

DATED

2023

Lincolnshire County Council

(1)

and

XXXXXXXXXXXXXXXXXXXXXXXXXX

(2)

CONTRACT

relating to the provision Community Supported Living
Services under Lot 1 / Lot 2

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- B15 Service User Records]
- B16 Business Continuity
- B17 Co-Operation

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THIS AGREEMENT is made the day of

2023

BETWEEN

(1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YL (the "Council")

and

(2) **xxxx** (registered under Company No: xxxx) whose registered office is situated at xxxxxxxxxxxxxxxxxxxx (the "Provider")

WHEREAS

(A) The Council has created an Open Select List to list providers of community supported living services which shall, if called off in accordance with this Contract, provide such Services in accordance with the Call off and this Contract

(B) The Provider has agreed to provide the same on the terms and conditions set out below.

(C) Provided that the Provider complies with the provisions of any such Call off and the terms of this Contract to the satisfaction of the Council, the Council shall make payments to the Provider in accordance with this Contract

IT IS HEREBY AGREED as follows:

GENERAL PROVISIONS

A1 DEFINITIONS AND INTERPRETATION

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

Affected Party means the Party seeking to claim relief in respect of a Force Majeure Event.

Approval means the prior written consent of the Council.

Authorised Person means the Council and any body or person concerned with the provision of the Services or care of a Service User.

Best Value means arrangements to secure continuous improvement in the way the Council's functions are exercised having regard to a combination of economy, efficiency and effectiveness.

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

Caldicott Guardian means the senior health professional responsible for safeguarding the confidentiality of patient information.

Call Off means the notification of a Call Off and requirements of the relevant Services

to be provided to a Service User. This shall be in the form set out at Schedule 9.

Care Quality Commission or CQC means the care quality commission established under the Health and Social Care Act 2008.

Care & Support Standard Hourly Rate means the element of the Service Charges which provides the hourly rate for the care and support element of the Services

Carer means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage.

Change means any variation to this Contract including to any of the Services and Service Levels.

Change Control Procedure means the procedure for changing this Contract as set out in Clause F3.

Change of Control means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in a majority or all of the shares in the Provider (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a).

Commencement Date means the 1 July 2020

Commercially Sensitive Information means any Party's Information that:

- (a) if disclosed, could prejudice the other Party's commercial interests and/or
- (b) constitutes a trade secret.

Commissioned Hours means the core and 1:1 hours identified by a Practitioner as required by a Service User and noted in a relevant Call Off or as amended by the Provider, the Practitioner and/or the Council in accordance with the Specification.

Competent Body means any body that has authority to issue standards or recommendations with which either Party must comply.

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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data.

Consents means:

- (i) 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; and/or
- (ii) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract.

Contract means this written agreement between the Council and the Provider consisting of these clauses and the attached Schedules.

Contracting Authority means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

Contract Period means the period from the Commencement Date to:

- (a) the date of expiry of the Initial Contract Period, or
- (b) following an extension pursuant to Clause A2.2, the date of expiry of the extended period,

or such earlier date of termination of the Contract in accordance with the Law or the provisions of this Contract.

Contract Year means a period of twelve (12) Months commencing on the Commencement Date and/or each anniversary of the Commencement Date.

Controller takes the meaning given in the GDPR.

Conviction means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988.

Council's Change Control Notice means a notice served by the Council on the Provider requesting a Change in accordance with Clause F3.

Council's Contract Manager means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Council pursuant to Clause B5, being the person responsible for managing the delivery of the Services on behalf of the Council.

Council's Personal Data means the Personal Data supplied by the Council to the Provider and/or Personal Data collected by the Provider on behalf of the Council for the purposes of or in connection with the Contract.

Council's Representative means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Council pursuant to Clause B5, being the person responsible for managing the overall relationship with the Provider.

CQC means the Care Quality Commission.

CQC Regulations means the Care Quality Commission (Registration) Regulation 2009.

Crown means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

Data Protection Legislation means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Officer take the meaning given in the GDPR.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Subject takes the meaning given in the GDPR.

Data Subject Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.

DBS means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

Default means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract.

Delivered Hours means the number of hours actually provided by the Provider in provision of the Services

Disaster means an unplanned interruption of, or inaccessibility to, the Services provided by the Provider.

Disaster Recovery and Business Continuity Plan means the business continuity and disaster recovery plan prepared pursuant to Schedule 6 as amended from time to time.

DPA means the Data Protection Act 2018.

Employment Checks means the pre-appointment checks that are required by Law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks and the Provider shall ensure that these meet the Council's Disclosure and Barring Service Policy which is available at <http://www.lincolnshire.gov.uk/professionals/downloads/file/646/recruitment-policy?fileID=646>

Enhanced DBS & Barred List Check means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate) and the Provider shall ensure that these meet the Council's Disclosure and Barring Service Policy.

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 as set out in the Council's Disclosure and Barring Service Policy.

Enhanced Night Time Support Rate means the element of the Service Charges which relates to the enhanced night time on call element of the Services.

Environmental Information Regulations means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Equality Legislation means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and non-discrimination and equality in employment.

Equipment means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under this Contract.

Financial Schedule means the full provider costing which will be required by Providers for a tender submission, for Service Type D as part of a further mini competition under the OSL.

Payment Schedule means the schedule that is sent by the Council to the Provider setting out the details of the amount of Commissioned Hours provided to Service Users and details of the Service Charges to be paid for the provision of such Services to the Provider in relation to any Service User(s) who have been subject to a Call Off in accordance with this Contract for the relevant Month in question.

Floating Support Rate means the rate that will apply for the element of Services in relation to care and support only that is delivered in a single person CSL service on less than a 24/7 basis, as set out within the Specification.

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider or the Staff or any other failure in the Provider's or a Sub-Contractor's supply chain.

Force Majeure Notice means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

Formal Warning Notice means a notice served in accordance with Clause H2.2.

Fraud means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Council.

GDPR means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

Geographical Zone means the area of Lincolnshire in which Provider is able to provide Services and as set out and defined within the Invitation to Tender.

Good Industry Practice means standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking under this Contract under the same or similar circumstances.

Guidance means any applicable local authority, health or social care guidance, direction or determination which the Council and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006.

Housing Provider means an entity which is introduced by the Provider in accordance with this Agreement who shall provide accommodation to Service Users as required by a relevant Call Off and enter into a Nomination Agreement accordingly.

ICT means information and communications technology.

ICT Environment means the Council's system and the Provider system.

Improvement Notice means a written notice given by the Council to the Provider pursuant to Clause H7.1 to initiate the Improvement Plan Process.

Improvement Plan means the plan agreed in accordance with Clause H7 for the resolution of a Default of the Provider.

Improvement Plan Process means the process for resolving certain of the Defaults of the Provider as set out in Clause H7.

Incumbent Provider means any Provider providing any service that constitutes or that shall constitute part of the Services immediately before the Transfer Date and Commencement Date of this Contract.

Information has the meaning given under section 84 of the FOIA and includes Personal data as defined under Data Protection Legislation.

Information Commissioner's Office means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in the DPA.

Initial Contract Period means the period from the Commencement Date to the date of expiry set out in Clause A2 (Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

Intellectual Property Rights means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

Invitation to Tender means the document provided by the Council for the purpose of

inviting the Providers to submit their Tender to supply the Council with the Services.

Joint Controllers means where two or more Controllers jointly determine the purpose and means of processing.

Key Personnel means those persons identified in Schedule 5 for the roles attributed to such personnel.

Law means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Provider is bound to comply.

LED means the Law Enforcement Directive (*Directive (EU) 2016/680*).

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 means experience derived from provision of the Services, 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.

Local HealthWatch means the local independent consumer champion for health and social care in England.

Losses means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements).

Management Agreement means an agreement between the Provider and Housing Provider setting out their respective responsibilities for the management of the Premises and Tenancies, including the support for any Service User's occupying and residing within such Premises.

Mini Competition means the mini tender process as identified within the Specification and the Invitation to Tender which is undertaken by the Council in order to ascertain which Supplier shall receive a Call Off for the provision of Type C and/or D Services.

Mini Tender Score means the score given to Suppliers following a Mini Competition following evaluation of the Supplier's bid and calculated in accordance with the procurement documentation relating to the Mini Competition in question

Month means calendar month.

National Institute for Health and Clinical Excellence or **NICE** means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body).

National Standards means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time.

NHS Act 2006 means the National Health Service Act 2006.

Nomination Agreement means an agreement entered into by the Council, the Provider and a Housing Provider following Call Off of Type C Services, setting out the

parties responsibilities in relation to nomination rights and voids for any Premises to be provided for such Type C Services in accordance with this Contract. An example of such an agreement is set out at Schedule 10 and which shall be used as a precedent for such an agreement.

OSL means Lincolnshire County Council's Open Select List for Community Supported Living Services.

Party means a party to this Contract and the term Parties shall be construed accordingly.

Patient Safety Incident means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User.

Pensions Direction means the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

Performance Management Framework means the performance monitoring system set out at Schedule 4.

Persistent Breach means a Default which has occurred on three or more separate occasions within a continuous period of three (3) Months.

Personal Data takes the meaning given in the GDPR.

Personal Data Breach takes the meaning given in the GDPR.

Practitioner means a health practitioner and/or adult social care practitioner who may identify a need for a Service User to be provided the Services and shall refer such a Service User to the Council to be referred through the OSL.

Premises means the location where the Services are to be supplied.

Processing takes the meaning given in the GDPR.

Processor takes the meaning given in the GDPR.

Prohibited Act each of the following constitutes a Prohibited Act:-

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:-
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:-
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract or any

other contract with the Council; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Council.

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Part B of Schedule 7.

Provider means the person, firm or company with whom the Council enters into this Contract including the Provider's Staff, agents and contractors and each Sub-Contractor.

Provider Change Control Notice means a notice served by the Provider on the Council requesting a Change in accordance with Clause F3.

Provider's Contract Manager means the person identified as such in Part 2 of Schedule 5 or any replacement person appointed by the Provider pursuant to Clause B5, being the person responsible for managing the delivery of the Services on behalf of the Provider.

Provider's Representative means the person identified as such in part 2 of Schedule 5 or any replacement person appointed by the Provider pursuant to Clause B5, as the person responsible for managing the Provider's overall relationship with the Council.

Public Contracts Regulations means the regulations on public procurement which implements the European Union Directive 2014/24/EU into English law with effect from 26 February 2015.

Quality Standards means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

Receipt means the physical or electronic arrival of the invoice at the address of the Council detailed in Schedule 3.

Regulated Activity in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council and "Regulatory Body" shall be construed accordingly.

Relevant Employees means the employees of the Provider (including Transferring Employees) who are wholly or mainly assigned to work in the provision of the Services

and who are/shall be subject to a Relevant Transfer by virtue of the application of the TUPE Regulations.

Relevant Transfer means a transfer of employment to which the TUPE Regulations apply.

Replacement Contractor means any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of this Contract.

Request for Information shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

Schedule means a schedule attached to, and forming part of, this Contract.

Serious Incident means an incident or accident or near-miss where a patient (whether or not a Service User), 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 or the Council are likely to be of significant public concern.

Services means the services to be supplied by the Provider as specified and detailed in the Specification and the Service Delivery Plan.

Service Charges means the charges levied by the Provider for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in this Contract including Schedule 3.

Service Delivery Plan means the details for delivery of the Services provided by the Provider as set out at Schedule 2.

Service Failure means a failure by the Provider to deliver any part of the Services in accordance with the Service Levels.

Service Levels means the levels to which the Services are to be performed as set out in Schedule 4.

Service User means the person directly receiving the Services provided by the Provider as specified in the Specification and includes their Carer and Legal Guardian where appropriate.

Specification means the description of the Services to be supplied under this Contract as set out in Schedule 1.

Staff means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.

Staff Vetting Procedure means the Council’s procedures for the vetting of Staff and as advised to the Provider by the Council available at <http://www.lincolnshire.gov.uk/professionals/downloads/file/646/recruitment-policy?fileID=646>

Standard Night Time on Call Support Rate means the element of the Service Charges which related to the night time on call element of the Services

Sub-Contract means any contract or agreement, or proposed contract or agreement between the Provider and any third party whereby that third party agrees to provide to the Provider the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

Sub-Contractor means the third parties that enter into a Sub-Contract with the Provider.

Sub-processor means any third party appointed to process Personal Data on behalf of the Provider related to this Contract.

Supplier means any providers who have been accepted onto the OSL and are eligible to receive Call Offs in accordance with the provisions of the OSL.

Quarter means three (3) consecutive Months

Tenancy means a tenancy agreement entered into by the Service User and relevant Housing Provider in respect of accommodation provided in accordance with this Contract and as part of a Call Off.

Tender means the document(s) submitted by the Provider to the Council in response to the Council's invitation to Providers for formal offers to supply it with the Services.

Tender Score means the score given to providers when being admitted onto the OSL by the Council following evaluation of the providers bid and calculated in accordance with the procurement documentation relating to the OSL.

Third Party Premises means any premises used by the Provider in the provision of the Services which are owned by a third party.

Transfer Date means the date the Transferring Employee is transferred to the employment of the Provider from the Incumbent Provider.

Transferring Employees means employees of the Incumbent Provider who are subject of a Relevant Transfer to the Provider by virtue of the application of the TUPE Regulations, as amended.

Transferring Original Employee means a former employee of the Council whose contract of employment, by virtue of the application of the TUPE Regulations, becomes a contract of employment with the Provider and who meets the definition of a Transferring Original Employee under the Pensions Direction.

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Type A Services means the element of Services in relation to care and support only, as set out as Service Type A within the Specification

Type B Services means the element of Services in relation to care and support in an existing accommodation setting, as set out as Service Type B within the Specification

Type C Services means the element of Services in relation to care and support with the requirement for a new accommodation setting, as set out as Service Type C within the Specification

Type D Services means the element of Services in relation to care and support in

exception circumstances, as set out as Service Type D within the Specification

Vacancy or Vacancies means any available accommodation which the Provider is able to offer to the Council for a Service User to occupy and receive the Services

VAT means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

Working Day means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to Clauses and Schedules are to the clauses and Schedules of this Contract; references to paragraphs are to paragraphs of the relevant Schedule;
- (d) the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to the Contract includes the Schedules;
- (e) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- (h) headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- (i) Where there is any conflict or inconsistency between the provisions of this Contract such conflict or inconsistency shall be resolved according to the following order of priority:-
 - (i) the clauses of this Contract;
 - (ii) Schedule 1;
 - (iii) the remaining Schedules to this Contract other than Schedule 2; and
 - (iv) Schedule 2 to this Contract.

A2 CONTRACT PERIOD AND EXTENSION

A2.1 This Contract shall take effect on the Commencement Date and shall expire automatically on 30 June 2025 unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under Clause A2.2.

A2.2 Subject to Clause C4 (Price adjustment on extension of the Initial Contract Period),

the Council may, by giving written notice to the Provider not less than six (6) Month(s) prior to the last day of the Initial Contract Period, extend this Contract on the same terms for a further period or further periods of up to a maximum of 24 Months in total. The provisions of this Contract shall apply (subject to any variation or adjustment to the Service Charges pursuant to Clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

A3 PROVIDER'S STATUS

A3.1 At all times during the Contract Period the Provider shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

A4 COUNCIL'S OBLIGATIONS

A4.1 Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its 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 its 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.

A5 NOTICES

A5.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail (confirmed by letter), or by letter (delivered by hand, first class post, recorded delivery or special delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given on the same Working Day if delivered by hand, two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail provided such notice is served no later than 1pm on any Working Day, otherwise such notice shall be deemed served the following Working Day, or sooner where the other Party acknowledges receipt of such letters or item of electronic mail. Such letters and electronic mail shall be addressed to the other Party in the manner referred to in Clause A5.3.

A5.3 For the purposes of Clause A5.2, the address of each Party shall be:-

(a) For the Council:
Commercial Team
Room 4-05, Orchard House
LINCOLN LN1 1BA
For the attention of: Edward Baker
Tel: 01522 552222
Email: Edward.Baker@lincolnshire.gov.uk

(b) For the Provider:
Name
Address
For the attention of: XXX/XXX
Tel: XXXX
Email: XXXX

A5.4 Either Party may change its address for service by serving a notice in accordance with

this clause.

A6 MISTAKES IN INFORMATION

A6.1 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Council.

A7 CONFLICTS OF INTEREST

A7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any of the Provider's Staff are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Provider and the duties owed to the Council under the provisions of this Contract. The Provider shall disclose to the Council full particulars of any such conflict of interest which may arise.

A7.2 The Council reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Provider and the duties owed to the Council under the provisions of this Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

A8 VOLUMES

A8.1 The Provider acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Council in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Council.

SUPPLY OF SERVICES

B1 ACCEPTANCE ONTO THE OSL

B1.1 The Council, having reviewed the documentation and evidence submitted by the Provider in accordance with the OSL, has selected the Provider to enter onto and become a Supplier of the OSL.

B1.2 The Provider acknowledges that it has entered onto the OSL and warrants and undertakes that it shall comply with all obligations and regulations identified within the Tender.

B1A SELECTION FROM THE OSL FOR TYPE A SERVICES

B1A.1 From time to time, the Council may identify a need for a Service User to receive Type A Services.

B1A.2 In the event that the Provider has indicated a desire to provide such Type A Services within its Tender and is able to provide such Services within the relevant Geographical Zone, the Provider shall be eligible to receive a Call Off in respect of the provision of such Services.

B1A.3 The Council shall review the list of Suppliers for the provision of Type A Services within the relevant Geographical Area and shall select the Supplier which has the best overall Tender Score.

B1A.4 In the event that the Provider who has been awarded the highest Tender Score is not available to provide such Type A Services, the Council shall review the list of Supplier who comply with the requirements of Clause B1A.2 and shall provide a Call Off in respect of such Services to the Supplier who has the next best Tender Score. The

Council shall work down the list of eligible Suppliers in descending order in relation to their Tender Score until a Supplier agrees to provide such Type A Services.

- B1A.5 In the event that two or more Suppliers have been awarded with the same Tender Score available to provide such Type A Services and are eligible to provide such Type A Services in accordance with Clauses B1A.2 – B1A.4, the Council shall select the Supplier who has the most competitive price.
- B1A.6 If the prices of the Supplier's referred at Clause B1A.5 are the same, the Council shall rotate any opportunities that arise in accordance with B1A.1 between those respective Suppliers at its own discretion, but acting reasonably.
- B1A.7 If the Provider is selected to provide Type A Services in accordance with Clause B1A.7, the Council shall issue a Call Off and the Provider shall provide such Services in accordance with this Contract and the relevant Call Off.
- B1A.8 If the Provider is selected to provide Type A Services where less than 24/7 care is being delivered in a single person CSL service, the Floating Support rate will apply.

B1B SELECTION FROM THE OSL FOR TYPE B SERVICES

- B1B.1 Every two (2) weeks from the Commencement Date, the Provider shall notify the Council of any Vacancies which arise in any Premises they are able to provide for Service Users.
- B1B.2 From time to time, the Council may identify a need for a Service User to receive Type B Services. Upon such need, the Council shall review the details of any such Vacancies provided by all Suppliers against the need of any such Service User.
- B1B.3 Following review of all Vacancies notified to the Council, it shall select the Supplier it believes in its absolute discretion whose Vacancy would provide the most suitable care, support and existing accommodation setting available for the Service User.
- B1B.4 In the event that the Provider is so selected in accordance with Clause B1B.3, it shall arrange to meet the Service User and any Carers, Guardians or family as appropriate to ensure that its Vacancy is suitable for that Service User's needs, acting reasonably.
- B1B.5 In the event that following the Provider's assessment in accordance with Clause B1B.4 it is decided that the Provider's Vacancy is suitable, the Council shall issue a Call Off and the Provider shall provide such Services in accordance with this Contract and the relevant Call Off.
- B1B.6 In the event that, following the Provider's assessment in accordance with Clause B1B.4, the Provider's Vacancy is not deemed to be suitable, the Practitioner will be notified and another Supplier shall be selected.

B1C SELECTION FROM THE OSL FOR SERVICE TYPES C & D

- B1C.1 From time to time, the Council may identify a need for a Service User to receive Type C or D Services.
- B1C.2 In the event that the Provider has indicated a desire to provide such Type C and/or D Services within its Tender, complies with the eligibility criteria within the Specification and is able to provide such Services within the relevant Geographical Zone where applicable, the Provider shall be invited to undertake a Mini Competition in relation to such Services.
- B1C.3 Following the completion of such a Mini Competition, the Council shall evaluate all responses to the Mini Competition and shall select the Supplier which has the best

overall Mini Tender Score and issue a Call Off in relation to the provision of such Services. In the event that the Provider receives such Call off, it shall provide such Services in accordance with this Contract and the relevant Mini Competition and Call Off.

- B1C.4 In respect of the provision of Type C Services, the Provider shall ensure that it has suitable Management Agreement with a Housing Provider who is able to provide the accommodation element of such Type C Services. The Provider shall and warrants that the Housing Provider in question shall enter into a Nomination Agreement in relation to any such accommodation required for such a Call Off, using the Nominations Agreement set out in Schedule 10 as a precedent but may be amended to take into account the specifics of the Call Off in question, by way of discussions.
- B1C.5 In the event that two or more Suppliers have been awarded with the same Mini Tender Score available, the Council shall select the Supplier who has the most competitive price.
- B1C.6 If the prices of the Supplier's referred at Clause B1C.5 are the same, the Council shall rotate any opportunities that arise in accordance with B1C.1 between those respective Suppliers at its own discretion, but acting reasonably.
- B1C.7 If the Provider is selected to provide Type C or D Services in accordance with Clause B1A.7, the Council shall issue a Call Off and the Provider shall provide such Services in accordance with this Contract and the relevant Call Off.

B2 THE SERVICES

- B2.1 The Provider shall supply the Services during the Contract Period in accordance with the Council's requirements as set out in the Specification, the provisions of this Contract, the Service Delivery Plan and any Call Offs or Mini Competitions, in consideration of the payment of the Service Charges.
- B1.2 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of this Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Council.
- B1.3 Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

B2A THE PREMISES

- B2A.1 The Provider shall ensure that any Premises used for the provision of any Services provided for under this Contract:
- shall be in accordance with the Specification and any requirements noted in any Mini Competition and/or Call Off;
 - Has been subjected to risk assessments and has adequate health and safety certification in relation to fixtures and fittings;
 - shall have sufficient space for the provision of the Services required;
 - complies with and meets any standards prescribed by Law including, but not exclusive to, Health & Safety, Fire Precautions, Environmental Health and accessibility;

- is fit for the purpose of providing the Services, including any requirements under any Call Off or Mini Competition for a Service User attending the Premises;
 - is in a clean and good state of repair and is maintained in good order
 - shall have suitable facilities/equipment to meet the assessed needs of Service Users.
 - shall have accessible points of access and egress from the building for use by all Service Users;
 - shall, where Services are provided for Service Users that have complex personal care needs, have suitable toileting and changing facilities, including suitable access for those that have a disability;
 - has suitable public liability and other household insurance for the provision of the Services and in accordance with this Contract;
 - is in a good state of repair, is watertight and is of sound construction
 - include any Equipment necessary for the provision of the Services as provided for in Clause B3
- B2A.2 If, in the provision of any Services, the Provider uses any Third Party Premises, the Provider shall ensure that it has procured a suitable licence to be able to use and provide the Services at the Third Party Premises and shall indemnify and hold the Council harmless against any claims or proceedings arising out of any use of Third Party Premises by the Provider in connection with this Contract. This may be by way of a Nomination Agreement or similar.
- B2A.3 As soon as reasonably practicable following any reasonable request from the Council, the Provider shall provide the Council with information about any Premises that they intend to use for the provision of the Services, before any such use. Such information shall include:
- details of the location and the history of the Premises
 - the Tenure of the Premises and details of any lease or licence which the Provider is party to
 - copies of all relevant risk assessments and documents relating to health and safety, including but not limited to, up to date electrical and gas test certificates
 - any other information which the Council may reasonably require to ensure that the Premises used are in accordance with this Contract and any needs of Service Users identified in any Call Off.
- B2A.4 The Provider shall use best endeavours to ensure that any Tenancy which is entered into as part of the provision of the Services by any Service User is entered into in accordance with the Specification and that any Service User who enters into such Tenancy understands, or their Legal Guardian, Carer or any other individual who has the power to enter into such agreements on behalf of the Service User, understands the implications of entering into such agreement.
- B2A.5 The Provider shall provide the Council with reasonable access to any Premises used for the provision of the Services so as to enable the Council to undertake audits to ensure that the Premises comply with this Clause B2A.
- B2A.6 Where the Provider becomes aware of a vacancy in an established and existing dedicated accommodation setting, which may be used as Premises for the provision of the Services, the shall notify the Council to support the bid process offering 'subsequent' vacancies, after accommodation is established to Practitioners for those potential Service Users who have care and support needs and an accommodation need. All vacancies should be reported within 72 hours via a web portal as required by the Council.

B2A.7 The Provider shall and shall ensure that any Housing Provider provides the Council and and Practitioners or other Parties, as required, with a licence to enter the Premises to undertake any audit, review or meeting as set out within this Contract.

B2B TRANSPORT

B2B.1 In the event that any Call Off provides for the Provider to provide transport to the Service User to and from any Premises or otherwise, the Provider shall ensure that any such requirements provided for in Schedule 1 are considered and that any such vehicle used is:

- Fit for the purpose of transporting the Service User, taking into account any specific needs and wishes of the Service User
- easily accessible by the Service User
- In compliance with all applicable requirements of the Law, including but not limited to having a valid MOT and insurance allocated, is otherwise road worthy, licensing, insurance, testing, operation, construction, use, fitness, equipment, safety and maintenance.
- regularly serviced, and kept in a fully operational state of repair;
- be of a suitable type, size and design for the provision of the Services;
- in a suitable and fully operational mechanical condition, safe and roadworthy and comply with any applicable Law;
- clean and comfortable
- driven by a competent member of Staff, who is fully licensed to drive such vehicle by Law

B2B.2 In the event that a Service User is a wheelchair user, the Provider shall ensure that the supplier must be able to demonstrate that they have ensured the driver uses appropriate equipment, to ensure that the Service User is safe and comfortable whilst on board such transport and that the driver has been adequately trained in their use.

B2B.2 In the event that such transport is provided by a volunteer driver or a third party, the Provider shall ensure that such third party provider has suitable policies and procedures in place and can evidence that any such transport provided for complies with the requirements of this Clause B3B and the Specification.

B2C PROVISION OF FOOD TO SERVICE USERS

B3C.1 In the event that the Provider supplies a Service User with food during the provision of the Services or the Provider makes such food and refreshments available, the Provider shall ensure that such food and/or drink is:

- provided in accordance with any wishes and dietary requirements of the Service User;
- culturally specific and of sufficient serving size for the Service User to maintain a healthy and consistent weight;
- provided and prepared in accordance with relevant documents and guidance provided by dieticians
- if a hot meal, prepared and heated in a safe and correct manner
- prepared in a clean and suitable environment
- provided taken into consideration any requirements in the Specification;

B2D ASSISTANCE WITH MEDICATION

B2D.1 If a Service User to whom the Provider is providing Services to following a Call Off, requires assistance or reminders in taking any medications whilst under the care of

the Provider, the Provider shall ensure that any Staff assisting the Service User is suitable trained in the administration of medication and have been informed as to the details of the medication and any suitable instructions from the Service User's Carer, Legal Guardian or otherwise, including but not limited to:

- a) what the medication is for
- b) when it shall be taken
- c) the dosage that shall be given
- d) how it shall be stored
- e) how to record that the medication has been given and taken

B2D.2 The Provider shall ensure that any Staff provision any assistance with medication shall comply with the relevant Law and the Specification when providing any such assistance.

B2E HANDLING SERVICE USER'S MONEY AND VALUABLES

B2E.1 In the event that a Service User requires the Provider to undertake any financial transaction or to hold any monies or other items belonging to the Service User in their possession, the Provider shall ensure that any such provision of these Services is undertaken in accordance with the Specification, the Law and that Staff are fair and honest.

B2E.2 The Provider shall ensure that any such transactions or details of items retained by the Provider for a Service User is recorded upon suitable media and in accordance with the Specification.

B2E.2 In the event that any Service User complains about any such item going missing or the Provider being in default of this Clause B2E, the Council shall investigate the complaint in accordance with Clause B13 and as such, in the event that following such investigations, the Provider or its Staff are in default of this Clause B2E, may terminate the relevant Individual Call Off or this Contract in its entirety.

B2F WITHHOLDING AND/OR DISCONTINUATION OF SERVICES

B2F.1 Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:-

- a) who in the reasonable professional opinion of the Provider is unsuitable to receive the Services, for as long as such unsuitability remains;
- b) who displays abusive, violent or threatening behaviour unacceptable to the Provider acting reasonably and taking into account the pre-existing condition and the mental health and/or physical health of that Service User);
- c) in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the Services that the Provider reasonably considers to be unacceptable; or
- d) where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.

B2F.2 If the Provider proposes not to provide or to stop providing the Services to any Service User under clause B1A.1:-

- (a) where reasonably possible, the Provider shall explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);

- (b) the Provider shall inform the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
- (c) the Provider shall inform the Council in writing without delay and wherever possible in advance of taking such action;

provided that nothing in this clause B1A.2 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

B2G SERVICE QUALITY

B2G.1 The Provider shall unless otherwise agreed (subject to the Law) with the Council in writing:-

- (a) comply, where applicable, with the registration and regulatory compliance requirements and guidance of CQC and any other Regulatory Body;
- (b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
- (c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
- (d) comply with the recommendations issued from time to time by a Competent Body;
- (e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;
- (f) respond to any reports and recommendations made by Local Health Watch; and
- (g) comply with the Service Levels set out in Schedule 4.

B2H SERVICE USER INVOLVEMENT

B2H.1 The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Practice and their human rights.

B2H.2 As soon as reasonably practicable following any reasonable request from the Council, the Provider shall provide evidence to the Council of the involvement of Service Users, Carers and Staff in the development of Services.

B2H.3 The Provider shall carry out Service User surveys (and Carer surveys) and shall carry out any other surveys as set out within Schedule 4 and as reasonably required by the Council in relation to the Services. The form (if any), frequency and method of reporting such surveys shall comply with the requirements as agreed between the Parties in writing from time to time.

B2H.4 The Provider shall review and provide a written report to the Council on the results of each survey carried out under clause B1C.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider shall implement such actions as soon as practicable. If required by the Council, the Provider shall publish the outcomes and actions taken in relation to such surveys.]

B3 PROVISION AND REMOVAL OF EQUIPMENT

B3.1 The Provider shall provide and maintain all the Equipment necessary for the supply of the Services.

- B3.3 All Equipment brought onto the Premises shall be at the Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises shall remain under the ownership of the Provider.
- B3.4 The Provider shall maintain all items of Equipment in a safe, serviceable and clean condition.
- B3.5 The Provider shall, at the Council's or a specific Service User or Housing Provider's written request, at its own expense and as soon as reasonably practicable:-
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with this Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.

B4 MANNER OF CARRYING OUT THE SERVICES

- B4.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Provider shall agree the relevant standard of the Services with the Council prior to the supply of the Services and in any event, the Provider shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.
- B4.2 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B4.3 The Council shall conduct a review of performance of this Contract at least annually during the Contract Period. During this review, a performance report shall be agreed.

B5 KEY PERSONNEL

- B5.1 Each Party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those individuals who are identified by each Party as being key to the success of the delivery and operation of the Services and who shall be retained on the delivery and operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on matters for which they are expressed to be responsible.
- B5.2 The Provider acknowledges that the Provider's Key Personnel are essential to the proper provision of the Services to the Council.
- B5.3 The Provider's Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- B5.4 The Provider shall ensure that the role of each of its Key Personnel is not vacant for more than ten (10) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Provider's Key Personnel whom they have replaced. A temporary

replacement shall be identified with immediate effect from the Provider becoming aware of the role becoming vacant.

B5.5 The Council shall not unreasonably withhold its agreement under Clauses B5.3 or B5.4. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on this Contract which could be caused by a change in the Provider's Key Personnel.

B5.6 The Council may require the Provider to remove or procure the removal of any of the Provider's Key Personnel whom the Council considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on delivery or management of the delivery of Services.

B5.7 If the Provider replaces the Key Personnel as a consequence of this Clause B5, the cost of effecting such replacement shall be borne by the Provider.

B6 PROVIDER'S STAFF

B6.1 At all times, the Provider shall ensure that:-

- (a) each of the Staff is suitably qualified, adequately trained (including any specialist based training that is required for the proper delivery of the Services) and capable of providing the Services in respect of which they are engaged;
- (b) there is an adequate number of Staff to provide the Services properly;
- (c) where applicable, Staff are registered with the appropriate professional regulatory body;
- (d) all of the Staff comply with all of the Council's policies as notified to it from time to time; and
- (e) all of the Staff comply with the Law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working; and
- (f) Staff are aware of and respect equality and human rights of colleagues and Service Users.

B6.2 The Provider shall notify its entire Staff about the Provider's obligations under the terms of this Contract and about any applicable Law.

B6.3 Upon receipt of a complaint against a member of Staff, the Council may, to the extent reasonably necessary to protect the standards and reputation of the Council, in consultation with the Provider, request that the Provider investigates the complaint and provides the Council with all requested information in relation to this investigation, in accordance with the Provider's own internal policy and procedures and Good Industry Practice.

B6.4 In the event of industrial disputes or action by any of the Staff, it remains the Provider's responsibility to meet the requirements of this Contract. The Provider shall inform the Council immediately of impending or actual industrial disputes or action, which may affect the Provider's ability to deliver the Services and of the Provider's contingency plans for dealing with such disputes or action.

B6.5 The Provider shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:-

- (a) proper and sufficient continuous professional and personal development, training and instruction; and
 - (b) full and detailed appraisal (in terms of performance and on-going education and training),
- each in accordance with Good Industry Practice and the standards of any applicable relevant professional body.
- B6.6 Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider shall cooperate 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.
- B6.7 The Provider shall carry out Staff surveys in relation to the Services at intervals and in the form as agreed in writing from time to time.
- B6.8 NOT USED
- B6.9 NOT USED
- B6.10 NOT USED
- B6.11 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- B6.12 Subject to Clause B6.13, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider shall without limitation, complete:-
- (a) the Employment Checks; and
 - (b) if appropriate such other checks as required by the Council's Recruitment and Selection Policy and all other policies and documentation referred to therein including the Council's Disclosure and Barring Service Policy referred to in this Contract.
- B6.13 Subject to Clause B6.14, the Provider may engage a person in an Enhanced DBS Position (as applicable) pending the receipt of the Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Council.
- B6.14 Where Clause B6.13 applies, the Provider shall ensure that until the Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards shall be put in place:-
- (a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - (b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - (c) the new member of Staff is accompanied at all times by either the appointed supervisor or a member of Staff who has already been subjected to the Staff Vetting Procedure whilst providing the Services under this Contract; and

- (d) any other reasonable requirement of the Council.
- B6.15 The Provider shall (unless and to the extent agreed otherwise by the Council in writing) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.
- B6.16 Without prejudice to the provisions of this Clause B6, the Provider shall not engage or continue to utilise in the provision of the Services involving or which are likely to involve access to children, vulnerable persons or other members of the public to whom the Council owes a special duty of care, any member of Staff whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.
- B6.17 If the Provider fails to comply with Clause B6 and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Council, then the Council may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- B6.18 NOT USED
- B6.19 The Provider shall replace any of the Staff who the Council reasonably determines have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Staff for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services at no additional cost to the Council.
- B6.20 The Provider shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Staff. The Provider shall ensure at all times that it has the right to provide these records in compliance with the Data Protection Legislation.
- B6.21 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- B7 NOT USED**
- B8 NOT USED**
- B9 OFFERS OF EMPLOYMENT**
- B9.1 For the duration of this Contract and for a period of twelve (12) Months thereafter neither the Council nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.
- B10 TUPE AND PENSIONS**
- B10.1 The Council and the Provider agree that where the identity of a contractor (including the Incumbent Provider) of any service which constitutes or will constitute part of the Services is changed as a result of entering into or pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.
- B10.2 The Provider acknowledges and accepts that under the TUPE Regulations the contracts of employment of the Transferring Employees shall have effect (except in

relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Provider.

- B10.2A The Provider shall prior to any formal consultation required in accordance with the TUPE Regulations provide to all Transferring Employees basic guidance on their rights under the TUPE regulations and such guidance shall conform to government department issued guidance e.g. BIS Guidance on TUPE 2006 as amended.
- B10.3 In the event that the Provider enters into any Sub-Contracts 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 B10 and shall ensure that each Sub-Contractor complies with such terms. The Provider shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability or Losses awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of a Sub-Contractor to comply with such terms.
- B10.4 The Provider shall be responsible for all emoluments and outgoings in respect of all Relevant Employees employed by the Provider or any Sub-Contractor, including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions, pension contributions and otherwise, which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement Date but which are attributable in whole or in part to the period after the Commencement Date). The Provider shall indemnify and keep the Council indemnified and harmless from and against all Losses and other liabilities which the Council may incur in respect of the same.
- B10.5 The Provider shall fully and accurately disclose to the Council (and shall ensure that any relevant Sub-Contractor accurately discloses) any and all information in relation to all personnel engaged in the provision of the Services and all information that the Council may reasonably request in relation to the Staff within ten (10) Working Days of the Council's request including the following:-
- (a) a list of employees employed by the Provider, or any Sub-Contractor; and
 - (b) a list of agency workers, agents and independent contractors engaged by the Provider; and
 - (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel; and
 - (d) the age, gender, salary or other remuneration, date of continuous employment commenced and, if different, the commencement date, accrued holiday entitlement, pension details, location, retirement, enhancement rates, and any other factors affecting their redundancy and pension entitlements and any outstanding claims arising from employment of the Staff referred to in Clause B10.5(a); and
 - (e) the terms and conditions of the employment/engagement of the Staff referred to in Clause B10.5(a), their job titles and qualifications; and
 - (f) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - (g) details of all collective agreements with a brief summary of the current state of

negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

- B10.6 Where the Provider provides information in accordance with Clause B10.5 and the Provider or Sub-Contractor makes or becomes aware of any changes or discovers new information the Provider shall notify the Council within five (5) Working Days of any such change or discovery.
- B10.7 At the time of providing the disclosed information pursuant to Clauses B10.5 and B10.6, the Provider shall warrant the completeness and accuracy of all such information. The Provider authorises the Council to use any and all information provided under Clause B10 to the Council as it considers necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
- B10.8 The Council may use the information it receives from the Provider pursuant to Clauses B10.5 and B10.6 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Provider shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B10.9 The Provider shall indemnify and keep indemnified and hold the Council and the Crown (both for themselves and any Replacement Contractor) harmless from and against all Losses which the Council or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:-
- (a) the provision of information pursuant to Clause B10; and
 - (b) any claim or demand by any Relevant Employee as defined under TUPE (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Provider in respect of any Relevant Employee on or before the end of the Contract Period; and
 - (c) any failure by the Provider to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Council or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations; and
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Relevant Employees as defined under TUPE arising from or connected with any failure by the Provider to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Provider to the Council and/or a Replacement Contractor whose name is not included in the list of Relevant Employees as defined under TUPE.
- B10.10 The Provider shall comply with the Pension Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- B10.11 The Provider shall ensure that, in accordance with The Best Value Authorities Staff Transfers (Pensions) Direction 2007, a Transferring Original Employee shall be granted:
- (a) Pension rights that are broadly comparable to or better than those he/she has as

an employee of the Incumbent Provider; or

- (b) continued access to the Local Government Pension Scheme for those employees who at the Transfer Date are members of that pension scheme; and
- (c) terms and conditions of employment which allow the Transferring Original Employee to enforce the protection afforded under The Best Value Authorities Staff Transfers (Pensions) Direction 2007.

B10.12 This Clause B10 applies during the Contract Period and indefinitely thereafter.

B10.13 The Provider undertakes to the Council that, during the twelve (12) Months prior to the end of the Contract Period the Provider shall not (and shall procure that any Sub-Contractor shall not) without the prior consent of the Council (such consent not to be unreasonably withheld or delayed):-

- (a) amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any Staff (other than where such amendment or variation has previously been agreed between the Provider and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
- (b) terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);
- (c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Provider, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services; and
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

B10.14 The Provider confirms that it shall comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent Provider (including any Replacement Contractor). The Provider warrants that any information provided in accordance with Regulation 11 of the TUPE Regulations shall be accurate and complete.

B10.15 The Provider shall indemnify and keep the Council and any Replacement Contractor indemnified in full from and against direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Council or any Replacement Contractor as a result of or in connection with:-

- (a) the employment or termination of employment of any Relevant Employee or employee of any Sub-Contractor during any period prior to and including the date of expiry or termination of this Contract; and
- (b) any claim brought against the Council or any Replacement Contractor as a result of the Provider's failure to comply with any of its obligations under the TUPE Regulations and this Contract.

B10.16 Notwithstanding any provisions of this Contract, for the purposes of Clause B10 and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Contractor shall be entitled to enforce the benefits conferred to it under this Contract. If the Parties rescind this Contract or vary it in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Contractor shall not be required for such rescission, variation or termination.

B11 BEST VALUE

B11.1 The Provider shall provide to the Council all such assistance, information and documentation as the Council shall reasonably require for the purpose of compliance with its obligations of Best Value under Part 1 of the Local Government Act 1999.

B12 SERVICE IMPROVEMENT

B12.1 The Provider shall throughout the duration of this Contract identify and discuss any improvements and enhancements which would improve the Services and delivery of the Services with the Council. Without prejudice to the a foregoing, the Provider shall, at its own cost submit a report to the Council within thirty (30) Working Days of the end of each Contract Year, which shall identify the emergence of new and evolving relevant technologies, processes and any other change which could improve the Services and the delivery thereof. Such report shall be provided in sufficient detail to enable the Council to evaluate properly the benefits of the change.

B12.2 If the Council wishes to incorporate any improvement identified by the Provider pursuant to Clause B12.1, the Council shall send the Provider a Council Change Control Notice and the Parties shall discuss the implementation of the associated Change in accordance with the Change Control Procedure provided always that if the Provider's costs in providing the Services to the Council are reduced as a result of any business change implemented by the Provider, a saving as agreed between the Parties shall be passed on to the Council by way of a consequential and immediate reduction in the Service Charges.

B13 COMPLAINTS

B13.1 The Provider shall maintain an up to date, comprehensive and detailed written record of all complaints it receives regarding the Services which shall be available to the Council upon request from time to time and as soon as practicable or in any event within five (5) Working Days of such request by the Council. Such records shall contain all relevant details of the complaint including the following details:-

- (a) the member of Staff or other person to whom the complaint was made and the name and job title of that person;
- (b) the name and address (if known) of the person making the complaint and in what capacity the complaint was made;
- (c) the nature and extent of the default of which complaint was made;
- (d) the date and time of complaint; and
- (e) any action taken to remedy the complaint, and if no action is to be taken, the reasons why no action is to be taken.

B13.2 Where a complaint is received regarding:-

- (a) the standard of Services;

- (b) the manner in which any Services have been supplied;
- (c) the manner in which work has been performed;
- (d) the materials or procedures used by the Provider; or
- (e) any other matter connected with the performance of the Provider's obligations under this Contract,

then the Council shall notify the Provider, and where considered appropriate by the Council, investigate the complaint.

B13.3 The Council shall have the right to investigate all complaints which fall within this Clause B13 and to take such steps, or require the taking of such steps by the Provider, as it deems necessary (acting reasonably) in order to deal with the complaint. The Provider shall promptly provide such documentation, information and assistance (including access to Staff) as the Council may reasonably require in order to enable the Council to investigate and deal with a complaint.

B13.4 Without prejudice to its other rights and remedies under the Contract, the Council may, in its sole discretion, uphold the complaint and take further action in accordance with Clause F5.1, Clause H2 (Termination on Default) or H7 (Improvement Plan Process) of this Contract.

B13A INCIDENTS REQUIRING REPORTING

B13A.1 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.

B13A.2. If the Provider gives a notification to the CQC or any other Regulatory Body under clause B13.A1 which directly or indirectly concerns any Service User, the Provider shall send a copy of it to the Council within twenty four (24) hours of the Provider becoming aware of the incident. The Provider shall send all completed forms via Secure Email to: CommercialTeamPeopleServices@lincolnshire.gov.uk and also to their designated contract officer.

B13A.3. The Parties shall comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Council.

B13A.4. Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause B.13.

B14. CONSENT

B14.1. The Provider shall publish, maintain and operate a Service User consent policy which complies with Good Practice and the Law.

B15. SERVICE USER RECORDS

B15.1. The Provider shall create, maintain, store and retain Service User health and social care records for all Service Users. The Provider must retain Service User records for the periods of time required by Law and securely destroy them thereafter in

accordance with any applicable Guidance.

B15.2 The Provider shall:-

- (a) use Service User records solely for the execution of the Provider's obligations under this Contract; and
- (b) give each Service User full and accurate information regarding his/her treatment and Services received.

B15.3. The Provider shall at all times during the term of this Contract have a Caldicott Guardian and shall notify the Council of their identity and contact details prior to the Service 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.

B15.4. Subject to Guidance and where appropriate, the Service User records shall include the Service User's verified NHS number.

B16 BUSINESS CONTINUITY

B16.1 The Provider shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms to ensure that the Services shall be maintained in the event of disruption (including disruption to information technology systems and the supply chain) to the Provider's operations and those of its Sub-Contractors however caused. Such contingency plans shall be available for the Council to inspect and to practically test at any reasonable time and shall be subject to regular updating and review throughout the Contract Period in accordance with Schedule 6.

B16.2 The Provider shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every twelve (12) Month period). The Council shall be entitled to participate in such tests as it may reasonably require.

B16.3 Following each test, the Provider shall send to the Council a written report summarising the results of the test within ten (10) Working Days of the completion of the test and shall promptly implement any actions or remedial measures which the Council considers to be necessary as a result of those tests.

B16.4 In the event of any significant changes to the Disaster Recovery and Business Continuity Plan, the Provider shall provide such updated plan to the Council within ten (10) Working Days of the implementation of the change.

B16.5 The Provider shall implement the Disaster Recovery and Business Continuity Plan in the event that the Services are not available for more than forty eight (48) hours.

B17 CO-OPERATION

B17.1 The Parties shall at all times act in good faith towards each other.

B17.2. The Provider shall co-operate fully and liaise appropriately with:-

- (a) the Council;
- (b) any third party provider who the Service User may be transferred to or from the Provider;
- (c) any third party provider which may be providing care to the Service User at the

same time as the Provider's provision of the relevant Services to the Service User;
and

(d) primary, secondary and social care services,

in order to:

- e) ensure that a consistently high standard of care for the Service User is at all times maintained;
- f) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- g) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Council or members of the public.

C PAYMENT AND SERVICE CHARGES

C1 SERVICE CHARGES

C1.1 In consideration of the Provider's proper performance of its obligations under this Contract, the Council shall pay the Service Charges in accordance with Clause C2 (Payment and VAT) and Schedule 3 (Payment Mechanism).

C2 PAYMENT AND VAT

C2.1 Where the Provider returns the signed Financial Schedule to the Council in accordance with Schedule 3, the Council shall consider and verify that signed Financial Schedule in a timely manner.

C2.3 Where the Council fails to comply with Clause C2.1 and there is an undue delay in considering and verifying the signed Financial Schedule, the signed Financial Schedule shall be regarded as valid and undisputed for the purposes of Schedule 3 after a reasonable time has passed.

C2.4 Where the Provider enters into a Sub-Contract with a Provider or contractor for the purpose of performing its obligations under this Contract, it shall ensure that a provision is included in such a Sub-Contract which requires:-

- (a) payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the Receipt of a valid invoice; and
- (b) the counterparty to that Sub-Contract to include in any sub-contract which it awards provisions having the same effect as the provisions of clause C2.4(a).

C2.5 All payments to be made by the Council under this Contract are stated to be exclusive of VAT which shall be additionally paid by the Council where relevant at the prevailing rate and from time to time in the manner prescribed by Law.

C2.6 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under this Contract. Any amounts due under this Clause C2.6 shall be paid by the Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is

payable by the Council.

- C2.7 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate this Contract under Clause H2.6 (Termination on Default) for failure to pay undisputed sums of money.
- C2.8 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Contract such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.
- C2.9 Where payment by the Council of the Service Charges or other claim for payment by the Provider is disputed, this dispute shall be resolved as follows:-
- (a) Notwithstanding Clause C3, payment by the Council of all or any part of any Service Charges rendered or other claim for payment by the Provider shall not signify approval. The Council reserves the right to verify the Service Charges after the date of payment and subsequently to recover any sums which have been overpaid.
 - (b) If any part of a claim rendered by the Provider is disputed or subject to question by the Council either before or after payment then the Council may call for the Provider to provide such further documentary or oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Provider shall promptly provide such evidence in a form satisfactory to the Council.
 - (c) If any part of a claim rendered by the Provider is disputed or subject to question by the Council, the Council shall not withhold payment of the remainder.
 - (d) If any Service Charge rendered for payment by the Provider is paid but any part of it is disputed or subject to question by the Council and such part is subsequently agreed or determined not to have been properly payable then the Provider shall forthwith repay such part to the Council.
- C2.10 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract and shall declare and make available for inspection to the Council all Service Charges components including profit, central office overheads and all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents. Such records shall be retained for inspection by the Council twelve (12) years from the end of the Contract Year to which the records relate.
- C2.11 Without prejudice to Clause C2.6, for the avoidance of doubt, it shall be the sole responsibility of the Provider to:-
- (a) assess the VAT rate and tax liability arising out of or in connection with the Contract; and
 - (b) account for or pay any VAT (and any other tax liability) relating to payments made to the Provider under the Contract to HM Revenue and Customs ("HMRC").
- C2.12 The Council shall not be liable to the Provider in any way whatsoever for any error or failure by the Provider (or the Council) in relation to VAT, including without limit:-
- (a) where the Provider is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;

- (b) where the Provider has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such relevant authority) to be incorrect or invalid; and/or
 - (c) where the Provider's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid;
 - (d) where the Provider has specified a rate of VAT, or a VAT classification, to the Council (including but not limited to Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Provider subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in this scenario C2.12 (d), the Provider shall be obliged to repay any overpayment by the Council on demand.
- C2.13 Where the Provider does not submit a VAT invoice together with any claim for payment of the Services Charges, the Council shall not be liable to pay any VAT for that claim of the Service Charges either when it falls due or at any later date.

C3 RECOVERY OF SUMS DUE

- C3.1 Wherever under this Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Contract or under any other agreement or contract with the Council.
- C3.2 Any overpayment by either Party, whether of the Service Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Provider shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 PRICE ADJUSTMENT

- C4.1 The Council reserves the right to enter into good faith negotiations at its discretion for a period of not more than thirty (30) Working Days to agree a variation to the Service Charges at the end of each Contract Year.
- C4.2 If a variation in the Service Charges is agreed between the Council and the Provider, the revised Service Charges shall take effect from the date of agreement between the Parties.
- C4.3 Any increase in the Service Charges pursuant to Clause C4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) or the Retail Price Index (RPI), whichever is the lowest between the Commencement Date and the date (six) 6 Months before the end of the Initial Contract Period.

C5 PERFORMANCE MANAGEMENT

- C5.1 The Provider shall ensure that the Services meet or exceed the Service Levels at all

times from the Commencement Date.

- C5.2 The Provider shall provide the Council with reports and data submissions in relation to the Services provided at the times and at the frequencies set out within Schedule 4 and the Specification.
- C5.3 The Parties shall have regular meetings and discuss the provision of the Services at the times and frequencies set out within Schedule 4, to monitor and review the performance of this Contract, the achievement of the Service Levels, the provision of the Services and any other elements set out in Schedule 4. Such meetings shall be minuted by the Council and copies of the minutes shall be circulated to and approved by both Parties.
- C5.4 If the Provider fails to provide the Services in accordance with the Service Levels measured at the frequencies set out in Schedule 4, the Council shall refer such failure to the Improvement Plan Process and undertake the same in accordance with this Contract.
- C5.5 The Council and the Provider shall review the Service Levels every six (6) Months throughout the Contract Period and make any changes in accordance with the Change Control procedure to reflect the changes in the Service Levels.

C6 CONTRACT MANAGEMENT

- C6.1 The Provider shall work with the Council to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified.
- C6.2 The Provider shall work with the Council to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Provider's management and delivery of it.
- C6.3 The Provider shall supply information requested relevant to the delivery of the Services to the Council, using formats and to the timescales specified by the Council.
- C6.4 The Council intends, wherever it can, to capture and collate information through its IT system(s). However, the Council does reserve the right to make reasonable requests for information (at no additional charge) from the Provider including ad-hoc requests for information from time to time.
- C6.5 Any additional requests for information shall be considered in consultation with the Provider as shall the process of defining the methods of collection.
- C6.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within the Contract.
- C6.7 Review meetings as referred to in Clause C5 and Schedule 4 between the Council and the Provider shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.
- C6.8 The Council may undertake spot checks at any time to ensure that the Provider is complying with its obligations under this Contract and the Provider shall co-operate fully, at its own cost, with the Council.
- C6.9 The Provider shall be responsible for managing and reporting on any Sub-Contractual arrangements. Arrangements shall include mechanisms for the provision of management information, change control procedures and the prompt resolution of any

problems. The Council shall agree with the Provider day-to-day relationship management, contact points, communication flows and escalation procedures.

- C6.10 The Provider shall be expected to continuously improve the quality of the provision of the Services including that delivered by Sub-Contractors.

STATUTORY OBLIGATIONS AND REGULATIONS

D1 PREVENTION OF BRIBERY

D1.1 The Provider:-

- (a) shall not and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

D1.2 The Provider shall:-

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within five (5) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this Clause D1 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

- D1.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

- D1.4 The Provider shall immediately notify the Council in writing if it becomes aware of or suspects any Default of Clause D1.1 or has reason to believe that it has or any Staff has:-

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or Default of Clause D1.1(b);
- (b) 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; or
- (c) 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 or breach of Clause D1.1(b).

- D1.5 If the Provider notifies the Council that it suspects or knows that there may be a breach

of Clause D1, the Provider must respond promptly and in any event within ten (10) Working Days to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 12 (twelve) calendar years following the expiry or termination of this Contract.

D1.6 The Council may:-

- (a) terminate this Contract by written notice with immediate effect and recover from the Provider the amount of any Loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period if the Provider breaches Clause D1; and
- (b) recover in full from the Provider any other Losses sustained by the Council in consequence of any Default of Clause D1.

D1.7 Any notice of termination under Clause D1.6 must specify:-

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this Contract shall terminate.

D1.10 Despite Clause I2 (Disputes), any dispute relating to:-

- (a) the interpretation of Clause D1; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Council acting reasonably having given due consideration to all relevant factors and its decision shall be final and conclusive.

D1.11 Any termination under Clause D1.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

D1.12 In exercising its rights or remedies under Clause D1.6, the Council shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by Clause D1.1 and the identity of the person performing that Prohibited Act/prohibited conduct.

D2 ANTI-DISCRIMINATION

D2.1 The Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any Law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

D2.2 The Parties shall not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.

- D2.3 The Provider shall provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- D2.4 In performing this Contract the Provider shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:-
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it
- and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.
- D2.5 The Provider shall take all reasonable steps to secure the observance of Clause D2.1 by all Staff employed in performance of this Contract.
- D2.6 The Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination.
- D2.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Provider's performance of this Contract being in contravention of Equality Legislation or other any Law, enactment, order or regulation relating to discrimination, the Provider shall, free of charge:-
- (a) provide any information requested in the timescale allotted;
 - (b) attend any meetings as required and permit the Staff to attend;
 - (c) promptly allow access to and investigation of any documents or data deemed to be relevant;
 - (d) allow the Provider and any of the Staff to appear as witness in any ensuing proceedings, and
 - (e) cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- D2.8 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Provider, its agents, Sub-Contractors or Staff, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.

D2.9 The Provider must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.

D2.10 The Provider acknowledges that the Council may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Provider shall provide all necessary assistance and information to the Council as may be required in relation to the performance of an impact analysis by the Council. The Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Council.

D3 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

D3.1 A person who is not a Party to this Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

D4 ENVIRONMENTAL REQUIREMENTS

D4.1 The Provider shall, when working at any Premises in the delivery of the Services, perform its obligations under this Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D5 HEALTH AND SAFETY

D5.1 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law relating to health and safety, which may apply to the Staff and other persons working at/on the Premises and any Council Premises in the performance of its obligations under this Contract.

D5.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

D5.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under this Contract at the Premises and/or any Council Premises where that incident causes any personal injury and/or damage to property which could give rise to personal injury claim and/or other claim in relation to such damage to property.

D5.4 The Provider shall promptly (within twenty four (24) hours) notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract. The Council shall promptly notify the Provider of any health and safety hazards which may exist or arise at any Council Premises and which may affect the Provider in the performance of its obligations under this Contract.

D5.5 While on any Council Premises, the Provider shall comply with any health and safety measures implemented by the Council in respect of its Staff and other persons working there.

D5.6 The Provider shall co-operate with officers of the Council, or its representatives, investigating any health and safety matter.

D6 SAFEGUARDING

SAFEGUARDING CHILDREN/VULNERABLE ADULTS

- D6.1 The Provider shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of children and vulnerable adults in the delivery of all aspects of the Service including but not limited to Section 11 of the Children Act 2004, the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.
- D6.2 The Provider, if it has responsibility for the management and control of Regulated Activity (as defined under the legislation identified below), shall make the necessary arrangements to ensure compliance with Section 11 of the Children Act 2004 (the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Service) and the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).
- D6.3 The Provider shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.
- D6.4 To fulfil the commitment to safeguard and promote the welfare of children and vulnerable adults, as appropriate, the Provider shall have:-
- (a) Clear priorities for safeguarding and promoting the welfare of children/vulnerable adults explicitly stated in strategic policy documents;
 - (b) A clear commitment by senior management to the importance of safeguarding and promoting children/vulnerable adults' welfare;
 - (c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children/vulnerable adults;
 - (d) Recruitment and human resources procedures in compliance with Clause B6 in order to safeguard and promote the welfare of children/vulnerable adults;
 - (e) Procedures for dealing with allegations of abuse against members of Staff and volunteers;
 - (f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;
 - (g) Policies for safeguarding and promoting the welfare of children/vulnerable adults and procedures that are in accordance with guidance and locally agreed inter-agency procedures;
 - (h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of children/vulnerable adults including sharing of information;
 - (i) A culture of listening to and engaging in dialogue with children/vulnerable adults; and
 - (j) Appropriate whistle-blowing procedures.
- D6.5 The Provider shall immediately notify the Council of any information it reasonably requests to enable it to be satisfied that the obligations of Clauses B6 and D6 have been met.

PROTECTION OF INFORMATION

E1 DATA PROTECTION

- E1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council and the Provider are Joint Controllers.
- E1.2 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- E1.3 Where Personal Data relating to a Data Subject are collected from the Data Subject, or, someone other than the Data Subject, by either of the Joint Controllers, the Controller obtaining the Personal Data shall, at the time when Personal Data is obtained, be it from the other Controller, Data Subject or any other party provide the Data Subject with all of the following information:-
- (a) the identity and the contact details of the Controller and, where applicable, of the Controller's representative;
 - (b) the contact details of the Data Protection Officer, where applicable;
 - (c) the purposes of the processing for which the Personal Data are intended as well as the legal basis for the processing;
 - (d) the legitimate interests pursued by the Controller or by a third party;
 - (e) the recipients or categories of recipients of the Personal Data, if any;
 - (f) the categories of Personal Data concerned (this relates to Personal Data obtained from someone other than the Data Subject only);
 - (g) where applicable, the fact that the Controller intends to transfer Personal Data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or where a transfer requires safeguards under Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available; and
 - (h) the existence of automated decision-making, including profiling, and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the Data Subject (this only relates when the Personal Data has not been obtained from the Data Subject).
- E1.4 In addition to the information referred to in paragraph E1.3 the Controller who has obtained the Personal Data from the Data Subject shall, at the time when Personal Data is obtained, provide the Data Subject with the following further information necessary to ensure fair and transparent processing:-
- (a) the period for which the Personal Data shall be stored, or if that is not possible, the criteria used to determine that period;
 - (b) the existence of the right to request from the Controller access to and rectification or erasure of Personal Data or restriction of processing concerning the Data Subject or to object to processing as well as the right to Personal Data portability;
 - (c) where the processing is based on the Data Subject having given consent, the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

- (d) the right to lodge a complaint with the Information Commissioner's office or any other relevant supervisory authority;
 - (e) whether the provision of Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Data Subject is obliged to provide the Personal Data and of the possible consequences of failure to provide such Personal Data; and
 - (f) the existence of automated decision-making, including profiling, and, at least in these cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the Data Subject.
- E1.5 Where the Controller intends to further process the Personal Data obtained from the Data Subject for a purpose other than that for which the Personal Data was collected, the Controller shall provide the Data Subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in Clauses E1.3, E1.4 and E1.5 shall not apply where and insofar as the Data Subject already has the information.
- E1.6 The Controller who has obtained the Personal Data from someone other than the Data Subject shall provide the information referred to in Clause E1.3 (a) to (h):-
- (a) within a reasonable period after obtaining the Personal Data, but at the latest within one (1) Month, having regard to the specific circumstances in which the Personal Data are processed;
 - (b) if the Personal Data is to be used for communication with the Data Subject, at the latest at the time of the first communication to that Data Subject; or
 - (c) if a disclosure to another recipient is envisaged, at the latest when the Personal Data are first disclosed.
- E1.7 Where the Controller who has obtained the Personal Data from someone other than the Data Subject intends to further process the Personal Data for a purpose other than that for which the Personal Data was obtained, the Controller shall provide the Data Subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in Clause E1.3 (a) to (h).
- E1.8 Clause E1.3 (insofar as it relates to Data obtained from someone other than the Data Subject) and Clauses E1.5 to E1.7 shall not apply where and insofar as:-
- (a) the Data Subject already has the information;
 - (b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or in so far as the obligation referred to in Clause E1.3 of this Contract is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the Controller shall take appropriate measures to protect the Data Subject's rights and freedoms and legitimate interests, including making the information publicly available;
 - (c) obtaining or disclosure is expressly laid down by Union or Member State law to which the Controller is subject and which provides appropriate measures to protect the Data Subject's legitimate interests; or

- (d) where the Personal Data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.
- E1.9 Without prejudice to the provisions set out in Clause G1.7, the Provider shall indemnify the Council and shall keep the Council indemnified against all liabilities, losses, damages, costs or consequential losses or loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses suffered or incurred by the Council arising out of or in connection with any claim made against it in relation to any breach by the Provider of the DPA or GDPR or the Provider's obligations under this Contract.
- E1.10 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:-
- (a) a systemic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- E1.11 Subject to Clause E1.12, either Party shall notify the other Party and the point of contact identified in Part A of Schedule 7 immediately if it :-
- (a) receives a Data Subject Request (or purported Data Subject Request) including a request to rectify, block or erase any Personal Data any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation with the details of any such request;
 - (b) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (c) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (d) becomes aware of a Data Loss Event.
- E1.12 The Provider's obligation to notify under Clause E1.11 shall include the provision of further information to the Council in phases, as details become available.
- E1.13 The Party receiving a request as identified in Clause E1.11, shall be responsible for responding to the Data Subject provided that the receiving party shall at all times consult with the other Party with regards the response unless otherwise agreed between the Parties.
- E1.13A The Party who becomes aware of a Data Loss Event shall inform the other Party of the breach and the Parties shall identify which Party would be most appropriate to report the Data Loss Event to the Information Commissioner's Office and to inform the Data Subject(s).

- E1.14 Both Parties shall comply with their obligations under Article 30 of the GDPR and shall maintain complete and accurate records and information to demonstrate its compliance with this clause E1.
- E1.15 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- E1.16 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- E1.17 The Council may, at any time on not less than thirty (30) Working Days' notice, revise this Clause E1 by replacing it with any applicable controller to controller standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- E1.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E1.19 The Provider acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data, the Council may be irreparably harmed (including harm to its reputation). In such circumstances, the Council may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- E1.20 In the event that through failure by the Provider to comply with its obligations under the Contract, the Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Provider.
- E1.21 In the event that the Provider is placed into liquidation as outlined in Clause H1.1 (b) and H1.1(c) or the Contract is terminated by the Council pursuant to the provisions of the Contract relating to termination on insolvency in accordance with Clause H1.1, the Provider (or a liquidator or provisional liquidator acting on behalf of the Provider) shall at its own cost and at no cost to the Council:-
- (a) conduct a full and thorough search for any electronic and paper records held by the Provider which contain Council Personal Data in accordance with the Council's instructions;
 - (b) return all relevant records to the Council in accordance with the Council's instructions;
 - (c) permanently destroy all copies of any relevant electronic records; and
 - (d) provide written confirmation to the Council that the actions outlined above in this Clause E1.21 have been completed.
- E1.22 In the event of a Sub-Contractor of the Provider being in liquidation then it is the responsibility of the Provider to recover records and Council Personal Data held by the Sub-Contractor and/or Sub-processor and provide assurance to the Council that they have been recovered.
- E1.23 In the event that the Provider is put into administration as outlined in Clause H1.1 (a)

the Council shall work closely with the administrator to ensure that the Provider is able to maintain the Council Personal Data and other records they have created in accordance with Clause E1 of this Contract and maintain the standards of safekeeping as set out in this Contract including Schedule 7.

E1.24 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.]

E2 CONFIDENTIAL INFORMATION

E2.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:-

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E2.2 Clause E2.1 shall not apply to the extent that:-

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause E3 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E2.3 The Provider may only disclose the Council's Confidential Information to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations of confidentiality.

E2.4 The Provider shall not use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

E2.5 At the written request of the Council, the Provider shall procure that the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

E2.6 Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:-

- (a) to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any

Contracting Authority;

- (b) to any consultant, professional adviser, contractor, supplier or other person engaged by the Council or any person conducting a government office gateway review;
 - (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) for the purpose of the examination and certification of the Council's accounts;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Contract including for auditing purposes, to a body to novate, assign or dispose of its rights under the Contract (Clause F1.8), to a Replacement Contractor (Clause H6.2) and for the purpose of the examination and certification of the Council's accounts; or
 - (f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- E2.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause E2.6 is made aware of the Council's obligations of confidentiality.
- E2.8 Nothing in this Clause E2 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- E2.9 Any breach by the Provider of Clauses E2.1 – E2.4 shall be a breach incapable of remedy for the purposes of Clause H2 and shall entitle the Council (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause H2.
- E2.10 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- E2.11 Notwithstanding any other term of this Contract, the Provider hereby gives consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

E3 TRANSPARENCY AND FREEDOM OF INFORMATION

- E3.1 The Parties acknowledge that the content of this Contract, including any changes to this Contract agreed from time to time, except for:-
- (a) any Information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Council; and
 - (b) Commercially Sensitive Information
- (together the "Transparency Information") is not Confidential Information.

- E3.2 Notwithstanding any other provision of this Contract, the Provider hereby gives its consent for the Council to publish to the general public the Transparency Information in its entirety (but with any Information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Council shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- E3.3 The Provider shall assist and co-operate with the Council to enable the Council to publish the Transparency Information.
- E3.4 The Council acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication it will provide a clear explanation to the Provider. If the Council believes that publication of any element of the Transparency Information would be contrary to the public interest, the Council shall be entitled to exclude such Information from publication. The Provider acknowledges that the Council would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.
- E3.5 The Council shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Provider.
- E3.6 The Provider agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Council on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Council may disclose such Information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause E2.6(c)) and E11) publish such Information. The Provider shall provide to the Council within five (5) Working Days (or such other period as the Council may reasonably specify) any such Information requested by the Council.
- E3.7 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- E3.8 The Provider shall and shall procure that any Sub-Contractors shall:-
- (a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- E3.9 The Council shall be responsible for determining in its absolute discretion and

notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E3.10 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

E3.11 The Provider acknowledges that (notwithstanding the provisions of Clause E3.7) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:-

(a) without consulting the Provider; or

(b) following consultation with the Provider and having taken their views into account;

provided always that where E3.11(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

E3.12 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

E3.13 The Provider acknowledges that the Council may be obliged to disclose Commercially Sensitive Information in accordance with this Clause E3.

E4 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

E4.1 The Provider shall not:-

(a) make any press announcements or publicise this Contract or its contents in any way; or

(b) use the Council's name or brand/logo in any promotion or marketing or announcements of orders

without the Approval of the Council which shall not be unreasonably withheld or delayed.

E4.2 Both Parties shall take reasonable steps to ensure that their employees, agents, sub-contractors, Providers, professional advisors and consultants comply with Clause E4.1.

E4.3 If so requested by the Council, the notepaper and other written material of the Provider and Sub-Contractors relating to the delivery of the Services shall carry only logos and markings Approved by the Council.

E4.4 All publicity and marketing material produced by the Provider and/or its Sub-Contractors in relation to this Contract shall be submitted to the Council for Approval and no such items shall be printed (other than for purposes of Approval) until such Approval is received.

E5 SECURITY

E5.1 The Provider shall agree to comply with the minimum information security controls

detailed at Schedule 7 to this Contract at all time when processing the Council's Personal Data for the purposes or in connection with the delivery of the Services. Failure by the Provider to comply with this obligation shall constitute a Default and be dealt with in accordance with Clause H3.

E6 INTELLECTUAL PROPERTY RIGHTS

E6.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):-

- (a) furnished to or made available to the Provider by or on behalf of the Council shall remain the property of the Council; and
- (b) prepared by or for the Provider on behalf of the Council for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Council;

and the Provider shall not (except when necessary for the performance of this Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E6.2 The Provider hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause E6.1(b). This assignment shall take effect on the date of this Contract or as a present assignment of future rights that shall take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation necessary to execute this assignment.

E6.3 The Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.

E6.4 The Council shall grant to the Provider a non-exclusive, revocable, free licence for the Contract period to use the IP Materials where it is necessary for the Provider to supply the Services. The Provider shall have the right to sub-licence the Provider's use of the IP Materials. At the end of the Contract Period or early termination thereof the Provider shall cease to use and shall ensure that any Sub-Contractor ceases to use the IP Materials.

E6.5 The Provider shall grant the Council a non-exclusive, irrevocable, free licence for the Contract Period to use the Provider's Intellectual Property Rights where it is necessary for the Council in the provision of the Services. At the end of the Contract Period, the Council shall cease to use the Provider's Intellectual Property Rights.

E6.6 The Provider shall obtain Approval from the Council before using any material in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable. That licence or sub-licence shall also include the right for the Council to sub-licence, transfer, novate or assign to other Contracting Bodies, the Replacement Contractor or to any other third party supplying services to the Council.

E6.7 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council harmless from and against all

Losses which the Council may suffer or incur as a result of or in connection with any breach of this Clause E6, except where any such claim arises from:-

- (a) items or materials based upon designs supplied by the Council; or
 - (b) the use of data supplied by the Council which is not required to be verified by the Provider under any provision of this Contract.
- E6.8 The Council shall notify the Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Rights in materials supplied or licensed by the Provider.
- E6.9 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:-
- (a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Council; and
 - (c) shall not settle or compromise any claim without the Council's Approval (not to be unreasonably withheld or delayed).
- E6.10 The Council shall at the request of the Provider provide the Provider with all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Provider's obligations under this Contract. The Provider shall indemnify the Council for all Losses incurred in doing so.
- E6.11 The Council and the Provider shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the Council or the Provider in connection with the performance of this Contract.
- E6.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Council and, at its own expense and subject to the Approval of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:-
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
 - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,
- and in the event that the Provider is unable to comply with Clauses E6.12(a) or (b) within twenty (20) Working Days of receipt of the Provider's notification the Council may terminate this Contract with immediate effect by notice in writing.

E7 AUDIT

- E7.1 The Provider shall keep and maintain until twelve (12) years after the end of the

Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's Representatives such access to those records as may be requested by the Council in connection with this Contract.

E7.2 The Council may at any time during the Contract Period and for a period of twelve (12) Months after the Contract Period, conduct an audit for the following purposes:-

- (a) to verify the accuracy of the Service Charges that become due and payable by the Council to the Provider in respect of the Services (and proposed or actual Changes to them in accordance with the Contract) or the costs of all Providers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of the Council Personal Data;
- (c) to review the Provider's compliance with the DPA, FOIA and other Law applicable to the Services;
- (d) to review the Provider's compliance with its obligations under the Contract;
- (e) to review any records created during the provision of the Services;
- (f) to review any books of account kept by the Provider in connection with the provisions of the Services;
- (g) to carry out the audit and certification of the Council's accounts;
- (h) to carry out an examination of the economy efficiency and effectiveness with which the Council has used its resources; and
- (i) to verify the accuracy and completeness of any management information delivered or required by this Contract.

E7.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.

E7.4 Subject to the Council's obligation of confidentiality, the Provider shall on demand provide the Council and any other Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:-

- (a) all Information requested within the permitted scope of the audit;
- (b) reasonable access to any premises or sites controlled by the Provider and to any Equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) access to the Staff;
- (d) access to software owned or licenced to the Provider including software which is or will be used by the Provider for the purposes of providing the Services; and
- (e) accommodation (including desks) at the Provider's premises as reasonably required to conduct the audit.

E7.5 The Council shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.

E7.6 If an audit identifies that:-

- (a) the Provider has committed a material Default which is capable of remedy, the Provider shall correct such Default as soon as reasonably practicable and implement a Improvement Plan in accordance with the Improvement Plan Process;
- (b) the Council has overpaid any charges that became due and payable by the Council to the Provider in respect of the Services properly rendered, the Provider shall pay to the Council the amount overpaid within twenty (20) Working Days. The Council may deduct the relevant amount from any further payment when due if the Provider fails to make the payment; and
- (c) the Council has underpaid any charges that become due and payable by the Council to the Provider in respect of the Services properly rendered, the Council shall pay to the Provider the amount of the under-payment less the cost incurred by the Council of the audit if this was due to a Default by the Provider within twenty (20) Working Days.

E7.7 Notwithstanding anything within this Clause E7, the Provider shall provide reasonable access to the Council or other parties in relation to the visits required and set out within Schedule 4.

E8 EXCEPTIONAL AUDITS

E8.1 The Provider shall permit the Council and/or its appointed representatives access to conduct an audit (an "Exceptional Audit") of the Provider in any of the following circumstances:-

- (a) actual or suspected impropriety or Fraud;
- (b) there are reasonable grounds suspect that:-
 - (i) the Provider is in Default under the Contract;
 - (ii) the Provider is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Provider financial distress and result in a risk of the Provider becoming insolvent or bankrupt; or
 - (iii) a breach of the provisions set out in Schedule 7(each an "Exceptional Circumstance").

E8.2 If the Council notifies the Provider of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Provider shall provide access in accordance with Clause E7.4 as soon as reasonably practicable after such request and in any event within forty eight (48) hours of the request having been made.

E9 AUDIT COSTS

E9.1 The Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses E7.2 to E8.2 unless an audit identifies a material Default by the Provider in which case the Provider shall reimburse:-

- (a) the Council for all the Council's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
- (b) where the Council, a Regulatory Body and Auditor General appoint another body to conduct an audit, the Council shall be able to recover on demand from the Provider the identifiable, reasonable and properly incurred costs and expenses of the relevant body.

E10 NOT USED

E11 RECORDS AND OPEN BOOK ACCOUNTING

E11.1 The Provider shall (and shall procure that each Sub-Contractor shall):

- (a) at all times maintain a full record of particulars of the costs of performing the Services;
- (b) upon request by the Council, provide a written summary of any of the costs referred to in Clause E11.1(a), in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Provider of its obligations under the Contract;
- (c) provide such facilities as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause E11.1; and
- (d) provide to the Council copies of its annual report and accounts within twenty (20) Working Days of publication.

E11.2 Compliance with Clause E11.1 shall require the Provider to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to the Contract, showing in detail:

- (a) administrative overheads;
- (b) payments made to the Sub-Contractors and from the Sub-Contractors to their sub-contractors;
- (c) capital and revenue expenditure; and
- (d) such other items as the Council may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of the Contract,

and the Provider shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in sub-clauses E11.2(a) to E11.2(d) inclusive, available for inspection by the Council (and its advisers) upon reasonable notice pursuant to Clause E7, and shall provide a copy of these to the Council as and when requested from time to time.

E11.3 The Provider shall maintain that detailed records relating to the performance of the Services, in each case in accordance with Good Industry Practice and any applicable Legislation.

E11.4 Without prejudice to Clause E11.3, the Provider shall ensure that the following are maintained:

- (a) a full record of all incidents relating to health, safety and security which occur during the Contract Period;
- (b) full records of all maintenance procedures carried out during the Contract Period
- (c) full records of all staff matters including turnover, pay and disciplinary matters,
- (d) Any other records referred within the Specification.

and the Provider shall have the items referred to in clauses E11.4(a) to E11.4(c) available for inspection by the Council (and its advisers) upon reasonable notice, and shall provide copies of these to the Council as and when requested from time to time.

- E11.5 Upon termination or expiry of the Contract, and in the event that the Council wishes to enter into an agreement with any Replacement Contractor, the Provider shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Council to provide information relating to the Provider's costs of providing the Services (if applicable for the Services).
- E11.6 All information referred to in this Clause E11 is subject to the obligations set out in Clauses E2 and E3.

CONTROL OF THE CONTRACT

F1 TRANSFER AND SUB-CONTRACTING

- F1.1 Except where F1.4 and F1.5 applies, the Provider shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior Approval.
- F1.2 The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- F1.3 Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable but at least within ten (10) Working Days of the request.
- F1.4 Notwithstanding Clause F1.1, the Provider may assign to a third party ("the Assignee") the right to receive payment of the Service Charges or any part thereof due to the Provider under this Contract (including any interest which the Provider may incur under Clause C2.6). Any assignment under this Clause F1.4 shall be subject to:-
- (a) reduction of any sums in respect of which the Council exercises its right of recovery under Clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Council under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Council receiving notification under both Clauses F1.5 and F1.6.
- F1.5 In the event that the Provider assigns the right to receive the Service Charges under Clause F1.4, the Provider shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Provider shall ensure that the Assignee notifies the Council of the Assignee's contact information and bank account details to which the Council shall make payment in accordance with this Contract.

- F1.7 The provisions of Clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.
- F1.8 Subject to Clause F1.10, the Council may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:-
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
 - (c) any private sector body which substantially performs the functions of the Council,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under this Contract.
- F1.9 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause F1.8, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.
- F1.10 The Council may disclose to any of its assignees Confidential Information of the Provider which relates to the performance of the Provider's obligations under this Contract. In such circumstances the Council shall authorise the Assignee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Assignee gives a confidentiality undertaking in relation to such Confidential Information.
- F1.11 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.

F2 WAIVER

- F2.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A5 (Notices).
- F2.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

F3 CHANGE CONTROL PROCEDURE

Without prejudice to any other provision contained in the Contract:-

COUNCIL CHANGE

- F3.1 The Council has the right to propose a Change in the Services in accordance with this Clause F3.1. If the Council requires a Change, it must serve a Council Change Control Notice on the Provider. The Council shall not propose a Change that:-

- (a) requires the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
- (b) would cause any consent to be revoked (or unobtainable);
- (c) would, if implemented, result in a material change in the nature of the Services; and/or
- (d) would materially and adversely affect the Provider's ability to perform the Services or cause or be likely to cause loss of revenue or incur expenditure in a way that is not adequately compensated for.

F3.2 The Council Change Control Notice shall:-

- (a) set out the Change required in sufficient detail to enable the Provider to calculate and provide an estimate of the variation in costs and or loss in revenue (the "Provider's Change Control Response"); and
- (b) require the Provider to provide the Council within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) of receipt of the Council Change Control Notice with the Provider's Change Control Response.

F3.3 As soon as practicable and in any event within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) after having received the Council Change Control Notice, the Provider shall deliver to the Council the Provider's Change Control Response. The Provider's Change Control Response shall include the opinion of the Provider on:-

- (a) whether relief from compliance with obligations is required, including the obligations of the Provider to meet the Service Levels contained in the Contract during the implementation of the Change;
- (b) any impact on the provision of the Services;
- (c) any amendment required to this Contract as a result of the Change; and
- (d) any loss of revenue or prospective revenue to the Provider or Sub-Contractor that results from the Change.

F3.4 As soon as practicable after the Council receives the Provider's Change Control Response, the Parties shall discuss and agree the issues set out in the Provider's Change Control Response, including:-

- (a) providing evidence that the Provider has used all reasonable endeavours (including the use of competitive quotes) to oblige its Sub-Contractors (if any) to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrating that the relevant Changes shall be implemented in the most cost effective manner; and
- (c) in such discussions the Council may modify the Council Change Control Notice, in which case the Provider shall, as soon as practicable, and in any event not more than seven (7) Working Days (or such other reasonable period of time as the Parties shall agree) after receipt of such modification, notify the Council of any consequential changes to the Provider's Change Control Response.

- F3.5 If the Parties cannot agree on the contents of the Provider's Change Control Response then the dispute shall be determined in accordance with Clause I2 (Dispute).
- F3.6 As soon as practicable after the contents of the Provider's Change Control Response has been agreed or otherwise determined pursuant to Clause I2 (Dispute), the Council shall:-
- (a) confirm in writing the Provider's Change Control Response (as modified); or
 - (b) withdraw the Council Change Control Notice.
- F3.7 If the Council does not confirm in writing the Provider's Change Control Response (as modified) within fifteen (15) Working Days (or such other reasonable period of time as the Parties shall agree) of the contents of the Provider's Change Control Response having been agreed in accordance with Clause F3.4 above or determined pursuant to Clause F3.6 above, then the Council Change Control Notice shall be deemed to have been withdrawn.
- F3.8 In the event that the Provider's Change Control Response has been confirmed by the Council, the relevant Change shall be implemented within seven (7) Working Days of the Council's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

PROVIDER CHANGE

- F3.9 If the Provider wishes to introduce a Change, it must serve a Provider Change Control Notice on the Council.
- F3.10 The Provider Change Control Notice must:-
- (a) set out the proposed Change in sufficient detail which detail shall include but not be limited to impact on Service delivery and financial implications so as to enable the Council to evaluate it in full;
 - (b) specify the Provider's reasons for proposing the Change;
 - (c) request the Council to consult with the Provider with a view to deciding whether to agree to the Change and, if so, what consequential changes the Council requires as a result;
 - (d) indicate any implications of the Change(s); and
 - (e) indicate if there are any dates by which a decision by the Council is critical.
- F3.11 The Council shall evaluate the Provider's proposed Change in good faith, taking into account all relevant issues, including whether:-
- (a) the Change affects the quality of the Services or the likelihood of successful delivery of the Services;
 - (b) the Change shall interfere with the relationship of the Council with third parties;
 - (c) the financial strength of the Provider is sufficient to perform the Change; and
 - (d) the Change materially affects the risks or costs to which the Council is exposed.
- F3.12 As soon as practicable after receiving the Provider Change Control Notice, the Parties

shall meet and discuss the matter referred to in it. During their discussions the Council may propose modifications or accept or reject the Provider Change Control Notice.

F3.13 If the Council accepts the Provider Change Control Notice (with or without modification), the relevant Change shall be implemented within seven (7) Working Days of the Council's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

F3.14 If the Council rejects the Provider Change Control Notice, it shall give its reasons for such a rejection.

F3.15 The Council cannot reject a Change that is required in order to conform to change in Law relating to the Services which was not reasonably foreseeable at the Commencement Date provided that such a Change does not materially affect the quality or performance of the Services as required under the Contract.

F4 SEVERABILITY

F4.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

F5.1 In the event that the Council is of the reasonable opinion that there has been a Default of this Contract by the Provider, then the Council may, without prejudice to its rights under Clause H2 (Termination on Default) or H7 (Improvement Plan Process), do any of the following:-

(a) without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider shall once more be able to supply all or such part of the Services in accordance with this Contract; and/or

(b) without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in the Service Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services.

F5.2 Without prejudice to its rights under Clause C3 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred 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 uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F6 REMEDIES CUMULATIVE

F6.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 FINANCIAL ASSURANCE

F7.1 The Provider shall immediately disclose to the Council any material changes to the organisation that impacts on its ongoing financial viability including details of the

revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

F7.2 The Provider shall notify the Council immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Provider's financial viability.

F7.3 Only where requested by the Council, shall the Provider be obliged to provide any financial information which could include but is not limited to a copy of the Provider's annual accounts and annual returns.

F8 ENTIRE AGREEMENT

F8.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F8.2 Each of the Parties 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 the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

F9 COUNTERPARTS

F9.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

LIABILITIES

G1 LIABILITY, INDEMNITY AND INSURANCE

G1.1 Neither Party excludes or limits liability to the other Party for:-

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation; or
- (d) breach of its statutory duty or breach of an obligation under the Data Protection Legislation.

G1.2 Subject to Clause G1.1, the Provider's total aggregate liability under this Contract to the Authority in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed five million pounds (£5,000,000.00).

G1.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Contract.

G1.4 Without prejudice to the Council's rights under this Contract, the Provider shall in respect of the performance of its obligations under this Contract effect and maintain the following insurances at the following indemnity levels with a reputable insurance company:-

- (a) public liability insurance to a minimum of five million pounds (£5,000,000);
 - (b) employer's liability insurance to a minimum of ten million pounds (£10,000,000);
 - and
 - (c) any other insurances as may be required by Law.
- G1.5 The minimum amounts set out in Clause G1.4 shall, in each case, apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of twelve (12) years following the expiration or earlier termination of this Contract.
- G1.6 Subject always to Clause G1.1, in no event shall either Party be liable to the other for any:-
- (a) loss of profits, business, revenue or goodwill; and/or
 - (b) loss of savings (whether anticipated or otherwise); and/or
 - (c) indirect or consequential loss or damage.
- G1.7 The Provider shall give the Council, on request, copies of all insurance policies referred to in this Clause G1 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.
- G1.8 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of this Contract, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- G1.9 The Provider shall notify the Council immediately of any alteration, cancellation or change of cover in respect of the insurances required by this Clause G1.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.

G2 WARRANTIES AND REPRESENTATIONS

- G2.1 The Provider warrants and represents that:-
- (a) it has full capacity, authority and all necessary Consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Provider;
 - (b) in entering into this Contract it has not committed any Fraud;
 - (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of this Contract;
 - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which shall or might have a material

adverse effect on its ability to perform its obligations under this Contract;

- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;
- (h) in the three (3) years prior to the date of this Contract:-
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Council may terminate this Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:-

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

- (g) being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - (h) any event similar to those listed in H1.1(a)-(g) occurs under the Law of any other jurisdiction.
- H1.2 The Council may terminate this Contract with immediate effect by notice in writing where the Provider is an individual and:-
- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider’s creditors; or
 - (b) a petition is presented and not dismissed within fourteen (14) days or order made for the Provider’s bankruptcy; or
 - (c) a receiver, or similar officer is appointed over the whole or any part of the Provider’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - (d) the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - (e) a creditor or encumbrance 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) days; or
 - (f) the Provider 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
 - (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- H1.3 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control . The Council may terminate this Contract by notice in writing with immediate effect within six (6) Months of:-
- (a) being notified that a Change of Control has occurred; or
 - (b) where no notification has been made, the date that the Council becomes aware of the Change of Control,
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- H2 Termination on Default**
- H2.1 The Council may terminate this Contract or any individual Call Off, by written notice to the Provider with immediate effect if the Provider commits a Default and if:-
- (a) the Provider has not remedied the Default to the satisfaction of the Council in accordance with an Improvement Plan; or
 - (b) the Default is not, in the opinion of the Council, capable of remedy; or

- (c) the Default is a material breach of this Contract or the Call Off in question.
- H2.2 Without prejudice to any other rights or remedies that the Council has under the Contract (including without limitation Clause C5 and Clauses H1 or H2.1) where the Council considers that the Provider has committed a Persistent Breach in relation to the Contract, Call Off, any part thereof (including any part of the Services), the Council shall be entitled to serve a written notice (a "Formal Warning Notice") on the Provider:-
- (a) specifying that it is a Formal Warning Notice;
 - (b) giving details of the Persistent Breach;
 - (c) stating that if the Persistent Breach recurs two or more times within a three (3) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by the Persistent Breach.
- H2.3 If:-
- (a) twenty (20) Working Days after service of a Formal Warning Notice the Provider has failed to demonstrate to the Council's satisfaction that:-
 - (i) the Persistent Breach specified has not continued; and
 - (ii) the Provider has put in place measures to ensure that such Persistent Breach does not occur; or
 - (b) within a three (3) Month period after the date of service of the Formal Warning Notice the Provider has failed to demonstrate to the satisfaction of the Council that:
 - (i) the Persistent Breach specified has not recurred two or more times within such three (3) Month period; and
 - (ii) the Provider has put in place measures to ensure that such Persistent Breach does not occur
- then the Council may deem such failure to be a Default which is a material breach of the Contract or Call Off in question, for the purposes of Clause H2.1 (c).
- H2.4 The Council may terminate this Contract and any Call Offs with immediate effect by written notice to the Provider if it becomes apparent that the Provider should have been excluded from the procurement process leading to the award of this Contract in accordance with the Public Contracts Regulations.
- H2.5 In the event that through any Default of the Provider, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.6 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate this Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the

Council exercising its rights under Clauses C3 (Recovery of Sums Due).

H3 BREAK

H3.1 The Council shall have the right to terminate this Contract at any time by giving three (3) Months' written notice to the Provider. The Council may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Provider during the period of extension.

H3.2 Without prejudice to Clause H3.1, the Council may by no less than three (3) Months' written notice to the Provider terminate this Contract where it becomes apparent that:-

- (a) this Contract has been subject to substantial modification which would have required a new procurement procedure pursuant to the Public Contracts Regulations; or
- (b) this Contract should not have been awarded for the reasons specified in the Public Contract Regulations.

H3.3 Notwithstanding the provisions of Clauses H3.1 and H3.2, either Party may terminate this Contract in whole or in part by giving the other at least twelve (12) Months' notice in writing, or such other period as may be agreed between the Parties, without the need to give any reason for the termination. Save in relation to any previous Default, in the event of termination pursuant to this Clause H3.3, neither Party shall have any right or rights against the other arising out of or as a consequence of such termination other than as provided for by Clause H4.3.

H3.5 Notwithstanding the provisions of Clauses H3.1, H3.2 and H3.3, the Council may terminate a Call Off, in whole or in part by giving the Provider at least twenty-eight (28) Days' notice in writing, or such other period as may be agreed between the Parties, without the need to give any reason for the termination. Save in relation to any previous Default, in the event of termination pursuant to this Clause H3.3, neither Party shall have any right or rights against the other arising out of or as a consequence of such termination other than as provided for by Clause H4.3.

H3.6 Exceptions to clause H3.5 are as follows:

- 1) Trial period or short term care arrangements, may be terminated by either party giving the other not less than 7 days written notice.
- 2) Hours delivered as additional 1:1 hours within a dedicated accommodation setting may be terminated by the Council giving the provider 14 days written notice (or such lesser time as may be mutually agreed between the parties). During the period of notice both parties shall co-operate to ensure that the interests of those supported under the contract call off arrangement are met.
- 3) Any notice period specified within a Call Off Agreement will supercede Clause H3.5 & take precedence within Clause H3.6.

H3.7 If there is the death of a service user during the term of a Call Off, the Call Off will terminate automatically three days after the date of death.

H4 CONSEQUENCES OF EXPIRY OR TERMINATION

H4.1 Where the Council terminates this Contract under Clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Council may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the

- remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.
- H4.2 Where this Contract is terminated under Clauses H2 (Termination on Default), no further payments shall be payable by the Council to the Provider (for Services supplied by the Provider prior to termination and in accordance with this Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.
- H4.3 Subject to Clause H4.4, where the Council terminates this Contract under Clause H3 (Break), the Council shall pay to the Provider the unavoidable direct Losses incurred by the Provider by reason of such termination provided that the Provider takes all reasonable steps to mitigate all such Losses. Where the Provider holds insurance, the Council shall only have to reimburse the Provider in respect of those unavoidable direct costs that are not covered by the insurance available. The Provider shall submit a fully itemised and costed list of unavoidable direct Losses which it is seeking to recover from the Council, with supporting evidence, of such alleged Losses reasonably and actually incurred by the Provider as a result of termination under Clause H3 (Break). Any payment paid by the Council in accordance with this Clause H4.3 shall be in full and final settlement of any claim, demand and/or proceedings of the Provider in relation to any termination by the Council pursuant to Clause H3. The Provider shall have no other rights or remedies available to it in respect of any such termination.
- H4.4 The Council shall not be liable under Clause H4.3 to pay any sum which:-
- (a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
 - (b) when added to any sums paid or due to the Provider under this Contract, exceeds the total sum that would have been payable to the Provider if this Contract had not been terminated prior to the expiry of the Contract Period; or
 - (c) is a claim by the Provider for loss of profit, due to early termination of this Contract.
- H4.5 On expiry or termination of the Contract or any part thereof:-
- (a) the Provider shall repay at once to the Council any moneys paid up to and including such date of termination other than moneys in respect of Services or part thereof properly performed in accordance with the Contract; and
 - (b) the Provider shall cease to use all of the Council's Intellectual Property Rights and IP Materials and shall return or destroy as the Council requires all documents, materials (including those in electronic format) incorporating or referring to the same.
- H4.6 Save as otherwise expressly provided in this Contract:-
- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), D2 (Anti Discrimination),

E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H4.7 The Parties shall comply with the provisions set out in Schedule 8.

H5 RECOVERY UPON TERMINATION

H5.1 On the expiry, early termination or termination of this Contract for any reason, the Provider shall:-

- (a) immediately return to the Council all Confidential Information, Personal Data, IP Materials, records and any other documentation and information in its possession or in the possession or under the control of any permitted Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
- (c) promptly provide all information concerning the provision of the Services including records as referred to in Clause E11 which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which Services have been provided or for the purpose of enabling the Council or the Replacement Contractor to provide a continued delivery of the Services.

H5.2 If the Provider fails to comply with Clause H5.1 (a) and (b), the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or Sub-Contractors premises where any such items may be held.

H5.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause H5.1 free of charge. Where the Contract ends for other reasons the Council shall pay the Provider's directly incurred reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

H6 DISRUPTION

H6.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council.

H6.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action is by the Provider or others for whom the Provider is responsible, which affects or might affect its ability at any time to perform its obligations under this Contract.

H6.3 In the event of industrial action by the Staff, the Provider shall seek Approval as to its proposals to continue to perform its obligations under this Contract.

H6.4 If the Provider's proposals referred to in Clause H6.3 are considered insufficient or unacceptable by the Council acting reasonably, then this Contract may be terminated with immediate effect by the Council by notice in writing.

H6.5 If the Provider is temporarily unable to fulfil the requirements of this Contract owing to

disruption of normal business of the Council, the Provider may request a reasonable allowance of time.

H7 IMPROVEMENT PLAN PROCESS

H7.1 If the Provider commits a Default and the Default is in the reasonable opinion of the Council capable of remedy, the Council may elect to operate the Improvement Plan Process. If the Council elects to operate the Improvement Plan Process, the Council shall serve a Improvement Notice on the Provider which shall specify the Default in outline and the actions the Provider needs to take with respect to remedying the Default.

H7.2 Within seven (7) Working Days of receipt of the Improvement Notice, the Provider shall either:-

- (a) submit a draft Improvement Plan to the Council even if the Provider disputes that it is responsible for the matters which are the subject of the Improvement Notice; or
- (b) inform the Council that it does not intend to submit a Improvement Plan in which event the Council shall be entitled to terminate the Contract by written notice.

H7.3 The Council shall either approve the draft Improvement Plan within seven (7) Working Days of its receipt pursuant to Clause H7.2 or it shall inform the Provider within the same time period why it cannot accept the draft Improvement Plan. In such circumstances, the Provider shall address all such concerns in a revised Improvement Plan which it shall submit to the Council within three (3) Working Days of its receipt of the Council's comments. Once agreed the Provider shall immediately start work on the actions set out in the Improvement Plan.

H7.4 If, despite the measures taken under Clause H7.3 a Improvement Plan cannot be agreed within twenty (20) Working Days, then the Council may elect to end the Improvement Plan Process and serve a notice to terminate the Contract.

H7.5 If an Improvement Plan is agreed between the Parties but the Provider fails to implement or successfully complete the Improvement Plan by the required Improvement Plan completion date, the Council may:-

- (a) terminate this Contract by serving a notice of termination; or
- (b) give the Provider a further opportunity to resume full implementation of the Improvement Plan; or
- (c) escalate any issue arising out of the failure to implement the Improvement Plan to the Provider's Representative under the dispute resolution procedure set out in Clause I2.

H7.6 If, despite the measures taken under Clause H7.5, the Provider fails to implement the Improvement Plan in accordance with its terms, the Council may elect to end the Improvement Plan Process and refer the matter to dispute resolution in accordance with Clause I2 or serve a notice of termination of the Contract.

H7.7 The Council shall be under no obligation to initiate the Improvement Plan Process if it issues a notice of termination as provided for under this Contract.

H8 SUSPENSION AND CONSEQUENCES OF SUSPENSION

H8.1 A suspension event shall have occurred if:-

- (a) the Council reasonably considers that a breach by the Provider of any obligation under this Contract:-
 - (i) may create an immediate and serious threat to the health or safety of any Service User; or
 - (ii) may result in a material interruption in the provision of any one or more of the Services; or
 - (iii) results in the Council becoming concerned with the provision of a type of Services being to the quality required under this Contract
- (b) Clause H8.1 does not apply, but the Council, acting reasonably, considers that the circumstances constitute an emergency affecting provision of the Services; or
- (c) the Provider is prevented, or will be prevented, from providing the Services due to the termination, suspension, restriction or variation of any Consent
- (d) The Provider has received a warning from the CQC in respect of the provision of the Services.

(each a "Suspension Event").

H8.2 Where a Suspension Event occurs the Council:

- (a) may by written notice to the Provider and with immediate effect suspend any affected Services, or the provision of any affected Services, or prevent the Provider from entering into a new Call Off in respect of affected Services until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to and shall perform the suspended Services, to the required standard; and
- (b) shall where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

H8.3 During the suspension of any Services under Clause H8.2, the Provider shall comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council's decision to suspend pursuant to Clause H8.2 has been referred to dispute resolution under Clause I (Dispute Resolution).

H8.4 During the suspension of any Services under Clause H8.2, the Provider shall not be entitled to claim or receive any payment for the suspended Services except in respect of:

- (a) all or part of the suspended Services the delivery of which took place before the date on which the relevant suspension took effect in accordance with Clause H8.2; and/or
- (b) all or part of the Services which the Provider continues to deliver during the period of suspension in accordance with Clause H8.3.

H8.5 The Parties shall use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Services.

H8.6 The Provider shall indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of that suspension (including for the

avoidance of doubt Losses incurred in commissioning the suspended Services).

- H8.7 Following suspension of any Services the Provider shall at the reasonable request of the Council and for a reasonable period:
- (a) co-operate fully with the Council and any Replacement Contractor of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Council or members of the public; and
 - (b) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Services by an alternative Replacement Contractor; and
 - (ii) deliver to the Council all materials, papers, documents and operating manuals owned by the Council and used by the Provider in the provision of the suspended Services.
- H8.8 As part of its compliance with Clause H8.7 the Provider may be required by the Council to agree a transition plan with the Council and/or any alternative Replacement Contractor.
- H8.9 If it is determined, pursuant to Clause I (Dispute Resolution), that the Council acted unreasonably in suspending any of the Services, the Council shall pay to the Provider any Losses directly and reasonably incurred by the Provider in respect of that suspension provided always that the Provider shall at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to bring a claim against the Council pursuant to this Contract.
- H8.10 During any suspension of any Services the Provider, where applicable, shall implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability of the other parts of the Services.

H9 FORCE MAJEURE

- H9.1 Subject to the remaining provisions of this Clause H9 (and, in relation to the Provider, subject to its compliance with its obligations in Clause B16, a Party may claim relief under this Clause H9 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Provider in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or Provider shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Provider is itself impeded by a Force Majeure Event from complying with an obligation to the Provider.
- H9.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- H9.3 If the Provider is the Affected Party, it shall not be entitled to claim relief under this Clause H9 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated but the Provider has failed to do so; and/or

- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- H9.4 Subject to Clause H9.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- H9.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. 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.
- H9.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clauses H1 and H3; and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Provider fails to perform its obligations in accordance with this Contract the Provider shall be entitled to receive payment of the Service Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- H9.7 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.
- H9.8 Relief from liability for the Affected Party under this Clause H9 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause H9.7.
- H9.9 In the event that any Force Majeure Event continues to affect the ability of either Party to fulfil their obligations under the Contract for a period of [three (3) Months] or more, either Party may serve notice of termination with immediate effect on the other Party.

DISPUTES AND LAW

I1 GOVERNING LAW AND JURISDICTION

- I1.1 Subject to the provisions of Clause I2, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2 DISPUTE RESOLUTION

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute

between them arising out of or in connection with this Contract within twenty (20) Working Days of either Party notifying the other of the dispute. Any dispute shall in the first instance be referred to the Contract Managers of each Party for resolution. If the dispute cannot be resolved by the Contract Managers of the Parties within ten (10) Working Days after the dispute has been referred to the Contract Managers, either Party may give notice to the other Party in writing (Dispute Notice) that a dispute has arisen and within five (5) Working Days of the date of the Dispute Notice each Party shall refer the dispute to the Council's Representative and the Provider's Representative for resolution.

- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties' Representatives pursuant to Clause 12.1 within ten (10) Working Days of the Dispute Notice the Parties shall refer it to mediation pursuant to the procedure set out in Clause 12.5.
- 12.4 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed by reference of a dispute to mediation and the Provider shall comply fully with the requirements of this Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- (a) A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.
 - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) Both Parties agree to co-operate fully with any Mediator appointed and to bear their own costs and one half of the fees and expenses of the Mediator unless otherwise agreed at Mediation.
 - (e) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (f) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.

- (g) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

IN WITNESS WHEREOF the Parties hereto have executed this Contract as a Deed with effect from the date first above written.

EXECUTED (but not delivered until dated))
as a deed by affixing the Common Seal)
of **LINCOLNSHIRE COUNTY COUNCIL**)
)
)
)

in the presence of:-

.....
Authorised Officer Signature
Print name:

EXECUTED (but not delivered until dated))
as a deed by **PROVIDER NAME** acting by:-)
)

.....
Director's Signature
Print name:

In the presence of:-

.....
Witness Signature
Print name:
Occupation:
Address:

**SCHEDULE 1
SERVICE SPECIFICATION**

COMMUNITY SUPPORTED LIVING – OPEN SELECT LIST

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1 Care & Support Service Overview

1.1 Lincolnshire County Council is seeking to commission a number of providers who can work positively with us to deliver community services for vulnerable people.

1.2 Providers will have experience, knowledge and expertise in delivering bespoke, personalised care to vulnerable people. The majority of those supported by this contractual arrangement will be people with a learning disability and/or autism who may display behaviour that challenges, including those with a mental health condition. However, the scope of the contract is wider to allow commissioners to draw on providers to meet need for vulnerable people more generally, for example, those who may have a physical disability and/or co-occurring and complex conditions.

1.3 We are seeking providers who can see the person, and build person centred & outcome focused support plans with the people they support. Providers are expected to ensure all staff can see beyond behaviours that challenge and personalise care and support for individuals as part of a wider multi-disciplinary, multi-agency team.

1.4 We are seeking to commission the least restrictive option for individuals, provided this safely meets needs and promotes achievement of outcomes. Providers are expected to continually work with individuals to enable them to further reduce the level of care and support arrangements in future.

1.5 Individuals requiring care and support will live in a variety of settings including dedicated single or shared supported living schemes, rented accommodation, owner occupied property, extra care schemes or live with family, carers or friends.

1.6 Where there is a dedicated single or shared supported living scheme, there may be a closer link between care and support provision and accommodation, with both being delivered alongside each other.

1.7 In all settings, care and support provision and accommodation must be provided in such a way that there is adequate separation ensuring any disputes with care and support do not impact tenancy and vice versa.

1.8 While a provider may deliver the majority of care and support hours (shared or otherwise) it is possible that additional 1-1 support may be provided by other providers (driven by the personal choices of individuals and supported by the involvement of advocates where appropriate). Personal care may be part of the requirement. In some circumstances, there will be a requirement of clinical care where staff members are must be trained and competent to deliver.

1.9 This service specification intended to apply to all care and support needs under Lot 1 and Lot 2 and all service types A – D as shown in the table below.

LOT	Service Type	Service Type Description
LOT 1	A	Care & Support Only (Floating Support)
	B	Care & Support, with existing accommodation
	C	Care & Support, with new accommodation
LOT 2	D	Care & Support in Exceptional Circumstances

1.10 The pricing structure reflects the submission from providers of a standard hourly rate for care and support for Lot 1 where support is required 24/7. It is expected that the submitted standard hourly rate will meet the commissioners' overall requirements in all but the most exceptional circumstances, during the term of this contract. For Lot 1, Service Type A, where support is not required 24/7, and where the support is not delivered in a shared setting where staffing is provided on a 24/7 basis, the floating support rate will apply.

1.11 Where exceptional circumstances do occur and the requirement is for people who are the most complex and/or have behaviours that will significantly challenge services, where care and support need cannot be met through Lot 1 arrangements, it will be possible to quote above the standard hourly rate. This will be on a discretionary basis and will be agreed locally with the lead commissioner at the appropriate time. This type of opportunity will be offered as a further mini-competition under Lot 2 of the framework.

1.12 Exceptional circumstances are defined as care and support needs that cannot be met via current existing and established arrangements, where there may be an increased ratio of one to one support, there may be very specialised needs which require a high level of staff training, access to a highly experience staff team with nursing oversight, or access to on call support from a wider staff team for additional support as required. The pricing element for this type of circumstance must be clearly described in the Financial Schedule as part of a mini-competition under Lot 2 of the framework.

1.13 The commissioner may from time to time vary this specification, and/or other contractual requirements. Any variation will be carried out in consultation with the providers.

1.14 The provider is expected to enter into a genuine spirit of co-operation, and to maintain positive relationships with all stakeholders, this is of particularly importance during service transfer periods.

2 Care & Support Service Standards & Quality Assurance

2.1 In line with the principles of Valuing People (DOH 2001), Our Health Our Care Our Say (DOH 2006) and Valuing People Now (DOH 2009), Health and Social Care Act 2012 and the Care Act 2014, there has been a policy shift to utilise supported living schemes that have a focus on enablement and independence in order to meet care and support needs and outcome expectations.

2.2 This service specification has also taken account of national legislation and the principles, guidance and standards outlined in the following key publications;-

- a. The building the right support nine core principles and golden threads in the [national service model](#) published in October 2015 to support commissioners of health and social care services¹
- b. [CQC guidance on Registering the Right Support 2017](#)²
- c. [NICE Guidance published in March 2018](#)³
- d. [Transforming Care guidance](#)⁴ including [Building the right support](#)⁵ & [Building the right home](#)⁶

2.3 In line with Valuing People & Valuing People Now, it is expected providers will deliver high quality services that will recognise and promote the rights of the people they support as citizens and encourage their independence, choice and inclusion through a person centred approach.

2.4 Following consultation with those supported by the service, the following **five outcome statements** have been created using a person centred approach with several groups of service users. This is broadly, what is important to those supported by this service. These statements should be used to structure the Annual Report required detailed later in this section.

- 2.4.1 “I am supported to exercise choice and control in all aspects of the care I receive and my quality of life is enhanced”
- 2.4.2 “My health and wellbeing are promoted at all times and I am supported to maintain my independence wherever possible”
- 2.4.3 “I am included and have the support required to join in activities and social events and be part of my local community”
- 2.4.4 “I feel safe – protected from avoidable harm and free from any kind of abuse, harassment and discrimination”
- 2.4.5 “My staff team are experienced, well trained and effectively supported to meet my needs”

2.5 A continuous improvement cycle is key to effective quality assurance, ensuring assurance activities generate learning and lead to improvement.

¹ <https://www.england.nhs.uk/wp-content/uploads/2015/10/service-model-291015.pdf>.

2.6 The Provider shall have documented assurance processes in place to assess, monitor and drive improvement in service quality. The Provider's assurance processes must involve service users, their families, carers and advocates as appropriate.

2.7 The Provider's assurance process must include seeking feedback, the provider shall:

- Actively seek feedback through structured assurance mechanisms such as surveys, workshops and forums.
- Seek feedback at least annually, from people who use the service, their family, unpaid carer or advocate.
- Ensure feedback mechanisms capture people's outcomes, experiences and satisfaction and support evaluation of safety, effectiveness and experience of the service.
- Ensure feedback mechanisms consider core/key specification requirements and performance measurements required
- The provider may need to design or adapt their feedback mechanisms to capture information for performance measurements.
- To ensure clear comparison can be made against outcome statements. The provider may need to design or adapt their feedback mechanisms to capture information for this comparison.

2.8 The Provider shall actively seek the views and experiences of people using the service who are unable or find it difficult to communicate due to disability, impairment or sensory loss. Some Service Users may need extra help to reflect upon and express their views and the Provider shall support this in compliance with the NHS England Accessible Information Standard.

Appropriate adjustments will be specific to the person, but may include:

- Accessible formats e.g. audio, braille, easy read, large print, pictorial
- Support from a communication professional e.g. British Sign Language Interpreter
- Communication support tools
- Observational techniques

2.9 The Provider shall also seek the views of other Stakeholders as part of their assurance practice – i.e. Staff, visiting professionals, professional bodies, regulators, purchasers, local user groups and other sector relevant bodies/groups.

2.10 As part of contract monitoring, the provider will be required to:

2.10.1 Develop and submit short Annual Report

2.10.2 Submit a service user satisfaction score

² https://www.cqc.org.uk/sites/default/files/20170612_registering_the_right_support_final.pdf

³ <https://www.nice.org.uk/guidance/ng93>

⁴ <https://www.local.gov.uk/our-support/our-improvement-offer/care-and-health-improvement/transforming-care/transforming-care>

⁵ <https://www.england.nhs.uk/wp-content/uploads/2015/10/ld-nat-imp-plan-oct15.pdf>

⁶ <https://www.england.nhs.uk/learningdisabilities/wp-content/uploads/sites/34/2015/11/building-right-home-guidance-housing.pdf>

2.10.3 Submit a family member, carer, advocate satisfaction score.

2.11 Requirements are detailed below.

2.12 Quality Assurance – Survey & Annual Report

2.13 It is a requirement that, as a minimum, an annual survey is carried out by the Provider to gather data and allow the assessment of satisfaction from the perspective of services users who access the service and informal carers/friends/family members.

2.14 Survey Question

2.15 It is expected that all current service users and their information carers/friends/family members are invited to provide feedback and are therefore surveyed as part of a providers quality assurance processes.

2.16 To ensure the Council and compare and benchmark response rates, Providers are asked to include the following **prescribed question** as part of their survey.

Reporting Level	Prescribed Question
Service User	"How happy are you with the care & support you receive?"
Family member, carer, advocate	"How happy are you with the care & support you receive?"

2.17 Providers will be required to submit the results of service user and carer surveys via a web form (see Data Requirements). The data submitted will be Number surveyed, the number responding to this specific question, the number indicating that they are satisfied or very satisfied with the care & support received.

2.18 Submitted data will be utilised by the Purchaser to analyse performance against the KPIs (see Key Performance Indicators) which measure overall service user satisfaction, overall carer satisfaction and response rates.

2.19 Annual Report

2.20 It is a requirement that, as a minimum, a 2 page annual report is submitted by the provider which is an opportunity to demonstrate how outcomes are being met. This report should be structured using the statements detailed in the service specification, section 2.4.1 – 2.4.5, which broadly reflect what is important to those supported by this service.

2.21 Information may come from a variety of sources, including but not limited to survey returns, case studies, individual outcome measurements and any other quality assurance processes and procedures undertaken by providers.

2.22 Providers should follow the general quality assurance guidance in Section 2 of the service specification to develop this and can include survey, case study information following this. Further information related to submission of the Annual Report is available in section 3B Contract Monitoring.

3 Care & Support Service Principles

3.1 There are **10 key principles defined below** identified by the commissioner that are crucial to the delivery of an effective and robust supported living service. Care and support providers are expected to deliver services in line with these principles and will:-

- 1 **Put the individual at the centre of service planning**, it is expected providers will deliver high quality services that will recognise and promote the rights of the people they support as citizens and encourage their independence, choice and inclusion through a person centred approach.
- 2 **Promote independence** ensuring that there are many opportunities for individuals to develop their skills and knowledge, to take responsibility and grow in confidence.
- 3 **Promote education, learning and work**, enabling and actively supporting individuals to access learning opportunities, to become work ready and to obtain paid and voluntary work as appropriate to their age, needs and circumstances.
- 4 **Promote inclusion within communities** ensuring those supported are accessing their local community, universal and targeted services and to take part in a range of activities of their choice.
- 5 **Recognise the importance of nurturing relationships**, supporting individuals to maintain current and develop a variety of relationships that are appropriate and acceptable to the individual. Providers need to be attuned to an individual's need for socialisation and be proactive in facilitating this where appropriate.
- 6 **Promote health and well-being**, acknowledging the importance of the physical and mental health of individuals, ensuring emotional support is available and enabling people to develop personal resources to deal with life changes, stresses and crisis.
- 7 **Support an awareness of heritage**, and develop an understanding and appreciation of their personal and wider history, including their family background. This sense of belonging and self-worth will improve their quality of life.
- 8 **Support the right to privacy, to be treated with respect and dignity**. Staff must ensure they are polite, thoughtful and caring at all times and respect an individual's right to privacy.
- 9 **Promote equality** and ensure that each individual's uniqueness in respect of gender, sexual orientation, age, ability, race, religion, culture and lifestyle will be acknowledged and respected and used to inform support planning.
- 10 **Promote economic wellbeing** ensuring that where it is appropriate, those supported are managing their own personal finances to the extent possible, supporting financial ability so that their funds can be used to achieve their wishes as well as their needs.

4 Accommodation Requirement

4.1 Background

4.2 Across Lincolnshire, the care and support service is delivered into a wide range of accommodation settings which can be from 1 hour in the family home to 24/7 support in a dedicated accommodation setting with increased staff ratios.

4.2.1 Where support services are less than 24/7 care and are being delivered in the community, the floating support rate will apply.

4.2.2 The floating support rate recognises the differentials in the cost of care delivery between services delivered on a 24/7 basis in a single or shared CSL setting, and those services where less than 24/7 care is being delivered in a single person CSL service. Floating support can be defined as delivering support services to a person not living in a shared CSL service, where the hours of care provision are less than 24/7.

4.3 A dedicated accommodation setting is defined by those settings where the local authority and care and support provider are working closely together to deliver shared care and support arrangements and ensure that nominations for future individuals to access tenancies are suitable and compatible with existing tenants and levels of support within the environment. The levels of support may be reviewed depending on the requirements of the tenants.

4.4 The care and support provider will be expected to co-operate and work closely with relevant housing providers for the benefit of individuals. It will be necessary for the care and support provider to enter into a Management Agreement which sets out the responsibility of each party in respect of supporting the tenancy and management and maintenance of the property. Where a separate Nominations Agreement is not in place, the management agreement between the care and support and the housing provider should also address referral and nominations protocols.

4.5 Across Lincolnshire, there is a range of well-established dedicated accommodation settings (approximately 500 tenancies) where elements of shared care and support are provided alongside 1:1 hours. Within those tenancies a high percentage of those supported have a learning disability and/or autism. In recent years, where care and support needs have included an accommodation requirement, this has been largely met through the existing dedicated accommodation settings.

4.6 Across dedicated accommodation settings, the council monitors the void level. The council is mindful that void level is linked to the market's long term financial sustainability.

4.7 Existing & Established Dedicated Accommodation Settings

4.8 For existing and established dedicated accommodation settings, care and support providers are required to submit property vacancies, which they become aware of in the course of delivering care and support and managing end of life care / transition planning. This requirement is detailed in Section 3B, 5.5 Vacancy Reporting. This will be cross referenced with the council's information. The vacancy list (existing and established accommodation only) will be updated and shared with relevant practitioner groups fortnightly.

4.9 Practitioners can put forward a proposal to utilise vacancies on behalf of individuals and their families or those who advocate for them. Prior to the proposal being made, suitability and compatibility will be considered. Senior representatives from care management and commercial teams review proposals to ensure needs match the environment. Where there is more than one proposal, they may seek to prioritise based on urgency and need. On acceptance of a proposal, the practitioner will liaise directly with the care and support provider who will follow their own assessment processes related to suitability and compatibility.

4.10 Providers must understand these are people's homes for which they have their own tenancy. It is outside the remit of the care and support provider to suggest alternative tenancies to an individual or their families. There is a process to follow which involves the individual's practitioner in the first instance, to ensure all parties are working collectively for the individual's best interests.

4.11 Practitioners will first look at options to adjust the environment and the outcomes within the care and support plans to better support the individual within their tenancy.

4.12 New Dedicated Accommodation Settings

4.13 The council will continue to assess need and identify opportunities for sharing support. Where there is an opportunity to develop a new dedicated accommodation setting that will meet need for an individual or a group, then eligible care and support providers will be invited to a mini-competition for contract call-off under the framework. In the development phase, providers must work with local authorities and jointly agree the best course of action prior to initiating plans.

4.14 During the life of this contract, there will be a need to maximise housing options available by working with district councils, housing associations, leveraging provider networks and local authority networks, to meet need that supports the achievement of outcomes and creates financially sustainable long term solutions.

4.15 The council will share identified future demand from practitioner teams on an annual basis. This is not a waiting list, identified demand does not automatically become a future need for care and support, or accommodation but it will give an indication of possible future demand per geographical area.

4.16 Under this framework agreement, when a new care and support requirement includes sourcing new accommodation, a mini-competition will invite all eligible providers to submit a tender response which will cover care & support and accommodation. The contract call off process is described in Section 6.

4.17 Where accommodation is part of the requirement, it is the care and support provider's responsibility to ensure the tenancy agreement is legally signed by the individual or an appropriate person authorised to act on their behalf. This must be in place prior to commencement of service delivery.

4.18 The housing and care and support provider must follow the legislation and guidance as set out within the Mental Capacity Act 2005, ensuring the individual understands their rights and responsibilities as a tenant.

4.19 Where individuals lack capacity, the care and support provider will support with the tenancy according to the principles laid out in this service specification, together with the individual's agreed care and support outcomes.

4.20 Care and support providers will understand and ensure that tenancies or licence agreements are developed in accordance with local tenancy guidance and the [NDTi Real Tenancy Test](#)⁷.

4.21 Providers must ensure that arrangements are clear with all relevant individuals (i.e. advocates, family members) and with landlords about who pays for repairs to damages to fixtures and fittings.

4.22 Arrangements should support the guidance '[Building the Right Home](#)⁸', LGA, ADASS, NHSE (December 2016). Arrangements should meet [CQC Guidance for housing and care](#)⁹ and CQC policy '[Registering the Right Support](#)¹⁰' to ensure a clear distinction between housing and care.

4.23 Accommodation will be located in appropriate settings, taking into account the individual's needs, wishes and any restrictions.

4.24 Housing providers should be aware that the design of living environments has an important role to play in the behaviour and outcomes that can be achieved for people with autism, as well as others with complex learning disabilities and/or mental health conditions and, where possible, have sufficient expertise to consider this during build and design or when remodelling a purchased property.

5 Care & Support Service Delivery

5.1 Care & Support Planning & Review

⁷ <https://www.ndti.org.uk/resources/publications/the-real-tenancy-test1>

⁸ <https://www.england.nhs.uk/learningdisabilities/wp-content/uploads/sites/34/2015/11/building-right-home-guidance-housing.pdf>

⁹ https://www.cqc.org.uk/sites/default/files/20151023_provider_guidance-housing_with_care.pdf

¹⁰ https://www.cqc.org.uk/sites/default/files/20170612_registering_the_right_support_final.pdf

- 5.1.1 Each individual will have a local authority or health practitioner who can refer into this service. Practitioners on behalf of LCC or LPFT may contact providers to deliver services under the Community Supported Living – Open Select List.
- 5.1.2 The practitioner will have identified a need for care and support. Support may be of varying length in terms of duration and hours for a wide range of adults who may have needs related to their physical disability, learning disability, autism, mental health, complex and co-occurring conditions.
- 5.1.3 The practitioner will assess and develop a broad outcomes based support plan, this will support identification of the services that can best meet both aspiration and need. This may be reviewed with the individual and relevant family members/carers at any point. The provider is expected to build good relationships, and work closely with practitioners, and if required, with the maximising independence team for the benefit of those supported.
- 5.1.4 Following initial adult needs assessment by the practitioner, the provider will develop their own detailed support plan based on a strengths based approach to care planning, which must be accessible to staff and presented in a way that is accessible to the person supported, wherever possible. Individuals' wishes and preferences shall be included in support plans with the individual's relatives, friends, advocates and other key members of an individual's circle of support fully involved.
- 5.1.5 Providers are expected to have an active commitment to facilitating the on-going development of strength based support planning. In practical terms, this means providers will engage with an individual's circle of support, on a regular basis. Where appointed, advocates (i.e. Independent Mental Capacity Advisor (IMCA)) will also be included.
- 5.1.6 The provider's detailed & person centred support plan will breakdown the broad outcomes identified by the practitioner into functional activities, ensuring there is a 'just enough' model of support which enables and support independence, avoiding the creation of over-dependency.
- 5.1.7 Support planning documentation will include health action plans and will specify which professionals will remain involved and the frequency of their inputs / support. It will focus on improving an individual's health, personal development and social wellbeing. All plans will have an underlying focus on increasing the individual's choice, rights, independence and control.

- 5.1.8 It is expected there will be a key worker system in place to support a person centred approach, which ensures consistency and continuity of care. Specific plans relating to complex needs and personal development will specify the inputs and interventions of different staff members and multi-disciplinary team professionals to support positive outcomes for individuals.
- 5.1.9 The provider will ensure the keyworker allocated to the person is appropriate and likely to build a positive working relationship with the person.
- 5.1.10 Planning will include activities which support the achievement of outcomes for the individual, and align to the care and support service delivery principles and outcome statements detailed in section 3 and section 2.4 of this document. Typically a detailed support plan will include the support required for each activity, who will provide the support and when it will be provided.
- 5.1.11 Individual support plans will usually be reviewed at 8 weeks, then annually thereafter. Depending on the terms of the contract call-off, interim reviews may be scheduled as required. This will be particularly relevant where individual needs and levels of dependency fluctuate. Reviews must always be person centred and always involve the practitioner.
- 5.1.12 All providers will have a medications management policy and within individual support plans, providers will ensure support workers have clear guidance and training on how and when to provide any prescribed treatments and therapies. These will be monitored to ensure they are provided as specified.
- 5.1.13 Alongside a detailed support plan, the provider shall conduct robust needs and risk assessment(s) for each individual and ensure these are reviewed on a regular basis; at least 3 monthly and more often if this is required. This shall include a fire risk assessment. This will support safely enabling individuals. Any decision taken by the provider that an individual shall not be enabled to take a risk shall be clearly documented and justified.
- 5.1.14 Ordinarily needs and risk assessments will have been completed before a service is commenced. Exceptionally, where a service is put in place on an emergency basis, the assessments should be completed within a maximum of 5 calendar days.

- 5.1.15 The provider must have a policy to positively engage and support individuals who have behaviours that challenge. This policy will take account of all relevant legislation, guidance and good practice including the Human Rights Act 1998, and the Mental Capacity Act 2005. Information should routinely be provided to individuals and their representatives, families and friends about requirements of relevant legislation.
- 5.1.16 Where it is appropriate, following the principles and guidance within the Mental Capacity Act, providers should inform carers and family members about occurrences of behaviour that challenges. All policies, procedures and terminology used should be clearly explained to those supported and those involved.
- 5.1.17 The service provider must be aware of, and have plans for, behaviours that challenge in the individuals' support planning documentation. Support to manage behaviours that challenge should be provided in the least restrictive way in accordance with the Mental Capacity Act 2005
- 5.1.18 Following commencement of delivery of care and support, evaluation of progress towards outcomes will be recorded by the provider and reassessed by the practitioner. These scheduled re-assessments will usually be at 8 weeks, then annually thereafter. However, this will depend on the needs of the individual and frequency may differ. This will be defined at the point of contract call-off.
- 5.1.19 Providers are expected to be key contributors evidencing progress towards outcomes and identifying opportunities for better management and/or reduced levels of support. Clear support planning documentation will be in place to allow for audit and review by practitioners and other professionals, easily establishing how individuals are supported to achieve their outcomes.
- 5.1.20 At any point, when there is any significant change in a person's assessed need, the provider should request a review, outside of the scheduled reassessments. Support hours will only be provided if needed and for the outcomes assessed for the individual.

5.2 Care & Support Delivery

- 5.2.1 The main objective of a supported living service is to deliver care and support which allows individuals' the opportunity to develop new skills and/or maintain existing skills. This support should enable individuals' to progress toward the outcomes within agreed care and support plans.
- 5.2.2 This can be delivered in a variety of settings and can vary in length from 1 hour to 24/7. There will be an expectation of flexibility to meet individuals' assessed needs which may necessitate split shifts and/or unsociable shifts.
- 5.2.3 All households construct daily routines, these routines reflect the functional activities of everyday life. The daily activities and the extent of support required to enable individuals, will vary. The provider's detailed support plan will break down outcomes defined by the practitioner, into functional activities. The provider will plan the rota around these.
- 5.2.4 There are a number of areas where providers may carry out support activities with those they support, to ensure levels of ability are maintained or increased. These may be typical everyday activities, housing related activities, activities that ensure good health and wellbeing, and may involve personal care as part of an individual's routine. This will be detailed in their care and support plan. This includes but is not limited to those listed in Enclosure 1 – Care & Support Activities (page 114-115).
- 5.2.5 These everyday activities comprise the content of the daily routine. These are the ways in which members of households organise their lives; who does what, and how members of the household spend their time. The care and support is there to help individuals' choose what they wish and to weave opportunities for independence into the fabric of everyday living. It is crucial that staff understand how to progress individuals' independence wherever possible. This should be at the heart of a detailed care and support plan.
- 5.2.6 If an activity is not detailed as requiring support, then it is just as important that providers do not support. Where an assessment has shown the individual is competent enough to carry out this task for themselves, offering support can be de-skilling for individuals and reduce levels of independence. Therefore, the support provided must reflect the care and support planning documentation and be in the most unobtrusive and least restrictive manner possible. 'Just enough' support will assist individuals to build on their strengths, develop their abilities and achieve their personal aspirations without developing over dependency.

- 5.2.7 The provider must ensure that their workforce remains skilled to meet the needs of those they are supporting. For example, stoma care, signing, PEG feeding.
- 5.2.8 If the provider has a resource available to meet a transport need, for example the use of a car, then this should not automatically be the only mode of transport considered. All options should be considered in terms of the individual's support plan and defined outcomes. Cost effectiveness for use over a period of time, depending on frequency of trips and any other factors should also be considered. For example, daily car hire, taxi, bus, train. Any costs incurred must be agreed at the outset with those supported.
- 5.2.9 When someone is admitted to a hospital environment, either planned or unplanned, they are under the care of the health service. Therefore, care and support hours will usually temporarily cease. Providers must review rota's to reflect this and ensure accurate payment for delivered hours. It is possible to 'bank' 1:1 support hours, but this must be agreed via the individual's practitioner.
- 5.2.10 For meeting support or advocacy needs whilst someone is in the care of the health service, providers can liaise with the appropriate agency where they feel this is required. i.e. PALs service, health liaison nurses, advocacy. No-one with a learning disability should be disadvantaged in a health environment.
- 5.2.11 In exceptional situations, where support is required, the individual's practitioner may agree some or all of the 1:1 hours can be delivered to support in a hospital. This would be the case if, for example, there was a high level or high risk of behaviour that will challenge or complex social care / communication needs. It is a requirement that this is agreed prior to delivery of support within a hospital.
- 5.2.12 The provider must provide continuity of care to individuals whenever possible. Although day to day staff members may change, the key worker system referred to (point 5.1.8) will support continuity and consistency within service provision. Where changes have to be made in relation to key staff or support staff, the individual must be informed of this and the reason for it, wherever possible in advance of the service change.

- 5.2.13 If an individual is unwilling to allow a support worker to provide support, the provider shall as soon as reasonably practicable contact the individual and take such steps as are necessary to resolve the situation. In the event that the individual requests that the provider supplies an alternative support worker the provider shall use all reasonable endeavours to comply with the request. The provider is expected to investigate the reasons for such requests. Advocacy support should be accessed to resolve the situation if necessary.
- 5.2.14 Where possible the provider shall inform the individual in advance if the support worker who normally delivers the service to that individual is unavailable to do so. A reason for the cancellation shall be given and an alternative support worker supplied.
- 5.2.15 Provider staff will appreciate that these are individuals' homes. As such they are guests, they are not expected to eat the individual's food or drink without express permission from the individual. Where a support worker is eating with a person or contributing to the weekly shopping the provider should ensure there is a clear policy in place.
- 5.2.16 Entry to properties or private areas (i.e. bedrooms) within properties should not be presumed. If an individual or a group is being shown around a property i.e. to view a vacancy within a shared house, then the existing tenants' rights and privacies must be respected. Where appropriate, advance notice should be given and entry granted with agreement from those living there.
- 5.2.17 If a family member, carer, friends is visiting someone who lives in a shared property and has permission to do so, but at the time, this causes distress to other tenants, then the provider is expected to take steps that minimise the impact of the visit and ensure the existing tenants' rights and privacies are respected.
- 5.2.18 The commissioner may visit a person's accommodation to understand and audit the care and support services being delivered. This may be with advance notice or unannounced. Entry will only be granted with the permission of those living there and privacy will be respected. Practitioners, maximising independence workers, contract officers should be given access to rota schedules, case notes and other appropriate information as required.
- 5.2.19 The provider shall ensure that houses used are not marked or otherwise identified in any way that might institutionalise them or differentiate them within their community.

- 5.2.20 Some consumables in the house may be shared by individuals and provider staff e.g. soaps & toilet rolls. The provider is expected to contribute towards the purchase of such items, where this is the case and have a clear policy related to this.
- 5.2.21 The provider is expected to purchase and supply staff with appropriate Personal Protective Equipment following relevant policy & CQC guidelines.
- 5.2.22 The provider is required to support and promote a total communication environment using a range of methods, both verbal and non-verbal, based on individual need. The provider should consider the individual's communication plan when allocating staff to individuals and/or within an accommodation setting and ensure staff are trained appropriately. The provider must be able to provide information and guidance in a number of formats such as makaton, easy read, picture exchange cards (pecs), talking mats, and any other relevant methods of communication for example, verbal telecare systems or person centred pictorial formats etc.
- 5.2.23 The provider shall immediately inform the practitioner if they have any reason to believe that an individual is at risk through self-neglect or as a result of their behaviour or lifestyle, or because of the actions or behaviour of others.
- 5.2.24 If any individual does not have capacity to give informed consent on any decision affecting them then the Mental Capacity Act (2005) must be followed with any 'best interests' decision making being recorded. The provider cannot be a decision maker if there is any possible conflict of interest and should refer to the practitioner and/or advocacy service as appropriate.
- 5.2.25 In supporting individuals, providers are expected to use their networks and share information about services and activities available for vulnerable people to access across the County. Connect to Support is an online resource <https://lincolnshire.connecttosupport.org/> which signposts to services available across Lincolnshire.
- 5.2.26 The commissioner wishes to support initiatives which promote choice and control for individual users of services. In particular increased choice will be underpinned by increasing the use of the Direct Payments Scheme and Personal Budgets which place the person at the centre of planning their support. Service providers will be required to fully co-operate with the commissioner to develop and promote such initiatives in future years.

- 5.2.27 Additionally, the commissioner will make available to interested individual users of services who take their personal budgets as cash payments, the list of providers appointed to the framework agreement together with the services each provider is offering.
- 5.2.28 The provider shall not use any individuals address for business correspondence either by letter or telephone. The provider shall not use an individual's home for business meetings.
- 5.2.29 Reviews would usually take place in individuals' homes, however, it is important that this takes place with the consent of the individual.
- 5.2.30 The provider shall ensure they are able to meet the needs of the commissioner, individuals, carers, family members and the local community through the provision of a suitable office base that enables timely response to queries, concerns and emergencies. Individuals must be able to contact this base by telephone, secure e-mail, (at the cost of local rates or below) or in person by appointment if necessary.
- 5.2.31 Whilst delivering support and care, both in the home and the wider environment, any concerns regarding the wellbeing of an individual being supported should be reported to the commissioner. In the same way, if the individual is unable to attend a pre-arranged appointment this should always be followed up and again, if necessary, the concerns should be reported to the commissioner.
- 5.2.32 Providers may be required to support individuals who have behaviours that challenge services. It is important that staff members are trained to see the person, and see beyond the behaviour. They should also be able to recognise and identify possible causes of behaviour that challenges to inform support planning and delivery. Providers should understand and be aware of guidance related to STopping Over Medication of People with a learning disability, autism or both (STOMP). <https://www.england.nhs.uk/learning-disabilities/improving-health/stomp/>
- 5.2.33 Providers must consider behaviour which challenges in the context of the environment in which it occurs, the way the service is organised and the needs of the individual.
- 5.2.34 Where an individual exhibits behaviour that cannot be managed in such a way as to safeguard them or other individuals, the provider will access services as appropriate.

- 5.2.35 Where emergency support is required, the provider should determine the type of support that is required. For a recurring issue, it may be possible for staff to reference existing protocol and/or current risk management procedures which are in place. For all incidents, staff should be enabled and supported in selecting the right service. For example, emergency services and/or emergency health care and treatment review (CHAT) team.
- 5.2.36 The individual's practitioner should be informed within 1 working day of any emergency incident and subsequent arrangement unless otherwise agreed. If the incident is new, the provider should update their risk protocol and assessments as required.
- 5.2.37 Where an individual has been assessed as requiring restraint (physical/chemical) for either their safety, or the safety of others the reason must be clearly documented within the individual's records. Additionally, there must be suitable arrangements in place to protect individuals against the risk of such control or restraint being unlawful or otherwise excessive. Support to manage should be provided in the least restrictive way in accordance with the Mental Capacity Act 2005
- 5.2.38 This must be supported by a clear and robust restraint policy, developed by the provider, which is in line with the legislative requirements of the Mental Capacity Act 2005 and Regulation 11 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010.
- 5.2.39 All reasonable endeavours will be undertaken by the provider to mitigate discontinuation of placement for the individual. The provider will work with the practitioner to take steps to resolve issues as and when they arise. Discontinuation of service will only occur if all other demonstrable efforts to resolve issues have been unsuccessful.
- 5.2.40 The provider must comply with any changes to policies and procedures required by the implementation of the Care Act 2014, and must satisfy themselves that they are compliant with the requirements of the Care Act 2014.

5.3 Care & Support Record Keeping

- 5.3.1 The provider shall ensure proper records are maintained, any records relating to the provision of care, these records are to be kept up to 6 years after the end of the involvement with the individual. This may also include but is not limited to :
- a. Recording of any financial transactions undertaken on behalf of Individuals

- b. Monitoring and review of individual support plans and person centred plans
- c. Risk assessments for individuals in partnership with other members of the multi-disciplinary team supporting the individual
- d. Medication administration records and reviews
- e. Completion of any relevant time sheets in relation to the service delivered; showing clearly where shared and individual support (one or more) has been delivered
- f. Monitoring of referrals for the service, including identified needs
- g. Incident Reports including keeping a specified procedure in place to responding and recording of these incidents
- h. All Safeguarding matter
- i. Notes of any “best interest” decisions made under the Mental Capacity Act 2005 and RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013).

5.3.2 Individual records must be kept secure and available on a need to know basis. The service provider should be able to demonstrate that its confidentiality policy is being implemented.

5.3.3 Case records should contain no more information than is needed to ensure the proper provision of care to the individual. These should be maintained in filing cabinets, which are secured and locked when not in use. Where possible these records should be kept in the individual’s home.

5.3.4 All information relating to individuals held on computer must have adequate password protection. It is the responsibility of the provider to ensure that information held on computer in relation to a support worker or tenant is registered under the Data Protection Act 2018. The provider must make available to the commissioner a copy of their current valid Data Protection Registration Certification upon request.

5.4 **Financial Matters**

5.4.1 Individuals should be supported to manage their own finance. Wherever possible, the support they receive should be to allow as much independence as possible in the management of their own personal finances. For example, by being able to sign for their own personal benefits.

5.4.2 Where an individual is assessed through the Mental Capacity Act Assessment as lacking the mental capacity to manage his or her own finances and there is no family member or other person in the community suitable to fulfil the role, the provider will be expected to act as Appointee for the receipt and management of welfare benefits for the Individual.

- 5.4.3 The Appointeeship role is part of a wider role of supporting a person with their finances, therefore, it is part of the submitted hourly cost and will not attract additional assessed hours. Support staff should alert their line manager to suspected financial abuse, or if the mental deterioration of the individual brings risk of abuse.
- 5.4.4 In acting as the Appointee, the provider will need to maintain all necessary accounting arrangements to distinguish between the funds of the provider and the funds held for or on behalf of individuals. Furthermore, providers will facilitate the inspection of any such financial records as soon as is reasonably practicable if requested to do so by the commissioner, or the Department for Work and Pensions.
- 5.4.5 Clear guidance should be issued regarding the support worker accepting gifts or hospitality from individuals, their families and friends, and training should be available to improve support workers awareness of financial abuse. The provider should have a formal Gifts and Hospitality Policy and Procedure in place.
- 5.4.6 Support workers should not:
- a. Act as Deputy or Appointee outside of established provider practice.
 - b. Hold a joint account with the individual.
 - c. Enter the property of an individual who lives alone when the individual is out without the permission of the individual.
 - d. Use personal credit cards to purchase items on behalf of an individual.
 - e. Collect points from loyalty schemes for themselves when shopping on behalf of the individual.
- 5.4.7 Proper financial records should be maintained. These should include:
- 5.4.7.1 A basic accounting record for each individual recording all amounts received and spent.
 - 5.4.7.2 Dates and signatures for each transaction.
 - 5.4.7.3 Receipt and payments entries supported by verifiable documentation.
- 5.4.8 Details of deposits/withdrawals from bank account. For other transactions that require financial records to be maintained may include, but are not limited to:
- a. Deposit of monies into a bank, building society or similar account.
 - b. Paying bills at post offices (or similar) .
 - c. Taking valuables such as jewellery for repair.

- 5.4.9 It is expected that the provider shall record the date and details of cash, items, etc being taken from the individual, the purpose of taking it and obtain a signature.
- 5.4.10 Receipts and receipted accounts booklets shall be returned as soon as possible and a signature obtained from the individual to confirm the return.
- 5.4.11 Cash point cards and pin numbers belonging to the individual shall not be used by the provider or provider staff under any circumstances.
- 5.4.12 Individuals should, wherever possible, be encouraged to set up direct debits to pay bills rather than expecting support workers to withdraw money to pay monthly bills, e.g. gas, electricity, etc.
- 5.4.13 For the payment of household amenities in a shared supported living environment, individuals will need to contribute towards the costs of household overheads and amenities (gas, electric, water, telephone), where costs are not covered by housing benefit. Copies of all invoices should be retained and records of all individual contributions should be kept in such a way as to allow any necessary auditing.
- 5.4.14 For the payment of a shared resource, for example, a car that may be accessed by those supported and driven by staff as a form of transport. The provider must have a clear policy which is person centred and ensures any charges are fair to the individual for the use of the car, in relation to a transport need.
- 5.4.15 All household financial arrangements should be renegotiated before any new tenants move in and agreed by all individuals.
- 5.4.16 All costs of individual community activities e.g. visits to sports centres, concerts etc, will be met from individuals' own personal money. Information about leisure passes available should be given to each person alongside assistance with application forms as needed. Providers are expected to support with looking into 'carer goes free' type opportunities and ensuring individuals are supported with options that are the best value for money.

- 5.4.17 Where a support worker is required to attend an activity with the individual, the additional cost of the support worker entering into the activity i.e. swimming entrance fee, should be covered by the individual or the provider. Providers may have established a 'comfort fund' to cover this. The provider will be expected to establish a clear policy on how such cost will be met and these arrangements should be agreed with an individual or their representative. Costs must be proportionate to the activity.
- 5.4.18 The cost of individuals' transport, meals, drinks and refreshments when accessing activities in the community will be met from their personal money. The provider should have a policy in place that stipulates how much an individual should pay in relation to these costs, and ensure that costs remain reasonable depending on the context and environment. Individuals have the right to choose their own refreshments whilst out in the community and these choices should be clearly detailed within their support plan with receipts kept for financial recording purposes.
- 5.4.19 Transport options should be considered in terms of cost effectiveness and opportunities to enable independence. Whether to access a daily car hire, taxi, provider car, own car, bus or train should be carefully considered the provider must ensure that costs remain reasonable depending on the context and environment.
- 5.4.20 Disability living allowance – the mobility component may cover some or all of the costs associated, the provider is responsible for ensuring those supported are able to cover any transport costs incurred, prior to incurring such costs. Individuals should only incur costs that are relevant to them, they should not, for example, incur a cost involved in picking up another individual from another collection point, unless this .
- 5.4.21 Where the provider wishes to provide a car or similar resource for a dedicated accommodation setting, the provider will be expected to establish a clear policy on how any costs related to this resource will be met. These arrangements must be agreed with an individual or their representative prior to accessing the resource. The full cost of the resource must be stated. The use of the resource and associated costs must be recorded and easily auditable by the commissioner.

5.5 Service Flexibility & Rota Planning

- 5.5.1 The support provided is intended to be person-centred and tailored to the needs of the individual. Providers are expected to ensure the total commissioned hours are delivered each week. Providers may use flexibility in service delivery to meet long and short term outcomes. Flexibility must be approved by the practitioner.

- 5.5.2 Following approval for flexibility from the practitioner, the way the service is provided will be left to the provider as per the individual's needs that particular week. In doing so, this will allow greater flexibility in allowing more hours one week and less hours another week, for example banking hours to support an individual on a holiday. Where this has been agreed, this should be evidenced on the rota with the communication that the practitioner confirmed this arrangement.
- 5.5.3 Providers are expected to tailor hours and create rota's which meet individualised needs. Successful rota scheduling, and recruitment alongside thoughtful person centred planning ensures optimum outcomes for those supported. The provider is expected to ensure supported living services are delivered with flexibility and responsiveness to meet the needs of the individual(s).
- 5.5.4 The provider is expected to ensure that the total number of hours commissioned each week is delivered in a way that meets support plan outcomes. The support planning documentation should allow the commissioner to easily audit where hours have been delivered and how they have been used.
- 5.5.5 Where hours are purposefully banked, the reason and extent of this should firstly be agreed with the individuals' practitioner. Any agreed changes should also be communicated to informal carers and family members as appropriate. The provider should ensure they have clear transparent records that show how hours have been banked, when this flexibility has been used.
- 5.5.6 The provider should ensure that they have a contingency plan in place to deliver hours of support for unavoidable events. i.e. if the person is unwell and needs to return home from day services or cannot attend day services due to illness.
- 5.5.7 Any additional hours required should be discussed with the care manager and reasons detailed. If additional hours are incurred as a result of unexpected situations, for example having to wait on transport, an unexpected hospital or GP visit, the provider should ensure they have a clear audit form which shows additional hours of support provided. Service flexibility can be used to support additional hours where this is possible.

- 5.5.8 The Council operates a model of 'core shared hours' and 'one to one' within a dedicated accommodation setting where more than one individual is supported. Core shared hours must provide a safe environment and will be set at an appropriate level. Support and tasks carried out within the core shared hours allocation must not leave other residents at risk.
- 5.5.9 Within core shared hours, lots of activities can be supported as individualised support, this becomes a persons' **individual time**.
- 5.5.10 Additionally, when a shared accommodation setting is not fully tenanted, core shared hours may continue to be commissioned and the provider will continue to receive payment for staff, with the view that the assessment of care and support for possible new tenants can be supported.
- 5.5.11 It is possible that support needs may change, particularly between an initial 8 week review and annual review. It is the providers' responsibility to deliver support plans and work individually with those supported. If it becomes clear that hours allocated (one to one or core shared hours) are not required, providers must let the practitioner(s) know. The practitioner(s) can then review one to one and, if relevant, core shared hours, and how these are used.
- 5.5.12 The commissioner reserves the right to review the core shared and one to one hours and will adjust this to meet need as required. Where commissioned hours are reduced, providers must agree the effective date with the practitioner. Providers must apply the reduction as soon as feasible. These are expected to be minor within the context of the overall service provision.
- 5.5.13 Support is 24/7 (including bank holidays and weekends), person centred and tailored to the person's needs. All service provision must include on-call support and management support available to support workers.
- 5.5.14 24/7 support may include the appropriate use of assistive technology and/or need for either waking night or sleep in staff. A sleep in facility will be provided where appropriate by the provider. The provider will be responsible for purchasing the necessary furniture/ bed linen required for this facility.
- 5.5.15 On call situations may need the provider to involve other professionals (health workers; emergency duty social work team (EDT)). The provider will be expected to note patterns of on-call need for individuals and to recommend re-assessment if required.

5.5.16 There are two night time on call support rates described as follows:

5.5.16.1 **Standard night time on call support;** as a minimum this will incorporate appropriate use of on call provision (each day including weekends and bank holidays) ensuring management support is available for support workers and may also include the use of assistive technology and/or sleep in staff. If support is provided by sleep in, this rate will only apply if it is not essential that the member of staff providing sleep in support remains on site for the whole night time period (22:00 to 07:00).

5.5.16.2 **Enhanced night time on call support;** As a minimum this will incorporate appropriate use of on call provision (each day including weekends and bank holidays) ensuring management support is available for support workers and may also include the use of assistive technology. This rate will only apply if sleep in support is also required, and the member of staff providing sleep in support must remain on site for the whole night time period (22:00 to 07:00).

5.5.17 The use of the enhanced night time on call support rate will be conditional on any subsequent legal clarification on the qualification of sleep in support shifts as working time for the purposes of payment of national minimum wage (NMW). Should such clarification determine that sleep in support shifts do not qualify as working time for the purposes of payment of NMW, all commissioned sleep in support will revert to payment at the standard night time on call support rate level.

5.5.18 Providers are required to offer their full assistance to review night time support arrangements, with a view to maximising effective care arrangements. Night time support can be offered through telecare, waking night, floating support, or sleep in support. This could increase capacity within current accommodation for further tenancies.

5.6 **Business Continuity and Emergency Planning**

5.6.1 The provider shall also make contingency arrangements to maintain continuity of service for contracted hours in the event of internal service failure and maintain an up to date business continuity and emergency action plan. The provider shall contribute to the commissioner emergency planning arrangements and use all reasonable endeavours to assist the commissioner in the event of a major emergency or disaster affecting supported individuals.

- 5.6.2 If an emergency arises during the contract period which cannot be dealt with by performance of the Service, the commissioner may request the provider to use reasonable endeavours to procure that such additional or alternative services are undertaken by the provider as and when required by the commissioner to ensure that the emergency is dealt with and normal operation of the service resumes without any unreasonable delay.
- 5.6.3 The reasonable and proper costs incurred by the provider of any additional or alternative services provided to the commissioner under clause 19.1 shall be agreed between the parties failing which they shall be determined in accordance with clause 24. Such costs shall be paid by the commissioner to the provider within 30 days of agreement or determination.
- 5.6.4 The provider shall throughout the contract maintain an appropriate Business Continuity Plan (BCP) covering the most significant risks or threats to the service provider for the commissioner. The BCP must be reviewed and updated at least annually during the contract period, so that the BCP remains reliable and fit for purpose.
- 5.6.5 The provider shall test the BCP at least annually, focusing on the strategies or contingencies in place for the key risks to service provision. The commissioner may request sight of business continuity plans as part of the annual review.
- 5.6.6 Where the provider is affected by an incident or disruption, the provider shall activate its business continuity arrangements and shall keep the commissioner informed about the incident or disruption
- 5.6.7 When there is a change of shift, there must be a robust handover from the current member of staff to the next member of staff. This should include all relevant information about those supported. For behaviours that challenge, this should include the current mood, any triggers that have been identified and the de-escalation techniques used.

5.7 Registration, Management & Staffing Considerations

- 5.7.1 Registration
- 5.7.2 The provider will ensure that all services they deliver are registered appropriately with the Care Quality Commission (CQC) and any other regulator required prior to commencement of services. The provider must comply with all registration and inspection requirements.

- 5.7.3 Providers must follow CQC's policy, 'Registering the Right Support' to ensure that care and support, and the relationship between care and housing aligns with CQC registration definitions and requirements.
- 5.7.4 Services rated as inadequate will not be accepted onto the Framework. Where services are already on the framework and subsequently rated inadequate, commissioners will not place future individuals until the CQC rating improves.
- 5.7.5 Providers of services rated as inadequate will be expected to develop an Improvement Plan that will be agreed with and closely monitored by the commissioner. If improvements are not made a default notice will be served on the provider for non-compliance with contract requirements.
- 5.7.6 The commissioner can ask CQC to provide information on the registration and inspection of the provider at any time.
- 5.7.7 The commissioner may be required to share monitoring, safeguarding, complaints, information relating to incidents and uses of physical intervention and/or restrictions and other information with regulators.
- 5.7.8 Providers must comply with the CQC Essential Standards of Quality and Safety (March 2010), and any other subsequently introduced regulatory requirements.
- 5.7.9 Providers must provide individuals with a statement of purpose in accordance with the requirements published by the CQC (July 2013). The providers will ensure that all services they deliver are registered.

5.8 Management

- 5.8.1 The service manager will be a registered manager with CQC. They are required to have a relevant qualification in social work, occupational therapy, nursing or management (Diploma in Management Studies, NVQ Level 4) or Registered Managers award, or equivalent qualifications and experience of working to support and enable people who are usually supported with this service.
- 5.8.2 The Director and Manager may be the same person, however where a separate Manager is employed to take day to day control, there is no requirement for Director/shareholders to have direct experience of care / support work.

- 5.8.3 In the event of absence of the manager or person in day-to-day control, cover arrangements acceptable to the commissioner shall be in place. If the Manager is expected to be absent for more than 14 days, the commissioner shall be informed, with details of the cover arrangements. Any planned or unplanned absence of the Director or person carrying on the business expected to last for 28 days or more shall be notified to the commissioner with details of the cover arrangements.
- 5.8.4 The manager is responsible for safeguarding the health, safety and welfare of individuals. They must take appropriate steps to ensure there are sufficient numbers of suitably qualified, skilled and experienced staff delivering support at all times. Providers will ensure that a robust contingency plan is in place including how appropriate staffing levels will be maintained.
- 5.8.5 Providers must comply with all relevant legislation, have relevant operational policies, procedures, practices and pathways in place, and abide by other agency policies.
- 5.8.6 Given the needs of the individuals being supported under this framework it is expected that specific consideration is given to:
- Environmental issues that may pose a greater risk to the health and safety of individuals and staff.
 - Adjustments to staff working arrangements or terms and conditions due to the nature of the support package, for example, different shift patterns and lengths, requirement for more breaks, need to pay staff at an increased rate due to the complexity of the individuals support needs or arrangements and requirement for higher levels of training to support people with specific complex needs.
- 5.8.7 The requirement for increased management presence to support staff, for example, reflective practice.
- 5.8.8 Effective retention strategies including access to staff care, psychological and pastoral support for employees as appropriate.
- 5.8.9 The provider will need to balance decisions regarding shorter shift patterns and increased breaks with the need for continuity of support for individual.

- 5.8.10 The manager will have robust arrangements in place for the management and supervision of staff – as well as the recruitment, employment, training and development expectations set out in Section Eight. Evidence may include supervision records, observation of practice, written documents outlining recruitment, employment, training and development practices.
- 5.8.11 The manager will have robust arrangements in place to assure the quality of the services provided to individuals – in accordance with the Outcomes Framework and requirements set out in Section Nine.
- 5.8.12 Where there are changes in the service/registered manager, this information should be shared with the commissioner. Where there are proposed changes to the management structure of the organisation commissioners expect to be advised and consulted appropriately.
- 5.8.13 In services where qualified nurses and other healthcare professionals are employed, providers must ensure that professional registration is maintained and that individual staff are accountable to their professional body.

5.9 Staffing Considerations

- 5.9.1 The provider shall also undertake risk assessments in relation to their staff in the work environment in line with the Health and Safety at Work, Act 1974 (as amended) and any associated legislation.
- 5.9.2 Providers must have a safer recruitment policy. This will explain the recruitment process which will have been designed to deter unsuitable applicants from applying for roles with vulnerable groups, and to identify and reject them if they do. Recruitment and selection procedures must meet the requirements of equal opportunities and anti-discriminatory practice. These procedures must ensure that all relevant documentation is checked for validity.
- 5.9.3 In addition to this, the provider must take two written references (at least one from current or last employer and if there has been previous employment in a social care capacity then a reference should be requested from them), assure of a legal right to work in the UK, explore gaps in employment record and confirm staff in post following a satisfactory enhanced Disclosure and Barring Service (DBS) check.

5.9.4 The provider must ensure that as far as possible, all staff members involved in the delivery of the contract are either directly employed on a permanent basis by the provider under a contract of employment. The submitted hourly rate for the contract is not expected to cover additional agency staff costs.

5.9.5 The provider is expected to:

5.9.5.1 recruit staff in sufficient numbers and deploy staff of a level of competence, with experience and qualifications to ensure and maintain Service delivery of a quality consistent with this specification and will provide an appropriate level of continuing training and professional support in the pursuit of best practice and national standards of competence.

5.9.5.2 shall, if requested, produce the personnel records of staff employed to the appropriate representative of the commissioner, subject to compliance with the relevant data protection legislation in relation to the information requested.

5.9.5.3 must have in place a staff training and development programme that as a minimum meets the essential standards of quality and safety, and demonstrates a strong emphasis on supporting individuals to achieve their stated outcomes whatever their support needs.

5.9.5.4 shall ensure that staff members receive training appropriate to their role in line with the skills for care training strategy and training that will equip them with skills that support and enable people with a variety of needs and/or conditions including a lack of mental capacity to express themselves and that communication difficulties are supported appropriately.

5.9.5.5 Equip staff with understanding of a person centred approach, the importance of following the individualised plan. Where appropriate, training will include strengths based planning, support specific to those with high dependency needs, lack of mental capacity, advanced stages of dementia and the ability to manage behaviours that challenge.

5.9.5.6 shall ensure that staff members' training and development is carried out in such a way as to, promote and empower the staff member to carry out the responsibilities of their role through regular and effective supervision and competency assessment which takes into consideration the need for additional and refresher training.

- 5.9.6 The provider will take a person centred approach to staffing whenever possible, and allow individuals supported to select their staff. Where this is not possible then the provider should consider how they can best match support staff to individuals.
- 5.9.7 The provider must be satisfied that staff who use their cars for work purposes have taken out appropriate motor insurance and have a valid MOT certificate and driving licence. The provider should ensure that a copy of the support worker's current and valid insurance documents, MOT certificate and licence is always held on the staff file.
- 5.9.8 Where staff are required to use their own vehicle to transport those they support as part of meeting the requirements of the person specific plan, it is the provider's responsibility to ensure that the staff member has valid business insurance in place. All should be reviewed to ensure continued validity.

6 Contract Call-Off

- 6.1 Acceptance onto the community supported living – open select list (CSL-OSL) framework agreement does not guarantee future work. Successful admission onto the framework means invitation to future opportunities, depending on eligibility criteria (service type, geographical area, specialism).
- 6.2 Future opportunities will be prioritised based on provider framework application score, further provider capability assessment if necessary to determine eligibility and/or subsequent scores to responses to a mini-competition.
- 6.3 Providers are expected to respond to referrals for service type A - care and support only and service type B - care and support in existing accommodation within a maximum of 5 calendar days.
- 6.4 The contract call off process is dependent on service type and each are detailed in the table below, alongside provider eligibility criteria and priority methodology.
- 6.5 If a specific service type is identified as required, and need cannot be met following the eligibility criteria and priority methodology outlined in the table, the commissioner may widen the search for a provider across neighbouring and/or all geographical areas.
- 6.6 The council may use a range of contract mechanisms as appropriate to meet a variety of care and support needs. If a service is identified as required, and need is subsequently unable to be met after going through steps described in the contract call off table below, the council may review alternative contract mechanisms to meet need and/or re-open the open select list.

6.7 Both care and support opportunities, and care and support with accommodation opportunities could be for an individual or a group of individual(s). For example, family members who live in the family home or unrelated individuals thought suitable and compatible to live together.

6.8 The commissioner reserves the right to include an additional eligibility step based on provider capability. This might be where during the contract term, a specialised care and support service is required. In this case, the commissioner reserves the right to ask eligible providers (based on geographical location, specialism as appropriate to the needs and desired location of the individual) to complete a further 'Provider Capability Assessment' in order to shortlist providers.

6.9 The commissioner reserves the right, where a mini-competition is part of the contract call off process and the requirement includes meeting an accommodation need, to include a requirement for the housing provider, care and support provider and the Council to enter into a Nominations Agreement. An example Nominations Agreement terms and conditions is available at Schedule 10.

6.10 Contract Call Off

6.11 All Call Off's will be detailed in the payment schedule which providers receive and are required to verify and return to the Council.

6.12 All Call Off's are eligible for a separate Contract Call Off Agreement at the level of individual. In the absence of this, the payment schedule confirms the hours and any subsequent adjustment to the hours. An example Call Off Agreement is available at Schedule 9.

6.13 Termination for Contract Call Off

6.13.1 In the event, of termination of a Call Off agreement, 28 days notice is required, with exceptions as follows;

- 1) A call off arranged for a 'trial period' as defined in the Call Off agreement, requires 7 days notice
- 2) Hours delivered as 1:1 may be terminated with 14 days notice.
- 3) Any notice period may be specified within the Call Off agreement, and would take precedence.

Contract Call Off Table

LOT 1 – Service Type A, B & C

Type of Support	Eligibility Criteria	Priority
<p>Service Type A</p> <p>Care & support only (sometimes referred to as floating support) which may be delivered in a range of settings including rented accommodation, owner occupied property, extra care schemes or where individuals live with family, carers or friends.</p>	<ul style="list-style-type: none"> - Indication provider(s) wishes to work in the geographical location - Indication provider(s) wishes to meet need for care and support only - If appropriate, evidence of provider(s) specialism meeting specific need 	<ul style="list-style-type: none"> - Select provider based on highest overall tender submission score - If more than one, select from this the most competitive price - If more than one, rotate opportunities between providers, ensuring as far as possible, equitability of opportunity based on hours.
<p>Service Type B</p> <p>Care and support in an existing accommodation setting. This may be single or shared accommodation where individuals have their own tenancy and usually would have access to 24/7 support.</p>	<ul style="list-style-type: none"> - Eligibility confirmed by the practitioner who, using a person-centred approach, bids for an established and existing vacancy. - Senior representatives from care management and commercial teams review bids to ensure needs match the environment. 	<ul style="list-style-type: none"> - The information within the bid will include relevant items such as suitability, compatibility, level of need, urgency of requirement. - Senior representatives from care management and commercial team review bids, if required, they will prioritise based on bid information
<p>Service Type C</p> <p>Care and support with the requirement for a new accommodation setting. This may be single or shared accommodation where individuals have their own tenancy and usually would have access to 24/7 support.</p>	<ul style="list-style-type: none"> - Indication provider(s) wishes to work in the geographical location - Indication provider(s) wishes to meet need for care and support, with accommodation - If appropriate, evidence of provider(s) specialism meeting specific need - Invitation to & response to mini-competition 	<ul style="list-style-type: none"> - Select provider based on highest overall mini-competition submission score - If more than one highest scorer, follow the priority methodology as outlined for care and support only opportunities.

LOT 2 – Service Type D Only

Type of Support	Eligibility Criteria	Priority
<p>Service Type D</p> <p>Care and support in Exceptional Circumstances. This may be a care and support need with or without an accommodation aspect. However, it is likely the care and support needs will require a bespoke approach, there may be co-occurring conditions and in some cases, require a high level of specialism to meet identified needs.</p>	<ul style="list-style-type: none"> - Indication provider(s) wishes to work with this client group. - If appropriate, evidence of provider(s) specialism meeting specific need (initial application or further provider capability assessment) - If appropriate, invitation to confirm eligibility via a provider capability assessment and /or - Invitation to & response to mini-competition 	<ul style="list-style-type: none"> - Select provider based on highest overall mini-competition submission score - If more than one highest scorer, follow the priority methodology as outlined for care and support only opportunities.

Enclosure 1 – Care & Support Activities

1. **Providers may be required to carry out the following support tasks which may include, but are not limited to the following:**
- 1.1 Getting to know individuals during any period of transition into supported living
- 1.2 Help settling in new tenants
- 1.3 Support with household budgeting, including help with correspondence, and the payment of bills.
- 1.4 Acting as the Appointee for the receipt of welfare benefits where Power of Attorney is not an option and as agreed on a case by case basis with the Council.
- 1.5 Prompting and supporting with practical household tasks e.g. general cleaning.
- 1.6 Prompting and supporting with laundry tasks.
- 1.7 Assistance in developing domestic and life skills including maintaining personal hygiene.
- 1.8 Assistance in developing social skills/behaviour management including supporting people to develop social networks within the community and elsewhere
- 1.9 Advising on aids/equipment.
- 1.10 Assisting individuals to access education, employment or community based activities in the local community.
- 1.11 Help in liaising with other agencies e.g. health professionals, social work staff;
- 1.12 Maintaining the personal safety and security of individuals;
- 1.13 Support in accessing information (e.g. local/national news);
- 1.14 Support in maximising welfare benefits and referring to specialist agencies where necessary;
- 1.15 Emotional support and advice;
- 1.16 Supporting individuals to access counselling as appropriate;
- 1.17 Helping to liaise with the Registered Social Landlord or landlord on issues such as maintenance/repair/ improvement work to the home;
- 1.18 Advice on transport methods and arrangement of transport;
- 1.19 Supervising and monitoring of medication e.g. prompting the individual to take medication which has been prescribed and dispensed into individual doses;
- 1.20 Support to plan and prepare meals, including addressing the principles of a healthy diet;
- 1.21 Assisting an individual with their mobility, such as accompanying individuals in the community, including shopping;
- 1.22 Practical support to help deal with emergencies;

- 1.23 Support individuals to access advocacy support where appropriate;
 - 1.24 Support individuals to develop social networks and to maintain current friendships and family relationships.
 - 1.25 Support to manage and maintain any vehicle provided under the mobility scheme; including but not limited to mileage recording, returns, cleaning and reporting any damage.
2. **Providers may also be required to carry out personal care support which may include, but are not limited to the following:**
- 2.1 Assisting the individual to get up and get dressed or undressed and to go to bed;
 - 2.2 Assisting the individual to maintain their personal and oral hygiene;
 - 2.3 Assisting the individual with their toilet/continence requirements;
 - 2.4 Helping the individual to eat their food or take a drink;
 - 2.5 Assisting an individual with their mobility needs.
3. **Providers may also be required to carry out support to maintain health and well-being which may include, but are not limited to the following:**
- 3.1 The support required as part of an individual's health action plan.
 - 3.2 Routinely make and support the individual in attending GP, hospital, dental, optician appointments etc and ensure these are scheduled and attended.
 - 3.3 Assist families and individuals with accessing information on health related matters.
 - 3.4 Support during periods of challenging behaviour, episodes of mental health difficulties and periods of illness.
 - 3.5 Support in managing service user weight.
 - 3.6 Support in managing continence issues.
 - 3.7 Providers must have a medication management policy in place which all staff are fully trained in its compliance and delivery.

SCHEDULE 2
PROVIDER SERVICE DELIVERY PLAN

SCHEDULE 3
PAYMENT MECHANISM

1. The Service Charges shall be as follows:
Service Type A, B, C
Floating Support Hourly Rate: £ 19.70 per hour
Care & Support Standard Hourly Rate: £ xx.xx per hour
Standard Night Time on Call Support Rate: £ 40.00 per night
Enhanced Night Time Support Rate: £ 93.78 per night

and shall be payable as set out in this Schedule.
2. Each Call Off issued in accordance with this Contract shall set out the Commissioned Hours required for the delivery of the Services by the Provider in respect of the relevant Service User.
3. The Council shall supply the Provider with a Payment Schedule on a regular basis, on a frequency which shall not be any more frequent than a four weekly basis. The Payment Schedule shall refer to any Commissioned Hours in any Call Offs issued to the Provider in accordance with this Contract and calculated against the relevant Service Charges above to show the amount due to the Provider.
4. If the Provider is satisfied that the Commissioned Hours and Service Charges identified within the Payment schedule are correct and reflect the Delivered Hours, the Provider shall sign the Payment schedule and return it to the Council by email to FIN_Payments@lincolnshire.gov.uk within the deadline expressed in the Payment Schedule.
5. If the Provider reasonably believes the Commissioned Hours and/or Service Charges identified within the Payment Schedule are not correct and do not reflect the Delivered Hours, the Provider shall amend the Payment Schedule accordingly to reflect the Hours Delivered for the period in question, sign the Financial Schedule and return the Financial Schedule to the Council by email to FIN_Payments@lincolnshire.gov.uk within the deadline expressed in the Payment Schedule.
6. The Council shall request the Provider return the Payment Schedule by a specified deadline that will enable the Council to pay the Provider the undisputed Service Charges within twenty eight (28) days. If a signed payment schedule is not received by the required deadline, the payment will be on the next payment cycle which is every 28 days.
7. The Provider shall not amend the Payment Schedule in a way to charge above the Service Charges set out above.
8. The Provider shall not be permitted to exercise any right under Clause H2.6 until such time as it has returned the signed Payment Schedule to the Council and has adhered to the provisions within Clause C1, C2 and in accordance with the requirements set out in this Schedule.
9. Where any payment is made by the Council and it is subsequently established that in the circumstances existing at the relevant time the Council was only liable under the terms of this Contract to pay the Provider a lesser sum (or none at all), the Provider shall repay the amount of the overpayment within five (5) Working Days from receiving notice from the Council of such overpayment.
10. The Provider shall keep and maintain proper accounts and records in relation to the provision of the Service in accordance with good accounting practice and permit the Council access to them to inspect and take extracts from them if required.

SCHEDULE 4

PERFORMANCE MONITORING

This Performance Management Framework shall apply in full from the Commencement Date and details the elements of the Services that shall be measured to monitor and to incentivise performance.

1. Contract Management Meetings

- 1.1. Contract management meetings between the Council and the Provider will be held on a quarterly basis, complimented with an annual contract management meeting.
- 1.2. Meetings will be held face to face meetings held between the Parties. All meetings will be minuted and reports will be sent to the Provider within a reasonable timeframe following the meeting.
- 1.3. The content of a quarterly contract management meeting is outlined below. A review of all the available information will be used to inform areas of focus.
- 1.4. The following items shall be discussed at quarterly contract management meetings. The Provider shall be issued with an agenda prior to the contract management meeting. However, the agenda is subject to change. The items set out below are subject to change throughout the duration of the contract. The Provider has an opportunity to add to this agenda. In the first Quarter of each Contract Year, the Quarterly contract management meeting will be extended to carry out a desktop review of the service and include additional items as detailed in the table below:

Item	Q1 (Jul- Sep)	Q2 (Oct - Dec)	Q3 (Jan- Mar)	Q4 (Apr- Jun)
Review of Performance Report (see Monitoring Arrangements below) <ul style="list-style-type: none"> • Are all data and report submissions being received on time? • What is the data telling us? 	X	X	X	X
Staffing – Operational Issues <ul style="list-style-type: none"> • Vacancies, recruitment, retention, sickness • Review of Training Matrix to identify robustness of staff training (have all staff that need to be trained/given refresher training received training?) • Any changes regarding Registered Manager • Use of agency staff 	X	X	X	X

Item	Q1 (Jul- Sep)	Q2 (Oct - Dec)	Q3 (Jan- Mar)	Q4 (Apr- Jun)
Complaints, Compliments & Concerns <ul style="list-style-type: none"> Review PPC's & Safeguarding Alerts Complaints (LCC and Provider) Compliments How is the provider routinely getting feedback from services users, and what are they doing with it? 	X	X	X	X
Risk Rating <ul style="list-style-type: none"> Discuss the current risk rating and reasons for any increase or decrease in risk 	X	X	X	X
Activity Audit¹¹ <ul style="list-style-type: none"> Review a sample of cases to compare commissioned hours (the payment schedule-remittance advice confirmed as accurate by providers) to planned and actual delivered hours 	X	X	X	X
Any other issues/points for discussion <ul style="list-style-type: none"> CQC Ratings and any recent inspection findings IPC (use of Assurance Matrix) Case Studies Quality Assurance processes and evidence of application Where applicable, dedicated accommodation issues arising and resolved, discussion re visits Vacancies within dedicated accommodation settings. 	X	X	X	X
Policy & Document Review <ul style="list-style-type: none"> Annual review of the following (to be sent to Contract Officers in advance) <ul style="list-style-type: none"> Business Continuity Plan Safeguarding Policy Whistleblowing Policy Medication Management Policy Insurances Quality Assurance Survey 	X			

¹¹ Should any concerns arise out of Activity Audits or any form of intelligence (e.g. complaints, poor practice concerns), the Council reserve the right to complete additional activity audits at any time.

Item	Q1 (Jul-Sep)	Q2 (Oct - Dec)	Q3 (Jan-Mar)	Q4 (Apr-Jun)
<p>Family member, carer or advocate & Service user feedback (see Monitoring Arrangements below)</p> <ul style="list-style-type: none"> • How is feedback sought? (e.g. what methods are being used) • How are service users encouraged to take part in the survey? • Discuss findings, response rates etc. • What are the opinions of family members/informal carers • What actions are being taken as a result? 	X			
<p>Staffing</p> <p><u>Supervision</u></p> <ul style="list-style-type: none"> • Review of supervision policies/approach (are they adequate and robust?) • Review of staff files to check for evidence of frequency and quality of supervisions <p><u>Recruitment Practices</u></p> <ul style="list-style-type: none"> • Review of providers Recruitment & Selection Policy (references, DBS checks, activities that can/can't be undertaken whilst an individual has all checks and training completed) • Review of staff files to check for evidence of application of policy (e.g. references completed and adequate, DBS checked completed) <p><u>Staff Training</u></p> <ul style="list-style-type: none"> • Review of Training Policy • Review of staff files to check for evidence of training being completed 	X			

1.5. An indication of the expected workflow for quarterly contract management meetings is as follows;

- Step 1: Provider to send through required reports and/or documents, policies/example quality assurance survey before meeting
- Step 2: Following the visit the Council sends through the completed Contract Management form to the Provider, with timescales to be determined according the Provider's risk rating, attributed by the Council.
- Step 3: Provider shall review, sign and return form to the Council within ten (10) days of receipt. If the Provider raises any issues with the contract management form within the ten days as set out in this step, the Council shall consider any issues

at its absolute discretion. In the event that the Council agrees with any such issues that the Provider has risen, it shall issue an updated contract management form as soon as reasonably possible with updated action dates. If the provider does not raise any issues within ten days, the contract management form is deemed to have been accepted by the Provider.

- Step 4: Action dates will then be fulfilled by identified parties
- Step 5: The next contract management meeting date will be arranged on the expected Quarterly basis however if there are concerns they will be arranged on a Monthly basis.

1.6. The Council may request a contract management meeting with the Provider at any time or may increase the frequency of contract management meetings if any concerns in the following areas are identified:

- Service level
- Contract compliance
- Contract Value and payments
- Quality
- Issue of a default Notice
- Complaints
- Risk to the Purchaser
- Serious Incidents or Safeguarding concerns

2. Quarterly Accommodation Visits (dedicated accommodation only)

- 2.1. For providers operating under the framework, where dedicated accommodation is being provided, a quarterly Premises visit shall take place.
- 2.2. The Council shall determine which Premises to visit and will notify the Provider five (5) days in advance of the visit.
- 2.3. Should issues be identified the Council reserves the right to visit additional Premises settings.

Item	Q1 (Jul-Sep)	Q2 (Oct - Dec)	Q3 (Jan-Mar)	Q4 (Apr-Jun)
<p>Environment</p> <ul style="list-style-type: none"> • Is the accommodation in a good state of repair? • What measures are taken to assist service users to report any maintenance issues? • Are issues dealt with in a timely manner? 	X	X	X	X
<p>Policy – application</p> <ul style="list-style-type: none"> • Have staff read the policies, do they know where they are stored, do they understand them? • How are service users made aware of appropriate policies, e.g. how to recognise signs of abuse and how to report concerns • Is there evidence of whistleblowing policy being promoted throughout the setting? 	X	X	X	X

Item	Q1 (Jul-Sep)	Q2 (Oct - Dec)	Q3 (Jan-Mar)	Q4 (Apr-Jun)
Review of care plans <ul style="list-style-type: none"> Was the care plan in place from the data care commenced? Are risk assessments up to date? Does the care plan clearly identify individual outcomes and how they are to be achieved? Does the care plan demonstrate progress against outcomes? 	X	X	X	X
Medication <ul style="list-style-type: none"> Review of MAR sheets Any issues/incidents Review any provider led medication audits 	X	X	X	X
Service User Support <ul style="list-style-type: none"> How are service users supported to live as independently as possible? Is there evidence that service users are being supported to achieve their individual outcomes? Do they know how to safely remove themselves in the event of an emergency? Does the service user have a visual rota/know when and which staff will be supporting them? 	X	X	X	X
Feedback from Service Users <ul style="list-style-type: none"> Discussion with service users present at the time of the visit. 	X	X	X	X

- 2.4 The Council may request a contract management meeting or accommodation meeting with the Provider at any time between the standard meeting times or may increase the frequency of any such meetings if any concerns regarding the safety, effectiveness or delivery of a positive experience for service users are identified, or should the risk of the Provider's service to the Council under this Contract change due to new information becoming available to the Council.

3. Monitoring Information

- 3.1 At the frequencies set out below, the Provider shall enter, via a web portal notified by the Council, a submission of data relevant to the delivery of the Services.
- 3.2 It is the Council's requirement that every provider submits this information at the times set out below. Whilst reminders may be sent, this remains the responsibility of the Provider and compliance is part of the overall monitoring process, which forms part of the Council's overall risk rating.
- 3.3 The information that is submitted by the Provider is shown in the table below.

Item	Frequency	Deadlines
<p>Staffing</p> <ul style="list-style-type: none"> • Number of new support workers commencing employment in the reporting period (incl. Agency) • Number of support workers leaving employment during the reporting period (incl. Agency) • Of the support workers leaving, the average length of employment (in months) • Total number of hours delivered in the reporting period • Total number of hours delivered by Agency Staff in the reporting period 	Quarterly	<p>Quarterly periods are:</p> <p>Q1 –Jul to Sep Q2 –Oct to Dec Q3 –Jan to Mar Q4 –Apr to Jun</p> <p>Data to be returned by the 15th of the month following the end of the quarter</p>
<p>Service Users</p> <ul style="list-style-type: none"> • Current number of service users supported (as at the end of the quarter) • Number of new service users being supported during the reporting period • Number of service users leaving the service during the reporting period 	Quarterly	<p>Quarterly periods are:</p> <p>Q1 –Jul to Sep Q2 –Oct to Dec Q3 –Jan to Mar Q4 –Apr to Jun</p> <p>Data to be returned by the 15th of the month following the end of the quarter</p>
<p>Annual Survey(s)</p> <p>As part of a providers own quality assurance, it is expected that family members, carers, advocates and service users will be surveyed.</p> <p>For Service Users; please submit:</p> <ul style="list-style-type: none"> • Number of surveys issued • Number of surveys returned • Number of Service Users satisfied or very satisfied <p>For Family members, carers, advocates; please submit:</p> <ul style="list-style-type: none"> • Number of surveys issued • Number of surveys returned • Number of members, carers, advocates satisfied or very satisfied 	Annually	Data to be returned by the end of June.
<p>Training Matrix</p>	Quarterly	To be returned by the 15 th of the month following the end of the quarter
<p>Policies</p> <p>Business Continuity Plan Safeguarding Policy Whistleblowing Policy Medication Management Policy Restraint Policy Insurances Annual Report (two pages as defined within the Specification)</p>	Annually	By end of June each year for review in Q1

Item	Frequency	Deadlines
New Tenancy Opportunities (Void/Vacancy information) Per vacancy; <ul style="list-style-type: none"> • Accommodation address • Number of bedrooms within the property • Property type • Vacancy details • Date available from 	As and when they occur	As early as possible when a vacancy occurs. Information can be submitted in advance of a vacancy where a planned exit occurs.

3.4 The Provider shall also be required to submit the following information via email FIN_Payments@lincolnshire.gov.uk or an alternative as advised by the Council:

Item	Frequency	Deadlines
Payment Schedule – this is effectively a remittance advice sent to the Provider on a 4 weekly basis. LCC will supply the Provider with a schedule of commissioned hours (both 1:1 and core). Providers are required to certify the information and return the schedule. This must be accurate and must reflect delivered hours.	4 weekly	To be returned in line with the deadline on the schedule, failure to do so could result in a delay of payment

3.5 Failure to submit within the above timescales will be recorded as a 'Missed or Late Submission'. Repeated missed or late submissions may result in a performance default being issued.

4. Monitoring Arrangements

4.1 The Council will analyse all available data (including data supplied by the Provider directly, data held by the Council, information reported via Poor Practice Concerns etc.) to assess performance of the Contract

4.2 Data will be monitored over time to provide a meaningful picture of performance improvement, sustained change or continuous under performance. Please note the tables below provide an indicative, not exhaustive, list.

Analysis of LCC held information
Data Source: LCC
<ul style="list-style-type: none"> • Number of data submissions completed within the timescale • Average time to respond to referrals for 'Care and Support Only' • Outcome of activity audits <ul style="list-style-type: none"> ○ Sample audit of actual delivery against commissioned hours. • Contract Management Report • Accommodation Visit Report • Poor Practice Concerns, Safeguarding Alerts, Serious Incidents • Risk Rating

Analysis of Provider Submitted Data

Data Source: Provider Data Returns

- Staffing
 - Number of new support workers commencing employment in the reporting period (incl. Agency)
 - Number of support workers leaving employment during the reporting period (incl. Agency)
 - Average length of employment (in months)
 - % of hours delivered by agency staff
- Annual Survey Results including response rate
- New tenancy opportunities (voids/vacancies)

Analysis of Outcome Achievement

Data Source: to be determined

- See Service Levels

4. Service Levels

4.1 The Service Levels are as follows:

Service Level Number	01
Service Level Name	Service User Satisfaction Level
Description	The percentage of services users who are satisfied or very satisfied with the care and support they receive.
Service Level	To be determined following first Contract Year
Calculation	Number of Service Users responded to the question "How happy are you with the care and support received" in the annual survey by answering either "satisfied " or "very satisfied" for that Contract Year divided by the total number of Service Users who responded to the question "How happy are you with the care and support received" in the annual survey for that Contract Year multiplied by 100
Frequency of reporting	Annually

Service Level Number	02
Service Level Name	Family member, Carers and Advocates Satisfaction level
Description	The percentage of Family member, Carers and Advocates who are satisfied or very satisfied with the care and support the relevant Service User has received.
Service Level	To be determined following first Contract Year
Calculation	Number of Family member, Carers and Advocates responded to the question "How happy are you with the care and support received" in the annual survey by answering either "satisfied " or "very satisfied" for that Contract Year divided by the total number of Family member, Carers and Advocates who responded to the question "How happy are you with the care and support received" in the annual survey for that Contract Year multiplied by 100

Frequency of reporting	Annual
------------------------	--------

Service Level Number	03
Measure Name	Provider meeting defined outcomes of Service Users
Service Level	To be agreed between the Parties after first twelve (12) Months of the Contract
Frequency of reporting	To be defined after first twelve (12) Months
Calculation	Number of Service Users Called Off through the Contract divided by the Number of Service Users whose outcomes are being met multiplied by 100.
Frequency of reporting	To be agreed between the Parties after first twelve (12) Months of the Contract

- 4.2 If the Provider fails to provide the Services in accordance with the required Service Levels, the Council shall refer such failure to the Improvement Plan Process in accordance with Clause H7.
- 4.3 The Service Levels are to be baselined in the first Contract Year and the Council shall not refer any failure to achieve such Service Levels to the Improvement Plan Process until following the first anniversary of the Commencement Date.
- 4.4 Following receipt of the details of the Service Levels following the initial Contract Year, the Provider shall serve on the Council a notice setting out the relevant percentages which has been achieved in the initial Contract Year. Following receipt of such information, this percentage shall determine the Service Levels accordingly from that date until expiry or earlier termination of this Contract.
- 4.5 Following establishment of the Service Levels as provided for in paragraph 4.4, any failure to achieve the Service Levels shall be referred to the Improvement Plan Process in accordance with paragraph 4.2.
- 4.6 The Provider shall be responsible for the monitoring and accurate recording at all times of its own performance of the Services and of compliance with, or failure under, the requirements of the Performance Management Framework. This is without prejudice to the rights of the Council to monitor performance independently.
- 4.7 The Provider shall notify the Council, in reasonable detail, of any Service Failures against any of the Service Levels set out above at the time of failure or as soon as the failure has been identified by the Provider. At the end of each frequency period as noted above, the Provider shall be required to report to the Council, as part of the report under clause C5 and this Schedule 4, the instances of Service Failures in those periods.
- 4.8 The Council may in its sole and absolute discretion grant relief from referral to the Improvement Plan Process if it is satisfied that the reason for the Service Failure was outside the reasonable control of the Provider. To claim such relief evidence must be provided by the Provider to the Council for each event for which relief is sought. Such evidence must show that the Provider was unable to mitigate the effects of the reason for the Service Failure. The Council shall review the application for relief and determine if the event causing a Service Failure was or was not outside the reasonable control of the Provider. The conclusion of the Council shall be final. The Provider must apply reasonable measures to mitigate problems/events which affect

the delivery of the Service to prevent the occurrence or minimise the amount of Service Failures.

- 4.9 Where the Council through its own monitoring of the Contract and the performance of the Services finds a failure by the Provider to meet a Service Level it shall notify the Provider and the Provider shall record the failure against the Service Level as per the Provider's monitoring system.
- 4.10 The Performance Management Framework shall be reviewed on an annual basis by the Council with Service Levels being reviewed every six (6) Months at the Council's ultimate discretion. No changes shall be made to the Performance Management Framework except by determination by the Council.

SCHEDULE 5
KEY PERSONNEL
PART 1

Council Key Personnel

Name	Job Title	Email Address / Responsibilities
	Council's Representative Contract Officer	
	Council's Contract Manager	
	Council's Data Submission Contact (web portal)	

PART 2

Provider's Key Personnel

SCHEDULE 6

DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

1. CONTENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

1.1 The Provider shall ensure that the Disaster Recovery and Business Continuity Plan includes:-

- (a) details of how the Provider shall implement the Disaster Recovery and Business Continuity Plan;
- (b) details of how the Disaster Recovery and Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Council (as notified by the Council from time to time);
- (c) details as to how the invocation of any element of the Disaster Recovery and Business Continuity Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the Services;
- (d) identification of all reasonably possible failures of or disruptions to the Services;
- (e) In respect of any software used in the Services, the back-up methodology, data verification procedures, hardware configuration details, network planning and invocation rules and procedures, data centre site audits, possible areas where system critical elements can be "dual sourced" so as to eliminate or minimise single points of failure and business continuity maintenance;
- (f) identification of all potential disaster recovery scenarios;
- (g) provision of appropriate levels of spares, maintenance equipment and test equipment;
- (h) responsibilities of the Sub-Contractors in the event of a Disaster;
- (i) Service Levels that the Provider shall have to comply with in the event of a Disaster; and
- (j) Council obligations and dependencies.

1.2 The Provider shall ensure that the Disaster Recovery and Business Continuity Plan identifies and details the processes and activities which it shall implement upon the occurrence of business-critical emergency situations. In particular, the Disaster Recovery and Business Continuity Plan shall include:

- (a) identification of Service priorities in the event of a Disaster;
- (b) risk analysis of key business risks (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis). Key business risks could include the loss of Staff, Key Personnel, Premises, key resources and key Sub-Contractors and/or Providers;
- (b) details of business processes, procedures (including procedures for activation, escalation and recovery) and responsibilities;
- (c) a communications strategy for Staff, the media and key internal and external

stakeholders;

- (d) identification of key internal and external interdependencies;
- (e) identification of essential resources and Equipment needed during a Disaster;
- (f) a contact list that contains details of all Staff, Sub-Contractors and anyone to be relied upon by the Provider to provide the Services; and
- (d) procedures for reverting to normal Service delivery.

2. REVIEW AND AMENDMENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

The Disaster Recovery and Business Continuity Plan shall be reviewed by the Council and the Provider annually, or at such other times as may be requested by the Council or the Provider.

**SCHEDULE 7
PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

1. The Council and Provider have jointly determined the purpose and means of processing as set out in this Schedule:
2. The point of contact for Data Subjects is LCC DPO; Amy Jaines; Email Address; DPO@lincolnshire.gov.uk
3. The Provider's point of contact for Data Subjects is

A. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Description	Details
Identity of the Council and the Provider	The Parties acknowledge that for the purposes of the Data Protection Legislation that they are Joint Data Controllers.
Subject matter of the processing	Processing is necessary to allow providers to deliver appropriate care to service users referred to them. This is a service delivered to vulnerable adults under Adult Social Care provision.
Duration of the processing	1 st July 2020 – 30 th June 2025
Nature and purposes of the processing	<p>The processing will involve adult social care / health practitioner referrals which will be made to the supplier at the point where a service user is identified as requiring a care and support service.</p> <p>Providers will be contacted according to the contract call off process defined in the service specification.</p> <p>Referrals will contain personal information and background in order that the provider can make an assertion on whether they have the capacity and capability to deliver the service. Providers will be expected to carry out further data collection to demonstrate that they have met the defined outcomes at the level of individual.</p> <p>Data should be stored in an appropriate case management system and data will need to be shared safely with LCC Social Care teams.</p> <p>The purpose of processing data is to facilitate meeting outcomes under the open select list for the delivery of care and support for service users.</p>
Type of Personal Data	Name, address, date of birth, further data relating to the service user's personal situation. Much of this may be special categories of data and relate to medical condition as well as other data around employment and status, the amount processed will depend on the case.
Categories of Data Subject	Service Users referred for community support living services by Lincolnshire County Council Adult Social Care / Lincolnshire Partnership NHS Foundation Trust (LPFT).
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>Information relating to a Data Subject shall be held for the duration of support and thereafter according to appropriate retention schedules defined in the service specification.</p> <p>Before the contract comes to an end, the following must be provided to the Council to ensure continuity of care for those supported: - individual assessments, risk assessments, support plans and reports pertinent to Adult Social Care's / LPFT ongoing support.</p> <p>LCC Retention Schedules: https://www.lincolnshire.gov.uk/directory/52/records-management</p>

B. MINIMUM INFORMATION SECURITY CONTROLS

The minimum security controls detailed within this Schedule are to be in place at all times when processing Information for the purpose of or in connection with the delivery of the Services. Such Information includes Personal Data and other Confidential Information or data.

1. GENERAL

1.1 The Provider shall have a security policy in place which sets out management commitment to information security, defines information security responsibilities, and ensures appropriate governance.

1.2 All Staff shall complete data protection and information security training commensurate with their role.

2. ICT INFRASTRUCTURE

Boundary Firewall and Internet Gateways

2.1 Information, applications and devices shall be protected against unauthorised access and disclosure from the internet, using boundary firewalls, internet gateways or equivalent network devices.

Secure Configuration

2.2 ICT systems and devices shall be configured to reduce the level of inherent vulnerabilities and provide only the services required to fulfil their role.

User Access Control

2.3 User accounts shall be assigned to authorised individuals only, managed effectively, and they shall provide the minimum level of access to applications, devices, networks, and Personal Data.

2.4 Access control (username & password) shall be in place. A password policy shall be in place which includes provisions to ensure:-

- (a) avoidance of the use of weak or predictable passwords;
- (b) all default passwords are changed;
- (c) robust measures are in place to protect administrator passwords; and
- (d) account lock out or throttling is in place to defend against automated guessing attacks.

2.5 End user activity shall be auditable and include the identity of end-users who have accessed systems.

Malware Protection

2.6 Mechanisms to identify detect and respond to malware on ICT systems and devices shall be in place and shall be fully licensed, supported, and have all available updates applied.

Patch Management and Vulnerability Assessment

- 2.7 Updates and software patches shall be applied in a controlled and timely manner and shall be supported by patch management policies.
- 2.8 The Provider shall adopt a method for gaining assurance in its organisation's vulnerability assessment and management processes, for example by undertaking regular penetration tests.
- 2.9 Software which is no longer supported shall be removed from ICT systems and devices.

Cloud Services

- 2.10 The Provider shall ensure that the controls applied to the use of cloud services satisfactorily supports the relevant security principles set out in the National Cyber Security Centre Cloud Security Principles:
<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

3. PROTECTING INFORMATION

Electronic Information

- 3.1 Electronic copies of Information shall be encrypted at rest to protect against unauthorised access.
- 3.2 When transmitting Information over the internet, over a wireless communication network e.g. Wi-Fi, or over an untrusted network the Provider shall use an encrypted communication protocol.
- 3.3 The Provider shall only use ICT which is under its governance and subject to the controls set out in this Schedule.

Hard Copy Confidential Information

- 3.4 Hard copy Confidential Information shall be stored securely when not in use and access to it shall be controlled.
- 3.5 Hard copy Confidential Information shall be transported in a secure manner commensurate with the impact a compromise or loss of information would have and which reduces the risk of loss or theft.

Secure Destruction of Information

- 3.6 Electronic copies of Information shall be securely destroyed when no longer required, including Information stored on servers, desktops, laptops or other hardware and media.
- 3.7 Hard copy Information shall be securely destroyed when no longer required.
- 3.8 Secure destruction means destroying Information so it cannot be recovered or reconstituted.
- 3.9 A destruction certificate may be required by the Council to provide the necessary assurance that secure destruction has occurred.

4. SECURITY INCIDENTS/PERSONAL DATA BREACH

- 4.1 The Provider shall notify the Council immediately of any fact or event which results in, or has the potential to result in, the compromise, misuse, or loss of Council Information, ICT services or assets.
- 4.2 The Provider shall notify the Council immediately of any Personal Data Breach which relates to personal data processed under this agreement.
- 4.3 The Provider shall fully co-operate with any investigation that the Council requires as a result of such a security incident or Personal Data breach.

5. COMPLIANCE

- 5.1 The Provider shall inform the Council of any non-compliance with the controls set out in this Schedule. Any deficiencies in controls shall be subject to a documented risk management process and where appropriate an Improvement Plan shall to be implemented with the aim of reducing, where possible, those deficiencies.
- 5.2 Independent validation which has been used as evidence of appropriate security controls by the Provider shall be maintained by the Provider for the duration of the Contract.
- 5.3 The Provider shall inform the Council of any expired or revoked evidence used as independent validation.

SCHEDULE 8

EXIT STRATEGY REQUIREMENTS

1. Without prejudice to the provisions set out in the Contract (including clause B7 and Section H) upon notification of this Contract terminating, howsoever caused, or twelve (12) Months prior to the expiry of this Contract, the Parties shall meet to discuss a timetable for drawing up and shall draw up a handover plan covering the performance of the obligations of both Parties during the handover period. In any event, the Provider shall, at no cost to the Council, provide such cooperation, information and assistance to the Council as may be reasonably required by the Council to transfer and to enable a smooth migration of the Services being supplied by the Provider including enabling the Council and/or a Replacement Contractor to perform services the same as or substantially the same as the Services in a similar manner as required under this Contract.
2. The Provider and the Council shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the transition of the Services to the Council or a Replacement Contractor.
3. The Provider agrees that if it is requested by the Council it shall use all reasonable endeavours to assign or novate any then existing contracts which the Provider has entered into with third parties in connection with the provision of the Services including the leasing of any equipment used in the delivery of the Services to the Council or to any Replacement Contractor.
4. The Provider shall not in the twelve (12) Month period prior to the expiry of this Contract (or such period remaining where a notice of termination has been issued) (the "Applicable Period") in relation to the Services except with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed:
 - 4.1 incur any expenditure or enter into any commitments other than in the ordinary course of trading;
 - 4.2 dispose of or agree to dispose of or grant any option in respect of any part of any land, buildings, equipment, spare parts, tools books, records, revenues, Intellectual Property Rights (excluding those assets which the Council is the full legal and beneficial owner of) other than stock in the ordinary course of trading;
 - 4.3 materially vary the terms of any contracts with any provider of goods and/or services already entered into;
 - 4.4 enter into any long-term (being twelve (12) Months or longer), unusual or abnormal contract or commitment;
 - 4.5 enter into any leasing, hire purchase, contract hire or other agreements or arrangements for payment on deferred terms;
 - 4.6 grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future incomes or assets affecting this Contract and/or the provision of the Services;
 - 4.7 permit any of its insurances to lapse or do anything which would make any

- policy of insurance void or voidable;
- 4.8 in any way depart from the ordinary course of its day to day business either as regards the nature or scope or the manner of conducting the same;
 - 4.9 pay any fees or commissions to any persons other than fees payable on arm's length terms to third parties who have rendered bona fide service or advice required in the ordinary course of business;
 - 4.10 release, waive or modify any warranty or guarantee given by any Provider of goods or services;
 - 4.11 cause or permit any item comprised in the records relating to the Services to be removed or destroyed or any programs or data held on the computer systems of the Provider and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with the DPA or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site;
 - 4.12 terminate the employment of any of the Relevant Employees for any reason whatsoever without first obtaining the consent of the Council to such termination save where, in the reasonable opinion of the Provider, termination is justified for cause due to the actions of any such of the Relevant Employees;
 - 4.13 alter or change in any way any of the terms and conditions of employment of any of the Relevant Employees whether with or without the consent of the Relevant Employees other than for wage or salary awards which are in line with those offered generally for similar individuals within the Provider's workforce or as is required by law (for the avoidance of doubt, the Provider shall provide upon request by the Council evidence that any such wage or salary award is in line with those offered generally for similar individuals);
 - 4.14 relocate or assign to new duties any of the Relevant Employees, or assign to the provision of the Services any employee not so assigned at the commencement of the Applicable Period, or increase to any significant degree the proportion of working time spent on the Services by any such employee, without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed; or
 - 4.15 make any other alterations to the structure or composition of the Relevant Employees which are intended to or which may preclude the application of the Regulations upon the resumption of service by the Council or Replacement Contractor.

**SCHEDULE 9
FORM OF CALL OFF**

CALL OFF AGREEMENT
FOR THE PROVISION OF CARE AND SUPPORT SERVICES

THE PURPOSE OF THE CALL OFF

This Call Off is a call off under the Community Supported Living Open Select List between the Council and the Provider for the below named Service User.

The Open Select List Contract Terms and Conditions between Lincolnshire County Council and [____] dated [_____] (the "Contract") are incorporated into the Call Off and the Provider shall provide any Services under this Call Off in accordance with the Contract.

Service User's Name:			
Date Call Off Issued:		Version Number:	
Initial Call Off / Variation* (<i>*delete as appropriate</i>)			

1. PARTIES TO THE CALL OFF

1.1 The Purchaser

Name of Council:	Lincolnshire County Council		
Address:	County Offices Newland Lincoln		
Postcode:	LN1 1YL		
Email:			
Telephone:	01522 552222	Fax:	01522 553257

1.2 The Provider

Name of Organisation: (Registered Legal Entity)			
Registered Company Number / Registered Charity Number:			
Registered Provider business address: (as per legal entity details above)			

Postcode:			
Email:			
Telephone		Fax:	

2. SERVICE USER'S DETAILS

Family Name:				
First Name:				
Known As (if applicable):				
Young Person Ethnicity:				
Date of Birth:		Gender:	Male <input type="checkbox"/>	Female <input type="checkbox"/>
Disability:		SEN:		
Other Legal Status/Action				

3. DETAILS OF THE SERVICES AND DURATION OF THE SERVICE

Date of Call Off			
Types of Services	Service Type A/B/C/D		
Particulars of Services Required			
Commissioned Hours			
Date of Service commencement			
Expected duration:		End Date: (if fixed term)	
	Long Term <input type="checkbox"/>		
Call Off review date:			
Contract review date:			

4. THE PRICE

4.1 Services to be provided and Fees

The Council shall pay the Provider the following sums for the provision of the Services:

£	Per Hour	Care and Support Standard Hourly Rate
£	Per night	Standard Night Time on Call Support Rate
£	Per night	Enhanced Night Time Support Rate

4.2 Additional Services to be provided
<p>Please detail any additional services that are to be provided to meet specific outcomes and specify the additional fee for the provision of the same. Please detail the measures to be used to monitor success, along with expected timescales for delivering the outcomes and the review date.</p>

9. SIGNATORIES TO AGREEMENT/APPROVAL FOR FUNDING:

The Provider agrees to provide the Services provided within this Call Off in accordance with the details set out above, any Mini Competition (as applicable), and the Contract. For the purposes of this Call Off, the Call Off Commencement Date is the date of actual commencement of the Services to the Service User (which includes the admission of Service User to the accomodation where applicable). This condition and the Contract in its entirety are not affected or altered in any way by the actual date of signature of this Call Off.

9.1 PURCHASER:

NAME:	
POSITION:	
SIGNATURE:	
DATE:	

9.2 PROVIDER:

NAME:	
POSITION:	
SIGNATURE:	
DATE:	

**SCHEDULE 10
NOMINATIONS AGREEMENT**

DATED

2023

Lincolnshire County Council (1)

and

[Housing Provider] (2)

And

[Care & Support Provider] (3)

NOMINATIONS AND VOIDS AGREEMENT

Relating to new dedicated accommodation within
Lincolnshire County.

LEGAL SERVICES LINCOLNSHIRE

Together we are stronger

Legal Services Lincolnshire
County Offices
Newland
LN1 1YL

THIS AGREEMENT is made the _____ day of _____ **2020**

BETWEEN

LINCOLNSHIRE COUNTY COUNCIL of County Offices, Newland, Lincoln, LN1 1YL ("the Council")

and

[_____] (registered under Company No: _____) whose registered office is at (the "Housing Provider")

And

[_____] (registered under Company No: _____) whose registered office is at ("the Care and Support Provider")

WHEREAS

- (A) The Council is a local authority which desires to find housing for persons who receive community supported living services in the Lincolnshire Area;
- (B) The Care & Support Provider has entered onto the Council's Community Supported Living Open Select List and is eligible to receive Call Offs to provide specialist care to Service User(s). The Care and Support Provider has won a mini tender through the OSL and shall consequently enter into the Call Off to provide specialist care to such Service User(s) who require care and accommodation.
- (C) The Housing Provider owns the freehold of title of the Property or holds the Property in a fashion in order to enable them to agree to the terms herein and agrees to provide identified Service User(s) with accommodation at the Property and agree to Service User(s), which the Council nominates in accordance with this Agreement, entering into a Tenancy Agreement in respect of the same. The Parties aim to provide the Tenants with long term residency in the Units of Accommodation and to assist them in accordance with this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretations

- 1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

"Agreement" means this written agreement between the Parties consisting of these clauses and the attached Schedules

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

"Call Off " means the form of Call Off within the OSL which the Council and the Care and Support Provider have entered into, relating to the provision of community supported living

services to Service Users and which requires and identifies a Service User(s) who requires the provision of accommodation to Service Users as Tenants at the Property in accordance with the terms and conditions of the OSL.

"the Care and Support Provider's Representative" means the person identified as such in Part C of Schedule 3 or any replacement person appointed by the Customer pursuant to Schedule 3, being the person responsible for managing the overall relationship with the Council and Housing Provider

"Commencement Date" means [REDACTED]

"Commercially Sensitive Information" means any Party's Information that:

- (a) if disclosed, could prejudice the other Party's commercial interests and/or
- (b) constitutes a trade secret.

"Common Parts" shall mean any part of the Property which is not let to a Tenant under the terms of any Tenancy Agreement and any dispute in respect of whether an area is a Common Part shall be determined by the Parties acting reasonably;

"Contracting Authority" means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

"Council's Personal Data" means the Personal Data supplied by the Council to the Care and Support Provider and/or Housing Provider for the purposes of or in connection with the Agreement.

"Council's Representative" means the person identified as such in Part A of Schedule 3 or any replacement person appointed by the Customer pursuant to Schedule 3, being the person responsible for managing the overall relationship with the Care and Support Provider and Housing Provider

"Crown" means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

"Data Protection Officer, Data Subject, Controller, Personal Data, Personal Data Breach, Processor" take the meaning given in the GDPR.

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by Housing Provider and/or the Care and Support Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

"Data Subject Access Request" means a request made by, or on behalf of, a data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

"Default" means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Agreement.

"DBS" means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

"DPA" means the Data Protection Act 2018.

"Equality Legislation" means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and non-discrimination and equality in employment.

"Fixtures and Fittings" means those fixtures and fittings which belong to Housing Provider and which from time to time are in on upon or located at the Property;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"Force Majeure Event" means any event outside the reasonable control of any Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Care and Support Provider or Housing Provider or the Staff or any other failure in the Care and Support Provider's or Housing Provider's or a Sub-Contractor's supply chain.

"Force Majeure Notice" means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

"Formal Warning Notice" means a notice served in accordance with Clause 25.3.3.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Council.

"GDPR" means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

"Good Industry Practice" means standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Care and Support Provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking under this Agreement under the same or similar circumstances.

"Housing Provider's Representative" means the person identified as such in Part B of Schedule 3 or any replacement person appointed by the Customer pursuant to Clause Schedule 3, being the person responsible for managing the overall relationship with the Council and the Care and Support Provider

"Information" has the meaning given under section 84 of the FOIA.

"Information Commissioner's Office" means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in Section 6 of the DPA.

"Initial Call Off" means the call off of Services through the OSL which includes the requirement for the provision of accommodation and serves as an initial nomination of a Service User to become a Tenant within the required Unit of Accommodation as set out within the call off document and agreed between the Parties

"Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"Losses" means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements).

"Month" means a calendar month

"OSL" means the Open Select List for Community Supported Living which the Care and Support Provider and the Council have entered into dated [REDACTED]

"Party" means a party to this Agreement and the term Parties shall be construed accordingly.

"Persistent Breach" means a Default which has occurred on three or more separate occasions within a continuous period of three (3) Months.

"the Property" shall mean the property described in Schedule 1 and reference to the Property shall include any part thereof

"Public Contracts Regulations" means the regulations on public procurement which implements the European Union Directive 2014/24/EU into English law with effect from 26 February 2015.

"Regulated Activity" in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

"Regulated Activity Provider" shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly.

"Remediation Notice" means a written notice given by the Customer to the Supplier pursuant to Clause 25.7.1 to initiate the Remediation Plan Process.

"Remediation Plan" means the plan agreed in accordance with Clause 25.7 for the resolution of a Default of the Parties.

"Remediation Plan Process" means the process for resolving certain Defaults of the Parties as set out in Clause 25.7.

"Rent" shall mean any rent and/or service charge payable to the Housing Provider by the Tenant under the terms of the Tenancy Agreement

"Request for Information" shall have the meaning set out in FOIA as relevant (where the meaning set out for the term "request" shall apply).

"Schedule" means a schedule attached to, and forming part of, this Agreement.

"the Scheme" means the accommodation of Service Users, which are selected and nominated by the Council in accordance with this Agreement, in the Units of Accommodation and the care provided to them by the Care and Support Provider in accordance with this Agreement, the OSL and the Call Off.

"the Services" means the specialist care services provided to Tenants by the Care and Support Provider in accordance with the Call Off, the OSL and this Agreement

"Staff" means all persons employed by the Care and Support Provider or Housing Provider to perform any obligations under this Agreement, together with the Care and Support Provider's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Call Off, OSL Agreement and this Agreement;

"Staff Accommodation" means the Unit of Accommodation which some of the Staff shall use as sleeping quarters during the provision of the Services

"Sub-Contract" means any contract or agreement, or proposed contract or agreement between Housing Provider or the Care and Support Provider as the case may be, and any third party whereby that third party agrees to provide to Housing Provider or the Care and Support Provider any obligations they may have under this Agreement the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

"Sub-Contractor" means the third parties that enter into a Sub-Contract with the Care and Support Provider and/or Housing Provider.

"Tenancy Agreement" means the individual tenancy agreements to be granted by the Housing Provider to individual Tenants of the Property.

"Tenant" means an individual Service User who becomes a tenant of a Unit of Accommodation as selected by the Council in accordance with the terms of this Agreement and who is a tenant of such Unit of Accommodation under the terms of the Tenancy Agreement and reference to Tenants shall be interpreted accordingly;

"Unit of Accommodation" shall mean a room or similar space within the Property which is or are let of are available for letting to a Tenant on a Tenancy Agreement pursuant to the terms hereof .

"Void(s)" means any period during which any one or more of the Units of Accommodation are unlet or unoccupied (other than any period when they are unlet or unoccupied due to Housing Provider carrying out works or repair, renovation and/or improvement or are uninhabitable)

"Working Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London

- 1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:
- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - (b) words importing the masculine include the feminine and the neuter;
 - (c) reference to Clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule;
 - (d) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to the Contract includes the Schedules;
 - (e) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - (f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - (g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
 - (h) headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2. Agreement

- 2.1 The Housing Provider shall ensure that the Unit(s) of Accommodation to which the Initial Call Off refers to shall be provided to the Service User(s) in accordance with this Agreement on, or before the date required within the Call Off, as notified to them by the Care and Support Provider or the Council.
- 2.2 At the Commencement Date, the Housing Provider shall make the Property available to the Council for the purposes of the Scheme and the Housing Provider agrees to provide the Care and Support Provider and the Council with a licence to enter into the Property as required for the provision of the Services to be provided to any Tenant for a term of equal to the duration of this Agreement, commencing on or before the Commencement Date or the date provided for within the Initial Call Off, whichever is the earlier.
- 2.3 The Property shall remain vested in the Housing Provider for the unexpired residue of the term of the lease provided for in Clause 2.1.
- 2.4 The Council and the Care and Support Provider have entered into the Call Off for the provision of the Services at the Property by the Care and Support Provider.

3. Agreement Term

- 3.1 This Agreement shall take effect on the Commencement Date and shall expire automatically on [REDACTED], ("the Initial Agreement Period") unless it is otherwise

terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated, or extended under Clause 3.2.

- 3.2 The Council may, by giving written notice to the Care and Support Provider and Housing Provider, not less than []Months prior to the last day of the Initial Agreement Period, extend this Agreement on the same terms for a further period or further periods of up to a maximum of [XX Months] in total. The provisions of this Agreement shall apply throughout any such extended period.

4. Exclusive Rights and Nominations of Tenants

- 4.1 The Housing Provider and/or the Care and Support Provider hereby warrants that the Council shall have exclusive sole nomination rights to nominate Service Users to become Tenants of any of the Units of Accommodation for a period of six (6) Months from the date of any nomination of a Void in accordance with Clause 14.1 (the "Exclusive Period").
- 4.2 Following the conclusion of the Exclusive Period as set out in Clause 4.1 or as extended in accordance with this Agreement, the Parties shall meet and assess the viability of the Scheme in accordance with Clause 11. The Exclusive Period shall be extended during the period of such negotiations and discussions between the Parties under Clause 11 and for a minimum of two (2) weeks.
- 4.3 In the event that a Service User has been nominated during the Exclusive Period but has not moved in by the end of the Exclusive Period, the Parties agree that the Exclusive Period shall be extended by a further three (3) Months from the original date of expiry of the Exclusive Period.
- 4.4 Following any Void, the Council shall nominate Service Users who in their reasonable opinion are eligible to become Tenants under the Scheme, during the duration of the Exclusive Period. Such nominations shall be made in writing to the Housing Provider.
- 4.5 The Housing Provider agrees to accept such persons so nominated, save for where, in their reasonable opinion, accepting any such potential Tenant shall:
- a) jeopardise the safe operation of the Scheme as a whole; or
 - b) jeopardise the welfare and/or safety of any person, who has access to the Property.

In which event, the Housing Provider may reject such nominations in accordance with this Clause 4.

- 4.6 In the event that the Housing Provider and/or the Care and Support Provider wishes to reject such a nomination due to a reason provided for in Clause 4.5, the Housing Provider or Care and Support Provider as applicable, must notify the other Parties of such rejection in writing within twenty one (21) days of receipt of the initial nomination and provide an explanation as to the reasons for such rejection and provide written evidence of the same.
- 4.7 If following receipt of such rejection, the Council do not agree with the grounds or validity of such rejection, the Council shall arrange a meeting between the Council, the Housing Provider and the Care and Support Provider which the Parties agree to attend, to discuss the grounds of rejection.
- 4.8 If the Parties agree that such person should be admitted as part of the Scheme following the meeting provided for in Clause 4.7, such person shall become a Tenant.

If the Parties agree that such a potential Tenant should not be admitted as part of the Scheme, the Council shall notify the potential Tenant.

- 4.9 If the Housing Provider does not respond within the twenty one (21) day period as provided for in Clause 4.6, such silence shall be deemed as acceptance of the nomination.
- 4.10 The Council may, at its absolute discretion, surrender their nomination rights in relation to the relevant Unit of Accommodation immediately by giving written notice to Housing Provider and the Care and Support Provider.

5. Housing Provider's Obligations

- 5.1 The Housing Provider shall be responsible for providing the Property to the Council in accordance with this Agreement and shall undertake the following:
- a) Cultivating, cutting and maintaining the garden, driveways and accessibility areas of the Property to a standard which ensures that the Property continues to be in keeping of the requirements of Tenants;
 - b) Decorating and maintain the exterior of the Property and the Common Parts as often as Housing Provider shall deem necessary to ensure that the Property is fit for the purposes of the Tenants, acting in its discretion and for the avoidance of doubt, the Housing Provider shall not be under any obligation to decorate any Units of Accommodation which are demised to a Tenant or Tenants under the terms of the relevant Tenancy Agreement;
 - c) Take out and maintain adequate public liability insurance and insurance of the Property with a reputable insurer(s), the Fixtures and Fittings and any further contents of the Property which belong to Housing Provider and for the avoidance of doubt, the Housing Provider shall not be under any obligation to insure any contents of the Property or Units of Accommodation which belong to any Tenant, any visitors of a Tenant, the Council, the Care and Support Provider, or the Care and Support Provider's employees, agents or contractors. Such insurance shall be maintained for the duration of this Agreement and for a minimum of twelve (12) years following the expiration or earlier termination of this Agreement;
 - d) Repairing, removing, reshaping and replacing the Fixtures and Fittings and any contents of the Property which belong to Housing Provider to ensure that the Property is fit for the purposes of the Tenants as often as Housing Provider shall deem reasonably necessary or as requested by the Council or the Care and Support Provider, such requests not to be undue or onerous. It is agreed that the cost of such repair, removal, reshaping and replacement shall be met by the Rent payable by a Tenant under the Tenancy Agreement and for the avoidance of doubt, the Housing Provider shall have no liability in respect of the repair or replacement of any items in the property which belong to any Tenant, visitors of a Tenant, the Council, the Care and Support Provider or its employees, agents or contractors, save for where any such repair or replacement of such items is as a direct result of Housing Provider's negligence;
 - e) Maintaining such fire detection and firefighting equipment at the Property in accordance with the Law;
 - f) Visiting the Property at least once in each year during the term of this Agreement to assess the condition of the Property and the fitness for purpose of the Property in respect of the Tenants;

- g) Visiting the Property within 3 Working Days of any complaint by the Care and Support Provider, the Council or a Tenant that any Unit of Accommodation or the Common Parts of the Property are in a state of disrepair or are no longer fit for their intended purpose;
- h) Arrange with Tenants terms of occupation of the Units of Accommodation including the preparation and signing of a Tenancy Agreement for each Tenant and discussing its contents with prospective Tenant and/or their advisers (if any);
- i) provide the Tenant with possession of the Unit of Accommodation in question, in accordance with Clause 12. The Tenancy Agreement may be amended from time to time by the Housing Provider acting reasonably and after consulting with the Council, the Tenants and their representatives but shall not be substantially amended from the form of Tenancy Agreement;
- j) administer the terms of the Tenancy Agreement and undertaking its obligations thereunder, including but not limited to any statutory requirements as landlord under the terms of the Tenancy Agreement;
- k) assess the Rent payable under the terms of the Tenancy Agreement and reviewing the Rent annually and in accordance with the Tenancy Agreement and any local housing allowance levels;
- l) collect the Rent payable under the Tenancy Agreement and taking appropriate action on arrears of Rent following consultation with the Council and the Care and Support Provider;
- m) provide reasonable advice and assistance to Tenants and/or the Care and Support Provider in relation to the submission of housing benefit claims for Tenants of the Property;
- n) undertake legal action to evict Tenants of the Property where there has been a serious and material breach of the terms of the Tenancy Agreement. Such eviction of Tenants shall not be undertaken until agreement with the Council has been obtained;
- o) undertake the Housing Provider's repairing obligations in accordance with the terms of the Tenancy Agreement save that the Housing Provider shall not be responsible for the cost of repairing any damage to the Property or Units of Accommodation, furniture or equipment therein caused by a Tenant, any visitors of the Tenant or the Council, and the Care and Support Provider shall seek to obtain the cost of such repairs directly from the Tenant, Care and Support Provider or Council as the case may be;
- p) renew the Tenancy in accordance with the Tenancy Agreement and notify the Tenant and/or their advisers, the Care and Support Provider, where applicable, and the Council of the outcome of such eligibility review and renewal of the Tenancy Agreement;

5.2 Subject to the written approval of the Council and the Care and Support Provider, the Housing Provider may appoint any other persons or organisation to act as its agent in connection with the provision of all or any of the matters specified in Clause 5.1 or in connection with carrying out all or any of the obligations of the Housing Provider under the terms of this Agreement. Such appointment shall be on terms similar to this Agreement. For the avoidance of doubt, the Housing Provider shall be responsible for the acts and omissions of any other persons or organisations appointed in accordance

with this Clause 5.2 and nothing shall diminish Housing Provider's obligations under this Agreement.

6. The Council's Obligations

6.1 The Council shall be responsible for:

- a) Providing information as to the initial Service User and identifying any subsequent Service Users in accordance with Clause 4, as soon as is practicable upon receipt of notice in writing of the date upon which a Void will arise or has arisen in accordance with Clause 14.
- b) Ensuring that reasonable endeavours are taken to nominate potential tenants who can fill Voids and shall in particular:
- c) ensure that Housing Provider is given not less than two (2) weeks' notice, whenever reasonably possible, that the proposed Tenant is to move into the relevant Unit of Accommodation;
- d) ensure that the Tenant does not move into the Unit of Accommodation without first ensuring that the Tenant has signed a Tenancy Agreement with Housing Provider
- e) Ensuring that the Tenants of the Property reside in the Property which their Tenancy Agreement relates to and ensuring that Tenants do not move between the Units of Accommodation or between any other properties in which Housing Provider may have an interest, save for where the Parties agree to such movement of Tenants

7. The Care and Support Provider's Obligations

7.1 The Care and Support Provider shall:

- a) undertake the Services in accordance with Good Industry Practice, the Law, the terms of this Agreement, the terms of the OSL and the terms of the Call Off;
- b) make arrangements to enable Tenants to acquire social, educational and daily living skills and to enable them to participate in the life of the community to their maximum potential.
- c) assist Tenants in their daily tasks of shopping, cooking, washing, cleaning, routine household maintenance and social activities
- d) employ and provide qualified and sufficient Staff to ensure that specialist care and support can be given to the Tenants using Good Industry Practice and in accordance with the Law and the terms of this Agreement, the Call Off and the OSL;
- e) assist Tenants with claims for housing benefits and any other such benefits as applicable to other individual Tenants and notifying the local authority housing benefit office (or any other relevant Government department) of any changes to Tenants financial circumstances and indemnifying Housing Provider in respect of any shortfall in housing benefit arising from any failure on the part of the Care and Support Provider to submit claims arising out of its obligations in this Clause 7.1 e), correctly or expeditiously;
- f) ensure that at all times during the duration of this Agreement, it has in place appropriate policies to comply fully with all statutory Health and Safety requirements which are relevant to the management and activities of the Property and to

immediately advise Housing Provider of any adaptations required to any Units of Accommodation or the Property in order to comply with such requirements and to indemnify Housing Provider against any claims arising against Housing Provider as a result of any failure to provide such advice correctly or expeditiously.

- g) ensure that the Care and Support Provider hold all necessary authorisations and registrations to comply with its obligations under the Call Off, the OSL and this Agreement including without limitation all necessary registrations under the Care Standards Act 2000 and whenever requested to do so to provide to Housing Provider and the Council such evidence of compliance with this Clause as the Parties may require;
- h) Arrange and assist with the moving in of Tenants;
- i) Ensuring that no alterations or additions are made to any Unit of Accommodation in which Tenants reside expect:
 - i. With the prior written consent of Housing Provider and the Care and Support Provider;
 - ii. Subject to such terms and conditions as Housing Provider and the Care and Support Provider may require, acting reasonably
 - iii. In accordance with drawings and specifications previously submitted in triplicate to and approved in writing by Housing Provider and the Care and Support Provider

In carrying out any alterations or additions to the Property under this Clause 6.1.i), the Care and Support Provider shall procure that such alterations or additions are carried out by a contractor approved by Housing Provider in writing.

- j) Ensure that any Staff who attend the Property shall act reasonably and comply with any health and safety measures implemented by Housing Provider in respect of its Staff and other persons working there in accordance with any health and safety policy so provided to them by the Housing Provider.
- k) take the necessary precautions to ensure so far as practicable, the safety of the Council's and Housing Provider's employees, contractors or agents when visiting or attending the Property;
- l) ensure that any Staff who are based or who are to attend the Property shall act reasonably and comply with any health and safety measures implemented by Housing Provider in respect of its Staff and other persons working there in accordance with any health and safety policy so provided to them by Housing Provider;
- m) ensure that the Units of Accommodation are only used in accordance with the use authorised by the terms of this Agreement and in accordance with the purposes of the Scheme and relevant Tenancy Agreement;
- n) notify Voids in accordance with Clause 14 of this Agreement;
- o) agree a rental amount and payment schedule with Housing Provider for any Staff Accommodation which may be required and comply with any such terms to ensure that the Staff Accommodation is available for their Staff and the provision of the Services, where agreed;

- p) Comply with the terms of the OSL and relevant Call-Off and use their best endeavours to ensure that they are a party to any subsequent relevant OSL following the expiry of the OSL.

8. Safeguarding Children/Vulnerable Adults

- 8.1 The Care and Support Provider shall comply with their safeguarding obligations in the OSL and/or Call Off.
- 8.2 The Housing Provider shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of children and vulnerable adults in the provision of its obligations under this Agreement including but not limited to Section 11 of the Children Act 2004, the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.
- 8.3 The Housing Provider, if it has responsibility for the management and control of Regulated Activity (as defined under the legislation identified below), shall make the necessary arrangements to ensure compliance with Section 11 of the Children Act 2004 (the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Service) and the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).
- 8.4 The Housing Provider shall make the necessary arrangements to ensure compliance with registration requirements with the DBS.
- 8.5 To fulfil the commitment to safeguard and promote the welfare of children and vulnerable adults, as appropriate, the Housing Provider shall have:-
- a) Clear priorities for safeguarding and promoting the welfare of children/vulnerable adults explicitly stated in strategic policy documents;
 - b) A clear commitment by senior management to the importance of safeguarding and promoting children/vulnerable adults' welfare;
 - c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children/vulnerable adults;
 - d) Recruitment and human resources procedures in order to safeguard and promote the welfare of children/vulnerable adults;
 - e) Procedures for dealing with allegations of abuse against members of Staff and volunteers;
 - f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;
 - g) Policies for safeguarding and promoting the welfare of children/vulnerable adults and procedures that are in accordance with guidance and locally agreed inter-agency procedures;
 - h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of children/vulnerable adults including sharing of information;
 - i) A culture of listening to and engaging in dialogue with children/vulnerable adults; and
 - j) Appropriate whistle-blowing procedures.

8.6 The Housing Provider shall immediately notify the Council of any information it reasonably requests to enable it to be satisfied that the obligations of this Clause 8 have been met.

9. Change Of Care and Support Provider

9.1 Notwithstanding anything in this Agreement, any Tenant living in any Unit Accommodation may, at any time, request a change of Care and Support Provider in respect of the one to one, or more specialist care that they are receiving, for any reason whatsoever.

9.2 In the event that a Tenant notifies the Council that they wish for an alternative Care and Support Provider, the Council shall notify the Care and Support Provider and Housing Provider and arrange for a replacement Care and Support Provider to provide the Services to the relevant Tenant following on from termination of the provision of the Services to that Tenant from the Care and Support Provider.

9.3 In the event of such replacement Care and Support Provider undertaking the Services for that particular Tenant, the Tenant's Tenancy Agreement shall not be affected and the Tenant shall continue to reside in the relevant Unit of Accommodation in accordance with the terms of the Tenancy Agreement, save for where the Tenant wishes to leave the Unit of Accommodation in accordance with Clause 10.

10. Removal of Tenants

10.1 Notwithstanding any obligations in this Agreement, the Council may at its absolute discretion remove a Tenant from any Unit of Accommodation in the event that the Tenant has notified the Council that:

- a) they do not consider that the Unit of Accommodation in question is not fit to meet their needs or are dissatisfied at the quality of the Unit of Accommodation; or
- b) They are not content with the level of Services which are being provided by the Care and Support Provider and wish to leave the Unit of Accommodation.

10.2 In the event that a Tenant does notify the Council of such an event as provided for in Clause 10.1, the Council shall notify Housing Provider and the Care and Support Provider of the Tenants wishes and the Parties shall, acting reasonably, agree a plan to ensure that the Tenant is able to move out of the Unit of Accommodation in accordance with his wishes.

11. Scheme Review

11.1 The Parties shall meet annually to review the provision of the Scheme and the efficacy of this Agreement. In such annual meetings, the Parties shall:

- a) Review current Void levels and monthly Voids figures provided under Clause 14.3
- b) Review the happiness of Tenants with the Services being provided in accordance with the Call Off
- c) Whether the Property or Unit of Accommodation in question is suitable for providing accommodation for the purposes of the Scheme in the future

- d) Whether it may be prudent for the Property to be sold and a different Property to be purchased by Housing Provider or the Group as the case may be, for the purposes of the Scheme
 - e) The percentage of any Tenants which have been selected by the Council in accordance with this Contract which have not been offered a Tenancy by Housing Provider in accordance with this Contract
 - f) Whether the Rent which is payable under the terms of the Tenancy Agreement/s relating to the Property need to be reviewed in order to reduce the Voids Losses relating to the Scheme
 - g) In the event that the Call Off expires or is terminated in accordance with the terms and conditions thereof, whether the Scheme is to continue or a replacement Care and Support Provider is to undertake the Services and how the Agreement may be amended to reflect this or a new agreement (on the same or similar terms as this Agreement) will be entered into
 - h) Number of rejection of potential Tenants by Linkage and including the reasons of such rejected and the general percentage of such rejections in respect of Tenants accepted onto the Scheme;
 - i) Generally assess the viability of the Scheme.
- 11.2 In addition to the annual meetings as provided for in Clause 11.1 the Parties shall also meet in accordance at the end of the Exclusive Period. Upon such meeting under this Clause 11.2, the Parties may by agreement, extend the Exclusive Period or for this Agreement, agree for referrals of Service Users to be accepted by an alternative referral process or to terminate this Agreement in accordance with Clause ___ .
- 11.3 In reviewing the viability of the Property and the Scheme under this Clause 11 the Parties may agree any of the following courses of action:
- a) That the Property be sold and a replacement property be found and purchased by Housing Provider for the purposes of setting up a new Scheme, in accordance with Clause 14.9; or
 - b) That the Property be sold and the Scheme be treated as coming to an end; or
 - c) That the Scheme and Exclusive Period be allowed to continue for a further period to be agreed between the Parties and a further review in accordance with Clauses 14.4 and 14.6 be undertaken at a mutually agreed date in the future; or
 - d) That the Rent be recalculated to cover the costs of the Scheme, in the event that the number of Tenants is less than what was originally envisaged by Housing Provider and the Council at the outset of the Scheme. Such recalculation shall be undertaken in conjunction with the Tenants, their advisors and the Parties, acting reasonably.
- 11.4 Where the Parties agree that the Property is to be sold pursuant to Clause 11.3, then Housing Provider may terminate this Agreement by giving no less than any notice period provided for within any Tenancy Agreements in effect at the time of such decision to terminate this Agreement, written notice to the Council. Following receipt of such notice, this Agreement shall determine and cease to have effect, save in respect of any claim which either Party has against the other in respect of any antecedent breach of the terms of this Agreement.

- 11.5 In the event that the Parties agree that the Property be sold and a replacement property be purchased by Housing Provider for the purposes of setting up a new Scheme pursuant to Clause 11.3, then:
- a) The Housing Provider shall consult the Council on the new Property and shall only go ahead with the purchase upon the Council's agreement that any replacement property shall be suitable for the purposes of the Scheme and in accordance with Clause 11.4. The Council and the Care and Support Provider shall, at the request of Housing Provider, enter into a new form of agreement with Housing Provider relating to the replacement property on terms and in a form which is substantially similar to this Agreement. Such new Agreement shall come into effect on the date that the replacement property is purchased and available for the Tenants to move from the Property to the replacement property in accordance with Clause 11.4.
 - b) the Property shall not be sold until a replacement property has been purchased and is available to be let to the Tenants. In the period between the Parties agreement for the change of Property and the replacement property becoming available, the Tenants shall continue to live within their respective Units of Accommodation under the terms of the Tenancy Agreement and upon such transfer to any replacement property, Housing Provider shall arrange for the Tenants to enter into new tenancy agreements in the same form as the Tenancy Agreement in accordance with Clause 4, and at no further cost to the Tenants.
- 11.6 Where the Parties agree that the Property be sold, the Parties agree to consult with and work in conjunction with each other to ensure that the Tenant/s are enabled to remain in their tenancy should this be in accordance with their wishes. Where the Tenant/s do not wish to remain in their tenancy, or in the event that the Parties are unable to reach agreement to enable Tenants to do so, the Parties agree to consult with and work in conjunction with each other to ensure that the Tenant/s are Orerelocated to alternative accommodation which is suitable for the particular Tenant's requirements.
- 11.7 If, following such review meetings and action points being undertaken in accordance with Clause 11.1, the Parties believe that the Scheme is no longer viable and that no remedial action can be taken to make the Scheme viable, then this Agreement may be terminated in accordance with Clause 25.2.1.1.
- 11.8 The Parties may increase the regularity of such meetings as provided for in this Clause 11 upon agreement.

12. Vacant Possession of the Property and the Units of Accommodation

- 12.1 Vacant possession of the Unit of Accommodation shall be given to the Tenant on completion of the Tenancy Agreement and any Rent due thereunder shall be payable by the Tenant to Housing Provider in accordance with the terms thereof.
- 12.2 This Agreement is an executory agreement and shall not operate or be deemed to operate as a demise of the Property.
- 12.3 Neither the Council nor the Care and Support Provider shall by this Agreement acquire or become entitled to occupation or possession of the Property or any of the Units of Accommodation.

13. No Assignments

- 13.1 No Party shall assign, underlet, charge, franchise or otherwise dispose with the benefit of this Agreement in whole or in part for any purpose unless the written consent of the other Parties has been obtained.
- 13.2 The Parties agree that any breach of the terms of Clause 13.1 shall be a fundamental breach of the terms of this Agreement for the purpose of Clause 25.3.1 (c) of this Agreement.

14. Voids

- 14.1 Within five (5) Working Days of the Care and Support Provider becoming aware or being provided notice that a Void or Voids has or shall occur at the Property at any time during the term of this Agreement, the Care and Support Provider shall notify the Council and Housing Provider of such Void or expected Void via a web portal as notified by the Council.
- 14.2 Following notification of a void in accordance with Clause 14.1, the Council's Exclusive Period shall commence in relation to the relevant Unit of Accommodation and the Council shall nominate a Service User in accordance with this Agreement during this period.
- 14.3 In the event of a Void or Voids occurring at any Unit of Accommodation at any time during the term of this Agreement, then the Parties agree that the Housing Provider and the Care and Support Provider shall be liable for any loss of Rent incurred by the Service arising out of the relevant Unit of Accommodation ("Voids Losses") for the entirety of the Exclusive Period and shall agree the share of such liability between them, notifying the Council in writing of details of such agreement. Following the expiry of an Exclusive Period, the Parties shall agree any such liability for Void Losses where applicable, from that date forward.
- 14.4 The Housing Provider shall provide an account to the Council and the Care and Support Provider on a Monthly basis in respect of any Voids Losses. In the event that the Care and Support Provider are responsible for such Voids Losses for that month, with reference to Clause 14.3, it shall pay the Housing Provider an amount equal to the Voids Losses in accordance with their agreement in relation to such Void Losses.
- 14.5 The Housing Provider and the Care and Support Provider, acting reasonably shall agree to meet at the next arranged annual meeting as provided for in Clause 11.1 or earlier if necessary to discuss and agree any disputed amount payable for Void Losses. Payment of any disputed amount shall not be due until 28 Working Days following agreement between the Parties of the disputed amount.
- 14.6 If the Parties are unable to reach agreement of the Void Losses for any Month following such meeting as provided for in Clause 14.5, the procedures as set out in Clause 25.7 shall apply.
- 14.7 Where there are any Voids at the Property at the Commencement Date and if such Voids are still in place at a date which shall be three (3) Calendar months from the Commencement Date, then the Parties shall meet and assess the viability of the Scheme in accordance with Clause 11.

15. Notices

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

15.2 Any notice or other communication which is to be given by any Party to any other shall be given by electronic mail (confirmed by letter), or by letter (delivered by hand, first class post, recorded delivery or special delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given on the same Working Day if delivered by hand, two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail provided such notice is served no later than 1pm on any Working Day, otherwise such notice shall be deemed served the following Working Day, or sooner where the other Party acknowledges receipt of such letters or item of electronic mail. Such letters and electronic mail shall be addressed to the other Party in the manner referred to in Clause 13.3

For the purposes of Clause 15.2, the address of each Party shall be:-

(a) For Housing Provider:

[]
[Address:]
[]

For the attention of:

Tel:

Email:

(b) For the Council:

[]
[Address:]
[]

For the attention of:

Tel:

Email:

(c) For the Care and Support Provider:

[]
[Address:]
[]

For the attention of:

Tel:

Email:

15.3 Either Party may change its address for service by serving a notice in accordance with this clause.

16. Data Protection Act

16.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and Housing Provider and the Care and Support Provider are Processors. The only processing that Housing Provider and the Care and Support Provider is authorised to do is listed in Schedule 2 by the Council and may not be determined by the Supplier.

16.2 Housing Provider and/or the Care and Support Provider as the case may be, shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

16.3 Housing Provider and the Care and Support Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact

Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:-

- a) a systemic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

16.4 The Housing Provider and the Care and Support Provider shall, in relation to any Personal Data processed in connection with their obligations under this Agreement:-

- a) process that Personal Data only in accordance with Schedule 2, unless they are required to do otherwise by Law. If it is so required, Housing Provider and/or the Care and Support Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- b) ensure that they have in place Protective Measures, which have been reviewed and approved by the Council as appropriate, to protect against a Data Loss Event having taken into account:-
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
- c) ensure that:-
 - i. the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 2);
 - ii they take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:-
 - (A) are aware of and comply with Housing Provider or the Care and Support Provider duties under this clause, as the case may be;
 - (B) are subject to appropriate confidentiality undertakings with Housing Provider or the Care and Support Provider duties under this clause, as the case may be or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or otherwise permitted by this Agreement; and
 - (D) Have undergone adequate training in the use, care, protection and handling of Personal Data; and

- d) not transfer Personal Data outside of the EU unless prior written consent of the Council has been obtained and the following conditions are fulfilled:-
 - i the Parties have provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - ii the Data Subject has enforceable rights and effective legal remedies;
 - iii Housing Provider and/or the Care and Support Provider as the case may be, complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - iv Housing Provider and/or the Care and Support Provider as the case may be comply with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless Housing Provider and/or the Care and Support Provider is required by Law to retain the Personal Data.
- 16.5 Subject to Clause 16.6, Housing Provider and/or the Care and Support Provider shall notify the Council immediately if it:-
- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - b) receives a request to rectify, block or erase any Personal Data;
 - c) receives any other request, complaint or communication relating to any Party's obligations under the Data Protection Legislation;
 - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - e) receives a request from any third party for disclosure of Personal data where compliance with such request is required or purported to be required by Law; or
 - f) becomes aware of a Data Loss Event.
- 16.6 The Housing Provider and the Care and Support Provider's obligation to notify under Clause 16.5 shall include the provision of further information to the Council in phases, as details become available.
- 16.7 Taking into account the nature of the processing, Housing Provider and the Care and Support Provider shall provide the Council with full assistance in relation to any of the Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 16.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:-
- 16.8 Housing Provider and the Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause 16. This requirement does not apply where either Party employees fewer than 250 staff, unless the Council determines:-

- (a) that the processing is not occasional;
 - (b) the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 16.9 Housing Provider and the Service Provider shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 16.10 Housing Provider and the Service Provider shall each designate a data protection officer if required by the Data Protection Legislation.
- 16.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, Housing Provider and/or the Service Provider shall:-
- (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 16 such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 16.12 Housing Provider and the Service Provider, as the case may be, shall remain fully liable for all acts or omissions of any Sub-processor.
- 16.13 The Council may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 16 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 16.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 16.15 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Personal Data, the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 16.16 In the event that through failure by Housing Provider and/or the Service Provider to comply with its obligations under the Agreement, the Personal Data is transmitted or Processed in connection with the Agreement is either lost or sufficiently degraded so as to be unusable, Housing Provider and/or the Service Provider, as the case may be, shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Housing Provider and/or the Service Provider.
- 16.17 In the event that through failure by Housing Provider or the Service Provider to comply

with its obligations under the Agreement, the Council is served with a monetary penalty notice by the Information Commissioner's Office, the Council shall be entitled to recover all Losses as a result of such monetary penalty notice from the negligent Party

16.18 In the event that Housing Provider or the Service Provider is placed into liquidation as outlined in Clause 25.1.1 (b) and 25.1.1(c) or the Agreement is terminated by the Council pursuant to the provisions of the Contract relating to termination on insolvency in accordance with Clause 25.1, Housing Provider and the Service Provider (or a liquidator or provisional liquidator(s) acting on behalf of the Housing Provider and the Service Provider) shall at its own cost and at no cost to the Council:-

- (a) conduct a full and thorough search for any electronic and paper records held by the Housing Provider and the Service Provider which contain Personal Data in accordance with the Council's instructions;
- (b) return all such records to the Council in accordance with the Council's instructions;
- (c) permanently destroy all copies of any relevant electronic records; and
- (d) provide written confirmation to the Council that the actions outlined above in this Clause 16.18 have been completed.

16.19 In the event of a Sub-Contractor of Housing Provider or the Service Provider being in liquidation then it is the responsibility of the Housing Provider or the Service Provider as the case may be, to recover records and Personal Data held by the Sub-Contractor and/or Sub-processor and provide assurance to the Council that they have been recovered.

16.20 In the event that the Housing Provider or the Service Provider's is put into administration as outlined in Clause 25.1 (a) the Council shall work closely with the administrator to ensure that the Housing Provider or the Service Provider as the case may be, is able to maintain the Personal Data and other records they have created in accordance with Clause 16 of this Agreement and maintain the standards of safekeeping as set out in this Agreement including Schedule .

16.21 The provision of this Clause 16 shall apply during the Contract Period and indefinitely after its expiry.

16.22 Housing Provider and the Service Provider shall indemnify the Council against any Losses incurred by the Council by reason of any breach by the Housing Provider and the Service Provider, as the case may be, of this Clause 16.

17. Confidential Information

17.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:-

- a) treat each Party's Confidential Information as confidential and safeguard it accordingly; and
- b) not disclose any other Party's Confidential Information to any other person without the owner's prior written consent.

17.2 Clause 17.1 shall not apply to the extent that:-

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information pursuant to Clause 16 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- (e) it is independently developed without access to the other Party's Confidential Information.

17.3 The Care and Support Provider and Housing Provider may only disclose the Council's Confidential Information to Staff who are directly involved in the undertaking of the obligations provided for under this Agreement and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations of confidentiality.

17.4 The Care and Support Provider and Housing Provider shall not use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.

17.5 At the written request of the Council, the Care and Support Provider and/or Housing Provider shall procure that the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

17.6 Nothing in this Agreement shall prevent the Council from disclosing the Care and Support Provider or Housing Provider's Confidential Information:-

- (a) to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
- (b) to any consultant, professional adviser, contractor, supplier or other person engaged by the Council or any person conducting a government office gateway review;
- (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) for the purpose of the examination and certification of the Council's accounts;
- (e) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

17.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Care and Support Provider's or Housing Provider's Confidential Information is

disclosed pursuant to Clause 17.6 is made aware of the Council's obligations of confidentiality.

- 17.8 Any breach by the Care and Support Provider of Clauses 17.1 – 17.4 shall be a breach incapable of remedy for the purposes of Clause 23 and shall entitle the Council (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause 23.
- 17.9 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 17.10 Notwithstanding any other term of this Agreement, the Care and Support Provider and Housing Provider hereby give consent for the Council to publish the Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Agreement, to the general public.

18. Transparency And Freedom Of Information

- 18.1 The Parties acknowledge that the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
 - a) any Information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Council; and
 - b) Commercially Sensitive Information(together the "Transparency Information") is not Confidential Information.
- 18.2 Notwithstanding any other provision of this Agreement, the Care and Support Provider and Housing Provider hereby give their consent for the Council to publish to the general public the Transparency Information in its entirety (but with any Information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Council shall, prior to publication, consult with the Care and Support Provider and/or Housing Provider as the case may be on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 18.3 The Care and Support Provider and/or Housing Provider shall assist and co-operate with the Council to enable the Council to publish the Transparency Information.
- 18.4 The Council acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication it will provide a clear explanation to the Care and Support Provider and/or Housing Provider as the case may be. If the Council believes that publication of any element of the Transparency Information would be contrary to the public interest, the Council shall be entitled to exclude such Information from publication. The Council acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.
- 18.5 The Council shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Agreement is being

performed, having regard to the context of the wider commercial relationship with the Care and Support Provider and/or Housing Provider.

- 18.6 The Care and Support Provider and Housing Provider agree that any Information they hold that is reasonably relevant to or that arises from the undertaking of obligations of this Agreement shall be provided to the Council on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Council may disclose such Information under the FOIA and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 15.6(c)) publish such Information. The Care and Support Provider and/or Housing Provider as the case may be, shall provide to the Council within five (5) Working Days (or such other period as the Council may reasonably specify) any such Information requested by the Council.
- 18.7 The Care and Support Provider and Housing Provider acknowledge that the Council is subject to the requirements of the FOIA and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 18.8 The Care and Support Provider and Housing Provider shall and shall procure that any Sub-Contractors shall:-
- a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - b) provide the Council with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
 - c) provide all necessary assistance as reasonably requested by the Customer to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 18.9 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA.
- 18.10 In no event shall the Care and Support Provider or Housing Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 18.11 The Care and Support Provider and Housing Provider acknowledge that (notwithstanding the provisions of Clause 16.7) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Care and Support Provider and Housing Provider or the obligations under this Agreement in certain circumstances:-
- a) without consulting the Care and Support Provider and/or Housing Provider; or
 - b) following consultation with the Care and Support Provider and/or Housing Provider and having taken their views into account;
 - c) provided always that where 18.11(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to

give the Care and Support Provider and/or Housing Provider advanced notice, or failing that, to draw the disclosure to the Care and Support Provider's and/or Housing Provider's attention after any such disclosure.

- d) The Care and Support Provider and Housing Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

18.12 The Care and Support Provider and Housing Provider acknowledge that the Council may be obliged to disclose Commercially Sensitive Information in accordance with this Clause 18.

19. Prevention Of Bribery

19.1 The Care and Support Provider and Housing Provider;-

- a) shall not and shall procure that all Staff shall not, in connection with this Agreement commit a Prohibited Act;
- b) warrants, represents and undertakes that they are not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.

19.2 The Care and Support Provider and Housing Provider shall:

- a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- b) within five (5) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause 17 by the Care and Support Provider and/or Housing Provider respectively and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Care and Support Provider and Housing Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

19.3 The Care and Support Provider and Housing Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

19.4 The Care and Support Provider and Housing Provider shall immediately notify the Council in writing if it becomes aware of or suspects any Default of Clause 19.1 or has reason to believe that it has or any Staff has:-

- a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or Default of Clause 19.1(b);
- b) 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; or

- c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act or breach of Clause 19.1(b).
- 19.5 If the Care and Support Provider or Housing Provider notifies the Council that it suspects or knows that there may be a breach of Clause 17, the Care and Support Provider or Housing Provider, as the case may be, must respond promptly and in any event within ten (10) Working Days to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 12 (twelve) calendar years following the expiry or termination of this Agreement.
- 19.6 The Council may:-
- a) terminate this Agreement by written notice with immediate effect and recover from the Care and Support Provider and/or Housing Provider as the case may be, the amount of any Loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the provisions of this Agreement and any additional expenditure incurred by the Council throughout the remainder of the Agreement Period if the Care and Support Provider and/or Housing Provider, as the case may be, breaches Clause 17; and
 - b) recover in full from the Care and Support Provider and/or Housing Provider as the case may be, any other Losses sustained by the Council in consequence of any Default of Clause 17.
- 19.7 Any notice of termination under Clause 19.6 must specify:-
- a) the nature of the Prohibited Act;
 - b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - c) the date on which this Agreement shall terminate.
- 19.8 Despite Clause 24 (Dispute Resolution), any dispute relating to:-
- a) the interpretation of Clause 19; or
 - b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council acting reasonably having given due consideration to all relevant factors and its decision shall be final and conclusive.
- 19.9 Any termination under Clause 19.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
- 19.10 In exercising its rights or remedies under Clause 19.6, the Council shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by Clause 19.1 and the identity of the person performing that Prohibited Act/prohibited conduct.
- 20. Anti-Discrimination**
20. The Care and Support Provider and Housing Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any Law, enactment,

order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

- 20.2 The Parties shall not discriminate between or against Tenants, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- 20.3 The Care and Support Provider and Housing Provider shall provide appropriate assistance and make reasonable adjustments for Tenants, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- 20.4 In performing this Agreement the Care and Support Provider and Housing Provider shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:-
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it
 - d) and for the avoidance of doubt this obligation shall apply whether or not the Care and Support Provider or Housing Provider is a public authority for the purposes of section 149 of the Equality Act 2010.
- 20.5 The Care and Support Provider and Housing Provider shall take all reasonable steps to secure the observance of Clause 20.1 by all Staff employed in performance of this Agreement.
- 20.6 Either the Care and Support Provider or Housing Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Care and Support Provider and/or Housing Provider under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination.
- 20.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Care and Support Provider or Housing Provider's performance of this Agreement being in contravention of Equality Legislation or other any Law, enactment, order or regulation relating to discrimination, the Care and Support Provider and/or Housing Provider as the case may be, shall, free of charge:-
- a) provide any information requested in the timescale allotted;
 - b) attend any meetings as required and permit the Staff to attend;
 - c) promptly allow access to and investigation of any documents or data deemed to be relevant;
 - d) allow any of the Staff to appear as witness in any ensuing proceedings, and

- e) cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 20.8 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Care and Support Provider and/or Housing Provider, its agents, Sub-Contractors or Staff, and where there is a finding against the Care and Support Provider or Housing Provider in such investigation or proceedings, the Care and Support Provider or Housing Provider, as the case may be, shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 20.9 The Care and Support Provider and Housing Provider must ensure that all written information produced or used in connection with this Agreement is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 20.10 The Care and Support Provider and Housing Provider acknowledge that the Council may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of this Agreement and the Care and Support Provider and Housing Provider shall provide all necessary assistance and information to the Council as may be required in relation to the performance of an impact analysis by the Council. The Care and Support Provider and Housing Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Council.

21. The Contracts (Rights Of Third Parties) Act 1999

- 21.1 A person who is not a Party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

22. Severability

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

22. Remedies Cumulative

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

23. Entire Agreement

- 23.1 This Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to another,

whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

- 23.2 Each of the Parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to any Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Agreement.

24. Termination

Termination on Insolvency and Change of Control

- 24.1 Any Party may terminate this Agreement with immediate effect by notice in writing where another Party is a company and:-
- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator; or
 - d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - g) being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - h) any event similar to those listed in 24.1.1(a)-(g) occurs under the Law of any other jurisdiction.
- 24.2 Each Party shall notify the other Parties immediately if that Party undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("Change of Control"). The Council may terminate this Agreement by notice in writing with immediate effect within six (6) Months of:-
- a) being notified that a Change of Control has occurred; or
 - b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

Termination on Agreement

24.3 The Parties may agree to terminate this Agreement with immediate effect if:

- a) Following a meeting between the Parties in accordance with Clause 11, and all attempts to amend the Agreement or delivery of the obligations herein accordingly to ensure the viability of the Scheme in accordance with Clause 11 have been exhausted, that the Parties no longer believe that the Scheme is viable and agree that the Agreement should be terminated.
- b) Termination or expiry of all of the Call Offs issued under the OSL ;
- c) Agreement that the Agreement is to be replaced by another Agreement in accordance with Clause 11.1.7 or the Scheme is no longer viable.
- d) it is held by any Court or Tribunal that this Agreement or any of its provisions is unlawful and/or ultra vires
- e) Upon the expiry of such notification from the Care and Support Provider under Clause 14.6.4, the Parties believe that the Scheme is no longer viable.

Termination on Default

24.4 The Council may terminate this Agreement by written notice to the Care and Support Provider and Housing Provider with immediate effect if either Housing Provider or the Care and Support Provider commits a Default and if:-

- a) Housing Provider or the Care and Support Provider has not remedied the Default to the satisfaction of the Council within two (2) Months of initial notification of the Default; or
- b) the Default is not, in the opinion of the Council, capable of remedy; or
- c) the Default is a material breach of this Agreement.

24.5 Without prejudice to any other rights or remedies that the Council has under the Contract, the Council may terminate this Agreement at will if:-

- a) The Call Off expires or is terminated in accordance with the conditions of the Call-Off
- b) The OSL expires and the Care and Support Provider does not meet the eligibility requirements to enable them to be a party to any subsequent OSL as provided for within the OSL

24.6 Without prejudice to any other rights or remedies that the Council has under the Contract where the Council considers that Housing Provider or the Care and Support Provider has committed a Persistent Breach in relation to the Agreement or any part thereof, the Council shall be entitled to serve a written notice (a "Formal Warning Notice") on Housing Provider and the Care and Support Provider:-

- a) specifying that it is a Formal Warning Notice;
- b) giving details of the Persistent Breach and which Party has committed it;

- c) stating that if the Persistent Breach recurs two or more times within a three (3) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Agreement or that part of the obligations therein, affected by the Persistent Breach.

If:-

- a) twenty (20) Working Days after service of a Formal Warning Notice Housing Provider or the Care and Support Provider, as the case may be, has failed to demonstrate to the Council's satisfaction that:-
 - (i) the Persistent Breach specified has not continued; and
 - (ii) the Party in question has put in place measures to ensure that such Persistent Breach does not occur; or
- b) within a three (3) Month period after the date of service of the Formal Warning Notice the Supplier has failed to demonstrate to the satisfaction of the Council that:
 - (i) the Persistent Breach specified has not recurred two or more times within such three (3) Month period; and
 - (ii) the Party in question has put in place measures to ensure that such Persistent Breach does not occur

then the Council may deem such failure to be a Default which is a material breach of the Agreement for the purposes of Clause 24.6 (c).

- 24.7 In the event that through any Default of Housing Provider or the Care and Support Provider, data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable, Housing Provider or the Care and Support Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 24.8 If the Council fails to pay Housing Provider undisputed sums of money when due, Housing Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, Housing Provider may terminate this Agreement in writing with immediate effect.

Break

- 24.9 The Council shall have the right to terminate this Agreement at any time by giving six (6) Months' written notice to the Housing Provider and the Care and Support Provider. The Council may extend the period of notice at any time before it expires.
- 24.10 Without prejudice to Clause 24.9, the Council may by no less than three (3) Months' written notice to the Housing Provider and the Care and Support Provider terminate this Contract where it becomes apparent that:-
 - a) this Contract has been subject to substantial modification which would have required a new procurement procedure pursuant to the Public Contracts Regulations; or

- b) this Contract should not have been awarded for the reasons specified in the Public Contract Regulations.

Consequences Of Expiry Or Termination

- 24.11 Subject to Clause 24.12, where the Parties terminate this Agreement under Clause 24.3 (Termination on Agreement), the Parties shall cover their own costs of such termination.
- 24.12 Where this Agreement is terminated as a direct result of the termination of the Call Off and the Call Off had been terminated as a direct result of a default of the terms thereof by the Care and Support Provider, then without prejudice to the terms and conditions of the Call Off, Housing Provider may recover from the Care and Support Provider any Losses caused as a direct result of such termination of the Agreement. Housing Provider shall take all reasonable steps to mitigate such additional expenditure.
- 24.13 Where the Council terminates this Contract under Clauses 24.4 – 24.8 (Termination on Default) and then makes other arrangements for the delivery of the Scheme, the Council may recover from the Party who committed the Default in question the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Agreement Period. The Council shall take all reasonable steps to mitigate such additional expenditure.
- 24.14 Where this Agreement is terminated under Clauses 24.3 – 24.8, no further payments shall be payable by the Council to Housing Provider (for any Voids Losses prior to termination and in accordance with this Agreement but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.
- 24.15 Subject to Clause 24.14, where the Council terminates this Agreement under Clause 24.9 – 24.10 (Break), the Council shall pay to Housing Provider the unavoidable direct Losses incurred by Housing Provider by reason of such termination provided that Housing Provider takes all reasonable steps to mitigate all such Losses. Where Housing Provider holds insurance, the Council shall only have to reimburse Housing Provider in respect of those unavoidable direct costs that are not covered by the insurance available. Housing Provider shall submit a fully itemised and costed list of unavoidable direct Losses which it is seeking to recover from the Council, with supporting evidence, of such alleged Losses reasonably and actually incurred by Housing Provider as a result of termination under Clause 24.9 – 24.10 (Break). Any payment paid by the Council in accordance with this Clause 24.15 shall be in full and final settlement of any claim, demand and/or proceedings of Housing Provider in relation to any termination by the Council pursuant to Clause 24.9-24.10. Housing Provider shall have no other rights or remedies available to it in respect of any such termination.
- 24.16 The Council shall not be liable under Clause 24.15 to pay any sum which:-
 - a) was claimable under insurance held by Housing Provider, and Housing Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
 - b) is a claim by Housing Provider for loss of Rent or profit, due to early termination of this Agreement.
- 24.17 Save as otherwise expressly provided in this Agreement:-

- a) termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of any Party to recover any amount outstanding at such termination or expiry; and

24.18 Notwithstanding any Clause in this Agreement, expiry, termination, suspension or amendment of this Agreement shall not affect any Tenancy which has been entered into at the date of such expiry, termination, suspension or amendment or the Services being provided to any Tenant in the event that the Call Off continues to be in force.

24.19 If in the event of such circumstances, the Parties shall meet within ten (10) Working Days of such expiry, termination, suspension or amendment of this Agreement and agree, acting reasonably, how such continuing Tenancy and relevant Services required by the Tenant shall continue which may include entering into a further agreement based on similar terms to this Agreement.

Recovery Upon Termination

24.20 On the expiry, early termination or termination of this Agreement for any reason, the Care and Support Provider and Housing Provider shall:-

- a) immediately return to the Council all Confidential Information, Personal Data, records and any other documentation and information in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced during the course of this Agreement;
- b) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services or any other obligations under this agreement to any replacement Care and Support Provider or housing provider; and

24.21 If the Care and Support Provider and/or Housing Provider fail to comply with Clause 24.20 (a), the Council may recover possession thereof and the Care and Support Provider and Housing Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Care and Support Provider and/or Housing Provider or its permitted suppliers or Sub-Contractors premises where any such items may be held.

24.22 Where the end of the Agreement Period arises due to a Default of the Care and Support Provider and/or Housing Provider, the Party who committed the Default shall provide all assistance under Clause 25.20 free of charge. Where the Agreement ends for other reasons the Council shall pay the Care and Support Provider's and Housing Provider's directly incurred reasonable costs of providing the assistance and the Care and Support Provider and Housing Provider shall take all reasonable steps to mitigate such costs.

25. Remediation Plan Process

25.1 If the Care and Support Provider and/or Housing Provider commit a Default and the Default is in the reasonable opinion of the Council is capable of remedy, the Council may elect to operate the Remediation Plan Process. If the Council elects to operate the Remediation Plan Process, the Council shall serve a Remediation Notice on the Party who has committed the Default in question, which shall specify the Default in outline and the actions the Party who has committed the Default in question needs to take with respect to remedying the Default.

- 25.2 Within seven (7) Working Days of receipt of the Remediation Notice, the Party who has committed the Default shall either:-
- a) submit a draft Remediation Plan to the Council even if the Party in question disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
 - b) inform the Council that it does not intend to submit a Remediation Plan in which event the Council shall be entitled to terminate the Agreement by written notice.
- 25.3 The Council shall either approve the draft Remediation Plan within seven (7) Working Days of its receipt pursuant to Clause 25.2 or it shall inform the Party who has committed the Default within the same time period why it cannot accept the draft Remediation Plan. In such circumstances, the Party in question shall address all such concerns in a revised Remediation Plan which it shall submit to the Council within three (3) Working Days of its receipt of the Council's comments. Once agreed the Party who has committed the Default shall immediately start work on the actions set out in the Remediation Plan.
- 25.4 If, despite the measures taken under Clause 25.3 a Remediation Plan cannot be agreed within twenty (20) Working Days, then the Council may elect to end the Remediation Plan Process and serve a notice to terminate the Agreement.
- 25.5 If a Remediation Plan is agreed between the Parties but the Party who has committed the Default fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date, the Council may:-
- a) terminate this Agreement by serving a notice of termination; or
 - b) give the Party who has committed the Default a further opportunity to resume full implementation of the Remediation Plan; or
 - c) escalate any issue arising out of the failure to implement the Remediation Plan to the Party who has committed the Default's Representative under the dispute resolution procedure set out in Clause 27.
- 25.6 If, despite the measures taken under Clause 25.5 the Party who has committed the Default fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the Remediation Plan Process and refer the matter to dispute resolution in accordance with Clause 27 or serve a notice of termination of the Agreement.
- 25.7 The Council shall be under no obligation to initiate the Remediation Plan Process if it issues a notice of termination as provided for under this Agreement.

26. Force Majeure

- 26.1 Subject to the remaining provisions of this Clause 26, a Party may claim relief under this Clause 26 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by either the Care and Support Provider or Housing Provider in performing its obligations under this Agreement which results from a failure or delay by an agent, sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, sub-

contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Care and Support Provider or Housing Provider.

- 26.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 26.3 If the Care and Support Provider or Housing Provider is the Affected Party, it shall not be entitled to claim relief under this Clause 26 to the extent that consequences of the relevant Force Majeure Event:
- a) are capable of being mitigated but the Party in question has failed to do so; and/or
 - b) should have been foreseen and prevented or avoided
- 26.4 Subject to Clause 26.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 26.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Care and Support Provider or Housing 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.
- 26.6 Where, as a result of a Force Majeure Event:
- a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Parties shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clauses 26.1 and 26.4; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;
- 26.7 The Affected Party shall notify the other Parties 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 Agreement.
- 26.8 Relief from liability for the Affected Party under this Clause 26 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 26.7.
- 26.9 In the event that any Force Majeure Event continues to affect the ability of either Party to fulfil their obligations under the Agreement for a period of six (6) Months or more, any Party may serve notice of termination with immediate effect.
- 26.10 In the event that the Lease is terminated by either party thereto for any reason, Housing Provider or its attorney, receiver, administrator, mortgagee or agent may at

any time during the term of this Agreement serve a notice on the Council and the Care and Support Provider to terminate this Agreement provided always that Housing Provider shall give to the Council and the Care and Support Provider not less than fourteen (14) days written notice of such termination ("the Termination Notice").

27. Dispute Resolution

- 27.1 In the first instance, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of any Party notifying the others of the dispute. Any dispute shall in the first instance be referred to the Contract Managers of each Party for resolution. If the dispute cannot be resolved by the Contract Managers of the Parties within ten (10) Working Days after the dispute has been referred to the Contract Managers, any Party may give notice to the other Parties in writing (Dispute Notice) that a dispute has arisen and within five (5) Working Days of the date of the Dispute Notice the Parties shall refer the dispute to their Representative for resolution.
- 27.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining any other Party from doing any act or compelling the other Party to do any act.
- 27.3 If the dispute cannot be resolved by the Parties' Representatives pursuant to Clause 26.1 within ten (10) Working Days of the Dispute Notice the Parties shall refer it to mediation pursuant to the procedure set out in Clause 27.5.
- 27.4 The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by reference of a dispute to mediation and the Parties shall comply fully with the requirements of this Agreement at all times.
- 27.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- a) A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, any Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to any Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.
 - b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.
 - c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a

without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties.

- f) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

28. Governing Law And Jurisdiction

- 28.1 Subject to the provisions of Clause 26 (dispute resolution) , the Parties accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as a Deed with effect from the date first above written.

EXECUTED (but not delivered until dated))
as a deed by affixing the Common Seal)
of **LINCOLNSHIRE COUNTY COUNCIL**)
)
)
)
)

in the presence of:-

.....
Authorised Officer Signature
Print name:

EXECUTED (but not delivered until dated))
as a deed by **HOUSING PROVIDER**)
acting by:-)

.....
Director's Signature
Print name:

In the presence of:-

Witness Signature
Print name:
Occupation:
Address

EXECUTED (but not delivered until dated))
as a deed by **CARE AND SUPPORT**)
PROVIDER)
acting by:-)

.....
Director's Signature
Print name:

In the presence of:-

Witness Signature
Print name:
Occupation:
Address

SCHEDULE 1 – THE PROPERTY

SCHEDULE 2

The Supplier shall comply with the instructions of the Customer with respect to processing as set out in this Schedule:

Description	Details
Identity of the Council and the Provider	The Parties acknowledge that for the purposes of the Data Protection Legislation that they are [Joint Data Controllers].
Subject matter of the processing	Processing is necessary to allow providers to deliver appropriate care to service users referred to them. This is a service delivered to vulnerable adults under Adult Social Care provision.
Duration of the processing	1 st July 2020 – 30 th June 2025
Nature and purposes of the processing	<p>The processing will involve adult social care / health practitioner referrals which will be made to the supplier at the point where a service user is identified as requiring a care and support service.</p> <p>Providers will be contacted according to the contract call off process defined in the service specification.</p> <p>Referrals will contain personal information and background in order that the provider can make an assertion on whether they have the capacity and capability to deliver the service. Providers will be expected to carry out further data collection to demonstrate that they have met the defined outcomes at the level of individual.</p> <p>Data should be stored in an appropriate case management system and data will need to be shared safely with LCC Social Care teams.</p> <p>The purpose of processing data is to facilitate meeting outcomes under the open select list for the delivery of care and support for service users.</p>
Type of Personal Data	Name, address, date of birth, further data relating to the service user's personal situation. Much of this may be special categories of data and relate to medical condition as well as other data around employment and status, the amount processed will depend on the case.
Categories of Data Subject	Service Users referred for community support living services by Lincolnshire County Council Adult Social Care / Lincolnshire Partnership NHS Foundation Trust (LPFT).
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>Information relating to a Data Subject shall be held for the duration of support and thereafter according to appropriate retention schedules defined in the service specification.</p> <p>Before the contract comes to an end, the following must be provided to the Council to ensure continuity of care for those supported: - individual assessments, risk assessments, support plans and reports pertinent to Adult Social Care's / LPFT ongoing support.</p> <p>LCC Retention Schedules: https://www.lincolnshire.gov.uk/directory/52/records-management</p>

MINIMUM INFORMATION SECURITY STANDARDS

The minimum security controls detailed within this Schedule are to be in place at all times when processing Personal Data for the purpose of or in connection with the delivery of the Services.

1. GENERAL

1.1 The Parties shall have a security policy in place which sets out management commitment to information security, defines information security responsibilities, and ensures appropriate governance.

1.2 All Staff shall complete data protection and information security training commensurate with their role.

2. ICT INFRASTRUCTURE

Boundary Firewall and Internet Gateways

2.1 Personal Data, applications and devices shall be protected against unauthorised access and disclosure from the internet, using boundary firewalls, internet gateways or equivalent network devices.

Secure Configuration

2.2 ICT systems and devices shall be configured to reduce the level of inherent vulnerabilities and provide only the services required to fulfil their role.

User Access Control

2.3 User accounts shall be assigned to authorised individuals only, managed effectively, and they shall provide the minimum level of access to applications, devices, networks, and Personal Data.

2.4 Access control (username & password) shall be in place. A password policy shall be in place which includes provisions to ensure:-

- a) avoidance of the use of weak or predictable passwords;
- b) all default passwords are changed;
- c) robust measures are in place to protect administrator passwords; and
- d) account lock out or throttling is in place to defend against automated guessing attacks.

2.5 End user activity shall be auditable and include the identity of end-users who have accessed systems.

Malware Protection

2.6 Mechanisms to identify detect and respond to malware on ICT systems and devices shall be in place and shall be fully licensed, supported, and have all available updates applied.

Patch Management and Vulnerability Assessment

2.7 Updates and software patches shall be applied in a controlled and timely manner and shall be supported by patch management policies.

2.8 The Parties shall adopt a method for gaining assurance in its organisation's vulnerability assessment and management processes, for example by undertaking regular penetration tests.

2.9 Software which is no longer supported shall be removed from ICT systems and devices.

Cloud Services

2.10 The Parties shall ensure that the controls applied to the use of cloud services satisfactorily supports the relevant security principles set out in the National Cyber Security Centre Cloud Security Principles:

<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

3. PROTECTING CONFIDENTIAL DATA

Electronic Data

3.1 Electronic copies of confidential Personal Data shall be encrypted at rest to protect against unauthorised access.

3.2 When transmitting confidential Personal Data over the internet, over a wireless communication network e.g. Wi-Fi, or over an untrusted network the Supplier shall use an encrypted communication protocol.

3.3 The Parties shall only use ICT which is under its governance and subject to the controls set out in this Schedule.

Hard Copy Confidential Data

3.4 Hard copy confidential Personal Data shall be stored securely when not in use and access to the Personal Data shall be controlled.

3.5 Hard copy confidential Personal Data shall be transported in a secure manner commensurate with the impact a compromise or loss of information would have and which reduces the risk of loss or theft.

Secure Destruction of Confidential Data

3.6 Electronic copies of confidential Personal Data shall be securely destroyed when no longer required, including Personal Data stored on servers, desktops, laptops or other hardware and media.

3.7 Hard copy confidential Personal Data shall be securely destroyed when no longer required.

3.8 Secure destruction means destroying Personal Data so it cannot be recovered or reconstituted.

3.9 A destruction certificate may be required by the Customer to provide the necessary assurance that secure destruction has occurred.

4. SECURITY INCIDENTS/PERSONAL DATA BREACH

4.1 The Housing and Care and Support Provider shall notify the Council immediately of any fact or event which results in, or has the potential to result in, the compromise, misuse, or loss of Customer Information, ICT services or assets.

4.2 The Housing and Care and Support Provider shall notify the Council immediately of any Personal Data breach if the breach relates to Personal Data processed on behalf of the Customer.

4.3 The Parties shall fully co-operate with any investigation that the Council requires as a result of such a security incident or Personal Data breach.

5. COMPLIANCE

5.1 The Housing and Care and Support Provider shall notify the Council of any non-compliance with the controls set out in this Schedule. Any deficiencies in controls shall be subject to a documented risk management process and where appropriate a Remediation Plan shall to be implemented with the aim of reducing, where possible, those deficiencies.

5.2 Independent validation which has been used as evidence of appropriate security controls by the Supplier shall be maintained by the Supplier for the duration of the Contract.

5.3 The Housing and Care and Support Provider shall notify the Council of any expired or revoked evidence used as independent validation.

SCHEDULE 3 – REPRESENTATIVES (INCLUDE MECHANISM FOR CHANGING)

A: Council's Representative:

B: Housing Provider's Representative:

C: The Care and Support Provider's Representative