



**TERMS AND CONDITIONS RELATING TO
THE PROVISION OF RESIDENTIAL CARE
HOMES FOR PEOPLE WITH LEARNING
DISABILITIES IN THE LONDON BOROUGH
OF WANDSWORTH**

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WHEREAS:

- (A) The Authority has social services functions in Wandsworth pursuant to the Local Authority Social Services Act 1970 and has the responsibility under the National Health Service and Community Care Act 1990 to provide community care services as that expression is defined in that Act.
- (B) The Service Provider represented to the Authority that it is capable of delivering the Services, and the Authority selected the Service Provider to enter into this Agreement for the provision of the Services from the Service Provider to Service Users in accordance with this Agreement.
- (C) Capitalised terms in these Recitals have the meaning given to them in Clause 1.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

1.1. In this Agreement, including the Recitals, the following expressions shall have the following meanings:

1999 Act	means the Local Government Act 1999 as amended by the 2007 Act;
2007 Act	means the Local Government and Public Involvement in Health Act 2007;
Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Affiliate	means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and " holding company " and " subsidiary " shall have the meaning given to them in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another, any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
Anti-Discrimination Legislation	means the Human Rights Act 1998, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002, the Flexible Working (Procedural Requirements) Regulations 2002, and any relevant Treaty, Directive, Regulation or Recommendation of the European Union and for the avoidance of doubt includes and statutory modification or re-enactment;
Audit	means an inspection of the Service Provider's records and accounts carried out by the Authority, a Relevant Authority or a Regulated Body pursuant to Clause 24.3;
Auditors	has the meaning given to it in Clause 24.3;
Authority	means the London Borough Of Wandsworth of Town Hall, Wandsworth High Street, London, SW18 2PU;

- Authority Confidential Information** means:
- (a) any information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential (however it is conveyed or on whatever media it is stored); and
 - (b) secret or confidential commercial, financial, marketing, technical or other information know-how, trade secrets and other information in any form or medium whether disclosed orally or in writing before, on or after the Commencement Date, together with any reproductions of such information in any form or medium or any part(s) of this information (and "confidential" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available) and all Personal Data and Intellectual Property Rights;
- Authority Policies** means the Authority's internal standard documents, policies, guidance and/or such other requirements as may be set out in the Authority Policy Framework in force or issued by the Authority from time to time, relating to the performance of the Services and notified to the Service Provider by the Authority from time to time in writing;
- Authority Framework Policy** means such other policies as may be agreed or issued by the Authority, in each case as the same may be revised, amended or issued from time to time, including:
- (a) the Authority's policies in respect of:
 - (i) DBS checks;
 - (ii) safeguarding;
 - (iii) data sharing; and
 - (b) Check Before Contact Register Information Sharing Protocol;
 - (c) Councils Inter-Agency Guidelines;
 - (d) the Authority's Customer Services policy, to the extent relevant to the provision of the Services; and
 - (e) the Authority's Department of Adult Social Services' Services Provided Quality and Risk Framework;
- Authority Related Parties** means the Authority's contractors (of any tier) and agents and its or their directors, officers and employees in relation to the provision of the Services (excluding the Service Provider and the Service Provider Related Parties);

Authority Reply	has the meaning given to it in paragraph Error! Reference source not found. of part 2 of Schedule 4 (Payment Terms);
Authority Representative	has the meaning given to it in Clause 13 (Representatives and Communication);
Best Practice	means those standards, practices, methods and procedures of working that conform to Law and guidance issued by the CQC, the Social Care Institute of Excellence, any Relevant Authority and any Regulatory Body in relation to the subject matter of the Services;
Best Value Duty	means the duty imposed on the Authority by Section 3 of the 1999 Act in relation to, inter alia, the Services;
Business Continuity Plan	means the plan developed by the Service Provider as a Condition Precedent which sets out the actions the Service Provider will take to ensure the continuation of the Services on the occurrence of an event which causes serious disruption to the Services (and/or mitigates the effects of such occurrence on the continuity of provision of Services);
Business Day	means a day (other than a Saturday or Sunday) on which banks are ordinarily open for business in the City of London;
Care Home	means the care home agreed between the Authority and the Service Provider as part of agreeing the Detailed Care Plan;
CEDR	means the Centre for Effective Dispute Resolution;
Change	means any change to this Agreement or the arrangements constituted by it;
Change Authorisation Notice	has the meaning given to it in Schedule 7 (Change Control Procedure);
Change Control Procedure	means the procedure for changing this Agreement as set out in Schedule 7 (Change Control Procedure);
Change in Law	means the coming into effect after the Commencement Date of: <ul style="list-style-type: none"> (a) any new Law; (b) any new Guidance; and (c) any applicable judgment of a relevant court of law which substantially and materially changes a binding precedent;
Change of Control	has the meaning given to it in Clause 40.9;
Change Request	has the meaning given to it in Schedule 7 (Change Control Procedure);

Commencement Date	means the date on which the Authority and the Services Provider agree that the Services to be delivered in respect of the Placement Agreement are to commence;
Compliments and Complaints Log	has the meaning given to it in Clause 18.5;
Conditions Precedent	means the conditions to be satisfied by the Service Provider pursuant to Clause 2.2 as the same are set out in Schedule 1 (Conditions);
Confidential Information	means the Authority Confidential Information and/or the Service Provider Confidential Information (as the context may require);
Core Rate	means, in respect of the Placement Agreement, the reduced weekly rate for the delivery of the Services under that Placement Agreement payable under the circumstances specified in this Agreement as agreed between the Authority and the Service Provider;
Core Reduced Rate	means 80% of the Core Rate;
CQC Inspector	means an inspector appointed by the CQC;
Crown	means the government of the United Kingdom including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Protection Legislation	means: <ul style="list-style-type: none">(a) the DPA 1998;(b) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;(c) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; and(d) all applicable Law about the processing of personal data and privacy;

Data Subject		has 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 to access their Personal Data;
DBS		means the Disclosure and Barring Service;
Deliverables		means any documents and/or written material;
Detailed Care Plan		means the plan developed by the Authority which specifies the needs of the Service User;
Direct Losses		means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses which have been reasonably and properly incurred) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
Disclosed Data		means information relating to the Services disclosed to the Service Provider;
Dispute		means any dispute, difference or question of interpretation arising out of or in connection with this Agreement (including any dispute, difference or question of interpretation relating to the Services), failure to agree in accordance with the Change Control Procedure (where the Change Control Procedure states that recourse is to be made to the Dispute Resolution Procedure) or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
Dispute Resolution Procedure	Resolution	means the dispute resolution procedure described in Clause 38;
DPA 2018		means the Data Protection Act 2018;
Draft Exit Plan		has the meaning given to it in Schedule 9 (Exit Requirements);
Draft Industrial Action Plan		has the meaning given to it in Clause 29.9;
Employee Information	Liability	means the employee liability information to be provided pursuant to Regulation 11 of TUPE;
End Date		means the date on which the Placement Agreement to which these terms and conditions apply is completed or comes to an end or is removed from the scope of this Agreement in accordance with its terms including in accordance with clause 46;

Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
Exit Period	has the meaning given to it in Schedule 9 (Exit Requirements);
Exit Plan	has the meaning given to it in Schedule 9 (Exit Requirements);
Exit Requirements	has the meaning given to it in Schedule 9 (Exit Requirements);
Final Warning Notice	has the meaning given to it in Clause 40.8.2;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Force Majeure Event	<p>means the occurrence after the Commencement Date of:</p> <ul style="list-style-type: none">(a) war, civil war, armed conflict or terrorism; or(b) nuclear, chemical or biological contamination unless in any case the Party claiming the benefit of relief (or a Service Provider Related Party or Authority Related Party as the case may be) is the source or cause of the contamination; or(c) lightning, earthquake, fire, flood, storm or extreme weather condition or other natural disaster, <p>which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Agreement and such event continues for 5 days, unless occurrence of any of the events listed in paragraphs (a)-(c) (above) are caused by the act or omission of the Affected Party;</p>
Fraud	<p>means:</p> <ul style="list-style-type: none">(a) any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Agreement; or(b) defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown; or(c) the issue of an invoice by the Service Provider to the Authority in respect of the delivery of the Services which contains false or misleading information,

and "**Fraudulent**" shall be construed accordingly;

GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
Good Industry Practice	means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonable and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
Guidance	means any applicable guidance, code of practice or directions issued by a Relevant Authority or a Regulatory Body which the Service Provider is bound to comply pursuant to the requirements of any Law;
Handover Meeting	has the meaning given to it in Schedule 9 (Exit Requirements);
Indemnity to Principal	means conditions within the Insurances under which the Authority is indemnified as if it were the Service Provider;
Indirect Losses	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature, save to the extent that such losses are addressed in the definition of Direct Losses;
Industrial Action Plan	has the meaning given to it in Clause 29.9;
Information	has the meaning given under section 84 of the FOIA, as amended from time to time;
Information Commissioner's Office	means the United Kingdom's independent authority set up to uphold information rights in the public interest and data privacy for individuals;
Insolvency Event	means the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity or the taking of any corporate action, legal proceedings or other procedure or step directly affecting the relevant entity in relation to the following events: (a) passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the relevant person being otherwise dissolved; (b) the appointment of a liquidator, an administrator of or, the making of an administration order in relation to the relevant person, or the appointment of a receiver or

administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue;

- (c) entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;
- (d) being unable or admitting its inability to pay its debts as they fall due or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but with the phrase "it is proved to the satisfaction of the court that" removed from subsection 123(2) of the Insolvency Act 1986),

provided that a resolution by the relevant person or a court order that such person be wound up for the purpose of a bona fide solvent reconstruction or amalgamation shall not amount to an Insolvency Event;

Insurances

means the insurances to be procured and maintained by the Service Provider pursuant to Clause 31 (Insurances) and listed at Schedule 5 (Insurances);

Intellectual Rights

Property

means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

IPR Claim

means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Right used to provide the Services or as otherwise provided by the Service Provider (or to which the Service Provider has provided access) to the Authority in the fulfilment of its obligations;

Know-How	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services;
Law	means: <ul style="list-style-type: none">(a) any applicable Act of Parliament which has been issued, declared, passed or given effect;(b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;(c) any exercise of the Royal Prerogative;(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972; and(e) any regulatory policy, binding guidance or binding industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
LED	means the Law Enforcement Directive (Directive (EU) 2016/680);
Losses	means all Direct Losses and Indirect Losses;
Mediator	has the meaning given to it in Clause 38.3.1;
Month	means a calendar month;
Necessary Consents	means all approvals, permissions, consents, licences, certificates and authorisations (whether statutory or otherwise) and including any CQC registration consents or other registration consents under any Law which are required for the purposes of carrying out the obligations of the Service Provider in connection with this Agreement, whether required in order to comply with Law or as a result or as a result of the rights of any third party or otherwise;
Non-Party Recipients	means Related Parties and/or such entities to whom a Party discloses Confidential Information (but not the other Party);
Parties	means the parties to this Agreement from time to time (including their successors and permitted assignees) and " Party " shall be interpreted accordingly;
Payment Period	has the meaning given to it in Schedule 4 (Payment Terms);
Performance Standards	means the standards specified at paragraphs 2.6.1, 2.6.2 and 8.1.10 of the Specification;
Persistent Breach	has the meaning given to it in Clause 40.8.2.3;

Personal Data	has the meaning given to it in the Data Protection Legislation;
Personal Data Breach	has the meaning given to it in the Data Protection Legislation;
Placement Agreement	means, in respect of the Service User, the package of care as detailed in the Detailed Care Plan (including any amendments which have been agreed from time to time) which is to be carried out at the Care Home and in respect of which the Parties have agreed the terms and conditions set out in this Agreement are to apply;
Prescribed Rate	means two per cent (2%) above the base rate from time to time of NatWest Bank Plc;
Processor	has the meaning given to it in the Data Protection Legislation and refers to the Data Processor for the purposes of the DPA 1998;
Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement;
Prohibited Act	means: <ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:(b) induce that person to perform improperly a relevant function or activity; or(c) reward that person for improper performance of a relevant function or activity; or(d) committing any offence:(e) under the Bribery Act 2010; or(f) under legislation creating offences concerning fraudulent acts; or(g) at common law concerning fraudulent acts,(h) in relation to this Agreement or any other contract with the Authority; or(i) defrauding, attempting to defraud or conspiring to defraud the Authority, and/or the Crown;
Protected Characteristics	means the "protected characteristics" set out from time to time in the Equality Act 2010;

Protective Measures	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
Regulated Activity	has the meaning given to it in the Safeguarding Vulnerable Groups Act 2006;
Regulations	means the Public Contracts Regulations 2015 (SI2015/102) (as amended);
Regulatory Bodies	means those government departments and regulatory, statutory and other entities, communities, 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 Authority or the Service Provider as applicable;
Related Parties	means either the Authority Related Parties or the Service Provider Related Parties, as the context may require;
Relevant Authority	means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Relevant Person	means any employee, agent, servant, or representative of the Authority;
Relevant Transfer Date	has the meaning given to it in Schedule 9 (Exit Requirements);
Replacement Service Provider	means any service provider which the Authority appoints following termination or the end of this Agreement or any contract to provide services equivalent to the Services;
Requests for Information	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;
Safeguarding Adults Manager	means the Authority's safeguarding adults manager who is a member of the Authority's safeguarding team;
Safeguarding Policy	has the meaning given to it in Clause 14.2;

Service Payment	means, in respect of a Payment Period, the fee payable by the Authority to the Service Provider calculated and paid in accordance with Part 1 of Schedule 4 (Payment Terms);
Service Payment Report	has the meaning given to it in paragraph 0 of part 2 of Schedule 4 (Payment Terms);
Service Provider	means the entity with whom the Authority has agreed that the Services will be provided in respect of the Placement Agreement and with whom it has been agreed that these terms and conditions will apply to such Services and Placement Agreement;
Service Provider Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Service Provider, including Intellectual Property Rights, together with information derived from the above, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked as "confidential");
Service Provider Default	means any one or more of the following events: <ul style="list-style-type: none">(a) a material breach by the Service Provider of its obligations under this Agreement;(b) any material breach by the Service Provider of any of its obligations under:<ul style="list-style-type: none">(i) Clause 14 (Safeguarding);(ii) Clause 15 (DBS Checks);(iii) Clause 17 (Data Protection); or(iv) Clause 21 (Freedom of Information);(c) the Authority is entitled to exercise its termination rights pursuant to any of the following Clauses:<ul style="list-style-type: none">(i) Clause 20.7 (Confidentiality);(ii) Clause 24.8 (Records and Audit);(iii) Clause 32.2.4 (Bribery and Corruption);(iv) Clause 33.3.1 (Safeguard against Fraud);(v) Clause 34.4 (Conflicts of Interest; and/or(vi) Clause 29.9;(d) the occurrence of a Persistent Breach;(e) the occurrence of an Insolvency Event in respect of the Service Provider;

- (f) the Service Provider abandons the Services for a period of 14 consecutive days, unless and to the extent that:
 - (i) Clause 29 (Force Majeure) provides the Service Provider with relief from termination;
 - (ii) the Service Provider has implemented its Business Continuity Plan to the fullest extent appropriate to the circumstances of the relevant Force Majeure Event; and
 - (iii) the Service Provider has otherwise continued to deliver the Services not affected by the Force Majeure Event;
- (g) the Service Provider is unable to procure or renew a Necessary Consent and/or a Necessary Consent is suspended, where such circumstances arise due to a fault, failure, breach and/or negligence of the Service Provider; and/or
- (h) the occurrence of an unauthorised Change of Control in respect of the Service Provider; and/or
- (i) any failure by the Service Provider to procure and/or maintain the Insurances in accordance with the requirements of Schedule 5 (Insurances);

Service Provider Default Sum means:

- (a) the Authority's Losses in respect of the termination of this Agreement pursuant to Clause 39 (except those referred to in limb (b) of this definition);
- (b) the Authority's Losses in respect of re-procuring the Services from one or more Replacement Services Providers;

Service Provider Related Parties means the Service Provider's Affiliates, any sub-contractors and agents and its or their directors, officers, employees and workmen in relation to the provision of the Services;

Service Provider Representative means the representative appointed by the Service Provider from time to time in relation to this Agreement;

Service User means the individual which is the subject of the Placement Agreement (and thereby to be resident at the Care Home under these terms and conditions);

Service User Satisfaction Survey has the meaning given to it in Clause 17;

Services	means the activities which the Service Provider is to carry out within the Placement Agreement, which fall within the scope of the Specification;
Specification	means the specification of requirements set out in Schedule 2 (Specification);
Staff	means any individual or individuals directly involved by the Service Provider in respect of the provision of the Services to Service Users and such term shall include the staff of any sub-contractor to the Service Provider which are directly included in the provision of the Services to Service Users;
Sub-processor	means any third party appointed to process Personal Data on behalf of the Service Provider in relation to this Agreement;
Term	means, subject to the earlier termination of this Agreement in accordance with its terms, the period commencing on the Commencement Date until the End Date;
Termination Date	means the date in which this Agreement is terminated in accordance with its terms;
Termination Notice	means a notice to terminate this Agreement served on the Service Provider by the Authority pursuant to Clause 40;
Termination Trigger Date	has the meaning given to it in Schedule 9 (Exit Requirements);
Transferring Employees	has the meaning given to it in paragraph 5.2 of Schedule 9 (Exit Requirements);
TUPE	means the Transfer of Undertakings (Protection of Employment Regulations) 2006 (as amended);
Week	has the meaning given to it in Schedule 4 (Payment Terms);
Weekly Rate	means, in respect of the Placement Agreement, the weekly rate for the delivery of the Services under that Placement Agreement as agreed between the Authority and the Service Provider; and
Weekly Reduced Rate	means 80% of the Weekly Rate (rounded down to the nearest whole penny).

1.2. In this Agreement, except where the context otherwise requires:

- 1.2.1. the singular includes the plural and vice versa;
- 1.2.2. each gender includes all genders;

- 1.2.3. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.4. a reference to any Recital, Clause, Schedule or Appendix is except where expressly stated to the contrary, a reference to such recital, Clause, schedule or appendix of and to this Agreement;
- 1.2.5. the Clause headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;
- 1.2.6. words preceding “**include**”, “**includes**”, “**including**” and “**included**” shall be construed without limitation by the words which follow those words;
- 1.2.7. references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced from time to time by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the Commencement Date);
- 1.2.8. in the event and to the extent only of any conflict between the Clauses on the one hand and the Schedules, Appendices or Annexes of this Agreement on the other, the Clauses shall prevail over the Schedules, Appendices or Annexes; and
- 1.2.9. any reference made to something having to be in writing includes email.

2. Commencement and Term

- 2.1. Subject to this Clause 2, this Agreement shall take effect on the Commencement Date and expire on the End Date unless it is terminated earlier in accordance with the terms of this Agreement or otherwise by operation of Law.
- 2.2. On or prior to the entry into of this Agreement the Service Provider has delivered to the Authority the Conditions Precedent (unless the requirement to deliver any such document has been waived by written agreement between Authority and the Service Provider).
- 2.3. All obligations in this Agreement which are stated to survive termination or expiry shall continue to have effect and bind the Parties for such period following termination or expiry as may be expressly stated in the relevant Clause, paragraph or other provision.

3. Not Used

4. Scope of Agreement

- 4.1. The Authority hereby appoints the Service Provider as the provider of Services to Service Users at the Care Home with effect from the Commencement Date on the terms set out in this Agreement.
- 4.2. No undertaking nor any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority in respect of the total quantities or values of the Services to be commissioned, ordered or procured pursuant to this Agreement and the Service Provider acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.

- 4.3. The Service Provider acknowledges that in entering into this Agreement no form of volume guarantee has been or is granted by the Authority in relation to the provision of the Services by the Service Provider.
- 4.4. The Service Provider expressly acknowledges that the Authority does not grant exclusivity to the Service Provider to provide the Services to the Authority.

5. Provision of the Services

- 5.1. The Service Provider shall:
 - 5.1.1. provide or procure all resources required in connection with and for the purpose of performing Services, whether of a temporary or permanent nature;
 - 5.1.2. ensure that all activities, operations and other things done, all equipment used, and all methods adopted in connection with and for the purposes of performing the Services are sufficient, safe and fit for purpose; and
 - 5.1.3. ensure, where any time period or deadline is specified in this Agreement for the provision of the Services or any part thereof, that all reasonable endeavours are used by the Service Provider to ensure that such time period is complied with or such deadline is met.
- 5.2. Subject to Clause 5.3, the Service Provider shall ensure that the Services:
 - 5.2.1. comply in all respects with the requirements set out in the Specification; and
 - 5.2.2. are delivered in accordance with the other terms of this Agreement.
- 5.3. Without prejudice to Clause 5.2 and subject to Clause 5.4, the Service Provider shall perform its obligations under this Agreement, including those in relation to the Services, in accordance with:
 - 5.3.1. the Specification;
 - 5.3.2. Law including, for the avoidance of doubt:
 - 5.3.2.1. all standards required by The Health and Social Care Act 2008 in order to maintain registration thereunder and the Service Provider shall inform the Authority of any change in its registration; and
 - 5.3.2.2. the National Minimum Wage Regulations 1999 (as amended) and the Authority reserves the right to monitor and review the Service Provider's compliance with the National Minimum Wage Regulations from time to time,

and the Authority shall be entitled to treat any material breach by the Service Provider of this Clause 5.3.2 as a Service Provider Default under limb (a) of such definition;
 - 5.3.3. Good Industry Practice;
 - 5.3.4. Best Practice;
 - 5.3.5. the Authority Policies;
 - 5.3.6. Guidance; and
 - 5.3.7. all Necessary Consents,so as to satisfy the Performance Standards.
- 5.4. In the event of:

- 5.4.1. any conflict between the requirements set out in Clause 5.2.1 and the requirements set out in Clause 5.2.2;
- 5.4.2. any conflict between any of requirements set out in Clause 5.3; or
- 5.4.3. any conflict between any of the requirements set out in Clause 5.2 and any of the requirements set out in Clause 5.3,

the Service Provider shall draw the relevant conflict to the attention of the Authority and shall comply with the Authority's decision regarding the resolution of that conflict.

- 5.5. The Service Provider shall deliver the Services efficiently and in a manner which represents value for money for the Authority.

6. Representatives and Communications

- 6.1. The Service Provider shall employ a representative, the identity of whom will be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed), to act as its representative in connection with the provision of the Services and generally in connection with this Agreement (the "**Service Provider Representative**").
- 6.2. The Service Provider Representative shall have full authority to act on behalf of the Service Provider for all purposes of this Agreement. The Authority and the Authority Representative shall be entitled to treat any act of the Service Provider Representative in connection with this Agreement as being expressly authorised by the Service Provider (save where the Service Provider has notified the Authority in writing that such authority has been revoked) and the Authority shall not be required to determine whether any express authority has in fact been given.
- 6.3. The Service Provider may by notice to the Authority change the Service Provider Representative. Where the Service Provider wishes to do so it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of the provision of Services. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).
- 6.4. The Service Provider shall ensure that a director or other individual in a similarly senior management role attends such meetings as the Authority may from time to time require (acting reasonably) in order that the representatives of the Authority and the representative of the Service Provider may discuss the Services, the quality of the provision of the Services, the operation of this Agreement generally and all other matters relevant to this Agreement as determined by the Authority (acting reasonably).
- 6.5. The Authority shall appoint an individual to liaise with the Service Provider Representative (the "**Authority Representative**"), and shall keep the Service Provider informed of the identity from time to time of the Authority Representative.
- 6.6. The Authority Representative shall have full authority to act on behalf of the Authority for all purposes of this Agreement. The Service Provider shall be entitled to treat any act of the Authority Representative in connection with this Agreement as being expressly authorised by the Authority (save where the Authority has notified the Service Provider that such authority has been revoked) and the Service Provider shall not be required to determine whether any express authority has in fact been given.
- 6.7. The Authority may by notice to the Service Provider change the Authority Representative. Where the Authority wishes to do so it shall by written notice to the Service Provider propose a substitute

for approval (such approval not to be unreasonably withheld or delayed), taking account of the need for liaison and continuity in respect of the provision of the Services.

- 6.8. Subject to 53 (Notices), any notice, information, instructions or public communication given to:
- 6.8.1. the Service Provider Representative shall be given in writing and shall be deemed to have been given to the Service Provider; and
 - 6.8.2. the Authority Representative shall be given in writing and shall be deemed to have been given to the Authority.

7. Consents

- 7.1. The Service Provider shall be responsible for obtaining all Necessary Consents in relation to the performance of this Agreement.

8. Anti-Discrimination Requirements

- 8.1. The Service Provider (including its agents and employees) shall not, and shall procure that all Service Provider Related Parties shall not:
- 8.1.1. unlawfully discriminate directly or indirectly (and in relation to disability for a reason related to disability or failure to make reasonable adjustments) or unlawfully discriminate by way of victimisation or harassment or carry out any other form of unlawful discrimination within the meaning of the Anti-Discrimination Legislation against any person or persons or groups of persons; and/or
 - 8.1.2. unlawfully discriminate directly or indirectly (and in relation to disability for a reason related to disability or failure to make reasonable adjustments) or unlawfully discriminate by way of victimisation or harassment or carry out any other form of unlawful discrimination against any person or persons or groups of persons on grounds of any of the Protected Characteristics or on the grounds of fixed-term status, part-time status, flexible working or any other prohibited actions contrary to the Anti-Discrimination Legislation;
 - 8.1.3. otherwise contravene the Anti-Discrimination Legislation; and/or
 - 8.1.4. treat one group of people less favourably than any other because of any of the Protected Characteristics under the Equality Act 2010 or on the grounds of fixed-term status or part-time status in relation to decisions to recruit, train or promote employees.
- 8.2. The Service Provider (including its agents and employees) shall, and shall procure that all Service Provider Related Parties shall:
- 8.2.1. for the purposes of ensuring compliance with Clause 8.1, in relation to Staff engaged in the provision of the Services, observe as far as possible the provisions of any codes of practice from time to time in force issued by the Equality and Human Rights Commission or by any other body with responsibility for ensuring good practice in equality matters, including but not limited to those provisions recommending the adoption, implementation, and monitoring of an equal opportunities policy;
 - 8.2.2. in performing its or their obligations under this Agreement, have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups or sexes or persons with disabilities and to comply with all similar obligations under the Anti-Discrimination Legislation;

- 8.2.3. notify the Authority Representative as soon as reasonably practicable in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider or any Service Provider Related Party in relation to the provision of the Services under any Anti-Discrimination Legislation; and
 - 8.2.4. assist the Authority with compliance with any equality scheme introduced or promoted by the Authority in respect of race, gender and/or disability as reasonably and expressly directed by the Authority (provided that such assistance does not incur additional cost to the Service Provider over and above that which the Service Provider would incur in respect of any acts which it is required to take under Law).
- 8.3. 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 Service Provider's performance of its obligations under this Agreement being in possible contravention of the Anti-Discrimination Legislation, the Service Provider shall, and shall procure that any relevant Service Provider Related Party shall, free of charge:
- 8.3.1. provide any information requested in the timescale allotted;
 - 8.3.2. attend any meetings as required and require any relevant members of its staff to attend such meetings;
 - 8.3.3. promptly allow access to and investigation of any documents or data deemed to be relevant;
 - 8.3.4. appear as witness in any ensuing proceedings, and require relevant members of its staff to do so; and
 - 8.3.5. co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 8.4. In the event of any finding of unlawful discrimination under the Anti-Discrimination Legislation being made against the Service Provider and/or against any Service Provider Related Party during the Term, or of any adverse finding in any formal investigation in respect of equality matters by any Relevant Authority or Regulatory Body over the same period, the Service Provider shall:
- 8.4.1. inform the Authority of its finding (subject to any relevant duty of confidentiality imposed on the Service Provider);
 - 8.4.2. take all appropriate steps (including those that may be required by the Authority) to prevent repetition of any unlawful discrimination; and
 - 8.4.3. indemnify the Authority against any Direct Losses in connection with any investigation or proceedings, save to the extent that the Authority is found to be at fault in respect of the matters which are the subject of the relevant investigation or proceedings (unless the Service Provider is aware of such matters and has unreasonably failed to resolve them prior to the commencement of such investigation or proceedings).
- 8.5. The Service Provider shall on request provide the Authority with details of any steps taken under Clause 8.4.
- 8.6. The Service Provider's equal opportunities policy shall be published to all Staff and to all Service Provider Related Party's staff concerned with management of staff (including but not limited to disciplinary matters, responsibility for recruitment, training and promotion), in relevant documentation available to its Staff and others and in its recruitment advertisements and other relevant literature.

- 8.7. The Service Provider shall procure that all Staff receive appropriate training in the application of the Anti-Discrimination Legislation and all relevant Guidance to the provision of the Services.
- 8.8. The Service Provider shall:
- 8.8.1. monitor representation amongst its Staff and the employees of Service Provider Related Parties; and
 - 8.8.2. provide such information as the Authority may reasonably request for the purpose of assessing the Service Provider's and/or any Service Provider Related Party's compliance with the above conditions, including, if requested, examples of any instructions, recruitment advertisements or other literature, and details of such monitoring of applicants and Staff.
- 8.9. The Service Provider shall have an equal opportunities policy or equivalent policy detailing:
- 8.9.1. its approach to eliminating unlawful discrimination against its employees, consultants, sub-contractors and Service Users on the basis of any of the Protected Characteristics; and
 - 8.9.2. the Service Provider's approach to promoting good relations between various groups covered by the Anti-Discrimination Legislation; and
 - 8.9.3. its process for monitoring all forms of harassment, bullying or intimidation.

9. Staff

- 9.1. The Service Provider will at all times ensure that Services are performed by appropriately qualified and trained Staff.
- 9.2. The Service Provider shall:
- 9.2.1. provide a sufficient number of supervisory staff to ensure that any Staff engaged in the provision of the Services are at all times adequately supervised and trained and properly perform their duties to the standards set out in this Agreement;
 - 9.2.2. employ at all times an adequate number of sufficiently qualified, certified, skilled and experienced Staff (including apprentices) to provide the Services in order to ensure adequate support for Service Users;
 - 9.2.3. provide opportunities for the employment of apprentices to be involved in the delivery of the Services;
 - 9.2.4. ensure that:
 - 9.2.4.1. all Staff have the right to work in the United Kingdom; and
 - 9.2.4.2. it and all Service Provider Related Parties have current and valid evidence on file of such right,and indemnify and keep indemnified the Authority against any claims, proceedings, loss or damages as may be occasioned in relation to any breach of the Service Provider's obligations under this sub-Clause;
 - 9.2.5. be responsible for all remuneration, benefits, entitlements and outgoings in respect of all Staff, including (without limitation) all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise;

- 9.2.6. ensure that its Staff perform their duties in as orderly, caring and sensitive a manner as may reasonably be practicable having regard to the nature of the duties being performed by them and shall ensure that its Staff and other employees (as applicable) are aware of and comply with the contents of this Agreement and specific instructions issued to them from time to time by the Authority or any other agency responsible for the care of Service Users;
- 9.2.7. employ or cause to be employed in the performance of the Services only such persons who are medically fit as appropriate for their specific responsibilities and duties (subject to the Service Provider's duty to make reasonable adjustments under the Equality Act 2010), careful and competent in the execution of their duties and either appropriately trained, skilled and experienced in their professions and vocations, or, in the case of trainees, properly supervised;
- 9.2.8. instruct all its Staff that respect shall be accorded by them towards all Service Users and their relatives and members of the public with whom they have contact;
- 9.2.9. where the nature or the place of any duties upon which the Staff shall be engaged in the provision of the Services make the wearing of any special or protective clothing and footwear necessary or appropriate, provide, and shall require its Staff wear, such clothing or footwear; and
- 9.2.10. provide a means of identification to all Staff in a form approved by the Authority in writing and in advance, and require all Staff to wear and keep visible such identification at all times whilst providing the Services (and make it available for inspection on request by any officer(s) of the Authority who shall similarly disclose their identity; and
- 9.2.11. procure that, before each member of Staff begins to perform the Services:
 - 9.2.11.1. each member of Staff is questioned as to whether he or she has any convictions or cautions;
 - 9.2.11.2. the results of a check of the most extensive available kind made with the DBS, and notify the results of such checks to the Authority in writing; and
 - 9.2.11.3. provide a risk assessment to the Authority in respect of any member of Staff who discloses convictions or cautions or is found to have convictions or cautions following a DBS check.
- 9.3. The Service Provider shall ensure it has systems in place to effectively monitor the work of its Staff and shall provide evidence of such systems to the Authority whenever the Authority reasonably requests.
- 9.4. The Service Provider shall carry out quality control inspections of the Services and covering all aspects of its activity at a minimum on a quarterly basis, the first such quality control inspect to take place on the date falling no later than the end of the third (3rd) Month after the Month in which the Commencement Date occurs. The findings of such inspections shall be documented by the Service Provider and made available to the Authority upon its reasonable request.
- 9.5. The Service Provider shall ensure that:
 - 9.5.1. so far as is possible, Service Users receive delivery of the Services by the same members of staff throughout to course of the Placement Agreement and, in each case at the same Care Home; and

- 9.5.2. each Service User is aware of which Staff will be delivering the Services under his or her Placement Agreement and, if sickness or other events prevent the usual Staff from attending, the Service Provider shall make appropriate replacement arrangements and to notify the Service User of the alternative arrangements in advance.
- 9.6. The Service Provider shall organise its affairs in such a way as to ensure that TUPE shall not apply at the End Date or the Termination Date and that therefore there will be no person employed by the Service Provider or any of its sub-contractors at or immediately before the End Date and/or the Termination Date whose contract of employment will transfer to any other person (whether in accordance with TUPE or otherwise) as a result of the expiry of the Term or the earlier termination of this Agreement.
- 9.7. For the duration of the Term and for a period of 12 Months following the Termination Date and/or the expiry of the Term (as applicable) neither Party 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 (including the Authority Representative) and/or the carrying out of the Services and of delivery of the Placement Agreement without the relevant Party's prior written approval.

10. Health and Safety

- 10.1. The Service Provider shall promptly notify the Authority of any health and safety hazards identified as "high risk" hazards in any of its risk assessments.
- 10.2. The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and legally binding codes of practice relating to health and safety, which may apply to Staff engaged in the delivery of the Services.
- 10.3. The Service 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 Authority on request.

11. Performance Monitoring

- 11.1. The Service Provider shall comply with the performance monitoring requirements set out in the Specification.

12. Monitoring by the Authority and the CQC

- 12.1. Subject to Clause 20 (Confidentiality) and the provisions of the Data Protection Legislation:
- 12.1.1. all monitoring of the Services covered by this Agreement is additional to any requirements of the CQC. The Authority shall have the right to share with the CQC the findings of its monitoring inspections and any other information it comes into possession of that it considers is pertinent and relevant for the CQC to know provided that the Authority shall provide the Service Provider on request with copies of such shared information; and
- 12.1.2. the Authority shall have the right to share with any other Relevant Authority or Regulatory Body the finding of its monitoring inspections and any other information it comes into possession of which the Authority believes is reasonable for other relevant organisations to know.

13. Sub-Contracting Requirements

- 13.1. The Service Provider shall not sub-contract the delivery of all part of the Services without the prior written consent of the Authority (such consent to be delayed and/or withheld and/or be given on such conditions as the Authority may specify at the absolute discretion of the Authority).

14. Safeguarding

- 14.1. The Service Provider shall use its best endeavours to ensure that Service Users are safeguarded from any form of harm, abuse, neglect or exploitation (whether physical, financial, psychological or sexual) through intended or negligent acts or omissions of the Service Provider and/or its Staff.
- 14.2. On or before the Commencement Date, the Service Provider shall put or have in place a policy designed to safeguard the wellbeing of Service Users (the "**Safeguarding Policy**"). The Safeguarding Policy must effectively:
- 14.2.1. implement any Law relating to the safeguarding of vulnerable adults; and
 - 14.2.2. implement the Authority's internal policies and procedures relating to the safeguarding of vulnerable adults; and
 - 14.2.3. set out how concerns relating to safeguarding will be dealt with (such process to be aligned with the Care Act 2004) and complement the Pan-London Multi Agency Adult Safeguarding policy and the Authority Policies.
- as applicable and as amended from time to time.
- 14.3. The Safeguarding Policy must actively encourage the immediate reporting by Staff of any allegation, suspicion, incident or risk or incident of harm, neglect or abuse (whether physical, financial, psychological or sexual) of any individual affected by the Services, whether the Service User or otherwise, to:
- 14.3.1. the Authority Representative; and
 - 14.3.2. the Authority's Adult Social Care Access Team.
- 14.4. The Service Provider shall comply with its Safeguarding Policy:
- 14.4.1. where allegations of abuse towards any individual affected by the Services, whether the Service User or otherwise, by a person other than the Service Provider or its Staff are made or where the Service Provider or any Service Provider Related Party suspects abuse is taking place towards an individual;
 - 14.4.2. where allegations of abuse (including verbal, emotional and/or physical abuse) and/or misconduct (including theft of property, personal possessions and/or cash) towards any individual affected by the Services, whether the Service User or otherwise are made against a member of Staff or where the Service Provider suspects a member of Staff or any other staff member of being guilty of abuse and/or misconduct. In either such case the Service Provider shall carry out a risk assessment and, where appropriate, suspend or dismiss the relevant Staff member; and
 - 14.4.3. in any situation where the Service Provider believes that a vulnerable Service User is suffering or is likely to suffer significant harm.
- 14.5. Where any of the situations set out in Clause 14.4 apply, the Service Provider shall take all action as necessary to ensure the safety and wellbeing of the Service User and shall immediately and in any event within one (1) Business Day notify the CQC Inspector and (unless prevented from doing so by Law and only to the extent to which it is prevented from doing so by Law) the Safeguarding Adults Manager, and the Authority Representative.
- 14.6. The Service Provider shall appoint an individual of sufficient seniority to have overall responsibility for and supervision of the implementation and monitoring of the Safeguarding Policy.

14.7. The Service Provider shall regularly and appropriately train all staff (or procure that staff are trained) in the content and requirements of the Safeguarding Policy so that all staff comply with the Safeguarding Policy and implement it in full.

15. DBS Checks

15.1. The Service Provider shall:

15.1.1. ensure that all Staff are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the two DBS "barred lists" for adults and children;

15.1.2. record, monitor and where necessary update the DBS checks referred to in this Clause 15.1 for all Staff; and

15.1.3. question each member of staff (or procure that each member of staff is questioned) as to whether they have any convictions and/or cautions.

15.2. The Service Provider shall make referrals to the DBS as and when required by Law and inform the Authority of any referrals as soon as possible and in any event within five (5) Business Days of the referral. The Service Provider shall ensure that all contracts of employment of its Staff allow for the sharing of the information required under this Clause 15.2.

15.3. The Service Provider shall not employ or otherwise engage any person who is in any way barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to Service Users.

15.4. The Service Provider shall comply with all guidance issued by the DBS as applicable and as amended from time to time.

15.5. The Service Provider shall operate a recruitment and ongoing Staff monitoring procedure which implements the Authority's safe recruitment and disciplinary standards, complies with Law relating to the safeguarding of vulnerable adults and ensures the protection of Service Users. Such procedure shall include but not be limited to:

15.5.1. use of an appropriate application form;

15.5.2. face to face interviews;

15.5.3. checking self-declaration forms for relevancy to the role;

15.5.4. checking references before confirming appointment;

15.5.5. a probationary and supervision period for new Staff;

15.5.6. conducting personal development reviews;

15.5.7. continually monitoring conduct; and

15.5.8. conducting regular risk assessments.

15.6. The Service Provider will ensure that all Staff are subject to a new valid enhanced disclosure check undertaken through the DBS including a check against the two DBS "barred lists" for adults and children no less frequently than every three years from the date of the last check carried out pursuant to clause 15.1 or this clause 15.6 (as applicable).

16. Payment Terms

16.1. The Parties shall comply with their respective obligations pursuant to Schedule 4 (Payment Terms).

17. Service User Satisfaction Monitoring by the Authority

- 17.1. If requested by the Authority the Service Provider shall undertake a Service User satisfaction survey (each an "**Service User Satisfaction Survey**") at such frequencies so that the Service Provider can accurately establish the level of Service User satisfaction and identify any matters which are detrimental to the satisfaction the Service Users.
- 17.2. Each Service User Satisfaction Survey which the Authority requests to be carried out pursuant to clause 17.1 shall be conducted in such a way so as to:
- 17.2.1. assess the level of satisfaction among Service Users with the provision of the Services (including the manner in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the supply of those Services;
 - 17.2.2. monitor the performance of the Service Provider in accordance with the Specification; and
 - 17.2.3. such other assessment as it may deem appropriate for monitoring Service User satisfaction.
- 17.3. Where the Authority has requested that a Service User Satisfaction Survey should be carried out pursuant to clause 17.1, the Service Provider shall:
- 17.3.1. report to the Authority on the results of each Service User Satisfaction Survey; and
 - 17.3.2. implement any improvements to its execution of the Services so that the Services comply with the standards specified in this Agreement and otherwise as it considers prudent, having regard to the results of each Service User Satisfaction Survey.

18. Complaints Handling

- 18.1. The Service Provider shall establish a written formal procedure for dealing with any complaints about the provision of the Services. The Service Provider must make the complaints procedure known to and available to every Service User in a format which is suitable to each Service User's needs. These procedures must include the following details:
- 18.1.1. how to lodge a complaint;
 - 18.1.2. who will deal with the complaint and carry out the investigation and how they will respond;
 - 18.1.3. the time limit within which a response will be made; and
 - 18.1.4. the address and telephone number in order that the complainant may make use of the Authority's own complaints procedure as communicated to the Service Provider by the Authority from time to time.
- 18.2. The Service Provider shall clearly inform each Service User, his or her family and anyone representing them that they may opt to submit any complaint which they wish to make direct to the Authority at the address is set out at Clause 18.1.4.
- 18.3. Any potentially or actually serious complaint received from a Service User for whom the Authority has a statutory responsibility shall be notified to the Authority by the Service Provider at the earliest opportunity and in any case within two (2) Business Days of its receipt.
- 18.4. Should any Service User, his or her family or anyone representing him or her submit a complaint to the Authority, the Service Provider shall co-operate fully with any ensuing investigation and use

all reasonable endeavours to rectify or correct any matter giving rise to a complaint to the extent substantiated in whole or in part (time being of the essence).

- 18.5. The Service Provider shall keep a centrally held written record of all Service Users' compliments and complaints and any remedial action taken (the "**Compliments and Complaints Log**"). The Compliments and Complaints Log is to be available for inspection by the Authority at all times on reasonable notice, except in the case of emergency.
- 18.6. The Compliments and Complaints Log shall be retained by the Service Provider for a minimum period of six (6) years following expiry of earlier termination of this Agreement.

19. Data Protection

- 19.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor unless otherwise specified in Schedule 11. The only processing that the Processor is authorised to do is listed in Schedule 11 by the Controller and may not be determined by the Processor.
- 19.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 19.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - 19.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 19.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the delivery of the Services;
 - 19.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 19.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 19.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement;
 - 19.4.1. process that Personal Data only in accordance Schedule 11, unless the Processor is required to do otherwise by Law. If it is so required to process the Personal Data otherwise by Law, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 19.4.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - 19.4.2.1. nature of the data to be protected;
 - 19.4.2.2. harm that might result from a Data Loss Event;
 - 19.4.2.3. state of technological development; and
 - 19.4.2.4. cost of implementing any measures;
 - 19.4.3. ensure that:

- 19.4.3.1. the Processor Personnel do not process Personal Data except in accordance with this Agreement;
 - 19.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any of Processor Personnel who have access to the Personal Data and ensure that they:
 - 19.4.3.2.1. are aware of and comply with the Processor's duties under this Clause 19;
 - 19.4.3.2.2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - 19.4.3.2.3. 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 Controller or as otherwise permitted by this Agreement; and
 - 19.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 19.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 19.4.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - 19.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 19.4.4.3. the Processor 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 Controller in meeting its obligations); and
 - 19.4.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - 19.4.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 19.5. Subject to Clause 19.6, the Processor shall notify the Controller immediately if it:
- 19.5.1. receives a Data Subject Request (or purported Data Subject Request);
 - 19.5.2. receives a request to rectify, block or erase any Personal Data;
 - 19.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 19.5.4. receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 19.5.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

- 19.5.6. becomes aware of a Data Loss Event.
- 19.6. The Processor's obligation to notify under Clause 19.5 shall include the provision of further information to the Controller in phases, as details become available.
- 19.7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 19.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 19.7.1. the Controller with full details and copies of the complaint, communication or request;
 - 19.7.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 19.7.3. the Controller at its request, with any Personal Data it holds in relation to a Data Subject;
 - 19.7.4. assistance as requested by the Controller following any Data Loss Event;
 - 19.7.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 19.8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 19.8.1. the Controller determines that the processing is not occasional;
 - 19.8.2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 19.8.3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 19.9. The Processor shall allow for audits of its data processing activity by the Controller or the Controller's designated auditor.
- 19.10. The Processor shall designate a data protection officer if required by the Data Protection Legislation.
- 19.11. Before allowing any Sub-processor to process any Personal Data related to this Agreement the Processor must:
- 19.11.1. notify the Controller in writing of the intended Sub-processor and processing;
 - 19.11.2. obtain the written consent of the Controller;
 - 19.11.3. enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 19 such that they apply to the Sub-processor; and
 - 19.11.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 19.12. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 19.13. The Controller may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard conditions or similar

terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

19.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

19.15. The Service Provider shall indemnify and keep indemnified the Authority in respect of all Losses suffered or incurred by, awarded against or agreed to be paid by the Authority arising from or in connection with:

19.15.1. any breach by the Service Provider of any of its obligations under this Clause 19; or

19.15.2. the Service Provider (or any person acting on its behalf) acting outside or contrary to the lawful processing instructions of the Authority in respect of the processing of Personal Data.

19.16. This Clause 19 is intended to apply to the allocation of liability for Losses as between the Parties arising from or in connection with those circumstances set out at Clause 19.15.1 and 19.15.2, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Legislation to the contrary except:

19.16.1. to the extent not permitted by applicable Law (including Data Protection Legislation; and

19.16.2. that it does not affect the liability of either Party to any Data Subject.

19.17. The Service Provider shall not be responsible for or be obliged to indemnify the Authority pursuant to Clause 19.15 to the extent that:

19.17.1. any matter referred to in Clause 19.15 arises as a direct result of the Service Provider acting on written notice or written request issued by the Authority; or

19.17.2. any injury, loss, damage, cost and expense is caused by the negligence or wilful misconduct of the Authority (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Service Provider of its obligations under this Agreement) or by the breach of the Authority of its obligations under this Agreement.

19.18. The provisions of this Clause 19 shall continue in force until a period of six (6) years after the expiry or earlier termination of this Agreement.

20. Confidentiality

20.1. Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

20.1.1. treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

20.1.2. not disclose any Confidential Information belonging to the other Party to any other person without the prior written approval of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or is a requirement of Law.

20.2. Each Party shall take all necessary precautions to ensure that all Confidential Information obtained by it under or in connection with this Agreement:

- 20.2.1. is given only to its Related Parties engaged to advise it in connection with this Agreement and then only to the extent strictly necessary for the performance of this Agreement; and
 - 20.2.2. is treated as confidential and not disclosed (without the prior written approval of the disclosing Party) or used by the receiving Party or its Related Parties otherwise than for the purposes of and in accordance with this Agreement.
- 20.3. The receiving Party shall ensure that Non-Party Recipients are aware of the receiving Party's confidentiality obligations under this Agreement and shall use its best endeavours to ensure that any Non-Party Recipient complies with the receiving Party's confidentiality obligations under this Agreement.
- 20.4. The provisions of Clauses 20.1, 20.2 and 20.3 shall not apply to any Confidential Information received by one Party from the other which:
- 20.4.1. is or becomes public knowledge (otherwise than by breach of this Clause 20);
 - 20.4.2. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - 20.4.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 20.4.4. is information independently developed without access to the Confidential Information;
 - 20.4.5. must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure; or
 - 20.4.6. is disclosed on a confidential basis for the purpose of obtaining professional advice.
- 20.5. If Confidential Information is related to:
- 20.5.1. any committee, sub-committee or joint committee of the Authority; or
 - 20.5.2. any executive decision of the Authority,
- and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to Confidential Information, provided that such Confidential Information is exempt information within the meaning of the Local Government Act 1972 (as amended) the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) Regulations 2012 (as amended) to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Service Provider and where reasonably practicable shall consider any representations of the Service Provider.
- 20.6. Nothing in this Agreement shall prevent the Authority from disclosing Service Provider Confidential Information:
- 20.6.1. for the purpose of the examination and certification of the Authority's accounts;
 - 20.6.2. for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 20.6.3. for the purpose of any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998;

- 20.6.4. to any government department or any "contracting authority" (as defined in the Regulations) and the Service Provider hereby acknowledges that all government departments or contracting authorities receiving such Service Provider Confidential Information may further disclose the Service Provider Confidential Information to other government departments or 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 government department or any contracting Authority;
- 20.6.5. for the purpose of disseminating knowledge of the Services and their performance to Service Users;
- 20.6.6. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 20.6.7. on a confidential basis to a professional advisor, consultant, supplier or other person engaged by any Partner Organisation for any purpose relating to or connect with this Agreement.
- 20.6.8. on a confidential basis for the purpose of the exercise of its rights under this Agreement, including audit rights pursuant to Clause 24 and the Exit Requirements as set out in Schedule 9 (Exit Requirements); or
- 20.6.9. on a confidential basis to a proposed successor body of the Authority in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement containing terms no less stringent than those placed on the Authority under this Clause 20.

- 20.7. In the event that the Service Provider fails to comply with Clauses 20.1 the Authority reserves the right to terminate this Agreement.
- 20.8. The Service Provider shall indemnify and keep the Authority indemnified against any Losses suffered or incurred by the Authority as a result of any breach of this Clause 20.
- 20.9. The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause 20 and therefore in addition to any right to damages, a Party shall be entitled to seek remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Clause 20.

21. Freedom of Information

- 21.1. The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its information disclosure obligations.
- 21.2. The Service Provider shall and shall procure that any Service Provider Related Party shall:
 - 21.2.1. notify the Authority of all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;
 - 21.2.2. provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within two (2) Business Days (or such other period as the Authority may specify) of the Authority's request; and

- 21.2.3. provide all necessary assistance reasonably requested by the Authority to enable the Authority 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.
- 21.3. The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations (as applicable).
- 21.4. In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority (and the Service Provider shall procure that no Service Provider Related Party responds directly to a Request for Information).
- 21.5. The Authority will use reasonable endeavours to consult with the Service Provider regarding any potential disclosure of information concerning the Service Provider or the Services under the FOIA or the Environmental Information Regulations. To the extent that the Authority is unable to consult with the Service Provider (despite having used reasonable endeavours), the Authority shall take reasonable steps to give the Service Provider advanced notice of disclosure, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

22. Transparency

- 22.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations, the content of this Agreement is not Confidential Information. Subject to Clause 22.3, the Authority shall be responsible for determining at its sole discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 22.2. The Service Provider hereby gives its consent for the Authority to publish this Agreement in its entirety (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations being redacted) including from time to time agreed changes to this Agreement, to the general public.
- 22.3. The Authority shall use reasonable endeavours to consult with the Service Provider to inform its decision regarding any exemptions under Clause 21 (Freedom of Information) but the Authority shall have the final decision in its absolute discretion.
- 22.4. The Service Provider acknowledges that in order to comply with the Government's policy on transparency, the Authority is required to disclose information on its website in relation to expenditure over five hundred pounds sterling (£500.00) in relation to this Agreement. The information will include the Service Provider's name and the net value of any payment made to the Service Provider. The Parties acknowledge and agree that this information is neither Confidential Information nor commercially sensitive.

23. Publicity and Branding

- 23.1. Unless otherwise directed by the Authority, the Service Provider shall not make any press announcements or publicise its participation in this Agreement in any way without the Authority's prior written consent.
- 23.2. The Authority shall be entitled to publicise this Agreement in accordance with any legal obligation imposed upon the Authority, including examination of this Agreement by Auditors or otherwise.

23.3. The Service Provider shall assist and co-operate with the Authority to enable to Authority to publicise this Agreement.

23.4. Neither Party shall do anything or cause anything to be done, which may damage the reputation of the other Party or bring the other Party into disrepute.

24. Records and Audit Rights

24.1. The Service Provider shall keep and maintain until six (6) years after the date of termination or expiry of this Agreement (or such other longer period as may be requested by the Authority, acting reasonably), full and accurate records and accounts of the operation of this Agreement.

24.2. The Service Provider shall keep the records and accounts referred to in Clause 24.1 in accordance with Good Industry Practice.

24.3. The Service Provider shall on reasonable notice and during normal business hours (and shall procure that any Service Provider Related Party) shall afford each of the Authority (or any Relevant Person), the National Audit Office, the Commissioner for Local Administration (Ombudsman) and/or auditor appointed by the Audit Commission ("**Auditors**") and their respective representatives (subject to the provisions of the Data Protection Legislation, where applicable) access to the records and accounts referred to in Clause 24.1 (including access to any IT systems and devices which store such records and accounts) and/or provide copies of such records and accounts, as may be required and agreed with the Authority (or Relevant Person or Auditors) from time to time, in order that the Authority (or Relevant Person or Auditors) may carry out an inspection including for the following purposes:

24.3.1. to verify the accuracy of fees charged by the Service Provider under this Agreement and their compliance with the requirements of Schedule 4 (Payment Terms);

24.3.2. to review the integrity, confidentiality and security of the Service User Personal Data held or used by the Service Provider;

24.3.3. to review the Service Provider's compliance with the Data Protection Legislation in accordance with this Agreement and any Laws;

24.3.4. to review the Service Provider's compliance with its security obligations;

24.3.5. to review any books of accounts or other financial records kept by the Service Provider in connection with the provision of the Services; and

24.3.6. to ensure that the Service Provider is complying with its obligations under this Agreement.

24.4. The Service Provider shall provide such records and accounts, including for the avoidance of doubt, electronic records, (together with copies of the Service Provider's published accounts) on request during the Term and for a period of six (6) years after termination or expiry of this Agreement to the Authority (or Auditors) and/or its internal and external auditors.

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

24.6. Subject to the Authority's obligations of confidentiality, the Service Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

- 24.6.1. all information within the scope of the Audit requested by the Auditors; and
 - 24.6.2. reasonable access to any Service Provider Related Party.
- 24.7. If:
- 24.7.1. an Audit reveals that the Service Provider has overcharged an amount equal to or greater than one per cent (1%) of the fees due in respect of any Invoicing Period unless such amount has been reimbursed prior to the Audit; or
 - 24.7.2. Clause 24.8 applies,
 - then the Service Provider shall reimburse as a debt on demand the Authority the overcharged amount referred to in Clause 24.7.1 and the Authority's costs incurred in relation to the Audit.
- 24.8. If an Audit reveals that the Service Provider has overcharged an amount equal to or greater than five per cent (5%) of the fees due in respect of any Invoicing Period the Authority shall (in addition to the right to be reimbursed in Clause 24.7) be entitled to exercise its rights to terminate this Agreement pursuant to Clause 39 (Termination for Service Provider Default).
- 24.9. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 24, save as specified in Clause 24.7.

25. Authority Warranties and Undertakings

- 25.1. Subject to Clause 25.3, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.
- 25.2. Subject to Clause 25.3, neither the Authority nor any of its agents or employees shall be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
 - 25.2.1. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
 - 25.2.2. any failure to make available to the Service Provider any materials, documents or other information relating to the Services (save where there is an express obligation under this Agreement to do the same).
- 25.3. Nothing in this Clause 25 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Service Provider in respect of any statements made fraudulently.
- 25.4. Subject to Clause 25.3 the Service Provider shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information available before or on the Commencement Date, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

26. Service Provider Warranties and Undertakings

- 26.1. The Service Provider warrants, represents and undertakes to the Authority that, as at the Commencement Date:
 - 26.1.1. the Service Provider is validly authorised and the obligations expressed as being assumed by it under this Agreement constitute valid and binding obligations on its part enforceable against it in accordance with its terms;

- 26.1.2. neither the execution of this Agreement by the Service Provider nor the performance or observation of any of its obligations under it will:
 - 26.1.2.1. conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Service Provider is bound; or
 - 26.1.2.2. cause any limitation on any of the powers whatsoever of the Service Provider or on the right or ability of any directors of the Service Provider to exercise such powers, to be exceeded;
- 26.1.3. the Service Provider is not in default of any law or enactment or any deed, agreement or other instrument or obligation by which it is bound so as to affect adversely its ability to perform its obligations under this Agreement;
- 26.1.4. the Service Provider has obtained all consents required in connection with execution, delivery, issue, validity or enforceability of this Agreement and none have been withdrawn;
- 26.1.5. to the best of the Service Provider's knowledge, there is no litigation or administrative or arbitration proceeding before any court, tribunal, government authority or arbitrator presently taking place in any country, pending or (to its knowledge, information and belief) threatened against, or against any of the Service Provider's assets which might have a material adverse effect on either of its business, assets, condition or operations or might affect adversely its ability to perform its obligations under this Agreement;
- 26.1.6. there has been no material adverse change in the Service Provider's business, assets, operations, data security policies and controls or prospects since such information was provided in the pre-qualification questionnaire;
- 26.1.7. the Service Provider is not aware, after due enquiry, of anything which materially threatens the provision of the Services;
- 26.1.8. there is no charge or other form of security over the Service Provider or any of its assets which could affect the ability of the Service Provider to deliver the Services;
- 26.1.9. the Service Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract;
- 26.1.10. no order has been made and no resolution has been passed for the winding up of the Service Provider or for a provisional liquidator to be appointed in respect of the Service Provider and no petition has been presented and no meeting has been convened for the purpose of winding up the Service Provider;
- 26.1.11. no administration order has been made and no petition for such an order has been presented in respect of the Service Provider, nor has any administrator been appointed in respect of the Service Provider, nor has any notice of intention to appoint any such administrator been given, nor have any steps been taken by any person (including the Service Provider, or any directors) to appoint any such administrator;
- 26.1.12. no person has appointed or threatened to appoint a receiver (including any administrative receiver) in respect of the Service Provider's assets.

- 26.1.13. the Service Provider is not insolvent or unable to pay its debts within the meaning of section 123 Insolvency Act 1986 and has not stopped payment of its debts as they fall due;
- 26.1.14. no voluntary arrangement has been proposed under section 1 Insolvency Act 1986 in respect of the Service Provider;
- 26.1.15. no circumstances have arisen (so far as the Service Provider is aware) which are likely to result in:
 - 26.1.15.1. a contract or transaction to which the Service Provider is party being set aside; or
 - 26.1.15.2. a third party claim involving any asset owned or used by the Service Provider being made under sections 238 or 339 (transactions at undervalue) or 239 or 340 (preferences) of the Insolvency Act 1986; and
- 26.1.16. all Staff assigned to the provision of the Services possess and exercise such qualifications, skills and experience as are necessary for the proper performance of such services.

27. Indemnities

27.1. The Service Provider shall (subject to Clause 27.3) be responsible for, and shall release and indemnify the Authority on demand from and against all liability for Losses arising from:

- 27.1.1. death or personal injury;
- 27.1.2. loss or damage to property; or
- 27.1.3. third party actions, claims and/or demands brought against the Authority, including any fine, penalty or levy imposed on the Authority by any competent authority as a result of breach of statutory duty or otherwise,

in each case which may arise out of, or in consequence of the provision of the Services or the performance or non-performance by the Service Provider of its obligations under this Agreement.

27.2. Nothing in this Agreement excludes or limits the liability of the Service Provider for Losses incurred by the Authority as a result of the Data Protection Legislation where the Service Provider is at fault, as set out in Condition 19.15;

27.3. The Service Provider shall not be responsible or be obliged to indemnify the Authority pursuant to Clause 27.1:

- 27.3.1. for any matter referred to in Clause 27.1 that arises as a direct result of the Service Provider acting on written notice issued by the Authority and which the Service Provider has upon receipt of such written notice, communicated to the Authority the relevant risks associated with the course of action described in the relevant notice; and
- 27.3.2. for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Service Provider of its obligations under this Agreement) or by the breach of the Authority of its obligations under this Agreement.

27.4. The losses for which the Service Provider assumes responsibility and which shall be recoverable by the Authority shall include, but not be limited to the following:

- 27.4.1. the costs and expenses reasonably incurred by the Authority in procuring and implementing alternative or replacement services including consultancy costs, the additional costs of management time and other personnel costs and costs of hardware, software and other equipment and materials; and
- 27.4.2. Direct Losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party against the Authority caused by the act or omission of the Service Provider.

28. Conduct of Claims

- 28.1. In the event that any claim is made against the Authority and it appears that the Authority is or may be entitled to indemnification under this Agreement, the Authority shall:
 - 28.1.1. (other than in respect of indemnification arising under Clause 36 and/or claims relating to the Insurances) notify the Service Provider in writing of any such claim as soon as reasonably practicable after it becomes aware of the same;
 - 28.1.2. (subject to the rights of the insurers under the Insurances) conduct all negotiations and proceedings itself, provided that it shall supply the Service Provider with all information and documents relating to the claim and shall, unless deemed inappropriate by the Authority (acting reasonably) permit the Service Provider to attend any negotiation meetings or proceedings relating to the claim and the Service Provider shall provide the Authority with such reasonable assistance as may be required by the Authority regarding such claim;
 - 28.1.3. not, without the Service Provider's prior written consent (not to be unreasonably withheld or delayed), make any public statement in respect of such claim;
 - 28.1.4. not, without the Service Provider's prior written consent (not to be unreasonably withheld or delayed), make an admission or agree a settlement in respect of the said claim;
 - 28.1.5. use its reasonable endeavours not to prejudice the Service Provider's defence of the said claim or Service Provider's rights in relation to the claim when defending the claim on the Service Provider's behalf (as appropriate); and
 - 28.1.6. use its reasonable endeavours to mitigate any losses in relation to the said claim.

29. Force Majeure

- 29.1. Neither Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party nor incur any liability to the other Party for any Losses incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by the occurrence of that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Agreement for a Service Provider Default if such Service Provider Default arises from a Force Majeure Event, (but without prejudice to Clause 41 (Termination for Continuing Force Majeure)).
- 29.2. A Party may not claim relief if the Force Majeure Event is attributable to its wilful act or omission, neglect or failure to take reasonable precautions or make reasonable effort to prevent against the Force Majeure Event.
- 29.3. On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

- 29.4. As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 29.5. The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Parties shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 29.6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 29.7. The Service Provider shall maintain the Business Continuity Plan in accordance with Good Industry Practice and provide the Authority with each iteration of the Business Continuity Plan for approval.
- 29.8. The Service Provider shall inform the Authority as soon as is reasonably practicable of each occasion where, in the opinion of the Service Provider (acting reasonably) the occurrence of industrial action by the Staff is likely and which may impact upon the ability of the Service Provider to perform the Services.
- 29.9. As soon as is reasonably practicable following the provision of a notice described in Clause 29.8, the Service Provider shall inform the Authority of the actions it intends to take in order to ensure that any industrial action by any Staff does not impact on the provision of the Services (a "**Draft Industrial Action Plan**") for the approval of the Authority (such approval not to be unreasonably withheld or delayed) such approved plan being an "**Industrial Action Plan**".
- 29.10. The Service Provider shall implement each Industrial Action Plan in accordance with its terms.
- 29.11. If the Service Provider does not provide a Draft Industrial Action Plan in accordance with clause 31.9 or the Authority (acting reasonably) with holds its approval of the Draft Industrial Action Plan, the Authority shall be entitled to terminate this Agreement in accordance with Clause 40.2.

30. Best Value

- 30.1. The Service Provider acknowledges that:
- 30.1.1. the Authority is subject to the Best Value Duty; and
 - 30.1.2. the provisions of this Clause 30 (Best Value) are intended to assist the Authority in discharging its Best Value Duty in relation to the delivery of the Services.
- 30.2. The Service Provider shall, throughout the Term, but only to the extent of its obligations in this Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 30.3. The Service Provider shall undertake or refrain from undertaking such actions in relation to the Services as the Authority shall reasonably request in writing to enable the Authority to comply with Part 1 of the 1999 Act.

31. Insurances

- 31.1. The Service Provider shall take out and maintain or procure the maintenance of the Insurances in accordance with the provisions of Schedule 8 (Insurances).
- 31.2. The maintenance of the Insurances (or the extent of cover procured under the Insurances) shall not limit the liability of the Service Provider to the Authority or relieve the Service Provider of any Obligation to the Authority in any way.

32. Bribery and Corruption

- 32.1. The Service Provider shall not:
 - 32.1.1. offer or give, or agree to give, to the Authority or any Relevant Person any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Agreement, or any other contract with the Authority;
 - 32.1.2. engage in and shall procure that all the Service Provider Related Parties or any person acting on the Service Provider's behalf shall not commit any Prohibited Act.
- 32.2. The Service Provider warrants, represents and undertakes to the Authority that it has not:
 - 32.2.1. in entering into this Agreement breaching the provisions of Clause 32.1; or
 - 32.2.2. paid commission or agreed to pay commission to the Authority or any Relevant Person in connection with this Agreement; or
 - 32.2.3. entered into this Agreement with knowledge, that, in connection with it, any money has been, or will be, paid to the Authority or any Relevant Person in connection with this Agreement, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before execution of this Agreement.
 - 32.2.4. If the Service Provider or any Service Provider Related Party or any person acting on the Service Provider's behalf, in all cases whether or not acting with the Service Provider's knowledge:
 - 32.2.4.1. breaches this Clause 32; or
 - 32.2.4.2. commits an offence under the Bribery Act 2010 in relation to this Agreement,

the Authority shall be entitled to terminate this Agreement by written notice with immediate effect in accordance with Clause 39 (Termination for Service Provider Default).

- 32.3. Without prejudice to its other rights and remedies under this Clause 32, the Authority shall be entitled to recover in full from the Service Provider and the Service Provider shall on demand indemnify the Authority in full from and against:
 - 32.3.1. the amount of value of any such gift, consideration or commission; and
 - 32.3.2. any other loss sustained by the Authority in consequence of any breach of this Clause 32.

33. Safeguard against Fraud

- 33.1. The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraudulent activity by the Service Provider and any Service Provider Related Party.

- 33.2. The Service Provider shall notify the Authority immediately and in writing if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur save where complying with this provision would cause the Service Provider or any Service Provider Related Party to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 33.3. If the Service Provider or any Service Provider Related Party commits Fraud, the Authority may:
- 33.3.1. terminate this Agreement in accordance with Clause 41 (Termination for Service Provider Default) and recover from the Service Provider the amount of any Loss suffered by the Authority resulting from the termination; or
 - 33.3.2. recover in full from the Service Provider the relevant gift, consideration or other asset which was the subject of the Fraudulent activity.

34. Conflicts of Interest

- 34.1. The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider Related Party are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or a Service Provider Related Party in the duties owed to the Authority and/or any Service User under the provisions of this Agreement.
- 34.2. The Service Provider shall promptly notify in writing and provide full particulars to the Authority if such conflict referred to in Clause 34.1 above arises or may reasonably be foreseen as arising and shall confirm in such notice the steps the Service Provider proposes to take in order to rectify the relevant conflict of interest.
- 34.3. Following issue by the Service Provider of a notice pursuant to Clause 34.2 in respect of a conflict of interest which is remediable, the Authority shall afford the Service Provider a reasonable period (such period not to exceed twenty (20) Business Days unless agreed otherwise by the Authority) to remedy the relevant conflict of interest, provided that the Service Provider shall comply with any reasonable instructions from the Authority in this respect.
- 34.4. In the event that there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Authority and/or any Service User under the provisions of this Agreement and the Authority reasonably considers that the conflict of interest could have a material adverse effect on the Authority's business or the provision of the Services to a Service User under this Agreement.
- 34.4.1. where the conflict of interest is remediable, the Service Provider shall take such steps as are necessary to remedy the conflict of interest , provided that, where the Service Provider does not take such actions as are required to remedy the conflict of interest, then the Authority may serve a notice pursuant to Clause 40.2; and
 - 34.4.2. where the conflict of interest is not remediable, then the Authority shall be entitled to exercise its rights under Clause 43 (Step-In Rights) in respect of the carrying out of the Services which relate to the relevant conflict of interests.

35. Change in Law

- 35.1. The Service Provider shall take all steps necessary to ensure that the Services are delivered and performed in accordance with the terms of this Agreement and all Law following any Change in Law.
- 35.2. The Service Provider acknowledges and agrees that the Service Provider shall not be entitled to:
- 35.2.1. relief from any of its obligations under this Agreement; or

35.2.2. any payment or other form of compensation from the Authority, as a result of the occurrence of a Change in Law.

36. Changes to this Agreement and the Placement Agreement

- 36.1. Any requirement for a Change (including any change to the Services or the related processes and arrangements described in the Specification) shall be subject to the Change Control Procedure.
- 36.2. Where Service Provider, acting in accordance with its obligations under this Agreement, considers that the needs and requirements of the Service User have changed, it shall, in conjunction with the Authority, arrange for assessment of the needs of the Service User (such assessment to be carried out by an appropriately qualified social worker) such that the social worker can produce a revised Detailed Care Plan.
- 36.3. The Authority may undertake a review of the needs and requirements of the Service User at any time and the social worker may produce a revised Detailed Care Plan.
- 36.4. The Authority shall, upon receipt of a revised Detailed Care Plan (whether pursuant to clause 36.2 or 36.3) either:
- 36.4.1. instruct the Service Provider to carry out the Services as set out in the Detailed Care Plan, in which case the Service Provider and the Authority shall (acting reasonably and with due regard for the interests of the Service User and otherwise in accordance with the terms of this Agreement) agree such changes to the Placement Agreement (including the Weekly Rate) as are reasonably required; or
 - 36.4.2. (if the revised Detailed Care Plan would require the Service Provider to provide the Services which are outside of its competency), give notice to the Service Provider that the Placement Agreement shall come to an end, on such notice as notice as is reasonable in the circumstances.

37. Intellectual Property

- 37.1. Except as expressly stated in this Agreement, neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent;
- 37.2. The Authority shall retain ownership of all Intellectual Property Rights in the Deliverables it made or makes available to the Service Provider for the purposes of delivering the Services.
- 37.3. All Intellectual Property Rights in the Deliverables prepared by or for the Service Provider for use, or intended use, in relation to the performance of the Services shall remain with the Service Provider.
- 37.4. The Service Provider hereby grants to the Authority a non-exclusive, royalty free, irrevocable, sub-licensable licence of all Intellectual Property Rights in the Deliverables which arise or are generated or used in connection with the delivery of the Services to use and/or otherwise exploit the same in the provision to third parties of home care services and/or other services that are similar to the Services. All Deliverables shall be provided to the Authority in a generic electronic format and/or through the Authority's adopted electronic system at the relevant time.
- 37.5. Where any Intellectual Property Rights that arise or are generated or used in connection with the Services are owned by a third party, the Service Provider shall procure from that third party for the benefit of the Authority a non-exclusive, royalty free, irrevocable, sub-licensable licence of the same to enable the Authority to use and/or otherwise exploit such Intellectual Property Rights in

the provision to third parties of home care services and/or other services that are similar to the Services.

- 37.6. The Authority shall (to the extent it is permitted to do so) grant a non-exclusive, royalty free, irrevocable (save as provided by Clause 37.10) to the Service Provider to use the Intellectual Property Rights used by the Authority to provide the Services, as at the date immediately prior to the Commencement Date.
- 37.7. The Service Provider shall at all times during the Term on written demand indemnify the Authority and keep the Authority fully indemnified against all Losses, incurred by, awarded against or agreed to be paid by the Authority arising out of any claim or infringement or alleged infringement (including the defence of such infringement or alleged infringement) resulting from the Service Provider's unauthorised use of the Authority's names, logos or trademarks.
- 37.8. The Service Provider shall at all times, during and after the Term, on written demand indemnify the Authority and keep the Authority indemnified against all Losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority arising from an IPR Claim provided that the Authority has complied in full with any terms of use which:
- 37.8.1. relate to the relevant IPR Claim; and
- 37.8.2. have been notified to it in advance and by the Service Provider.
- 37.9. The Service Provider shall have the conduct of any IPR Claims provided that it notifies the Authority of such claims and keeps the Authority consulted on the progress of claims, and shall not settle IPR Claims without the Authority's consent.
- 37.10. On termination or expiry of this Agreement, the licence granted to the Service Provider pursuant to Clause 37.6 shall determine and the Service Provider shall return all materials relating to such licence held in any format.

38. Dispute Resolution Procedure

- 38.1. The Parties shall, in the first instance, attempt in good faith to negotiate a settlement of any Dispute between them arising out of or in connection with this Agreement within twenty (20) Business Days of either Party notifying the other of the Dispute.
- 38.2. If the Dispute cannot be resolved by the Parties pursuant to Clause 38.1, the Parties may by agreement refer it to Mediation pursuant to the procedure set out in Clause 38.3.
- 38.3. If a Dispute is referred to mediation the Parties shall comply with the following provisions:
- 38.3.1. a neutral adviser or Mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Business Days from the date of the proposal to appoint a Mediator or within ten (10) Business Days of notice to either Party that the Mediator is unable or unwilling to act, apply to the CEDR to appoint a Mediator;
- 38.3.2. the Parties shall within ten (10) Business 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 CEDR to provide guidance on a suitable procedure;

- 38.3.3. unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - 38.3.4. if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties with effect from its signature by their duly authorised representatives;
 - 38.3.5. if the Parties fail to reach an agreement on the resolution of the Dispute, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties;
 - 38.3.6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the relevant Dispute may be referred to the courts of England for final determination; and
 - 38.3.7. all costs of mediation shall be borne equally by the Parties unless otherwise directed by the Mediator.
- 38.4. 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.
- 38.5. The obligations of the Service Provider under this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or the courts pursuant to this Clause 38 and the Service Provider and any Service Provider Related Party shall comply fully with the requirements of this Agreement at all times.

39. Service Provider Remedies

- 39.1. The Service Provider shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.
- 39.2. In the event that any undisputed amount correctly rendered by invoice by the Service Provider remains unpaid by the Authority after 30 (thirty) Business Days the Service Provider shall notify the Authority in writing giving the Authority a further 15 (fifteen) Business Days to pay such invoice. If the amount remains unpaid following the expiry of such period, the Service Provider shall be entitled to charge interest from the date on which the 15 (fifteen) Business Day period expired to the Business Day before payment is made at the Prescribed Rate calculated on a daily basis.
- 39.3. It is agreed between the Parties that the interest rate provided for under this clause 40 provides the Service Provider with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

40. Termination for Service Provider Default

- 40.1. Subject to Clauses 40.4.1, 40.5.1, 40.6.1 and 40.7.1 where a Service Provider Default has occurred and the Authority decides to exercise its right to terminate this Agreement, it shall serve a Termination Notice.

40.2. On the occurrence of a Service Provider Default, or within a reasonable time after the Authority becomes aware of the same, and while the same is subsisting, the Authority may act or require action in accordance with the relevant Clauses referred to in the table below:

Limb of definition of Service Provider Default	Brief description (this column is included for ease of reference and shall be disregarded for the purposes of the interpretation of this Agreement)	Consequence	Relevant Clause in the first instance
(a)	Material breach of this Agreement by the Service Provider	Rectification Programme	Clause 40.4
(b)(i)	Material breach of Clause 14 (Safeguarding) by the Service Provider	Opportunity to Remedy	Clause 40.5
(b)(ii)	Material breach of Clause 15 (DBS Checks) by the Service Provider	Opportunity to Remedy	Clause 40.5
(b)(iii)	Material breach of Clause 17 (Data Protection) by the Service Provider	Opportunity to Remedy	Clause 40.5
(b)(iv)	Material breach of Clause 21 (Freedom of Information) by the Service Provider	Opportunity to Remedy	Clause 40.5
(c)(i)	Exercise of Authority's right to terminate this Agreement under Clause 20.7 (Confidentiality)	Rectification Programme	Clause 40.4
(c)(ii)	Exercise of Authority's right to terminate this Agreement under Clause 24.8 (Records and Audit Rights)	Rectification Programme	Clause 40.4
(c)(iii)	Exercise of Authority's right to terminate this Agreement under Clause 32.2.4 (Bribery and Corruption)	Immediate Termination	Clause 40.7
(c)(iv)	Exercise of Authority's right to terminate this Agreement under Clause 33.3.1 (Safeguard against Fraud)	Immediate Termination	Clause 40.7
(c)(v)	Failure to remedy a remediable conflict of interest	Rectification Programme	Clause 40.4
(c)(iv)	Failure to produce Industrial Action Plan	Rectification Programme	Clause 40.4
(d)	Occurrence of Persistent Breach	Termination	Clause 40.6
(e)	Occurrence of an Insolvency Event	Immediate Termination	Clause 40.7
(f)	Abandonment of the Services	Immediate Termination	Clause 40.7

Limb of definition of Service Provider Default	Brief description (this column is included for ease of reference and shall be disregarded for the purposes of the interpretation of this Agreement)	Consequence	Relevant Clause in the first instance
(g)	Revocation of Necessary Consent	Immediate Termination	Clause 40.7
(h)	Occurrence of an unauthorised Change of Control	Termination	Clause 40.9
(i)	Failure to procure and/or maintain the Insurances	Opportunity to Remedy	Clause 40.5

40.3. Where the Authority is terminating this Agreement for a Service Provider Default falling under limb (a) of the definition of Service Provider Default it may rely on a single material breach or on a number of breaches or repeated breaches that taken together constitute a material breach. The Authority agrees that prior to determining whether to exercise any right of termination in respect of limb (a) of the definition of Service Provider Default it shall, acting reasonably and in good faith by reference to the nature of the breach, give all due consideration to taking action other than termination of this Agreement (including exercising its other contractual rights and remedies under this Agreement (having regard to the nature of such rights and remedies) to deal with the breach or circumstances giving rise to the breach.

40.4. Rectification Programme

40.4.1. Where this Clause 40.4 applies (as set out in the table in Clause 40.2), the Termination Notice submitted pursuant to Clause 40.1 shall specify:

40.4.1.1. the type and nature of Service Provider Default that has occurred, giving reasonable details; and

40.4.1.2. that this Agreement will terminate on the day falling fifteen (15) Business Days after the date the Service Provider receives the Termination Notice, unless the Service Provider puts forward an acceptable rectification programme within ten (10) Business Days after the date the Service Provider receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Service Provider Default in accordance with the programme).

40.4.2. If the Service Provider implements the accepted rectification programme in accordance with its terms, the Termination Notice will be deemed to be revoked and this Agreement will continue.

40.4.3. If no acceptable rectification programme has been put forward pursuant to Clause 40.4.1.2 and the Service Provider fails to rectify the Service Provider Default within the time period specified in the Termination Notice this Agreement will terminate on the date set out in the Termination Notice.

40.4.4. If the Service Provider fails to implement any acceptable rectification programme submitted pursuant to Clause 40.4.1.2 in accordance with its terms, this Agreement will terminate on a date notified to the Service Provider by the Authority.

40.5. Opportunity to Remedy

- 40.5.1. Where this Clause 40.5 applies (as set out in the table in Clause 40.2), the Termination Notice submitted pursuant to Clause 40.1 must specify:
 - 40.5.1.1. the type and nature of Service Provider Default that has occurred, giving reasonable details; and
 - 40.5.1.2. that this Agreement will terminate on the day falling fifteen (15) Business Days after the date the Service Provider receives the Termination Notice, unless the Service Provider remedies the Service Provider Default prior to the date which is five (5) Business Days after the date the Service Provider receives the Termination Notice.
- 40.5.2. If the Service Provider remedies the Service Provider Default within the time specified in the Termination Notice, the Termination Notice will be deemed to be revoked and this Agreement will continue in full force and effect.
- 40.5.3. If the Service Provider fails to remedy the Service Provider Default within the time period specified in the Termination Notice, this Agreement will terminate on the date set out in the Termination Notice.

40.6. Termination

- 40.6.1. Where this Clause 40.6 applies (as set out in the table in Clause 40.2), the Termination Notice submitted pursuant to Clause 40.1 must specify:
 - 40.6.1.1. the type and nature of Service Provider Default that has occurred, giving reasonable details; and
 - 40.6.1.2. that this Agreement will terminate on the day falling fifteen (15) Business Days after the date the Service Provider receives the Termination Notice, and this Agreement shall terminate on the date set out in the Termination Notice.

40.7. Immediate Termination

- 40.7.1. Where this Clause 40.7 applies, the Termination Notice submitted pursuant to Clause 40.1 must specify:
 - 40.7.1.1. the type and nature of Service Provider Default that has occurred, giving reasonable details; and
 - 40.7.1.2. that this Agreement will terminate on the next Business Day after the date the Service Provider receives the Termination Notice, and this Agreement shall terminate on the date set out in the Termination Notice.

40.8. Persistent Breach

- 40.8.1. If a particular breach of this Agreement has continued for more than ten (10) Business Days or occurred more than two (2) times in any six (6) Month period then the Authority may serve a notice on the Service Provider:
 - 40.8.1.1. specifying that it is a formal warning notice;
 - 40.8.1.2. giving reasonable details of the breach; and
 - 40.8.1.3. stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

- 40.8.2. If, following service of a warning notice the breach specified has continued beyond ten (10) Business Days or recurred two (2) or more times in the six (6) Month period after the date of service, then the Authority may serve another notice (a "**Final Warning Notice**") on the Service Provider:
- 40.8.2.1. specifying that it is a Final Warning Notice;
 - 40.8.2.2. stating that the breach specified has been the subject of a warning notice pursuant to Clause 40.8.1; and
 - 40.8.2.3. stating that if the breach continues for more than five (5) Business Days or recurs once more within the three (3) Month period after the date of service of the Final Warning Notice, the Authority shall be entitled to terminate this Agreement ("**Persistent Breach**").
- 40.8.3. A warning notice may not be served by the Authority in respect of any breach which has previously been counted in respect of a separate warning notice.

40.9. Change of Control

- 40.9.1. The Service Provider shall notify the Authority immediately if the Service Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Authority immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 40.9.2. The Authority may terminate this Agreement by notice in accordance with Clause 40.1 within six (6) Months of:
- 40.9.2.1. being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
 - 40.9.2.2. where no notification has been made, the date that the Authority becomes aware of the Change of Control,
- if it believes, acting reasonably, that such Change of Control is likely to have an adverse effect on the performance of the Services, but it shall not be permitted to terminate this Agreement where the Authority's approval of the Change of Control was granted prior to the Change of Control occurring.
- 40.9.3. For the purposes of this Clause 40.9, any transfer of shares or of any interest in shares by its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

40.10. Reservation of Rights

- 40.10.1. The rights of the Authority (to terminate or otherwise) under this Clause 39 are in addition (and without prejudice) to any other right or remedy which the Authority may have to claim the amount of Loss or damage suffered by the Authority on account of the acts or omissions of the Service Provider (or to take any action other than termination of this Agreement). The provisions of this Clause 40.9 shall continue in force until a period of six (6) years after the expiry or earlier termination of this Agreement.

41. Termination for Continuing Force Majeure

- 41.1. Either Party may, by written notice to the other, terminate this Agreement in the event that a Force Majeure Event occurs which prevents a Party from performing all or a substantial part of its obligations under this Agreement for a continuous period of more than sixty (60) days.

42. Consequences of Termination

- 42.1. Upon termination of this Agreement in accordance with Clause 39 the Service Provider shall pay to the Authority the Service Provider Default Sum.
- 42.2. The Service Provider acknowledges and agrees that, on termination of this Agreement pursuant to Clause 41 and/or pursuant to expiry of the Term due to the effluxion of time and/or Clause 43, the Service Provider shall have no entitlement to recover (and unconditionally and irrevocably waives its rights to claim) from the Authority any costs, expenses or losses of any kind. The Service Provider has accepted this on the basis that no volume guarantee is granted by the Authority in relation to the provision of the Services by the Service Provider.
- 42.3. On termination of this Agreement pursuant to Clause 41, each Party shall bear its own costs, losses and expenses arising from such termination.
- 42.4. The Parties acknowledge and agree that, save where this Agreement expressly provides otherwise, 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 either Party to recover any amount outstanding at such termination or expiry.
- 42.5. As soon as reasonably practicable (and not later than twenty (20) Business Days following the date of termination or expiry of this Agreement), each Party will return to the other Party all Confidential Information of the other Party and will certify that it does not retain the other Party's Confidential Information.
- 42.6. On expiry or earlier termination of this Agreement, the Service Provider shall do any necessary acts (including entering into any contracts) and comply with the Exit Requirements to ensure that the Authority or any Replacement Service Provider obtains all rights and interests in order to deliver the Services with effect on and from the date of expiry or the date of termination of this Agreement (as applicable). The provisions of this Clause 42.6 shall continue in force until a period of twelve (12) Months after the expiry or earlier termination of this Agreement.

43. Termination under the Public Contracts Regulations 2015

- 43.1. The Authority shall be entitled to terminate this Agreement forthwith upon giving written notice that:
- 43.1.1. this Agreement has been subject to a substantial modification that constitutes a new contract award;
- 43.1.2. it has been discovered after the date of contract award that the Service Provider should have been excluded on mandatory exclusion grounds; and/or
- 43.1.3. the Court of Justice of the European Union has declared a serious infringement by the Authority meaning the Agreement should not have been awarded by the Authority to the Service Provider.

44. Step-In Rights

- 44.1. If the Authority reasonably believes that it needs to take action in connection with this Agreement:

- 44.1.1. where the Service Provider has committed a Service Provider Default which, pursuant to clause 40.5, it is been provided with an opportunity to remedy;
 - 44.1.2. the Provider has had its CQC registration suspended and/or cancelled;
 - 44.1.3. where the Authority, acting reasonably, considers there is a significant risk to the safety and/or wellbeing of one or more Service Users if the Provider continues to deliver the Services under the Placement Agreement;
 - 44.1.4. where a Service Provider Default is subsisting which is materially preventing or materially delaying the performance of the Services or any part of the Services and/or which has an adverse material impact on the business of the Authority and/or its ability to fulfil its functions;
 - 44.1.5. where this Agreement has become terminable by the Authority in accordance with its terms and where applicable, the Service Provider has failed to comply with its obligations under clause 40.4 and/or 40.5;
 - 44.1.6. where the Authority reasonably believes that the occurrence of a Service Provider Default is imminent and such Service Provider Default shall materially prevent or materially delay the performance of the Services or any part of the Services and/or which shall prevent the Services being provided to the standard required by this Agreement and/or which shall have an adverse material impact on the business of the Authority;
 - 44.1.7. where the Authority considers it necessary in order to carry out any of its statutory obligations, functions or other duties as a Contracting Authority and in respect of which the Provider has been or will be unable to perform such obligations, functions or other duties;
 - 44.1.8. the occurrence of a Force Majeure Event; and/or
 - 44.1.9. there is a conflict of interest to which clause 34.4 refers which is not remediable,
- then the Authority shall be entitled to take action in accordance with the provisions of this Clause 44 (Step In Rights).
- 44.2. If clause 44.1 applies and the Authority wishes to take action, the Authority shall notify (by way of a "**Step-In Action Notice**") the Service Provider of the following:
- 44.2.1. the action it wishes to take;
 - 44.2.2. the reason for such action;
 - 44.2.3. the date it wishes to commence such action;
 - 44.2.4. the time period which it believes will be necessary for such action; and
 - 44.2.5. the effect on the Service Provider and its obligations to provide the Services during the period such action is being taken,
- provided always that where the Service Provider has remedied the grounds for step-in as described in clause 44.1 to the reasonable satisfaction of the Authority prior to the date referred to in clause 44.2.3 the Step-In Action Notice shall be deemed to be withdrawn and therefore clause 44.3 shall not apply.

- 44.3. Following service of any Step-In Action Notice, the Authority may take such action as notified under clause 44.3 above and any consequential additional action as it reasonably believes to be necessary (together the "**Required Action**"):
- 44.3.1. at the Service Provider's cost if such action results from a breach of this Agreement; or
 - 44.3.2. at the Authority's cost if such action does not result from a breach of this Agreement and the Service Provider shall give all reasonable assistance to the Authority while it is taking such Required Action.
- 44.4. The taking of the Required Action shall be subject to the following conditions:
- 44.4.1. the Authority shall employ suitably qualified contractors or personnel;
 - 44.4.2. the Authority shall take reasonable steps to properly manage any contractors or works being carried out so as to procure that any rights and/or remedies available to it or the Service Provider against any contractors are preserved;
 - 44.4.3. the Authority shall take reasonable steps to mitigate the effects of the circumstances to the extent that such effects are giving rise to the Required Action including taking all reasonable steps to minimise the period of the Required Actions; and
 - 44.4.4. the Authority shall have due regard to all reasonable recommendations put forward by the Service Provider.
- 44.5. The Authority shall be entitled to take the Required Action until the circumstances giving rise thereto have ceased to subsist or until such times as the Service Provider is able to demonstrate to the Authority's reasonable satisfaction that it has implemented sufficient measures to allow resumption of performance of the Services without such circumstances.
- 44.6. The Service Provider shall ensure that its sub-contractors are subject to an obligation to comply with the terms of any Step-In Action Notice given under this Clause 44.
- 44.7. To the extent that the Required Action affects the ability of the Service Provider to provide any part of the Services (other than those parts of the Services which are subject of the Required Action), the Service Provider shall, without prejudice to the Authority's rights under Clause 40 (Termination of Service Provider Default) and Clause 40.8 (Persistent Breach), be relieved of its obligations to provide such part of the Services and the Weekly Rate shall be reduced as is reasonable to reflect the extent of the Required Action.

45. Ineffectiveness

- 45.1. In the event that following execution of this Agreement a court of competent jurisdiction declares this Agreement ineffective in accordance with the Public Contracts Regulations 2015 the Parties agree that:
- 45.1.1. this Agreement and any corresponding licences or leases granted to the Service Provider for the purposes of carrying out this Services will be terminated in writing by either party with immediate effect by mutual agreement;
 - 45.1.2. the Service Provider will immediately cease the provision of the Services and otherwise clause 42 shall apply; and
 - 45.1.3. the Parties will agree the amount which is due to the Service Provider for the provision of the Services up to and including the date of the declaration and the Service Provider shall not claim for any damages, costs, loss of earnings, profit from the Authority. Upon agreement of such sum due the Service Provider shall hereby agree to issue an

itemised VAT invoice for such sum to the Authority for payment within 30 Business Days. In the event that parties cannot agree an amount, within 30 Business Days, this will be referred to the Dispute Resolution Procedure, which the Parties agree shall constitute a collateral agreement and shall survive and continue to apply and not be subject to any ineffectiveness declaration.

- 45.2. In the event that this Agreement is declared ineffective in accordance with Clause 45.1, the provisions of this Clause 45, which set out the relevant discharge terms of this contract shall survive and continue to apply.

46. The end of the Placement Agreement

- 46.1. For the purposes of these terms and conditions, a Placement Agreement shall expire upon (and this Agreement shall terminate forthwith):

- 46.1.1. upon the Services required (as set out in the Placement Agreement) are completed (as set out in the Placement Agreement);
- 46.1.2. on the date specified in a notice which is served under clause 36.4.2;
- 46.1.3. upon the death of the relevant Service User;
- 46.1.4. on the date specified in any notice to the Service Provider by the Authority, where the Service User has been hospitalised and/or transferred to a hospice or other facility and the Authority gives notice that the Service User will not be returning to the Care Home; and/or
- 46.1.5. upon the expiry of one months' notice given to the Service Provider by the Authority at any time.

- 46.2. Where this Agreement terminates pursuant to clause 46.1.3, the Service Provider shall hold the room in which the Service User was resident (and shall not remove any chattels from such room belonging to the Service User (“**Chattels**”)) for a period of three (3) days (the “**Removal Period**”) and provide access at all reasonable times during the Removal Period to the Authority and the relatives of the Service User to enable the collection of the Chattels. Upon the expiry of the Removal Period the Service User shall be entitled to remove Chattels and shall, as between the Authority and the Service Provider, be entitled to lawfully dispose of the Chattels. Without prejudice to any right the Service Provider may have against the Service User (or its estate) and/or the relatives of the Service User, the Authority shall have no liability to the Services User in respect of any Chattels at any time.

47. Transfer Restrictions

- 47.1. The Authority may assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement to any contracting authority, as defined in the Regulations or other body which substantially performs any of the functions that previously had been performed by the Authority.
- 47.2. A change in the legal status of the Authority shall not affect the validity of this Agreement shall be binding on any successor body to the Authority.
- 47.3. The Service Provider shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the Authority.

48. Severability

- 48.1. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force without affecting the remaining provisions of this Agreement.
- 48.2. If any provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

49. Waiver and Cumulative Remedies

- 49.1. The rights and remedies provided by this Agreement may be waived only in writing by the Authority Representative or the Service Provider Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 49.2. Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by the relevant Party is without prejudice to the relevant Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 49.3. The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Agreement.

50. Relationship of the Parties

- 50.1. Nothing in this Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

51. Authority Obligations

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

52. Entire Agreement

- 52.1. This Agreement, and the other documents referred to in it constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel or nullify any previous agreement between the Parties in relation to such matters.
- 52.2. The Provider irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Agreement because of breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement.
- 52.3. Nothing in this Clause 52 shall operate to exclude liability or remedy for Fraud or fraudulent misrepresentation.

53. Notices

- 53.1. Any notices given under or in relation to this Agreement shall be in writing by letter (signed by or on behalf of the Party giving it) sent by hand, post, registered post, by the recorded delivery service or email.
- 53.2. A notice shall be deemed to have been received:
- 53.2.1. if delivered personally, at the time of delivery;
 - 53.2.2. in the case of pre-paid first class post, special or other recorded delivery two (2) Business Days from the date of posting, unless such notice is returned as undelivered; or
 - 53.2.3. in the case of email, at the time received if received between the hours of 9am and 5pm on a Business Day, and otherwise at 9am on the Business Day if received before 9am, and at 9am on the following Business Day if received after 5pm (unless a delivery failure notification and/or out of office response is returned in respect of the relevant notice).
- 53.3. In proving service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing the notice was addressed to the relevant Party set out in Clause 53.4 (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, special or other recorded delivery or pre-paid airmail letter.
- 53.4. For the purposes of Clause 53.1, the address of each Party shall be:
- 53.4.1. for the Authority:

3rd Floor, Civic Centre, 44 York Street, Twickenham TW1 3BZ.

For the attention of: Head of Commissioning - Adult Social Care; and
 - 53.4.2. for the Service Provider, the address provided by the Service Provider prior to the agreement of the Placement Agreement, or any subsequent address as notified to the Authority by the Service Provider by way of notice.
- 53.5. Either Party may change its address for service by serving a notice in accordance with this Clause 53.

54. Contracts (Rights of Third Parties) Act 1999

- 54.1. A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

55. Governing Law and Jurisdiction

- 55.1. This Agreement and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of England and, without prejudice to the dispute resolution procedure set out in Clause 38 (Dispute Resolution Procedure), each Party agrees to submit to the exclusive jurisdiction of the courts of England and for all disputes to be conducted within England.

Schedule 1 - Conditions

1. Documents to be delivered and Conditions Precedent to be satisfied by the Service Provider

- 1.1. Unless an original document is specifically referred to in this Schedule 1 (Conditions), a copy (certified by an officer of the Service Provider as being a true copy) of each of the documents in Appendix A to this Schedule 1 (Conditions) is to be delivered by the Service Provider to the Authority (in a form that is satisfactory to the Authority) in accordance with Clause 2.2 of this Agreement. The items listed in Appendix A to this Schedule 1 (Conditions) shall only be considered to be satisfied when the Authority has confirmed in writing that the documents delivered are in a form satisfactory to it or, where no document needs to be delivered, that the relevant Condition Precedent has, in the Authority's opinion, been satisfied.

Appendix A to Schedule 1

Conditions Precedent to be satisfied by the Service Provider prior to the Commencement Date

1. The Service Providers Memorandum of Association and Articles of Association.
2. Evidence from the minutes of the board of directors of the Service Provider (certified as true and accurate by the secretary or the directors of the Service Provider), at which resolutions were passed approving the execution, delivery and performance of this Agreement and in each case authorising a named person or persons or class of persons to execute and deliver each such document and any documents to be delivered pursuant to them.
3. Evidence of registration with the Information Commissioner as a data processor in accordance with the Data Protection Legislation.
4. Evidence that such insurances (as are required under this Agreement to be in force from the Commencement Date) are in force.
5. Evidence that an office of the Service Provider located in the relevant area is registered with the CQC for the delivery of a regulated activity for each CQC registration.
6. The provision by the Service Provider to the Authority of the Business Continuity Plan.

Schedule 2 - Specification

The Specification is the accompanying document provided to the Service Provider with these terms and conditions entitled "Wandsworth Borough Council – Schedule 2 Residential Placements for People with Learning Disabilities - Service Specification".

Schedule 3- Not Used

Schedule 4- Payment Terms

Part 1 - Payment and Calculation of the Service Payment

1. The Service Payment for each Payment Period shall be calculated in accordance with paragraph 2 for the relevant Payment Period. The Service Provider agrees that the Service Payment, the Service User Contributions and Further Contributions shall together constitute the full inclusive price of all the Services provided to the Service User and that the Service Provider shall not seek any further sums in respect of the delivery of the Services delivered to the Service User to the Service User in at the Care Home without the consent of the Authority.

2. The Service Payment shall be calculated as follows:

$$(A \times B) - (C+D) + E$$

where:

A = the Weekly Rate (except where paragraph 5 states that another rate shall apply);

B = the number of weeks during which the Service User has been resident at the Care Home;

C = Service User Contributions;

D = Further Contributions; and

E = Any Arears to which paragraph 7 of Part 4 of this Schedule 4 applies.

3. For the purposes of this Schedule:

3.1. "**Week**" means the period of seven days ending at 23:59:59hrs on a Sunday, provided that:

3.1.1. the first Week during the Term shall start on the Commencement Date and end on the next Sunday;

3.1.2. such seven (7) day period shall start on the day following the last day of the preceding Week; and

3.1.3. the last Week during the Term shall end on the End Date provided that, in the event of the Placement Agreement coming to an end pursuant to clause 46.1.3, for the purposes of this paragraph, the End Date shall be the earlier of:

3.1.3.1. date that falls three days following the date on which the Service User dies; and

3.1.3.2. the date on which another resident occupies the relevant room.

3.2. "**Payment Period**" means the period of four Weeks provided that:

3.2.1. the first Payment Period during the Term shall start on the Full Service Commencement Date and end at the end of the fourth Week following the Full Service Commencement Date;

3.2.2. each Payment Period shall start on the day following the last day of the preceding Payment Period; and

3.2.3. the last Payment Period during the Term shall end upon the expiry of the Term (whether by the effluxion of time or otherwise).

- 3.3. **"Service User Contributions"** means the contribution to the provision of the Services by the Service User as determined by the Authority following a financial assessment of the Service User carried out by the Authority.
- 3.4. **"Further Contributions"** means any contributions that are payable by third parties (not including the Service User) and which arise because the Authority has determined that the Service Payment and the Service User Contribution are not sufficient to meet the cost of the Services in respect of the Service User.

4. Inflation

The Weekly Rate shall be reviewed each year during the Term on the date on which the Department for Work and Pensions publishes the benefit for the relevant year by such amount as is communicated by the Authority to the Service Provider, or, if the Service Provider does not agree with such determination, such amount as determined by the Authority having considered representations given by the Service Provider.

5. Circumstances in which Reduced Fees Apply

- 5.1. Subject to paragraph 5.2, for the period (including part-Weeks) during which the Service User is admitted to the hospital as an in-patient, the Weekly Rate shall not be used for the calculation of the Service Payment for such period (including part-Weeks) and the Core Rate shall be used for such period.
- 5.2. For the period commencing on the date that falls 28 days after the Service User was first admitted to hospital as an in-patient and ending on the date that the Service User returns to the Care Home, neither the Weekly Rate nor the Core Rate shall be used for the calculation of the Service Payment for such period (including part-Weeks) and the Core Reduced Rate shall be used for such period.
- 5.3. Where a Service User is consistently absent from the Care Home for a period exceeding 21 days (other than by reason of hospitalisation as an in-patient), the Care Home shall notify the Authority of such fact and the Weekly Rate shall not be used for the calculation of the Service Payment for such period (including part-Weeks) and the Weekly Reduced Rate shall be used for such period.
- 5.4. For the avoidance of doubt, where the Service Provider fails to notify the Authority of: (a) the hospitalisation of the Service User; or (b) the absence of the Service User from the Care Home in accordance with paragraph 5.3, the Service Provider shall notify the Authority immediately upon it becoming aware of such failure, and all relevant invoices shall be credited and reconciled so that they are retrospectively calculated on the correct basis (with any excess payments made by the Authority shall be payable by the Service Provider to the Authority as a debt on demand).

Part 2 - Service Payment Reports and Invoicing

Providers with more than one service user will be paid by schedule. If you have only one authority service user in residence, then you will be paid on the e-mailed submission of an invoice

Scheduled Payments

1. Payment will be made every 28 days, two weeks in advance and two weeks in arrears. The Service Provider will be sent a draft Remittance advice that contains the amount due to be paid, for whom and the period to which the payment relates to. This must be signed and returned within 7 days showing any discrepancies, corrections or amendments to be made.
2. The Remittance advice must be signed and returned to the Authority in order for the payment to be released for that payment period.
3. If this is not returned no payment shall be released and the provider will need to wait 28 days until the next schedule is due. If no remittance is returned for any period, then the payment for that period will not be released.
4. Any amendments agreed by the Authority as noted in the draft Remittance Advice return will be reflected in either in the current period or in a subsequent months payment.
5. Following resolution of any discrepancies, corrections or amendments, the purchase order will be amended to reflect the change and amount agreed or adjudged to be due shall be treated as not in dispute and be paid by the Authority in the next Payment Cycle dependent upon the Remittance Advice sent to the Provider being signed as agreed.
6. Whenever the Service Provider is liable under or in connection with this Agreement to pay any sum of money to the Authority, the Authority reserves the right to make the deduction from payments to the Service Provider by way of set-off and, if this is not sufficient, the Service Provider shall pay to the Authority (to such account as the Authority shall have notified to the Service Provider in each notice or demand for payment submitted to the Service Provider) within thirty (30) Business Days of the Authority's demand for payment and if not so paid the Authority shall be entitled to recover interest on any monies due at the Prescribed Rate from time to time calculated on a daily basis from the due date for payment until the date that payment is received by the Authority whether before or after judgment.

Invoice Submission

1. Service Providers will submit an invoice for the service user covering a 28-day period, from Monday to Sunday
2. The Authority will process the invoice within 30 days of receipt unless there is a discrepancy. Where there is a discrepancy between the commissioned service and the invoice, the Authority will treat this as a dispute and advise the Service Provider.
3. Upon resolution of the dispute, the Authority will release the payment within 7 days.

Part 3 - Performance Monitoring

1. The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage during the Term (provided that the Authority provides reasonable notice to the Service Provider and such monitoring is carried out during normal working hours for any purpose relating to this Agreement) including in order to ensure that the Services are being provided in accordance with this Agreement. The Service Provider will use its reasonable endeavours to assist the Authority in such an exercise. The Authority shall be entitled to notify the Service Provider of the outcome of the performance monitoring exercise and the Service Provider shall have due regard to the Authority's comments in relation to the future provision of the Services.
- 1.1. Without prejudice to the Authority's rights under Clause 39.1 (Termination for Service Provider Default) and any other express rights under this Agreement, where the Service Provider has been found to:
 - 1.1.1. be fraudulent in the submission of monitoring reports as required by this Schedule 4; or
 - 1.1.2. have submitted at least two (2) erroneous monitoring reports as required by this Schedule 4 within a three (3) consecutive Payment Periods,then the Authority may by notice to the Service Provider increase the level of its monitoring of the Service Provider in respect of the Services (or any part thereof) which are the subject of such erroneous or fraudulent reporting until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Agreement.
- 1.2. If the Authority issues a notice under paragraph 1.1 the Service Provider shall bear its own costs and indemnify and keep indemnified the Authority at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring arising due to the circumstances under paragraph 1.1 above.

Part 4 - Collection of Service User Contributions and Further Contributions

1. The Service User Contribution shall, unless otherwise stipulated by the Authority be collected from the Service User direct by the Service Provider (such collection being the sole responsibility of the Service provider); and
2. Where the Authority agrees with the Service Provider that the aggregate of the projected Service Payment and the Service User Contributions shall be insufficient to meet the cost of the Services in respect of the Service User, the Service Provider may seek to recover the Further Contributions in such amount and from such entities as the Authority shall determine. Unless otherwise stipulated by the Authority, the Further Contributions shall be collected direct from the relevant third parties by the Service Provider (such collection being the sole responsibility of the Service Provider).
3. In respect of NHS funded nursing care and other forms of funding which relate to the provision of health care (as opposed to social care), such amounts shall be claimed directly by the Service Provider from the relevant entity and shall not constitute "**Further Contributions**" unless and to the extent that such amounts relate to social care provision (as determined by the Authority, acting reasonably).
4. If, the Service Provider having used its best endeavours, has failed to secure payment to it of all or any of the Service User Contribution from the Service User or the Further Contribution from the third party (as applicable) for a period exceeding eight (8) weeks from the due date for payment of the relevant amount (the "**Arrears**"), subject to paragraph 6 the Service Provider may request in writing that the Authority pays to the Service Provider the Arrears (an "**Arrears Contribution Request**").
5. Each Arrears Contribution Request shall include:
 - 5.1. copies of all relevant correctly addressed invoices to the Service User (or the Service User's appointed representative as the case may be) or the relevant third party (as applicable) (the "**Contributor**"); and
 - 5.2. copies of all correspondence between the relevant Contributor evidencing the steps taken by the Service Provider to recover the Arrears and otherwise obtain a reason for payment being withheld by the relevant Contributor.
6. The Service Provider shall not issue an Arrears Contribution Request unless and until a reasonable period has elapsed following the date of the last communication sent by the Service Provider to the Contributor.
7. Where the Authority (acting reasonably) considers that the Service Provider has complied with its obligations in this Agreement and the requirements imposed upon it by this Part 4 of Schedule 4, the Authority shall notify the Service Provider of this fact within a reasonable timeframe and the Service Provider may include the Arrears in the next Service Payment Report following such notification.
8. Where the Arrears which arise in respect of a Further Contribution and in respect of which the Authority has agreed to pay the Service Provider pursuant to paragraph 7 above remains unpaid for a period of eight (8) weeks, the Authority may terminate this Agreement by giving no less than four (4) weeks' notice to the Service Provider.
9. The Authority shall review the Service User Contribution in April of each year during the Term and may, following such review, revise the Service User Contribution accordingly. The Authority may revise the Service User Contribution at any time during any year of the Term if additional financial

information becomes available to it or there is a relevant change in the circumstances of the Service User.

- 10.** The Authority shall notify the Service Provider of the revised Service User Contribution as soon as reasonably practicable following such determination. The Authority shall notify the Service Provider as soon as reasonably practicable of any change to the value of Further Contributions of which it becomes aware.
- 11.** The Service Provider shall, upon being notified of any change to the Service User Contribution or Further Contribution, apply such change from the date notified to it by the Authority.
- 12.** If at any time the Service Provider is paid any Arrears (or any part of it) in respect of which the Authority has made a payment pursuant to paragraph 7, the Service Provider shall transfer such amount received to the Authority forthwith.

Schedule 5- Not Used

Schedule 6- Not Used

Schedule 7 - Change Control Procedure

Change Control Procedure

1. Interpretation

1.1. In this Schedule 7 the following words and expressions have the following meanings unless the context otherwise requires:

- | | |
|------------------------------------|---|
| Change Authorisation Notice | means the form used by the Parties to set out the agreed Change and which shall be substantially in the form of Appendix B to Schedule 7; |
| Change Request | means a written request for a Change which shall be substantially in the form of Appendix A to this Schedule 7; |
| Contemplated Change | means a Change which was contemplated by the Authority prior to the Commencement Date and which was communicated to the Service Provider during the procurement process and prior to the Commencement Date and related to any of the following: <ul style="list-style-type: none"> (a) not used; and (b) the use of an electronic call monitoring system procured by the Authority; and |
| Impact Assessment | means a written assessment prepared by the Service Provider setting out the information required by paragraph 5.1 of this Schedule 7. |

2. General Principles of the Change Control Procedure

2.1. This Schedule 7 sets out the procedure for dealing with variations to this Agreement.

2.2. Under this Change Control Procedure:

- 2.2.1. either Party may request a Change which they shall initiate by issuing a Change Request in accordance with paragraph 4 of this Schedule 7;
- 2.2.2. the Service Provider or Authority as appropriate will assess and document the potential impact of a proposed Change in accordance with the relevant sections of paragraph 5 of this Schedule 7 before the Change can be either approved by the Authority or implemented by the Service Provider;
- 2.2.3. the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 6 of this Schedule 7;
- 2.2.4. the Service Provider shall have the right to reject a Change Request issued by the Authority solely in the manner set out in paragraph 7 of this Schedule 7; and
- 2.2.5. no proposed Change shall be implemented by the Service Provider until such time as a Change Authorisation Notice has been signed and issued by the Authority in accordance with paragraph 6.2 of this Schedule 7.

2.3. Until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 6.2 of this Schedule 7, then:

2.3.1. unless the Authority expressly agrees otherwise in writing, the Service Provider shall continue to provide the Services in accordance with the existing terms of this Agreement as if the proposed Change did not apply; and

2.3.2. any discussions, negotiations or other communications which may take place between the Authority and the Service Provider in connection with any proposed Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

3. Costs

3.1. Subject to paragraph 3.2, each Party shall bear its own costs in relation to the preparation and agreement of each Change Request and any Impact Assessment.

3.2. Both Parties' reasonable and properly incurred costs incurred in respect of any operation of this Change Control Procedure as a result of any Service Provider Default shall be paid for by the Service Provider.

4. Change Request

4.1. Either Party may issue a Change Request to the other Party at any time during the Term.

4.2. Subject to paragraph 4.4 of this Schedule 7, if the Service Provider issues a Change Request to the Authority, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Business Days of the date of issuing the Change Request.

4.3. Subject to paragraph 4.4 of this Schedule 7, if the Authority issues a Change Request to the Service Provider, then the Service Provider shall provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Business Days of the date of receiving the Change Request from the Authority.

4.4. If the Service Provider requires any clarifications in relation to the Change Request before it can deliver its Impact Assessment, then it will promptly notify the Authority and the time period for the receipt of the Impact Assessment shall be extended by the time taken by the Authority to provide such clarifications. The Authority shall respond to the request for clarifications as soon as is reasonably practicable and the Authority shall provide the Service Provider with sufficient information to enable it to understand fully the nature of the request for clarification.

5. Impact Assessment

5.1. The Service Provider shall ensure that each Impact Assessment includes details of:

5.1.1. the impact of the proposed Change on the delivery of the Services; and

5.1.2. the Service Provider's ability to meet its other obligations under this Agreement; and

5.1.3. any variation to the terms of this Agreement that will be required as a result of that impact and including without limitation changes to:

(a) the Specification;

(b) other proposed Changes which have yet to be agreed with the Authority pursuant to this Change Control Procedure;

- (c) details of the cost of implementing the proposed Change, including any increase or decrease in the Weekly Rate in respect of the Placement Agreement;
- (d) details of the ongoing costs required by the proposed Change when implemented, including any associated increase or decrease in the charges in respect of the Placement Agreement;
- (e) a timetable for the implementation of the Change and details of the impact on any other proposed Changes;
- (f) details of how the proposed Change will ensure compliance with any applicable Change in Law;
- (g) such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2. The Authority shall review the Impact Assessment and, shall no later than fifteen (15) Business Days of receiving the Impact Assessment, it shall respond to the Service Provider in accordance with paragraph 6 of this Schedule 7.

6. Authority's Right of Approval

6.1. Within the period specified in paragraph 5.2 of this Schedule 7, the Authority shall consider the Impact Assessment and shall do one of the following:

- 6.1.1. approve the proposed Change, in which case the Parties shall follow the procedure set out in paragraph 6.2 of this Schedule 7;
- 6.1.2. in its absolute discretion reject the Change, in which case it shall notify the Service Provider of the rejection, provided that the Authority shall not reject any proposed Change to the extent the Change is necessary for the Service Provider or the delivery of the Services to comply with any Change in Law. If the Authority does reject a Change, then it shall explain its reasons in writing to the Service Provider as soon as is reasonably practicable following such rejection; or
- 6.1.3. require the Service Provider to modify the Change Request and/or Impact Assessment in which event the Service Provider shall make such modifications within five (5) Business Days of such request. Subject to paragraph 4.4 of this Schedule 7, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Change within ten (10) Business Days.

6.2. If the Authority approves the proposed Change pursuant to paragraph 6.1 of this Schedule 7 and it has not been rejected by the Service Provider in accordance with paragraph 7 of this Schedule 7, then the Authority shall inform the Service Provider and as soon as reasonably practicable thereafter the Service Provider shall prepare two (2) copies of a Change Authorisation Notice which it shall promptly sign and deliver to the Authority for its signature. As soon as reasonably practicable following receipt by the Authority of the Change Authorisation Notice, it shall sign both copies and return one (1) copy to the Service Provider. On the Authority's signature, the Change Authorisation Notice (together with the variations itemised in the Impact Assessment that has

been approved by the Authority in accordance with paragraph 6.1.2 and/or 6.1.3 (as applicable)) shall constitute a binding variation to this Agreement, provided that the Change Authorisation Notice has been signed by the Authority within ten (10) Business Days of receiving the Service Provider's signed copy. If the Authority does not sign the Change Authorisation Notice within this time period, then the Service Provider shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Notice within five (5) Business Days of the date of such notification, then the Service Provider may refer the matter to the Dispute Resolution Procedure.

7. Service Provider's Right of Approval

7.1. If the Service Provider reasonably believes that any proposed Change which is requested by the Authority:

7.1.1. would materially and adversely affect the risks to the health and safety of any person;
or

7.1.2. would cause any Necessary Consent to be revoked;

7.1.3. would require the Services to be provided in a way that infringes any Law; or

7.1.4. is outside of the Service Provider's technical capability where:

(a) the Service Provider can demonstrate to the Authority's reasonable satisfaction that the proposed Change is impossible to implement; and

(b) the proposed Change is outside the technical scope of the Services as set out in the Specification,

then the Service Provider shall be entitled to reject the proposed Change and shall notify the Authority of its reasons for doing so within the relevant Impact Assessment in accordance with paragraph 5 of this Schedule 7.

8. Change Authorisation

8.1. Any proposed Change processed in accordance with this Schedule 7 will not be authorised and the Service Provider shall not implement any proposed Change until the associated Change Authorisation Notice is executed in accordance with paragraph 6.2 of this Schedule 7.

9. Contemplated Changes

9.1. The Parties acknowledge and agree that any Contemplated Change is a Change which satisfies the requirements of regulation 72(1)(a) and/or 72(1)(b) of the Regulations.

9.2. When the Authority seeks to implement a Contemplated Change it shall issue to the Service Provider a Change Request in the manner set out in paragraph 2.2 of this Schedule 7, save that:

9.2.1. the Authority shall set out the scope and nature of the Contemplated Change and its reasons for seeking to implement the Contemplated Change; and/or

9.2.2. where a Contemplated Change is for one or more of the Additional Services the Authority shall confirm that a change in service provider cannot be made for economic or technical reasons or would cause significant inconvenience or substantial duplication of the Authority's costs and that the inclusion of one or more of the Additional Services would not increase the price for the delivery of the Services by more than 50% of the value of this Agreement at the Commencement Date.

- 9.3. The Service Provider shall provide an Impact Assessment to the Authority in respect of the implementation of a Contemplated Change as set out in paragraph 4.3 of this Schedule 7.
- 9.4. The Service Provider shall not have the right to reject a Change Request in respect of a Contemplated Change.
- 9.5. The Authority shall follow the processes set out in paragraphs 5.2 to 6.2 of this Schedule 7 in respect of approving a Contemplated Change.

Appendix A to Schedule 7

Change Request

CR No.:	Title:	
Required by date:		
Action:	Name:	Date:
Raised by:		
Area(s) impacted (optional field):		
Full description of requested Change:		
Details of any proposed alternative scenarios:		
Reasons for and benefits and disadvantages of requested Change:		
Signature of requesting Change owner:		
Date of request:		

**Appendix B to Schedule 7
Change Authorisation Notice**

CR No.:	Title:	Date raised:
Required by date:		
Detailed description of Change for which an Impact Assessment has been being prepared and details of any related Agreement Changes:		
Agreed Financial Adjustments (and proposed means and mechanism of payment)		
Signed on behalf of the Authority:		Signed on behalf of the Service Provider:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

Schedule 8 - Insurances

1. Insurance Covenants

- 1.1. The Service Provider:
 - 1.1.1. shall effect and maintain or procure the maintenance of, the Insurances (and any other insurances required by Law) in full force and effect at all times from the Commencement Date until the date which is six (6) years following the end of the Term provided that such insurances are generally available in the market to businesses similar to the Service Provider;
 - 1.1.2. shall not cancel the Insurances or make any material change thereto without the express written consent of the Authority;
 - 1.1.3. subject to paragraph 1.1.2 of this Schedule 8 (Insurances), may change the insurers with whom the Insurances are held on annual basis and the Service Provider shall use reasonable endeavours to provide the Authority with notice of at least ten (10) Business Days prior to any such change; and
 - 1.1.4. agrees that neither the failure to comply nor full compliance with the insurance provisions of this Agreement shall limit the Service Providers liabilities and/or obligations under this Agreement.
- 1.2. The Insurances shall be maintained on terms that are as favourable to those generally available to a prudent service provider in respect of risks insured in the international insurance market.
- 1.3. The Insurances shall be maintained with a reputable insurance company that are of good financial standing (and the Service Provider acknowledges and agrees that the Insurances notified to the Authority prior to the Commencement Date satisfy these requirements).
- 1.4. The Service Provider shall procure, at no cost to the Authority, in respect of each of the public liability, employers liability and professional indemnity insurances, that:
 - 1.4.1. each such Insurance shall include an Indemnity to Principal clause; and
 - 1.4.2. the insurers of each such Insurance shall waive all rights of subrogation or action that insurers may acquire against the Authority, its employees and/or agents,

provided that the Authority shall use reasonable endeavours to observe, fulfil and be subject to the terms, exclusions, conditions and endorsements of the Insurances so far as they can apply to the Authority and to the extent that the same has been notified to the Authority.
- 1.5. The Service Provider shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any Insurance or cover, or to treat any Insurance, cover or claim as avoided in whole or part. The Service Provider shall use reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any Insurance, or any cover or claim under any Insurance in whole or in part.
- 1.6. The Authority may purchase (if possible) any of the Insurances which the Service Provider has failed to maintain in full force and effect pursuant to this Agreement. The Authority may recover the premium and other costs incurred doing so as a debt due from the Service Provider.
- 1.7. The Service Provider shall within thirty (30) Business Days after the renewal of each Insurance forward a letter from its insurance brokers who arranged the Insurances containing at least the

information set out in Appendix A to this Schedule 8 (Insurances). The Service Provider shall confirm in each covering letter that the maximum deductible in respect of any of its insurance policies is no greater than 10% (ten per cent) of the sum insured under that policy.

1.8. The Authority may from time to time submit a request in writing to the Service Provider, demanding evidence of the existence of all Insurances in the form of certificates of insurance, evidence of the existence of the rights required in respect of each Insurance pursuant to paragraph 1.4 of this Schedule 8 (Insurances) and evidence of the timely payment of premiums (confirmation in the form of a broker's letter) and the Service Provider shall provide all such evidence within five (5) Business Days of such written request.

1.9. Insurance Claims

1.9.1. The Service Provider shall:

(h) promptly notify the insurers of any matter arising or in relation to the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances; and

(i) diligently pursue any valid insurance claim

1.9.2. The Service Provider shall notify the Authority immediately, such notification to be accompanied by reasonable particulars of the incident or circumstances, of any incident or circumstances which may give rise to any claim under any of the Insurances which are connected to the delivery of the Services and/or this Agreement.

1.9.3. The Service Provider shall have the conduct of any claims it makes under the Insurances which are connected to the delivery of the Services and/or this Agreement, provided that it shall keep the Authority notified of the progress of any such claims at least every three (3) Months.

2. Insurances

Class	Minimum Sum Insured
Public Liability	£5 million for each and every clam or series of connected claims or as otherwise agreed by the Authority when agreeing that a Placement Agreement shall be subject to these terms and conditions
Employers Liability	£10 million for each and every clam or series of connected claims or as otherwise agreed by the Authority when agreeing that a Placement Agreement shall be subject to these terms and conditions
Professional Indemnity	£5 million for each and every clam or series of connected

	claims or as otherwise agreed by the Authority when agreeing that a Placement Agreement shall be subject to these terms and conditions
Any other insurance required by Law	As required by Law

**Appendix A to Schedule 8
Contents of Broker's Letter**

A) Class: **PUBLIC LIABILITY**
 Insurer: **[to be completed]**
 Policy No: **[to be completed]**
 Period: **[to be completed]**

[Confirmation that the levels of Insurance are at least as required in paragraph 2 of Schedule 8 (Insurances).]

[Confirmation that the premiums due under the terms of the policy of insurance are not (and have not previously been) in arrears as at the date of inception or renewal or as at the date of the broker's letter.]

B) Class: **EMPLOYERS LIABILITY**
 Insurer: **[to be completed]**
 Policy No: **[to be completed]**
 Period of Insurance: **[to be completed]**

[Confirmation that the levels of Insurance are at least as required in paragraph 2 of Schedule 8 (Insurances).]

C) Class: **PROFESSIONAL INDEMNITY**
 Insurer: **[to be completed]**
 Policy No: **[to be completed]**
 Period of Insurance: **[to be completed]**

[Confirmation that the levels of Insurance are at least as required in paragraph 2 of Schedule 8 (Insurances).]

Schedule 9 - Exit Requirements

1. Interpretation

In this Schedule 9 (Exit Requirements) the following expressions shall have the meanings set out under them:

Draft Exit Plan	has the meaning given to it in paragraph 3.2 of this Schedule 9 (Exit Requirements);
Exit Period	means the period between the Termination Trigger Date and the date of termination of the Agreement;
Exit Plan	has the meaning given to it in paragraph 3.6 of this Schedule 9 (Exit Requirements);
Exit Requirements	has the meaning given to it in paragraph 2.1 of this Schedule 9 (Exit Requirements);
Handover Meeting	has the meaning given to it in paragraph 4.1 of this Schedule 9 (Exit Requirements);
Termination Trigger Date	has the meaning given to it in paragraph 3.1 of this Schedule 9 (Exit Requirements); and
Transferring Employees	has the meaning given to it in paragraph 5.2 of this Schedule 9 (Exit Requirements).

2. Introduction

- 2.1. In order to ensure business continuity following the termination of the Agreement, it is necessary for the Parties to agree a process that delivers the Authority's exit requirements (as set out in this Schedule 9 (Exit Requirements)) and which provides both Parties with a clear indication of the areas for which they will be responsible (the "**Exit Requirements**").
- 2.2. This Schedule 9 provides that procedure and sets out the principles required to ensure a smooth transfer of responsibilities, services, staff and any other items or information necessary to enable a Replacement Service Provider to operate the replacement services with effect from the date of termination of all or any part of the Agreement for any reason. It also provides confirmation of the Service Provider's commitment to ensuring service quality throughout the Exit Period through to the completion of handover.
- 2.3. This Schedule 9 (Exit Requirements) seeks to provide clarification of the nature and extent of the responsibilities that will need to be discharged by the Service Provider and the Authority following the date of expiry or earlier termination of the Agreement.

3. Exit Plan

- 3.1. If the Authority serves a Termination Notice on the other Party prior to the expiry of the Term, the date of such notice shall constitute the "**Termination Trigger Date**".
- 3.2. The Service Provider shall produce and submit to the Authority an outline draft exit plan ("**Draft Exit Plan**") for the Authority to review, such Draft Exit Plan being based on the matters set out in paragraphs 4 to 6 of this Schedule 9 (Exit Requirements) on the date falling no later than (with the exception of termination of the Agreement for Service Provider Default falling under limbs (c)(iii), (c)(iv) and (e) of the definition of Service Provider Default), five (5) Business Days after the Termination Trigger Date.

- 3.3. For the avoidance of doubt, the Service Provider shall not be required to produce and submit to the Authority a Draft Exit Plan in the event that the Authority has served a Termination Notice for Service Provider Default falling under limbs (c)(iii), (c)(iv) and (e) of the definition of Service Provider Default.
- 3.4. The Authority shall provide any comments in respect of the Draft Exit Plan to the Service Provider in the case of termination of the Agreement, on the date falling no later than five (5) Business Days of receipt of the Draft Exit Plan from the Service Provider.
- 3.5. The Service Provider and the Authority shall meet to discuss and seek to agree the contents of the Draft Exit Plan. In the event of a dispute between the Authority and the Service Provider in relation to the contents of the Draft Exit Plan, the matter shall be referred to the Dispute Resolution Procedure.
- 3.6. Once the Authority and the Service Provider have agreed the contents of the Draft Exit Plan, or it has been determined pursuant to the Dispute Resolution Procedure, then it shall become the exit plan ("**Exit Plan**").
- 3.7. Following agreement or determination of the Exit Plan, the Service Provider will appoint an exit manager who will be responsible for its implementation in accordance with Good Industry Practice.
- 3.8. The Exit Plan will be agreed by both the Authority and the Service Provider.

4. Handover Meeting

- 4.1. The Service Provider shall provide within the Exit Plan its arrangements for a handover meeting in respect of each Staff member delivering the Services to the relevant Service User and the Replacement Service Provider ("**Handover Meeting**").
- 4.2. The Service Provider shall ensure that all information and data concerning the provision of the Services is provided to the relevant Replacement Service Provider as soon as reasonably practicable, and in any case, no later than two (2) Business Days prior to the commencement of the replacement services.
- 4.3. The Service Provider shall ensure that the Service User is kept fully informed and involved with the handover process at all times.

5. TUPE Assistance

- 5.1. On a termination or expiry of this Agreement it is not intended that the employment of any person will transfer to the Authority or any Replacement Service Provider. The Service Provider shall indemnify the Authority and any Replacement Service Provider against all liability, cost, losses, damages, expenses, claims and proceedings suffered or incurred by the Authority and/or any Replacement Service Provider arising as a result of the transfer of any such employment and/or any claim being brought by any person that their employment has been transferred to the Authority or a Replacement Service Provider provided that, if such employee is not dismissed by the Authority or Replacement Service Provider (as applicable) within twenty (20) Business Days of becoming aware that the relevant employee has transferred, the indemnity in this sub-paragraph shall not apply to such employee.
- 5.2. Notwithstanding the generality of paragraph 5.1, the Service Provider shall provide the Authority with such information relating to all Staff connected with delivery of the Services whose contract of employment may transfer to the Replacement Service Provider or the Authority ("**Transferring Employees**") as the Authority or the Replacement Service Provider may reasonably require

(including where appropriate "Employee Liability Information" under TUPE, within such timescales as the Authority or the Replacement Service Provider may reasonably require (and in the case of Employee Liability Information) within the timescales prescribed by TUPE from time to time).

- 5.3. The Service Provider will collaborate with and support the Authority and the Replacement Service Provider so far as is reasonably possible through any statutory or other consultation process as may be required by the Authority in relation to all Staff whose contract of employment may transfer to the Replacement Service Provider or the Authority following the date of expiry or earlier termination as the case may be on or before the transfer of the Transferring Employees to the Authority or the Replacement Service Provider ("**Relevant Transfer Date**").
- 5.4. The Authority shall be entitled to use the Employee Liability Information referred to in paragraph 5.2 for the purposes of TUPE and of re-tendering. The Service Provider shall co-operate with the re-tendering of this Agreement and permit the entity to whom it is expected that the affected employees shall transfer to communicate with and meet the affected employees and/or their representatives.
- 5.5. The Service Provider shall indemnify the Authority and/or any Replacement Service Provider and hold them harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to Employee Liability Information referred to in paragraph 5.2.
- 5.6. The Service Provider shall indemnify the Authority and/or any Replacement Service Provider from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on the Relevant Transfer Date which arises out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- 5.7. In the event that the Employee Liability Information referred to in paragraph 5.2 provided by the Service Provider becomes inaccurate and/or incomplete the Service Provider shall notify the Authority of the inaccuracies and/or further information and provide the amended information as soon as reasonably practicable following the Service Provider becoming aware that the information previously provided is inaccurate and/or incomplete.
- 5.8. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 5 of this Schedule 9 to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 5.9. Not used.
- 5.10. Not used.

6. Exit Period Assistance

- 6.1. The Exit Plan shall include (but not be limited to) the Service Provider:
 - 6.1.1. providing assistance and expertise as necessary to identify all material operational and business processes (including all supporting documentation) in place;
 - 6.1.2. providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services;

- 6.1.3. novating or assigning any agreements with sub-contractors in place to provide the Services, as may be requested by the Authority or the Replacement Service Provider to facilitate the provision of replacement services;
- 6.1.4. providing access to the Replacement Service Provider and the Authority during the Exit Period and for up to twelve (12) Months thereafter to:
 - (a) such information relating to the Services as is in the power, possession or control of the Service Provider or any Service Provider Related Party (and the Service Provider agrees and shall procure that its Service Provider Related Parties do not destroy, erase, delete or dispose of such information within such period); and
 - (b) such members of the Service Provider's or the Service Provider Related Parties' personnel as have been involved in the delivery or management of the Services and who are still employed or engaged by the Service Provider or the appropriate Service Provider Related Party, provided that the Replacement Service Provider or the Authority shall pay the reasonable and proven costs of the Service Provider incurred in responding to requests;
- 6.1.5. explaining the procedures and operations used to provide the Services to the Replacement Service Provider and the Authority and providing such information, records and documents required to clarify such explanation; and
- 6.1.6. answering all reasonable questions from the Authority or its Replacement Service Provider regarding the general nature of the Services.

Schedule 10 - Not used

Schedule 11 - Processing, Personal Data and Data Subjects

1. The contact details of the Controller's Data Protection Officer are: as notified by the Authority to the Service Provider from time to time.
2. The contact details of the Processor's Data Protection Officer are: as notified from time to time.
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Initial recording, consideration and consultation of Personal Data in connection with a Residential and or Nursing Care Provider Contract services.
Duration of the processing	The term of the provider contract and individual placement agreement
Nature and purposes of the processing	<p>Sharing assessment and care and support plan with provider via e-brokerage referral. This is to inform care providers response to referral as well as their subsequent assessment to determine whether provider will accept the package of care and deliver a service to the service user.</p> <p>Recording and updating service user Care and Support plans.</p> <p>Collection and recording of data for recruitment purposes and employment of workforce.</p>
Type of Personal Data	<p>Service users: name, address, date of birth, telephone number, gender, NHS number, financial position</p> <p>Carers: name, address, date of birth, telephone number</p> <p>Staff and/ or volunteer: name, address, date of birth, NI number, telephone number, salary, tax information, gender, sick leave, photograph of the person (ID badge)</p> <p>Sensitive personal data: medical history, social care needs, religion, sexual orientation</p>
Categories of Data Subject	<p>Individuals requiring care, their family members or other representatives.</p> <p>Provider members of staff, including volunteers and temporary workers.</p>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to	All data is the property of the Council. The data must be returned to the Council at the end of the contract or individual placement agreement through a safe and secure way such as encrypted email (e.g. Egress) or on a secure memory stick (e.g. iron key) or assurances that the data has been destroyed. Data will be retained in line with the Councils corporate retention and destruction policies.

preserve that type of data	
Subject matter of the processing	Initial recording, consideration and consultation of Personal Data in connection with a Residential and or Nursing Care Provider Contract services.

Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

- The contact details of the Controller’s Data Protection Officer are:
Tania Robinson
 FOI and DPA Officer
 Wandsworth Borough Council
 Civic Centre
 The Town Hall
 High Street
 London SW18 2PU.

T: 020 8891 7199
 E: Tania.Robinson@richmondandwandsworth.gov.uk
- The contact details of the Processor’s Data Protection Officer are:
[enter name]
 [enter address]

T: [Enter telephone contact]
 E: [Enter email contact]
- The Contractor shall comply with any further written instructions with respect to processing by the Customer.
- Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Initial recording, consideration and consultation of Personal Data in connection with a Residential and or Nursing Care Provider Contract services.
Duration of the processing	The term of the provider contract and individual placement agreement
Nature and purposes of the processing	Sharing assessment and care and support plan with provider via e-brokerage referral. This is to inform care providers response to referral as well as their

	<p>subsequent assessment to determine whether provider will accept the package of care and deliver a service to the service user.</p> <p>Recording and updating service user Care and Support plans.</p> <p>Collection and recording of data for recruitment purposes and employment of workforce.</p>
Type of Personal Data	<p>Service users: name, address, date of birth, telephone number, gender, NHS number, financial position</p> <p>Carers: name, address, date of birth, telephone number</p> <p>Staff and/ or volunteer: name, address, date of birth, NI number, telephone number, salary, tax information, gender, sick leave, photograph of the person (ID badge)</p> <p>Sensitive personal data: medical history, social care needs, religion, sexual orientation</p>
Categories of Data Subject	<p>Individuals requiring care, their family members or other representatives.</p> <p>Provider members of staff, including volunteers and temporary workers.</p>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>All data is the property of the Council. The data must be returned to the Council at the end of the contract or individual placement agreement through a safe and secure way such as encrypted email (e.g. Egress) or on a secure memory stick (e.g. iron key) or assurances that the data has been destroyed. Data will be retained in line with the Councils corporate retention and destruction policies.</p>