

DATED

201[]

DYNAMIC PURCHASING SYSTEM AGREEMENT

FOR THE SUPPLY OF

RESIDENTIAL AND NURSING CARE HOME SERVICES

BETWEEN

(1) STAFFORDSHIRE COUNTY COUNCIL

AND

(2) [INSERT NAME OF THE SERVICE PROVIDER**]**

[AT [**INSERT THE NAME OF THE CARE HOME**]]**



John Tradewell
Director of Strategy, Governance and Change
Staffordshire County Council
Staffordshire Legal Services
2 Staffordshire Place
Tipping Street
Stafford
ST16 2DH

(Ref MT 10246)

© 201[7] Copyright Staffordshire County Council. All rights reserved. Staffordshire County Council gives general consent to nominated third parties to use this document for procurement purposes. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of Staffordshire County Council.

CONTENTS

1	DEFINITIONS AND INTERPRETATION.....	6
2.	CONTRACT PERIOD AND EXTENSION PERIOD(S)	21
3.	SERVICE PROVIDER'S STATUS	22
4.	NO VOLUME GUARANTEE, SELECTION OF SERVICE PROVIDERS AND THE AWARD PROCEDURES	22
5.	NOTICES.....	30
6.	MISTAKES IN INFORMATION	31
7.	CONFLICTS OF INTEREST	31
8.	THE SERVICES.....	32
9.	NOT USED	32
10.	STAFF AND SAFEGUARDING VULNERABLE ADULTS	33
11.	TUPE	36
12.	CONTRACT PRICE	36
13.	RECOVERY OF SUMS DUE	36
14.	PREVENTION OF BRIBERY AND CORRUPTION	37
15.	EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION.....	38
16.	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	38
17.	HEALTH AND SAFETY.....	38
18.	THE DATA PROTECTION ACT	38
19.	CONFIDENTIAL INFORMATION	41
20.	FREEDOM OF INFORMATION	42
20A	INFORMATION GOVERNANCE.....	43
21.	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES	44
22.	AUDIT AND INSPECTION	44
23.	TRANSFER AND SUB-CONTRACTING	46
24.	WAIVER	46
25.	VARIATION AND UNEQUIVOCAL REVIEW CLAUSE	47
26.	SEVERABILITY	48
27.	REMEDIES CUMULATIVE	48
28.	ENTIRE AGREEMENT	48
29.	COUNTERPARTS	48
30.	LIABILITY.....	48
31.	INSURANCE	50
32.	WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS.....	50
33.	TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL.....	52
34.	OTHER TERMINATION RIGHTS	52
35.	BREAK CLAUSE	54
36.	CONSEQUENCES OF EXPIRY OR TERMINATION.....	54

37. DISRUPTION.....	54
38. FORCE MAJEURE EVENTS.....	55
39. BUSINESS CONTINUITY PLAN	55
40. GOVERNING LAW AND JURISDICTION	56
41. DISPUTE RESOLUTION PROCESS.....	56
42. CONTINUOUS IMPROVEMENT	57
44. MODERN SLAVERY ACT 2015.....	57

Schedule 1	–	Part A - The Particulars
		Part B - The Specification
Schedule 2	–	Quality, Performance and Contract Monitoring
Schedule 3	–	The Call Off Terms
Schedule 4	–	The Lots
Schedule 5	–	Part A – Standard Variation
		Part B – Unilateral Notice
Schedule 6	–	The Pen Portrait
Schedule 7	-	Commercially Sensitive information
Schedule 8	–	The Caldicott Principles
Schedule 9	–	The Short Stay Call Off Contract
Schedule 10	–	The Long Stay Call Off Contract
Schedule 11		The Award Criteria

THIS CONTRACT is made on the day of

201[]

BETWEEN:

(1) **STAFFORDSHIRE COUNTY COUNCIL** of Staffordshire Place 1, Tipping Street, Stafford, ST16 2DH (the “**Council**”); and

(2) **[**INSERT THE NAME OF THE SERVICE PROVIDER**]** **[**a private limited company limited by shares registered in England and Wales (with company registration number [**insert**]) whose registered office is at [**insert**] (the “Service Provider”),**

or

[INSERT THE NAME OF THE SERVICE PROVIDER**]** **[**a company limited by guarantee and registered in England and Wales (with company registration number [**insert**] whose registered office is at [**insert**] (the “Service Provider”),**

or

[INSERT THE NAME OF THE SERVICE PROVIDER**]** **[**a charity registered in England and Wales (with charity commission number [**insert**] whose registered charitable address is at [**insert**] (the “Service Provider”),**]**

or

[INSERT THE NAME OF THE SERVICE PROVIDER**]** **[**a partnership registered in England and Wales (with charity commission number [**insert**] whose registered charitable address is at [**insert**] (the “Service Provider”),**]**

or

[INSERT THE NAME OF THE SERVICE PROVIDER**]** **[**a sole trader whose principal place of business is at [**insert**] (the “Service Provider”),**]**

and the Council and the Service Provider shall individually be referred to herein as a “**Party**” and collectively as the “**Parties**”.

RECITALS:

(A) The Council is a local authority as defined by section 270 of the Local Government Act 1972.

(B) The Council has certain statutory obligations to provide residential care home and nursing care home services to eligible individuals.

(C) The Council placed an OJEU Notice **[**insert reference**]** on **[**insert date**]** in the Official Journal of the European Union seeking bids from potential providers to be appointed as eligible providers of the Services under this DPS.

(D) The Council has selected the Service Provider to be such an eligible provider.

(E) This Contract sets out the procedure pursuant to which the Council may award Call Off Contracts to the Service Provider for the provision of the Services from time to time.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

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

“Abnormally Low Tender”	means any Tender received by the Council from the Service Provider in response to an Invitation to Tender which the Council deems to be abnormally low in comparison to the applicable Reference Prices and following the compliance by the Council with its applicable obligations pursuant to the Regulations;
“Abnormally High Tenders”	means any Tender received by the Council by the Service Provider in response to an Invitation to Tender which the Council deems to be abnormally high in comparison to the applicable Reference Prices;
“Annual Return”	has the meaning ascribed to it in paragraph 5.1 of Schedule 2;
“Approval”	means the prior written consent of an authorised representative of the Council;
“Award Criteria”	means the applicable award criteria set out in Schedule 11 of this Contract which the Council shall use to evaluate Tenders and to elect whether to award any Services under a Call Off Contract;
“Bank Holidays”	means any public holiday in England when the Bank of England is not open for business;
“Best Value”	means the duty imposed on the Council by Section 3 of the Local Government Act 1999 in relation to the Services;
“Business Continuity Plan”	means a plan which sets out the procedures to be adopted by the Service Provider in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event);
“Caldicott Principles”	means those principles identified in the Department of Health report on the review of Patient Identifiable Information December 1997 (or as updated from time to time) and as set out in Schedule 8 of this Contract;
“Call Off Contract”	means either any Short Stay Call Off Contract or Long Stay Call Off Contract entered into between the Council and the Service Provider for the

	provision of any applicable Services pursuant to the terms of this Contract;
“Call Off Terms”	means the call off terms set out in Schedule 3 of this Contract;
“Care Home”	means the Service Provider’s care home set out in the Particulars at which any Services which are awarded to the Service Provider under any applicable Call Off Contract shall be performed;
“Change of Control”	has the meaning ascribed to it in clause 33.2 of this Contract;
“Code”	has the meaning ascribed to it in clause 20.5 of this Contract;
“Commencement Date”	means the date of this Contract;
“Commercially Sensitive Information”	<p>means the information (if any) listed in Schedule 7 of this Contract comprising of:</p> <ul style="list-style-type: none"> (a) any information which is provided by the Service Provider to the Council in confidence; and/or (b) any information that constitutes a trade secret;
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including any information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, including (without limitation) any trade secrets, Intellectual Property Rights, Commercially Sensitive Information, Personal Data, Sensitive Personal Data and know-how of either Party;
“Contract”	means the terms and conditions of this contract including its schedules, annexures and appendices;
“Contract Manager”	means the person appointed or nominated from time to time by the Council to oversee and supervise the management of this Contract and any applicable Call Off Contract;
“Contract Review Meeting”	means a meeting between the Council and the Service Provider pursuant to paragraph 3 of Schedule 2 to this Contract for the purposes of reviewing the Service Provider’s performance

under this Contract;

“Contract Period”	means the period commencing on the Commencement Date and ending on the Expiry Date;
“Contract Price”	means the price payable to the Service Provider by the Council pursuant to the applicable provisions of paragraph 2 of Schedule 3 to this Contract for the performance of any Services under any Call Off Contract;
“Contracting Authorities”	has the meaning ascribed to it in the Regulations and the term “Contracting Authority” shall be construed accordingly;
“Crown”, “Crown Body” or “Crown Bodies”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), 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;
“CQC”	means the Care Quality Commission being the independent regulator of health and social care services in England or any successor body thereto;
“CQC Regulations”	means the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the Care Quality Commission (Registration) Regulations 2009 (as amended from time to time);
“DBS”	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012;
“Direct Payments”	a payment which is made by the Council to an individual in accordance with the Care and Support (Direct Payments) Regulations 2014 in order to meet their assessed needs;
“Disaster”	means an event defined as such in the Business Continuity Plan;
“Dispute Process”	Resolution means the process set out in clause 41 of this Contract;
“DPA”	means the Data Protection Act 1998 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;
“Dynamic Purchasing System” or “DPS”	means this dynamic purchasing system used by the Council to procure the Services under this Contract pursuant to the applicable provisions of the Public Contracts Regulations 2015 (as amended from time to time);
“Emergency Award Procedure”	means the Council’s award procedure set out in clauses 4.26 to 4.31 (inclusive) of this Contract;
“Employment Checks”	means the pre-appointment checks that are required by Law and/or any applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
“End Date”	has the meaning ascribed to it in clause 4.10.2(d) of this Contract;
“Enhanced DBS & Barred List Check”	means an Enhanced DBS & Barred List Check (Child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) as appropriate;
“Enhanced DBS & Barred List Check (Child)”	means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children’s barred list;
“Enhanced DBS & Barred List Check (Adult)”	means a disclosure of information comprised in an Enhanced DBS Check together with information from DBS adult’s barred list;
“Enhanced DBS & Barred List Check (Child & Adult)”	means a disclosure of information comprised in an Enhanced DBS check together with information from the DBS children’s and adult’s barred list;
“Enhanced DBS Check”	means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for;
“Enhanced DBS Position”	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) which also meets the criteria set out in The Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as

appropriate) is permitted;

“Environmental Information Regulations”

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

“Existing Contracts”

has the meaning ascribed to it in clause 4.4 of this Contract;

“Expiry Date”

means the earlier of either (i) the expiry date of the Initial Term, (ii) the expiry date of any applicable Extension Period, (iii) the expiry date of any extension to the Contract Period pursuant to clause 2.3 of this Contract or (iv) the date of any termination of this Contract;

“Extension Period”

has the meaning ascribed to it in clause 2.2 of this Contract;

“FOIA”

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

“Force Majeure Event”

means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including any fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Service Provider's organisation; or
- (b) any failure on the part of the Service Provider's supply chain to comply with their applicable obligations to the Service Provider under any third party contract relating to any of the Services;

“Fundamental Standards”

means the fundamental standards set out in the Social Care and Health Act 2008 (Regulated Activities) Regulations 2014 (as amended from time to time);

“Good Industry Practice”

means the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected

from a leading and expert supplier of services similar to the Services to a customer like the Council;

“Guidance”

means any guidance issued or updated by the UK Government from time to time in relation to the Regulations;

“High Level Support Plan and Assessment”

means the plan and risk assessment substantially in the form set out in Schedule 1 of an applicable Call Off Contract (as amended from time to time) which comprises the Services which the Service Provider shall deliver to the Council under such Call Off Contract;

“Information”

has the meaning given under section 84 of the FOIA;

“Initial Term”

has the meaning ascribed to it in clause 2.1 of this Contract;

“Insolvency Event”

means the occurrence of any one of more of the following:

- (i) the Service Provider suspends, or threatens to suspend, payment of its debts as they fall due or admits any inability to pay its debts or (being a limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words “it is proved to the satisfaction of the court” did not appear in sections 123(1) or 123(2) of the insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies to;
- (ii) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than being a company) for the sole purpose of a scheme for a sole amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;
- (iii) a petition is filed, a notice is given, a

resolution is passed, or an order is made for or in connection with the winding up of the Service Provider (being a company, a limited liability partnership or a partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;

- (iv) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);
- (v) an application is made to the court of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (vi) a person becomes entitled to appoint a receiver over all or any of the assets of the Service Provider or a receiver is appointed over all or any of the assets of the Service Provider;
- (vii) the Service Provider (being an individual) is the subject of a bankruptcy petition, application or order;
- (viii) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied on enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days;
- (ix) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to the events mentioned in (iv) to (viii) above;
- (x) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (xi) the Service Provider enters into a company voluntary arrangement pursuant to section

“Intellectual Rights”	Property	means all patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
“Invitation to Tender”		means any electronic submission by the Council through the DPS which invites all of the eligible service providers in the applicable Lot(s) under the DPS to submit a Tender to bid for the delivery of the applicable Services which are the subject matter of such invitation to tender;
“Law”		means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of any court of competent jurisdiction, or directives or requirements or any Regulatory Body of which the Service Provider is bound to comply;
“Large Scale Enquiry”		means an enquiry which is instigated by the Staffordshire and Stoke-on-Trent Adult Partnership Board in accordance with section 9 of the Staffordshire and Stoke-on-Trent Adult Safeguarding Enquiry Procedures (as amended from time to time);
“Letter of Intent”		means a letter from the CQC notifying the Service Provider of its intention to take urgent enforcement action under section 31 of the Health and Social Care Act 2008 (as amended from time to time);
“Local HealthWatch”		means the local independent consumer champion for health and social care in England;
“Long Stay”		means any Placement of a Resident in the Care Home which is not a Short Stay;
“Long Stay Call Off Contract”	Call Off	means the Call Off Contract entered into between the Parties with respect to any Resident Placed in the Care Home on a Long Stay basis in the form substantially set out in Schedule 10 of this Contract;

“Losses”	means all damages, losses, liabilities, claims, actions, costs, expenses (including all legal and/or other professional expenses) proceedings, demands and charges whether arising under statute, contract, tort (including negligence), at common law or otherwise;
“Lot”	means the applicable lot(s) which the Service Provider has been appointed to under this Contract and is eligible to submit Tenders in relation to (subject always to any suspension rights of the Council) and such lots are set out in Schedule 4 of this Contract;
“Material Breach”	means a breach of any of the terms of this Contract or of any Call Off Contract which has a serious effect on the benefit of this Contract or any Call Off Contract to either Party, or where any Persistent Breach of the terms of this Contract or any Call Off Contract has been committed by either Party;
“Mediator”	has the meaning ascribed to it in clause 41.5.1 of this Contract;
“NHS Funded Nursing Care”	means care which is provided by a registered nurse as part of a package of care in a Care Home with Nursing (as defined in the Specification);
“NICE”	means National Institute for Health and Care Excellence being the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of all ill health (or any successor body);
“Nominated Partners”	means either SSOTP, North Staffordshire Combined Healthcare NHS Trust (NSCHT), South Staffordshire and Shropshire Healthcare NHS Foundation Trust (SSSFT) or Independent Futures (an internal department within the Council) which have been nominated by the Council to provide assessment and care management services on behalf of the Council, and the term “Nominated Partners” shall be construed accordingly;
“Notice of Decision”	means decision by the CQC which is notified to the Service Provider to impose a condition on its registration under section 31 of the Health and Social Care Act 2008 (as amended from time to time);
“Notice of Proposal”	means either a proposal by the CQC:

- (i) to vary a condition of the Service Provider's location pursuant to section 12(5)(a) of the Health and Social Care Act 2008 (as amended from time to time); or
- (ii) to cancel, suspend, vary, remove or impose registration conditions on the Service Provider under section 26 of the Health and Social Care Act 2008 (as amended from time to time);

“Nursing Care”	means any nursing care Services provided by a registered nurse in relation to the Resident at the Care Home;
“OJEU Notice”	means the notice in the Official Journal of the European Union [**insert details**] ;
“Option A Award Criteria”	means the Council's Award Criteria set out in paragraph 2.1 of Schedule 11;
“Option B Award Criteria”	means the Council's Award Criteria set out in paragraph 2.2 of Schedule 11;
“Option C Award Criteria”	means the Council's Award Criteria set out in paragraph 2.3 of Schedule 11;
“Out of Hours”	means (i) any times outside of the hours of 09:00 hours and 17:00 hours Monday to Thursday inclusive or 09:00 hours and 16:30 hours on Fridays (excluding any Bank Holidays) or (ii) at any time during a non-Working Day;
“Particulars”	means the specific details of the Service Provider pertaining to this Contract and substantially in the form set out in Part A of Schedule 1 of this Contract;
“Pen Portrait”	means the document used by the Council or one of its Nominated Partners to summarise the Council's initial High Level Support Plan and Assessment and annexed to the applicable Call Off Contract substantially in the form set out in Schedule 6 of this Contract;
“Persistent Breach”	means any breach of this Contract or any Call Off Contract which is committed by the Service Provider six or more times in any six month period during the Contract Period or during the term of any applicable Call Off Contract;
“Personal Budget”	means the cost to the Council of meeting a Resident's assessed needs which the Council chooses or is required to pay having to take into consideration circumstances where the cost to

the Council may need to be adjusted to ensure that a Resident's needs are met, and having regard to the availability of the Services and the actual cost of care;

“Place” “Placed” or “Placement” means the admission of a Resident into the Care Home in accordance with the terms of an applicable Call Off Contract either on a Short Stay or Long Stay basis;

“Procurement Documents” has the same meaning ascribed to it as in the Public Contracts Regulations 2015;

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract or any applicable Call Off Contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract, any applicable Call Off Contract or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council;

“Quality Assurance Visit” means a quality assurance visit performed by the Council in accordance with paragraph 4 of Schedule 2 of this Contract;

“Re-ablement” means the re-ablement Services more particularly described in the Specification provided by the Service Provider for the

		purposes of enabling the Resident to return to live in their own home;
"Rectification Action"		has the meaning ascribed to it in clause 34.4 of this Contract;
"Reference Prices"		means the reference prices set out in paragraph 3 of Schedule 11 to this Contract;
"Registered Manager"		means the member of the Service Provider's Staff referred to in the Particulars (as amended from time to time) who manages the Care Home and is registered with the CQC (or any other applicable regulator);
"Regulated Activity"		in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
"Regulated Provider"	Activity	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 (as amended from time to time);
"Regulations"		means the Public Contracts Regulations 2015, (as amended from time to time);
"Regulatory Body"		means a body established by those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract, any Call Off Contract or any other affairs of the Council and the term "Regulatory Bodies" shall be construed accordingly;
"Relevant Convictions"		means any conviction that is relevant to the nature of the Services or as notified by the Council to the Service Provider from time to time;
"Replacement Provider"		means any third party Service Provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry or termination of this Contract or any Call Off Contract;
"Request for Information"		shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term

			“request” shall apply);
“Resident”			means any individual who is currently residing in the Care Home or will be residing in the Care Home and which is receiving or shall receive the benefit of the Services under any applicable Call Off Contract;
“Respite”			means a short-term or temporary Placement of a Resident in the Care Home to provide relief for their usual carer(s);
“Room”			means an applicable room within the Care Home which is allocated to or chosen by a Resident upon their Placement in the Care Home;
“Safeguarding Review”	Adult		means a review of the same name carried out pursuant to section 44 of the Care Act 2014 (as amended from time to time);
“Schedule”			means any schedule attached to, and forming part of, this Contract;
“Selection Criteria”			means the Council’s criteria for appointing service providers onto this DPS which are set out in the Council’s Selection Questionnaire;
“Selection Questionnaire”			means the Council’s selection questionnaire which is set out in the Procurement Documents in relation to this Contract;
“Sensitive Personal Data”			has the meaning ascribed to it under the DPA;
“Services” or “Service”			means any service or services supplied by the Service Provider to the Council under an applicable Call Off Contract as more particularly described in the High Level Support Plan and Assessment (as amended from time to time);
“Service Representative”	Provider’s		means the individual described as such in the Particulars;
“Short Stay”			a Placement of a Resident into the Care Home either for a period of up to eight (8) weeks in order to enable that Resident to return home or to be moved on to the right setting, either following a hospital stay or where that individual has experienced a health or social care crisis in their own home, including (without limitation) any Re-ablement or Respite Placement;
“Short Stay Contract”	Call Off		means a Call Off Contract entered into between the Parties with respect to any Resident Placed in the Care Home on a Short Stay basis in the form substantially set out in Schedule 9 of this

		Contract;
“Special Conditions”		has the meaning ascribed to it in clause 4.10.2(e) of this Contract;
“Specification”		means the description of the scope of care home and nursing care home services, all or part of which the Council may wish to award under an applicable Call Off Contract from time to time and as set out in Part B of Schedule 1 of this Contract;
“Sponsor”		means an individual who has been nominated by the Resident or their next of kin/representative to pay any applicable Topping Up Payment and is willing and able to do so;
“SSOTP”		means Staffordshire and Stoke-on-Trent NHS Partnership Trust;
“Staff”		means all persons employed or engaged by the Service Provider in order to perform the Service Provider’s obligations under this Contract or under any Call Off Contract on its behalf, including (without limitation) all of its employees, servants, agents, suppliers, permitted Sub-Contractors and assignees and any other representatives;
“Standard Procedure”	Award	means the Council’s award procedure set out in clauses 4.9 to 4.25 (inclusive) of this Contract;
“Standard DBS Check”		means a disclosure of information which contains certain details of an individual’s convictions, cautions, reprimands or warnings recorded on police central records and includes both ‘spent’ and ‘unspent’ convictions;
“Standard DBS Position”		means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted;
“Standard Equipment”		means any equipment, plant or materials to be provided by the Service Provider pursuant to the provisions of the Specification or an applicable Call Off Contract to perform the Services;
“Standard Variation”		means a variation to any applicable Call Off Contract which is substantially set out in the form in Part A of Schedule 5 to this Contract;
“Statutory Contribution”		has the meaning ascribed to it in paragraph 2.1A.1 of Schedule 3 to this Contract;

“Sub-Contractor”	means any third party which is permitted by the Council to deliver all or part of the Services to the Council on behalf of the Service Provider;
“Tender”	means the document(s) submitted electronically through the DPS by the Service Provider to the Council in response either to the Council's: <ul style="list-style-type: none"> (a) OJEU Notice in order for the Service Provider to be appointed as an eligible service provider under the DPS; or (b) Invitation to Tender and which sets out the details of the Service Provider's bid in relation to the applicable Services which the Council is considering the award of with respect to such Invitation to Tender;
“Top Up Payment” “Topping Up Payment”	or any additional cost to be paid by a Sponsor (or in some cases a Resident) to the Service Provider in circumstances where the Resident has actively chosen a care home with a weekly Total Care Price that is greater than the amount identified in the Personal Budget for the provision of the Services, and such additional cost shall be the difference between the applicable Personal Budget and the Total Care Price;
“Total Care Price”	means the total weekly price proposed by the Service Provider as part of its applicable Tender in relation to providing the Services pertaining to the Placement of an individual into the Care Home,
“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended from time to time);
“Transferee”	has the meaning ascribed to it in clause 23.2 of this Contract;
“Unilateral Notice”	means the notice substantially set out in the form in Part B of Schedule 5 to this Contract;
“VAT”	means any value added tax pursuant to the Value Added Tax Act 1994 (as amended from time to time);
“Warning Notice”	means any warning notice served by the CQC under Section 29 of the Health and Social Care Act 2008 (as amended from time to time); and
“Working Day”	means Monday to Friday (inclusive) excluding any Bank Holiday.

- 1.2 The interpretation and construction of this Contract and/or any Call Off Contract shall be subject to the following provisions:
- 1.2.1 any words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa;
 - 1.2.2 any words importing the masculine shall include the feminine and the neuter;
 - 1.2.3 any reference to a clause or paragraph shall be a reference to the whole of that clause or paragraph unless stated otherwise;
 - 1.2.4 any reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument;
 - 1.2.5 any reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees, Sub-contractors and/or transferees;
 - 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - 1.2.7 all headings are included in the Contract and any Call Off Contract for ease of reference only and shall not affect the interpretation or construction of this Contract or any Call Off Contract; and
 - 1.2.8 save where expressly stated otherwise in this Contract, or any applicable Call Off Contract, the terms and conditions of this Contract and its schedules are to be read as mutually explanatory of one another. In the event that there is a conflict or inconsistency between the clauses and the schedules of this Contract, such conflict or inconsistency shall be resolved in accordance with the following order of precedence:
 - (a) the clauses of this Contract;
 - (b) Schedule 3 of this Contract;
 - (c) Schedule 1, Part B of this Contract;
 - (d) Schedule 11 of this Contract; and
 - (e) the remaining Schedules equally.

2. **CONTRACT PERIOD AND EXTENSION PERIOD(S)**

- 2.1 This Contract shall come into effect on the Commencement Date and shall expire automatically on [**30 June 2019**] (the “**Initial Term**”), unless:
- 2.1.1 the Council extends the Initial Term in accordance with clauses 2.2 or 2.3 of this Contract; or
 - 2.1.2 this Contract is terminated earlier by either Party pursuant to its terms or by operation of Law.

- 2.2 The Council may extend the Contract Period beyond the Initial Term by up to two further extension periods of twelve (12) months each (each an “**Extension Period**”), subject always to giving the Service Provider not less than three (3) months’ written notice prior to the expiry of the Initial Term or the first Extension Period (as the case may be), or such other period of notice as is agreed in writing between the authorised representatives of the Parties from time to time.
- 2.3 The Council may further extend the Contract Period beyond the expiry of the second Extension Period (if any) in accordance with the Regulations.
- 2.4 Save where expressly stated otherwise herein, any termination or expiry of this Contract shall not affect the validity or enforceability of any Call Off Contract entered into by the Parties from time to time and any such Call Off Contract shall only terminate or expire in accordance with its own applicable terms.

3. SERVICE PROVIDER’S STATUS

- 3.1 At all times during the Contract Period and during the term of any applicable Call Off Contract, the Service Provider shall be an independent contractor and nothing in this Contract nor in any Call Off Contract, shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract or any applicable Call Off Contract.
- 3.2 The Parties hereby acknowledge and agree that nothing in this Contract nor in any Call Off Contract shall create or be deemed to create any relationship of landlord and tenant in respect of any accommodation, Care Home and/or Room which is provided as part of any Services, whether between the Council and the Service Provider, the Council and the Resident, the Service Provider and the Resident or otherwise.

4. NO VOLUME GUARANTEE, SELECTION OF SERVICE PROVIDERS AND THE AWARD PROCEDURES

- 4.1 Save as otherwise expressly provided herein, the obligations of the Council under this Contract and/or under any Call Off Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract and/or in any Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability (howsoever arising) under this Contract and/or any Call Off Contract on the part of the Council to the Service Provider.
- 4.2 Save where expressly stated otherwise herein, in entering into this Contract the Council hereby appoints the Service Provider as a potential provider of the Services under the applicable Lot(s) which are set out in the Particulars and the Service Provider shall be eligible to be considered for the award of Call-Off Contracts for such Services by the Council during the Contract Period in accordance with this clause 4.
- 4.3 In order to execute this Contract, the Council shall arrange for the final form version of this Contract to be produced and uploaded onto the Council’s DPS system in order to be executed by the authorised representatives of the Parties in counterpart and exchange such counterparts via the DPS and, save where expressly stated otherwise herein, the Service Provider shall be appointed as a

potential provider of the Services under the DPS with effect from the date on which the second Party executes a counterpart.

- 4.4 The Service Provider acknowledges and agrees that, in entering into this Contract, no form of exclusivity or volume guarantee has or shall be granted by the Council for any Services to be awarded to or delivered by the Service Provider and that the Council shall only use this Contract to Place individuals into the Care Home where it is unable to do so under its other contracts with other providers from time to time, including (but not limited to) its contracts regarding block bookings for respite or dementia care (the “**Existing Contracts**”), and that nothing in this Contract nor any applicable Call Off Contract shall prohibit or fetter the Council’s unequivocal right to enter into other contracts and arrangements with other service providers for the provision of any or all services which are the same as or similar to the Services hereunder.
- 4.5 Save where expressly otherwise agreed by the authorised representatives of the Council, the Service Provider shall only be entitled to submit a Tender in response to any Invitation to Tender in relation to the Lot(s) which the Service Provider has been appointed to if, at the time of submitting such Tender, it is able to comply with all of the Selection Criteria.
- 4.6 The Service Provider warrants, represents and undertakes that all of the information submitted in the Selection Questionnaire from time to time is true and accurate and the Service Provider shall immediately notify the Contract Manager in writing if:
- 4.6.1 it becomes aware, or reasonably suspects, that it will no longer be able to comply with such Selection Criteria and, save where the authorised representatives of the Council expressly agrees otherwise in writing, the Service Provider shall not be entitled to submit a Tender in respect of any subsequent Invitation to Tender until such time as it has demonstrated to the Council’s satisfaction that it is able to fully comply with its Selection Criteria; or
- 4.6.2 any of the details submitted by the Service Provider in relation to the Selection Questionnaire have changed, but such changes do not affect the ability of the Service Provider to comply with the provisions of the Selection Questionnaire.
- 4.7 At all times during the Contract Period, new service providers shall be entitled to apply to the Council in order to be selected to participate in the DPS.

The Award Procedures

- 4.8 During the Contract Period, the Council shall be entitled (but not obliged) to award Call Off Contracts for the provision of the applicable Services to service providers in accordance with either the Standard Award Procedure or the Emergency Award Procedure.

The Standard Award Procedure

- 4.9 Where an individual is assessed by the Council or one of its Nominated Partners as having a need for being placed into a care home then either the Council or one of its Nominated Partners shall complete a High Level Support Plan and Assessment.

- 4.10 If the Council is unable to place such an individual into a care home or any such analogous accommodation under its Existing Contracts, then the Council or any of its Nominated Partners shall as soon as reasonably practicable following the completion of an applicable High Level Support Plan and Assessment:
- 4.10.1 complete a summary of the High Level Support Plan and Assessment in the form of a Pen Portrait and provide this to the Council;
 - 4.10.2 submit, via its DPS system, its Invitation to Tender in relation to the applicable Services which it wishes (but shall not be obliged) to award with respect to the relevant individual and such Invitation to Tender shall substantially comprise of:
 - (a) the applicable Pen Portrait;
 - (b) the Lot which the Services relate to;
 - (c) the Award Criteria pertaining to the Services in question;
 - (d) the timescales within which the Tender must be submitted in order to be eligible for evaluation by the Council in accordance with the Award Criteria, (the “**End Date**”);
 - (e) any supplements and/or refinements to the Call Off Terms (the “**Special Conditions**”) and the Award Criteria which are permitted by and in accordance with the Regulations and the Guidance; and
 - (f) any other provisions which are necessary to govern the provision of the applicable Services.
 - 4.10.3 invite each and every eligible service provider which is appointed to the relevant Lot to which the Services relate to submit a bid with respect to the applicable Invitation to Tender for the award of such Services and ensure that the Council affords all such service providers the same amount of time to submit a bid prior to the End Date.
- 4.10A The Council shall have the right to extend the End Date in relation to any Invitation to Tender at any time prior to its expiry by notifying through the DPS all of the service providers on the applicable Lot which are currently eligible to participate in the DPS of any such extension.
- 4.11 The Service Provider shall at all times during the Contract Period monitor its emails and the DPS (as applicable) as regularly as possible to check for the submission of any Invitation to Tender by the Council and each time the Service Provider receives an Invitation to Tender and elects to submit a Tender in response then it shall:
- 4.11.1 immediately raise any clarifications regarding the applicable Invitation to Tender with the Council through the DPS system; or
 - 4.11.2 submit such a Tender via the DPS system (whether following the receipt of any Council response to a clarification in accordance with clause 4.12 of this Contract (if applicable) or otherwise), and such Tender shall confirm to the Council:

- (a) that the Service Provider's Care Home currently has a CQC rating of "Requires Improvement" or above, unless the authorised representatives of the Council have confirmed in writing that a lower CQC rating is acceptable;
- (b) that the Service Provider is able to meet all of the individual's needs set out in the applicable Pen Portrait;
- (c) the Service Provider's proposed Total Care Price (excluding any charges in relation to NHS Funded Nursing Care) with respect to the applicable Services comprised in the Invitation to Tender; and
- (d) any other details which the Council requires (if any) where such details are requested under the Council's applicable Invitation to Tender.

4.12 If the Service Provider raises any clarifications regarding an applicable Invitation to Tender pursuant to clause 4.11 of this Contract above then the Council shall use its reasonable endeavours to respond to the same as soon as reasonably practicable and such response shall be issued to all service providers who have submitted a bid in the same Lot as the Service Provider and whom are currently eligible to participate in the DPS.

4.13 In the event that any clarification raised by the Service Provider or any other service provider on the same Lot results in the requirement for a further re-assessment of the individual to be carried out by the Council or one of its Nominated Partners, or in the need for a revised version of the applicable Pen Portrait to be submitted via the DPS, then the Council shall withdraw the applicable Invitation to Tender and notify each of the eligible service providers on the applicable Lot of its reasons for doing so as soon as reasonably practicable and seek to place the individual in accordance with the provisions of clause 4.25 of this Contract.

4.14 Following the expiry of the applicable End Date, the Council shall:

- 4.14.1 comply with the provisions of clause 4.25 of this Contract if no bids have been received or if all received bids are rejected by the Council for any reason; or
- 4.14.2 evaluate all of the compliant tenders which it has received with respect to the applicable Invitation to Tender as soon as reasonably practicable in accordance with the applicable Award Criteria in order to determine the highest scoring tender which has been submitted.

4.15 As soon as reasonably practicable following the conclusion of the evaluation exercise referred to in clause 4.14.2 of this Contract the Council shall:

- 4.15.1 notify any service providers which have not complied with the relevant Award Criteria that they have not been awarded the applicable Services;
- 4.15.2 either inform the relevant individual, or instruct its applicable Nominated Partner to inform the relevant individual of the following:

- (a) the names, addresses and any other relevant details of the care homes of any service providers whom have submitted tenders which have successfully complied with the relevant Award Criteria;
- (b) the score which each of the successful service providers have been allocated by the Council following its evaluation using the Award Criteria;
- (c) the prices which the relevant service providers have submitted for the performance of the applicable Services;
- (d) the details of the service provider and its care home which has submitted the highest scoring tender in accordance with the Council's applicable Award Criteria;
- (e) details of any Topping Up Payment which may be required in relation to any of the care homes referred to in clause 4.15.2(a) of this Contract, and
- (f) any other relevant details,

so that, amongst other things, the Council or any Nominated Partner can assist the individual (or their duly appointed representative(s) and family members) in determining which tenders form the individual's first, second or third choice for the prospective placement (provided always sufficient bids have been received to enable such choices) and in order to enable the Council (or any Nominated Partner) and the individual to carry out all necessary planning and discussions regarding the suitability of such choices.

- 4.16 As soon as reasonably practicable following the Council's notification pursuant to clause 4.15.2 of this Contract, the Council shall notify the Service Provider through the DPS whether or not it is the applicable individual's first choice for the delivery of the Services and either it or its applicable Nominated Partner shall forward a copy of the individual's High Level Support Plan and Assessment to any such first choice.
- 4.17 If the individual does not wish to be Placed in the Service Provider's Care Home then the Council shall reject the Service Provider's applicable Tender as soon as reasonably practicable in writing via the DPS.
- 4.18 Without delay, but in any event no later than the end of the next Working Day following the date of the Council's notification pursuant to clause 4.16 of this Contract that the Service Provider is the individual's first choice (if applicable), then the Service Provider shall visit the relevant individual for the purposes of performing its own assessment of the individual's needs to formulate the Service Provider's Care Plan in relation to the individual.
- 4.19 If, following the Service Provider's assessment in accordance with clause 4.18 of this Contract, the Service Provider is able to meet the relevant individual's needs and the Parties wish to enter into a Call Off Contract for the Services, then the Council shall arrange for an agreed final form copy of the Call Off Contract for the applicable Services to be produced and uploaded onto the Council's DPS system in order to be executed by the authorised representatives of the Parties in accordance with clause 4.20 of this Contract, and the Council shall notify any

- unsuccessful service providers via the DPS as soon as reasonably practicable that their applicable tenders have been rejected.
- 4.20 Unless otherwise agreed by the authorised representatives of the Parties, the Parties shall each arrange for an authorised representative to sign and date a copy of the agreed final form Call Off Contract in counterpart and upload and exchange such executed counterparts on the Council's DPS system whereupon the applicable Call Off Contract shall become legally binding on the date upon which the second of the Party's executes the aforementioned agreed final form copy.
- 4.21 If the Service Provider's assessment in accordance with clause 4.18 of this Contract reveals:
- 4.21.1 that the Service Provider cannot meet the needs of the individual in question due to an error contained in the Pen Portrait and/or the High Level Support Plan and Assessment which the Council or one of its Nominated Partners has prepared then the Council shall:
- (a) withdraw its applicable Invitation to Tender;
 - (b) inform all of the relevant service providers on the applicable Lot of such withdrawal and the reasons for doing so; and
 - (c) submit a new Invitation to Tender to all of the eligible service providers on the applicable Lot once the Council or its applicable Nominated Partner has performed another assessment then the Council shall comply with the provisions of clause 4.25 of this Contract; or
- 4.21.2 that the Service Provider cannot meet the needs of the individual (but such inability is not due to any reason set out in clause 4.21.1 of this Contract above) then the Council shall reject the Service Provider's applicable Tender via the DPS and the Council will contact the service provider which is the individual's second choice (if one exists) in order for the relevant service provider to perform an assessment on the individual to ascertain whether they are able to meet their needs and this process will continue until all of the individual's choice of service provider have either been rejected or an assessment confirms that a service provider is able to meet the individual's needs and an applicable Call Off Contract is entered into.
- 4.21A Where the Service Provider is unable to meet the needs of the individual pursuant to clause 4.21 of this Contract above then it shall ensure that it immediately destroys all copies of any Personal Data and/or Sensitive Personal Data in whatever form or medium relating to the individual in question (whether contained in the Pen Portrait, the High Level Support Plan and Assessment or otherwise) and, if required by the Council, the Service Provider shall certify in writing to the Council that it has done so.
- 4.22 If none of the individual's choices are able to meet the needs of the individual following the requisite assessments then the Council shall withdraw the applicable Invitation to Tender and the Council shall then comply with the terms of Clause 4.25 of this Contract.
- 4.23 Not used.

- 4.24 The Service Provider shall immediately notify the Council through the DPS if, at any time following the submission of its Tender in relation to an Invitation to Tender, it is no longer able to provide the prospective Services to the individual in question, including (but not limited to) where the applicable Room in the Care Home becomes no longer available.
- 4.25 If the Council elects to withdraw any Invitation to Tender pursuant to the applicable provisions of this clause 4 of this Contract then it shall either:
- 4.25.1 re-submit the applicable Invitation to Tender with any relevant amendments using the Standard Award Procedure at least one further time before seeking to Place the individual in question through the Emergency Award Procedure; or
 - 4.25.2 proceed straight to seeking to Place the individual in question through the Emergency Award Procedure if the Council (acting reasonably) believes that the individual in question needs to be Placed on an urgent basis in order to protect their health and wellbeing.

THE EMERGENCY AWARD PROCEDURE

- 4.26 Where an individual is assessed by the Council or one of its Nominated Partners and the applicable High Level Support Plan and Assessment identifies the individual in question as having a need for being admitted into a care home immediately on an emergency or a temporary, Re-ablement or Respite basis, including (without limitation) where the Council needs to make a Placement on an Out of Hours basis, and to the extent that the Council is unable to admit such an individual into a care home or any such analogous accommodation under its Existing Contracts, then the Council shall follow one of the procedures set out in clauses 4.27 to 4.28A (inclusive) or 4.29 of this Contract.
- 4.27 If (acting reasonably and having given due regard to level of the applicable emergency and the risk that it poses to the wellbeing of the individual) the Council has time to submit via its DPS system an Invitation to Tender relating to the applicable emergency Services to all eligible service providers on the relevant Lot then it shall do so and such Invitation to Tender shall comprise the details set out in clause 4.10.2 (a) to (f) (inclusive) of this Contract, save that the End Date with respect to an emergency admission shall be much shorter than under the Standard Award Procedure.
- 4.28 If any Tenders are received with respect to the Invitation to Tender referred to in clause 4.27 of this Contract, then the Council shall evaluate the same without delay and shall have the right (but shall not be obliged) to award the Services in accordance with Schedule 11 of this Contract.
- 4.28A If the Council elects to award such Services pursuant to clause 4.28 above, then the Parties shall use all reasonable endeavours to enter into a Call Off Contract before the Placement commences, using the execution process in clause 4.20 of this Contract.
- 4.29 If for any reason the Council (acting reasonably) is unable to follow the procedure in Clauses 4.27 to 4.28A (inclusive) of this Contract, including (but not limited to) due to any time constraints, or due to the Council's DPS system not being available for any reason, or to protect the welfare and wellbeing of the individual in question, or no appropriate bids are received under the procedure set out in clause 4.27 of this Contract or otherwise, then the Council shall be entitled to

contact any service provider appointed to this DPS direct by telephone or such other means as is necessary in order to arrange the admission of the individual into a care home and to (amongst other things) agree a weekly care price for the Services in question and the Council shall be entitled to award the Services to such service provider in such circumstances.

- 4.29A When contacting any service provider in accordance with paragraph 4.29 above, the Council shall make available the Pen Portrait, the High Level Support Plan and Assessment and/or such other information as is necessary relating to the individual in question through the DPS in order to ensure that such service provider can meet their needs, and if the Service Provider is so contacted by the Council regarding an emergency Placement and it is unable to provide the applicable Services for any reason then it shall immediately destroy all copies of any Personal Data and/or Sensitive Personal Data in whatever form or medium relating to the individual in question (whether contained in the Pen Portrait, the High Level Support Plan and Assessment or otherwise) and, if required by the Council, certify in writing to the Council that it has done so.
- 4.30 If the Service Provider is awarded the Services pertaining to an emergency Placement in accordance with the procedure in clause 4.29 of this Contract then the Parties shall use all reasonable endeavours either to (i) enter into the applicable Call Off Contract prior to the admission of the applicable individual into the Care Home in accordance with the process set out in clause 4.20 of this Contract or (ii) enter into a Call Off Contract as soon as reasonably practicable thereafter.
- 4.31 As soon as reasonably practicable following any Placement of a Resident into the Care Home on an emergency basis, the Council shall seek to Place such individual into either the same Care Home or an alternative one on a Short Stay or Long Stay basis using the Standard Award Procedure.

GENERAL

- 4.32 The Council shall have the right not to award any of the Services (including any emergency Services) which are the subject of the submission of any Invitation to Tender under either the Standard Award Procedure or the Emergency Award Procedure by the Council, save that where it elects not to make any such award it shall notify its reasons for adopting such an approach as soon as reasonably practicable to all of the service providers which have submitted a bid in relation to such Invitation to Tender.
- 4.33 The Council shall be entitled to use the Reference Prices more particularly described in paragraph 3 of Schedule 11 in order to assist it to identify any Abnormally Low Tenders or any Abnormally High Tenders which are submitted by the Service Provider or any other service providers during the Contract Period in order to assist its decision as to whether to either reject or accept any such Abnormally Low Tenders or Abnormally High Tenders.
- 4.34 Not used.
- 4.35 If, at any time during the Contract Period or the term of any applicable Call Off Contract, the Council becomes aware of or suspects (acting reasonably) that the Service Provider has:
- 4.35.1 fixed or adjusted the amount of any Tender by or in agreement with any other service provider or third party;

- 4.35.2 communicated to any third party (other than the Council or the Resident's family or authorised representatives) any amount or the approximate amount of its proposed Tender or information which would enable the amount or approximate amount to be calculated;
- 4.35.3 entered into any agreement or arrangement with any other third party whereby such third party shall refrain from submitting a tender with respect to any Invitation to Tender;
- 4.35.4 entered into any agreement or arrangement with any third party regarding the amount of any tender to be submitted; or
- 4.35.5 offers or agrees to pay any sum or sums of money, inducement or valuable consideration directly or indirectly to any third party for submitting or not submitting a tender,

then, without prejudice to its other rights under this Contract, any applicable Call Off Contract or at Law, the Council shall be entitled to reject any such Tender or suspend or permanently prohibit the Service Provider from participating in this DPS and terminate with immediate effect this Contract and/or any Call Off Contract which the Parties have entered into hereunder which is still in effect.

- 4.36 If the Parties are not able to enter into a Call Off Contract prior to the individual's admission into the Care Home pursuant to this clause 4, then the Service Provider irrevocably agrees that the delivery of the Services shall be governed by the terms and conditions of this Contract until such time as an alternative Call Off Contract is entered into.
- 4.37 If an individual wishes exercise their rights relating to customer choice in order to be placed into a care home operated by a service provider which is not currently eligible to participate in the DPS because it has not entered into this Contract then:
 - 4.37.1 the Council shall be entitled to contact such service provider in order to inform them that they are the individual's preferred choice; and
 - 4.37.2 award the applicable Call Off Contract to such service provider without the need for further competition provided always that the service provider in question first agrees to all of the applicable terms of this Contract and the applicable Call Off Contract (including, but not limited to, agreeing the total weekly care price).

5. NOTICES

- 5.1 Except as otherwise expressly provided within this Contract or in any applicable Call Off Contract, no notice or other communication from one Party to the other shall have any validity under this Contract or any applicable Call Off Contract unless made in writing by or on behalf of the Party concerned in accordance with clause 5.2 of this Contract.
- 5.2 Any notice which is to be served by either Party to the other under this Contract or any Call Off Contract shall either be served in the form of an email or letter and such letter shall either be delivered in person or posted by first class post. Such notices shall be addressed to the other Party in the manner referred to in clause 5.3, and shall be deemed to be served immediately if successful delivered in person or by email or two (2) Working Days after the day on which the notice was

sent by first class post, provided always that any such notice is not returned as undelivered.

5.3 For the purposes of clause 5.2, all notices shall be addressed as follows:

5.3.1 on behalf of the Council:

For the attention of: The Contract Manager

Care Homes Team, Health and Care Directorate

Staffordshire Place 1

Tipping Street

Stafford

ST16 2DH

Email address: adultcarehomesdps@staffordshire.gov.uk

5.3.2 on behalf of the Service Provider:

For the attention of [**insert appropriate representative**]

[**insert address details**]

[**insert email address details**]

5.4 Either Party may change its address details and/or its recipient for the service of notices by serving a notice in accordance with the provisions of clause 5 of this Contract.

6. MISTAKES IN INFORMATION

The Service Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Service Provider in connection with this Contract and any applicable Call Off Contract, including (but not limited) to the information supplied in the Selection Questionnaire and any Tender.

7. CONFLICTS OF INTEREST

7.1 The Service Provider shall ensure, and shall procure that all of its Staff shall ensure, that neither it nor they are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual or potential conflict between the pecuniary or personal interests of the Service Provider and/or any of its Staff and the duties owed to the Council under the provisions of this Contract or any applicable Call Off Contract. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise.

7.2 The Council reserves the right to terminate this Contract together with any/all Call Off Contracts which the Parties have entered into hereunder immediately by notice in writing and/or to take such other steps as it deems necessary where, in the reasonable opinion of the Council, there is or may be any such conflict referred to in clause 7.1 of this Contract.

- 7.3 The actions of the Council pursuant to clause 7.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council and where the Council exercises its right to terminate in clause 7.2 of this Contract it shall be entitled to recover any Losses which it suffers or incurs as a result of having to terminate this Contract and/or any applicable Call Off Contract(s).

8. THE SERVICES

- 8.1 The Service Provider warrants, represents and undertakes that it will provide any and all of the Services which may be awarded to it by the Council from time to time at all times during the Contract Period and during the term of any applicable Call Off Contract with all due skill, care and diligence and in accordance with:

- 8.1.1 the provisions of Schedule 2 of this Contract;
- 8.1.2 Good Industry Practice;
- 8.1.3 all applicable Laws;
- 8.1.4 the Specification;
- 8.1.5 the Procurement Documents;
- 8.1.6 the terms of this Contract and any applicable Call Off Contract; and
- 8.1.7 the Caldicott Principles to the extent that these are applicable to the provision of the Services.

- 8.2 The Service Provider shall at all times during the Contract Period and during the term of any applicable Call Off Contract comply with its staffing and Equipment obligations set out in Specification.

- 8.3 The Service Provider shall, and shall procure that all of its Staff shall:

- 8.3.1 do nothing nor omit to do anything which shall cause the Council to be in breach of any of statutory duties with respect to the Services or any of the Council's obligations under this Contract, any applicable Call Off Contract or pursuant to any Law; and
- 8.3.2 act in good faith when complying with all of its obligations under this Contract or any applicable Call Off Contract and shall promptly provide all such reasonable co-operation and assistance to the Council as is requested from time to time to enable the Council to perform its obligations under this Contract, any applicable Call Off Contract or pursuant to any Law.

- 8.4 The Service Provider shall ensure that it enters into all agreements and arrangements with the Resident as are required by Law (including, without limitation, pursuant to the CQC Regulations).

9. QUALITY, PERFORMANCE AND CONTRACT MONITORING

The Service Provider shall ensure that it complies with all of its obligations under Schedule 2 of this Contract at all times during the Contract Period and during the term of any applicable Call Off Contract.

10. STAFF AND SAFEGUARDING VULNERABLE ADULTS

- 10.1 The Service Provider shall procure at all times during the Contract Period and during the term of any applicable Call Off Contract that all of its Staff comply with all of their applicable legal and regulatory obligations when performing any Services on behalf of the Service Provider, including (without limitation) any obligations and/or requirements which are prescribed by the CQC (or any other applicable regulator) from time to time.
- 10.2 Not used.
- 10.3 At all times during the performance of any Services pursuant to an applicable Call Off Contract, the Service Provider shall ensure that:
- 10.3.1 all of its Staff are suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged, including (without limitation) receiving all of the training which is set out in the Specification;
 - 10.3.2 there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Call Off Contract (having due regard to the needs of the other individuals residing in the Care Home);
 - 10.3.3 where applicable, Staff are registered with the appropriate Regulatory Body; and
 - 10.3.4 all of its Staff are aware of and respect the equality and human rights of colleagues and each Resident.
- 10.4 The Service Provider must have in place processes for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services pursuant to any applicable Call Off Contract receives:
- 10.4.1 proper and sufficient continuous professional and personal development, training and instruction; and
 - 10.4.2 full and detailed appraisals (in terms of performance and on-going education and training), each in accordance with Good Industry Practice and the standards of any applicable relevant professional body and/or Regulatory Body.
- 10.5 Subject to clause 10.6 of this Contract, before the Service Provider engages or employs any person in the provision of the Services pursuant to any applicable Call Off Contract, or in any activity related to, or connected with, the provision of such Services, the Service Provider must without limitation, promptly complete:
- 10.5.1 the Employment Checks; and
 - 10.5.2 such other checks as required by the DBS.
- 10.6 Subject to clauses 10.6 and 10.7 of this Contract, the Service Provider may only engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate).

- 10.7 Where clause 10.6 above applies, the Service Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- 10.7.1 an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff;
 - 10.7.2 wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted;
 - 10.7.3 the new member of Staff is accompanied at all times by another member of Staff, preferably the appointed supervisor, whilst providing any Services under an applicable Call Off Contract;
 - 10.7.4 the Service Provider shall (and shall procure that all of its Staff) comply with any additional reasonable requirements of the Council which the Council notifies to the Service Provider from time to time.
- 10.8 The Service Provider shall undertake checks to ensure that any of its potential Staff members who are likely to be in a position where they are providing any Services pursuant to an applicable Call Off Contract to a Resident has a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom. The Service Provider shall not employ or engage any Staff prior to receipt of a satisfactory Employment Check, and should the Employment Check disclose information about Staff which indicates that the person does not have a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom then that person shall not be so employed or engaged in connection with such Services.
- 10.9 The Service Provider shall ensure that the employment or involvement of young Staff complies with all applicable Laws and in particular the Children and Young Persons Act 1933 (as amended) and the Children Act 1989.
- 10.10 The Service Provider shall ensure that any volunteers using their own vehicles in connection with the performance of the Services pursuant to a Call Off Contract have informed their insurers of their volunteer driving.
- 10.11 The Service Provider shall ensure that any concerns relating to the abuse or neglect of a child are reported to the relevant local authority in accordance with the Staffordshire Safeguarding Children Board Policy and Procedures: <https://www.staffsscb.org.uk/Professionals/Procedures/Procedures.aspx>.
- 10.12 The Service Provider must have policies and procedures which acknowledge and provide for on-going monitoring of its Staff including undertaking further DBS disclosures if required and the Service Provider shall comply with such policies at all times when performing any Services under a Call Off Contract.
- 10.13 The Service Provider must keep and must procure that the Council is kept advised at all times of any Staff who subsequent to their commencement of employment or engagement with the Service Provider receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Service Provider or any member of its Staff and the Service Provider must immediately notify the Council where a referral is made to the DBS in relation to future barring of any member of its Staff.

- 10.14 The Service Provider shall comply and shall ensure that all Staff comply with the Staffordshire and Stoke-on-Trent Adult Safeguarding Enquiry Procedures dated June 2016 (as amended from time to time) <https://ssaspb.org.uk/Guidance/SSASPB-Adult-Safeguarding-Enquiry-Procedures-Final-Dec-2016-v2.pdf> and the Service Provider's own policies and procedures concerning adult protection and/or safeguarding.
- 10.15 The Service Provider's above policies and procedures shall include safeguarding adults and children from any form of abuse or exploitation which includes physical, financial, psychological or sexual abuse, neglect, discriminatory, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance.
- 10.16 The Service Provider shall have in place robust procedures for responding to suspicion or evidence of abuse and/or neglect to ensure the safety and protection of the Resident. The procedures shall reflect local multi-agency policies, protocols and guidance, including informing the CQC (or any other applicable regulator) and where appropriate involving the police in accordance with the Public Interest Disclosure Act 1998.
- 10.17 The Service Provider's safeguarding policy and procedures must ensure that all allegations and incidents of abuse are followed up in a prompt, specified timeframe. All details and actions taken are recorded in a special record/electronic file kept specifically for the purpose, and on the personal file of the Resident.
- 10.18 The Service Provider will undertake safeguarding enquiries under section 42 of the Care Act 2014 when caused to do so by the Council including (but not limited to) producing an enquiry report in compliance with local procedures.
- 10.19 The Service Provider will immediately co-operate with any safeguarding enquiry undertaken by the Council or its Nominated Partners under section 42 of the Care Act 2014 and will provide any information and documentation that is relevant to that enquiry.
- 10.20 The Service Provider shall have a Public Interest Disclosure Act 1998 (Whistleblowing) policy which will include procedures under which Staff can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These can include situations when Staff believe that:
- 10.20.1 a criminal offence has been committed;
 - 10.20.2 someone has failed to comply with a legal obligation;
 - 10.20.3 a miscarriage of justice has occurred;
 - 10.20.4 the health and safety of an individual is being endangered; and
 - 10.20.5 there are or may be financial irregularities.
- 10.21 The Service Provider shall have in place policies and procedures for Staff regarding the Resident's will and bequests. The policies and procedures shall prevent the involvement of any Staff, or family members of Staff, in the making of, or benefiting from, the Resident's will, soliciting any other form of bequest or legacy, acting as a witness or executor, and being involved in any way with any other legal arrangement.

- 10.22 The Service Provider shall ensure that all Staff shall receive training on the prevention of abuse promptly following their employment or engagement and that such training must be updated and delivered to such Staff annually thereafter. Adult Protection level 1 is the minimum requirement for all Staff and levels 1 and 2 for managers.

Safeguarding and Safeguarding Adult Reviews

- 10.23 The Service Provider shall (at no additional cost to the Council) assist the Council by providing such information as the Council and/or the Safeguarding Adult Board may request in relation to a Safeguarding Adult Review within 10 Working Days of receipt. If for any reason, the Service Provider cannot assist they must inform the Council in writing within 48 hours of request. The Service Provider must also stipulate why they cannot assist with the request.

Safeguarding Adults

- 10.24 Not used.
- 10.25 The Service Provider acknowledges that they shall at all times have regard to the health and safety of all those accessing the Care Home, including all Staff, the Resident, the Resident's duly authorised representative, visitors and all other third parties.
- 10.26 The Service Provider shall be responsible for the observance of the health and safety legal and policy requirements by all of its Staff at the Care Home.
- 10.27 The Service Provider shall ensure that full traceability is available in relation to all Services, products and facilities supplied to any Resident.

11. TUPE

The Parties do not envisage that the provisions of TUPE will apply to the subject matter of this Contract or any applicable Call Off Contract, save that the Service Provider shall be obliged to make its own enquiries directly with any existing providers of the Council to obtain all relevant TUPE and related information as may be required in order to submit any Tender which shall include the full costs which the Service Provider anticipates in incurring in order to comply with any of its applicable TUPE obligations. The Council recommends that the Service Provider seek their own legal advice regarding this area of employment law.

12. CONTRACT PRICE

If any Services are awarded to the Service Provider during the Contract Period, then the Council shall pay the Contract Price to the Service Provider in accordance with the applicable provisions of Schedule 3 of this Contract in consideration of the Service Provider performing all of its obligations under this Contract and the applicable Call Off Contract.

13. RECOVERY OF SUMS DUE

- 13.1 Wherever under this Contract or under any applicable Call Off Contract, any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of this Contract or any Call Off Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become

due to the Service Provider under any applicable Call Off Contract or under any other agreement or contract which the Council has entered into with the Service Provider.

- 13.2 Any overpayment by either Party, whether of the Contract Price or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 13.3 The Service Provider shall be entitled to deduct, whether by way of set-off, counterclaim, discount, abatement or otherwise, any amount(s) which it is owed by the Council under this Contract or any Call Off Contract from any amount that it owes to the Council.

14. PREVENTION OF BRIBERY AND CORRUPTION

14.1 The Service Provider:

- 14.1.1 shall not, and shall procure that all of its Staff shall not, in connection with this Contract or any applicable Call Off Contract commit a Prohibited Act during the Contract Period or the term of any applicable Call Off Contract; and
 - 14.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract or any applicable Call Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before the execution of this Contract or any applicable Call Off Contract.
- 14.2 The Service Provider shall provide the Council with any reasonable assistance (at the Service Provider's cost) to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.
- 14.3 The Service Provider shall, and shall procure that all of its Staff shall, notify the Council in writing immediately if any breach of clause 14.1 of this Contract is suspected or known and that any such notice contains full details of any such suspected or known breach.
- 14.4 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 14.1 of this Contract, the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit all books, records, materials, databases and any other relevant documentation relating to the delivery of the Services. This obligation shall continue for the later of six (6) years following the Expiry Date or the termination or expiry of the last Call Off Contract entered into between the Parties hereunder.
- 14.5 The Council may immediately terminate this Contract and/or any applicable Call Off Contract by written notice with immediate effect if the Service Provider or any of its Staff breaches clause 14.1 of this Contract.

15. EQUALITY, DIVERSITY AND NON-DISCRIMINATION

At all times during the Contract Period and at all times during the term of any applicable Call Off Contract the Parties shall comply with their respective obligations under the Equality Act 2010 and any subordinate legislation thereunder.

16. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

16.1 Unless expressly stated in this Contract or in any applicable Call Off Contract, a person who is not a Party to this Contract or any applicable Call Off Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on them, without the prior written agreement of the authorised representatives of each Party. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

16.2 For the avoidance of doubt, each Resident shall have the benefit of any Services awarded to the Service Provider under any Call Off Contract, but nothing in this Contract or any Call Off Contract shall entitle the Resident to terminate this Contract or any applicable Call Off Contract relating to the Services which they are a third party beneficiary of.

17. HEALTH AND SAFETY

17.1 Each Party shall perform its obligations under this Contract and any applicable Call Off Contract in accordance with the applicable requirements of the Health and Safety at Work etc. Act 1974 and any other applicable acts, orders, regulations and codes of practice relating to health and safety.

17.2 The Service Provider will immediately report to the Council all accidents which concerns or relates to the Service(s) being delivered and which ordinarily require reporting in accordance with the Health and Safety at Work Act 1974.

17.3 The Service Provider shall use all reasonable endeavours to ensure that all of the Service Provider's Staff have read and understood both the Service Provider's and statutory and local health and safety policies before they undertake any Service delivery within the Care Home.

17.4 Service Provider must ensure that any observed and/or reported health and safety breach is addressed within the quickest possible timespan and any effected areas within the Care Home are made safe before any activity is re-commenced.

17.5 The Service Provider shall supply or make available to the Council all certificates, licences, permits and otherwise which are required to ensure that the Service Provider is legally permitted to deliver the Services on behalf of the Council or to any Resident.

18. THE DATA PROTECTION ACT

18.1 For the purposes of this Contract, the terms "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Personal Data**", "**Sensitive Personal Data**" "**Process**" and "**Processing**" shall have the meaning prescribed under the DPA, and any references herein to the "Personal Data" and/or "Sensitive Personal Data" shall include a Resident's Personal Data and/or Sensitive Personal Data.

- 18.2 The Service Provider shall (and shall procure that all of its Staff shall) comply with all of the applicable requirements under the DPA when performing its obligations under this Contract or any Call Off Contract.
- 18.3 The Parties envisage that under this Contract and any applicable Call Off Contract that the Council and the Service Provider shall be Data Controllers in common and that if the Service Provider or any of its Staff Processes any Personal Data and/or any Sensitive Personal Data in relation to the Council or any actual or prospective Resident in connection with this Contract or any Call Off Contract then it/they shall:
- 18.3.1 only Process such Personal Data and/or Sensitive Personal Data in accordance with the instructions of the Council (which may be specific instructions or instructions of a general nature as set out in this Contract, any applicable Call Off Contract or as otherwise notified by the Council to the Service Provider at any time during the Contract Period, during the term of any Call Off Contract or following the termination or expiry of the same);
 - 18.3.2 Process the Personal Data and/or Sensitive Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - 18.3.3 implement appropriate technical and organisational measures to protect the Personal Data and/or Sensitive Personal Data against any and all unauthorised or unlawful Processing and against any accidental or deliberate loss, theft, destruction, corruption, damage, alteration and/or disclosure, and such measures shall be appropriate to the harm which might result from any such unauthorised or unlawful Processing, accidental or deliberate loss, destruction, corruption, damage, alteration and/or disclosure to the Personal Data and/or Sensitive Personal Data and having regard to the nature of such Personal Data and/or Sensitive Personal Data which is to be protected;
 - 18.3.4 ensure that all of the Personal Data and/or Sensitive Personal Data is kept confidential at all times during and after the Contract Period or the term of any applicable Call Off Contract;
 - 18.3.5 ensure the reliability of all of its Staff who have access to the Personal Data and/or Sensitive Personal Data;
 - 18.3.6 obtain the prior written consent of the authorised representatives of the Council in order to transfer any of its or any actual or prospective Resident's Personal Data and/or Sensitive Personal Data to any third party any in relation to the provision of the Services;
 - 18.3.7 ensure that all of its Staff required to access the Personal Data and/or Sensitive Personal Data are informed of the confidential nature of such Personal Data and/or Sensitive Personal Data and comply with all of the obligations set out in this clause 18;
 - 18.3.8 ensure that none of its Staff publish, disclose or divulge any Personal Data and/or Sensitive Personal Data of the Council or any actual or prospective Resident to any third party unless directed in writing to do so by the authorised representatives of the Council;

- 18.3.9 promptly (but in any event within two (2) calendar days) notify the Council if it or any of its Staff:
- (a) receives a request from a Data Subject to have access to that Resident's Personal Data and/or Sensitive Personal Data; or
 - (b) received a complaint or request relating to the Council's or the Service Provider's obligations under the DPA;
 - (c) provide (and shall procure that all of its applicable Staff shall provide) the Council (at the Service Provider's sole cost) with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Council with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Council's instructions;
 - (ii) providing the Council with any of the Personal Data and/or Sensitive Personal Data which it or its Staff holds in relation to a Data Subject (within the timescales required by the Council); and
 - (iv) providing the Council with any information requested by the Council.
- 18.3.10 permit the Council or any member of its authorised personnel (subject to them entering into reasonable and appropriate confidentiality undertakings), to inspect and audit the Service Provider's Processing activities and comply with all reasonable requests or directions of the Council to enable the Council to verify that the Service Provider is in full compliance with its obligations under clause 18 of this Contract;
- 18.3.11 provide a written description of the technical and organisational methods employed by the Service Provider or its Staff for Processing the Personal Data and/or Sensitive Personal Data (within the timescales required by the Council);
- 18.3.12 not Process or otherwise transfer any of the Personal Data and/or Sensitive Personal Data outside the European Economic Area, unless otherwise agreed by the authorised representatives of the Council in writing;
- 18.3.13 take and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element (including any malicious software) into the Council's DPS system or any other Council system which is used by the Service Provider or its Staff in connection with this Contract or any Call Off Contract; and
- 18.3.14 only retain sufficient copies of any Personal Data and/or Sensitive Personal Data relating to the Council or any Resident as is necessary to comply with the Service Provider's legal and regulatory obligations and

promptly return or destroy (at the Council's sole direction) all other copies of such Personal Data and/or Sensitive Personal Data in whatever form or medium upon the expiry or termination of this Contract and/or each applicable Call Off Contract and certify in writing to the Council that it has done so.

18.4 The Service Provider acknowledges and agrees that, in the event that it or any of its Staff breaches (or attempts or threatens to breach) its obligations contained in this clause 18, the Council may be irreparably harmed (including harm to its reputation), and in such circumstances the Council may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

18.5 The provisions of this clause 18 shall apply during the Contract Period and the term of any Call Off Contract and indefinitely after expiry or termination of the same.

19. CONFIDENTIAL INFORMATION

19.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract or any applicable Call Off Contract, each Party shall:

19.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

19.1.2 not disclose the other Party's Confidential Information to any third party without the owner's prior written consent.

19.2 Clause 19.1 of this Contract shall not apply to the extent that:

19.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 20 of this Contract;

19.2.2 such Confidential Information which was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

19.2.3 such Confidential Information was obtained from a third party without any obligation of confidentiality;

19.2.4 such Confidential Information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract or any applicable Call Off Contract; or

19.2.5 it is independently developed without access to the other Party's Confidential Information.

19.3 The Service Provider may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know such Confidential Information, and shall ensure that such Staff are aware of and shall comply with the obligations set out in this clause 19 of this Contract.

- 19.4 The Service Provider shall not, and shall procure that its Staff shall not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract or any applicable Call Off Contract.
- 19.5 At the written notification of the Council, the Service Provider shall procure that those members of its Staff identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract or any applicable Call Off Contract.
- 19.6 Nothing in this Contract nor any Call Off Contract shall prevent the Council from disclosing the Service Provider's Confidential Information:
- 19.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 19.6.2 to any consultant, professional advisor employee, agent or any other person engaged by the Council in relation to this Contract or any applicable Call Off Contract or any person conducting an Office of Government Commerce gateway review;
 - 19.6.3 for the purpose of the examination and certification of the Council's accounts; or
 - 19.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 19.7 The Council shall use its reasonable endeavours to ensure that any third party to whom the Service Provider's Confidential Information is disclosed pursuant to clause 19.6 of this Contract is made aware of the Council's obligations of confidentiality hereunder.
- 19.8 Nothing in this clause 19 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

20. FREEDOM OF INFORMATION

- 20.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 20.2 The Service Provider shall, and shall procure that all of its Staff shall, transfer to the Council all Requests for Information that it receives without delay and in any event within two Working Days of receiving a Request for Information and shall:
- 20.2.1 provide the Council with a copy of all Information in its or their possession, or power in the form that the Council requires within five

Working Days (or such other period as the Council may specify) of the Council's request; and

- 20.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 20.3 Notwithstanding any other provision in this Contract or any applicable Call Off Contract, the Council shall be entitled to determine, in its absolute discretion, whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 20.4 In no event shall the Service Provider, nor any of this Staff, respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 20.5 The Service Provider acknowledges that (notwithstanding the provisions of this clause 20) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the “**Code**”), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Services in certain circumstances:
- 20.5.1 without consulting the Service Provider; or
- 20.5.2 following consultation with the Service Provider and having taken their views into account;
- provided always that where this clause 20.5 applies, the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 20.6 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 20.7 The Service Provider acknowledges that the Commercially Sensitive Information listed in Schedule 7 of this Contract is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 20.

Electronic Communications

- 20.8 The Service Provider shall ensure that prior to the Commencement Date and at all times during the Contract Period and the term of any applicable Call Off Contract, it will provide the Council with its applicable up-to-date email address and all other relevant contact details from time to time, so that the Council can notify it of any Invitations to Tender which the Council submits from time to time through the DPS and that the Service Provider shall have access to continuous internet connectivity, subject to any unforeseen downtime.
- 20.9 The Service Provider shall check its emails and the DPS as frequently as practicable during each day during the Contract Period for the submissions by the Council of any new Invitation to Tender.

20A INFORMATION GOVERNANCE

20A.1 Without prejudice to the Service Provider's obligations under clause 18 or Schedule 8 of this Contract, at all times during the Contract Period or during the term of any applicable Call Off Contract the Service Provider shall (and shall procure that its Staff shall):

20A.3.1 remember that the DPA is not a barrier to sharing information but provides them with a framework to ensure that personal information about living persons is shared appropriately;

20A.3.2 be open and honest with any Resident (and/or their duly authorised representative or family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement (or that of their duly authorised representative), unless it is unsafe or inappropriate to do so;

20A.3.3 seek advice if they are in any doubt, without disclosing the identity of the Resident where possible;

20A.3.5 consider the safety and well-being of each Resident and any others who may be affected by their actions when making any information sharing decisions; and

20A.3.6 keep records of their decisions and the reasons for them regarding whether to share any information or not, with whom and for what purpose.

20A.4 The Service Provider shall fully indemnify the Council and keep it fully indemnified against all charges, losses, damages, costs, actions, claims, proceedings, judgments, expenses (including legal and other professional expenses) and all other liabilities incurred by, awarded against or agreed to be paid by the Council arising from or in connection with any breach of the Service Provider's obligations under clauses 18 and/or 20A, except and to the extent that the same have resulted directly from the Council's instructions.

21. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

21.1 The Service Provider shall not make any press announcement or publicise this Contract, any applicable Call Off Contract, the Services or any aspects thereof in any way, except with the prior written Approval of the Council.

21.2 The Service Provider shall procure that all of its Staff, suppliers, professional advisors and consultants comply with clause 21.1.

22. AUDIT AND INSPECTION

22.1 The Service Provider shall, and shall procure that all of its Staff shall, keep and maintain for the period of six years following the expiry or termination of this Contract or any Call Off Contract full and accurate records of any Services supplied to the Council, including (but not limited to) all expenditure reimbursed to the Council, all payments made by the Council (if any) and any payments made by the Resident and/or the Sponsor. The Service Provider shall, and shall procure that any permitted Sub-Contractor shall, promptly afford the Council and the

- Council's authorised representatives such access to those records for audit purposes.
- 22.2 Without prejudice to the Service Provider's obligations under Schedule 2 of this Contract, the Service Provider must comply with all reasonable written requests made by the CQC (or any other applicable regulator), the National Audit Office, the authorised representatives of the Local HealthWatch and any other Regulatory Body for entry to the Care Home or the Service Provider's (or any permitted Sub-Contractor's) premises for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for auditing any information relating to the provision of the Services. The Service Provider may refuse such request to enter the Care Home where it would adversely affect the provision of the Services or, the privacy or dignity of a Resident, subject always to the Service Provider subsequently providing or procuring such access as soon as reasonably practicable thereafter.
- 22.3 Subject to any applicable Law and notwithstanding clause 22.2, the Contract Manager and/or the Council's nominated representatives may either:
- 22.3.1 enter the Care Home without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, and subject to any applicable Law and Good Industry Practice (also taking into consideration the nature of the Services and the effect of the visit on any Resident), the Service Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Contract Manager and/or the Council's other nominated representatives; or
- 22.3.2 oblige the Service Provider to provide to the Council hard or electronic copies of any such records, documentation or other materials which the Council reasonably requests within five (5) Working Days of the date of such request.
- 22.4 Within ten (10) Working Days of the Council's reasonable request, the Service Provider shall (and shall procure that all of its Staff shall) send the Council a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Service Provider, to which the Service Provider has access to and which it can disclose in accordance with the Law.
- 22.5 The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 22.6 During any audit undertaken under clauses 22.2 and 22.3 of this Contract, the Service Provider shall (and shall procure that all of its Staff shall) provide the Council with all reasonable co-operation and assistance in relation to that audit, including:
- 22.6.1 all reasonable information requested within the scope of the audit;
- 22.6.2 reasonable access to the Care Home; and
- 22.6.3 access to the Staff.

23. TRANSFER AND SUB-CONTRACTING

- 23.1 To the fullest extent permitted by Law, the Service Provider shall not assign, novate, transfer, sub-contract, charge or in any other way dispose of its rights and/or obligations under this Contract or any applicable Call Off Contract to any third party without the prior written consent of the authorised representatives of the Council.
- 23.2 The Council may assign, novate, transfer or otherwise dispose of any of its rights and obligations under this Contract or any Call Off Contract to:
- 23.2.1 any Contracting Authority; or
 - 23.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
 - 23.2.3 private sector body which substantially performs the functions of the Council, (the “**Transferee**”),
- provided that any such assignment, novation, transfer or other disposal shall not increase the burden of the Service Provider’s obligations under this Contract or under any Call Off Contract.
- 23.3 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of this Contract or of any Call Off Contract. In such circumstances, the terms of this Contract and any applicable Call Off Contract shall bind and inure to the benefit of any successor body to the Council.
- 23.4 The Council may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider’s obligations under this Contract or under any applicable Call Off Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider’s obligations under this Contract and/or any applicable Call Off Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 23.5 If the Council provides its written consent pursuant to clause 23.1 of this Contract then the Service Provider shall reimburse in full any reasonable costs and expenses which are incurred by the Council in relation to any assignment, novation, transfer, sub-contract or any other disposal of the Service Provider’s rights within 14 days of the date of any invoice which the Council submits to the Service Provider in relation to such costs and expenses.
- 23.6 Where the Service Provider is permitted to assign or sub-contact any of its rights under this clause 23, then the Service Provider shall be directly liable for any acts or omissions committed by any applicable assignee or Sub-contractor as if the Service Provider had committed such acts or omissions itself.

24. WAIVER

- 24.1 The failure of either Party to insist upon strict performance of any provision of this Contract or any Call Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or

remedy and shall not cause a diminution of the obligations established by this Contract or any Call Off Contract.

24.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 5 (Notices).

24.3 A waiver of any right or remedy arising from a breach of this Contract or of any Call Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract or of any Call Off Contract.

25. VARIATION AND UNEQUIVOCAL REVIEW CLAUSE

25.1 Any variation to this Contract or any applicable Call Off Contract shall only be legally binding if:

25.1.1 it is a Standard Variation and is made in writing and executed by the authorised representatives of both Parties; or

25.1.2 this Contract provides the Council with an express right to unilaterally vary the terms of any applicable Call Off Contract whereupon any such variation shall be set out in the form of a Unilateral Notice and served on the Service Provider in accordance with the provisions of clause 5.2 of this Contract,

and for the avoidance of doubt a unilateral variation to this Contract or any applicable Call Off Contract shall only apply to the exercising of (i) the Council's right to amend the breakdown of the Contract Price, Statutory Contribution and any Topping Up Payment pursuant to paragraph 2.6A of Schedule 3 once a financial assessment of the Resident has been carried out, (ii) the Council's right to consider whether to increase the Contract Price and the Statutory Contribution annually pursuant to paragraph 2.8 of Schedule 3; (iii) the Council's right to **change** the Contract Price **(as appropriate and depending on whether the assessed needs have increased or reduced and as limited by paragraph 2.9A of Schedule 3)** either on a temporary or long term basis pursuant to paragraph 2.9 of Schedule 3 if the needs of the Resident **change** during any Placement from time to time or (iv) the Council's right to amend the References Prices from time to time pursuant to paragraph 3 of Schedule 11.

25.2 The Service Provider acknowledges and agrees that the Council may wish to make variations to this Contract and/or any applicable Call Off Contract during the Contract Period in order to:

25.2.1 enable Resident's to pay for the Services direct to the Service Provider using Direct Payments or any other analogous payment methods;

25.2.2 provide for any applicable changes to the Law, the common law or any regulatory requirements;

25.2.3 provide for changes to any applicable central government funding conditions;

25.2.4 provide material changes to the manner in which the care home market operates; and/or

25.2.5 further develop the provisions of Schedule 2 (Quality, Performance and Contract Monitoring) hereto.

- 25.3 Any variations pursuant to clause 25.2 above shall be effected by way of a Standard Variation and shall require the agreement in writing of the authorised representatives of each Party.

26. SEVERABILITY

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

27. REMEDIES CUMULATIVE

Except as otherwise expressly stated in this Contract or in any applicable Call Off Contract, all rights and remedies available to either Party under this Contract, any applicable Call Off Contract, at Law or under equity are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

28. ENTIRE AGREEMENT

This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matters dealt with therein. This Contract and any applicable Call Off Contract entered into shall supersede all prior negotiations between the Parties and all representations and undertakings made by one Party to the other in relation to its subject matter, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

29. COUNTERPARTS

- 29.1 This Contract and any applicable Call Off Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.
- 29.2 Transmission of an executed counterpart of this Contract or any applicable Call Off Contract (but not of a signature page alone) or through the DPS (in PDF, JPEG or any other agreed format) shall take effect as delivery of an executed counterpart of this Contract or of any Call Off Contract.
- 29.3 No counterpart shall be effective until each Party has executed and delivered at least one counterpart and both counterparts have been dated with the date on which the second Party executed such counterpart.

30. LIABILITY

- 30.1 Neither Party excludes or limits its liability to the other Party under this Contract or any Call Off Contract for any:
- 30.1.1 death or personal injury caused by its negligence;
 - 30.1.2 Prohibited Act;
 - 30.1.3 fraudulent misrepresentation;

- 30.1.4 breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982,
 - 30.1.5 other act or omission which is not capable or being limited or excluded under Law; or
 - 30.1.6 any indemnity provided herein.
- 30.2 Subject to clauses 30.1 and 30.3 of this Contract, neither Party shall in any circumstances be liable to the other Party under this Contract or any Call Off Contract for any:
- 30.2.1 any special or consequential loss or damage; or
 - 30.2.2 any loss of profits,
 - 30.2.3 loss of business opportunities,
 - 30.2.4 loss of revenue; or
 - 30.2.5 loss of goodwill,
- whether direct or indirect.
- 30.3 The provisions of clause 30.2 shall not limit or exclude the Council's right to recover any of the following from the Service Provider:
- 30.3.1 any additional operational and administrative costs and expenses which the Council suffers or incurs as a result of or in connection with any act or omission of the Service Provider or any its Staff under this Contract or any applicable Call Off Contract;
 - 30.3.2 any wasted expenditure or charges rendered unnecessary which are suffered or incurred by the Council arising from any act or omission of the Service Provider or any of its Staff under this Contract or any applicable Call Off Contract;
 - 30.3.3 any additional cost of procuring and implementing replacement services as a result of any act or omission of the Service Provider or any of its Staff under this Contract or any applicable Call Off Contract;
 - 30.3.4 any loss of, corruption or damage to or alteration of any of the data (including any Personal Data or Sensitive Personal Data) which the Council or any of its Nominated Partners provides to the Service Provider or any of its Staff under this Contract or any applicable Call Off Contract;
 - 30.3.5 any fines, expenses or other Losses which the Council suffers or incurs as a result of or in connection with any breach by the Service Provider or any of its Staff of any applicable Laws in connection with this Contract or any applicable Call Off Contract; or
 - 30.3.6 any loss of anticipated savings which is suffered or incurred by the Council as a result of any act or omission by the Service Provider or any of its Staff in relation to this Contract or any applicable Call Off Contract.

- 30.4 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 30 of this Contract is held to be invalid under any applicable statute or rule of Law, it shall, to that extent, be deemed omitted from this Contract or any applicable Call Off Contract, and if any Party becomes liable for any Losses which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this clause 30.

31. INSURANCE

- 31.1 The Service Provider shall maintain and effect the following policies of insurance with reputable insurers at all times during the Contract Period and during the term of any applicable Call Off Contract:

31.1.1 public liability insurance; and

31.1.2 employer's liability insurance;

31.1.3 not used;

31.1.4 not used.

with the minimum limits of cover set out in clause 31.6 of this Contract and the Service Provider shall ensure that all of its obligations and all potential Losses of the Council under this Contract or under any applicable Call Off Contract are insured by the terms of such insurance policies.

- 31.2 The Service Provider shall promptly provide to the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 31.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of this Contract the Council may make alternative arrangements to protect its interests and may recover all of the costs of such arrangements from the Service Provider in full.

- 31.4 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any of its obligations or liabilities under this Contract or under any applicable Call Off Contract.

- 31.5 The Service Provider shall (and shall procure that all of its Staff shall) do nothing nor omit to do anything during the Contract Period which shall invalidate, nullify or exclude any of the cover under the insurance policies set out in clause 31.1 of this Contract.

- 31.6 The Service Provider shall maintain the levels of insurance set out below for the provision of the Services. The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any of its obligations or liabilities under this Contract nor under any applicable Call Off Contract:

31.6.1 public liability insurance with a limit of cover of not less than £5,000,000 (five million pounds) for each and every claim;

31.6.2 not used;

31.6.3 employer's liability insurance with a limit of cover of not less than £5,000,000 (five million pounds) for each and every claim;

31.6.4 not used; and

31.6.5 any other insurance policies required under the Specification.

32. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

32.1 The Service Provider warrants, represents and undertakes that:

- 32.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of any applicable parent company) to enter into and perform its obligations under this Contract and/or under any applicable Call Off Contract and that this Contract and any applicable Call Off Contract is executed by the duly authorised representatives of the Service Provider;
- 32.1.2 in entering into this Contract or any applicable Call Off Contract neither the Service Provider nor any of its Staff have not committed any Prohibited Act;
- 32.1.3 prior to the Commencement Date and at all times during the Contract Period or during the term of any applicable Call Off Contract, all information provided by the Service Provider to the Council remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the execution of this Contract or of any Call Off Contract;
- 32.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Contract and/or under any applicable Call Off Contract;
- 32.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract and/or under any applicable Call Off Contract;
- 32.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 32.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract and/or under any applicable Call Off Contract;
- 32.1.8 in the three (3) years prior to the date of the Commencement Date:

- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract and/or under any applicable Call Off Contract.

33. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 33.1 The Council may terminate this Contract immediately by notice in writing if an Insolvency Event occurs with respect to the Service Provider at any time during the Contract Period.
- 33.2 The Service Provider shall notify the Council immediately if the Service Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**").
- 33.3 The Council may terminate this Contract by notice in writing with immediate effect if:
 - 33.3.1 it has been notified that a Change of Control has occurred; or
 - 33.3.2 where no notification has been made, the date that the Council becomes aware that such Change of Control has occurred,
 but shall not be permitted to terminate where an Approval was granted prior to the change of control.

34. OTHER TERMINATION AND SUSPENSION RIGHTS

- 34.1 The Council may terminate this Contract by written notice to the Service Provider if:
 - 34.1.1 the Service Provider or any of its Staff commits a Material Breach or a Persistent Breach of the terms of this Contract and the Service Provider fails to remedy the same to the satisfaction of the Council within fifteen (15) calendar days, or such other period as may be specified by the Council after the date of the Council's written notice specifying the Material Breach or the Persistent Breach (as applicable) and requiring it to be remedied;
 - 34.1.2 the Service Provider or any of its Staff commits a Material Breach which, in the reasonable opinion of the Council, is not capable of remedy;
 - 34.1.3 the Service Provider or any of its Staff commits a breach of clauses 4.35, 7 or 14 of this Contract; or

- 34.1.4 the Care Home has to close either on a temporary or permanent basis or there is a significant likelihood that the Care Home will close temporarily or permanently.
- 34.2 If the Council fails to pay the Service Provider any undisputed sums of money when due pursuant to any Call Off Contract, the Service Provider shall notify the Council in writing of any such failure to pay. If the Council fails to pay such undisputed sums within sixty (60) days of the date of such written notice, then the Service Provider shall not be entitled to terminate this Contract or any applicable Call Off Contract but instead it shall be entitled to invoke the Dispute Resolution Process, save that such right shall not apply where the failure to pay is due to the Council exercising its rights under clause 13 of this Contract.
- 34.3 The Council may also terminate this Contract if:
- 34.3.1 it has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Regulations;
 - 34.3.2 any of the mandatory or discretionary exclusions set out in regulation 57 of the Regulations either applied or apply (as the case may be) to the Service Provider at the time when this Contract was awarded or throughout the Contract Period;
 - 34.3.3 any competent court makes an award for ineffectiveness of this Contract under the Regulations; or
 - 34.3.4 this Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations of the Treaty on European Union (TFEU) or the Public Contracts Directive 2014 that has been declared by the Court of Justice of the European Union under a procedure under Article 258 of the TFEU.
- 34.4 In the event that the Council is entitled to terminate this Contract in accordance with its terms, then the Council may at its sole discretion elect to instead suspend the Service Provider's ability to participate in the DPS (including, without limitation, prohibiting the Service Provider's ability to submit any further tenders in relation to any of the Lots which the Service Provider is appointed under) by serving notice in writing on the Service Provider and where such notice is served, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Council in writing from time to time until the Service Provider has taken the necessary steps to rectify the reason for the applicable suspension (the "**Rectification Action**").
- 34.5 If the Council exercises its right of suspension pursuant to clause 34.4 of this Contract, then the Council shall be entitled to terminate this Contract by notice in writing if the Service Provider fails to take or to successfully complete any applicable Rectification Action within the timescales prescribed by the Council from time to time.
- 34B The Service Provider's rights to terminate any Long Stay Call Off Contract or any Short Stay Call Off Contract are set out in paragraph 4.7 and paragraph 4.25 of Schedule 3 respectively.

35. BREAK CLAUSE

The Council shall have the right to terminate this Contract for convenience (but not any existing Call Off Contracts made under it) by giving three (3) months' written notice to the Service Provider prior to [****30 June 2018****].

36. CONSEQUENCES OF EXPIRY OR TERMINATION

36.1 Where the Council terminates this Contract due to the default of the Service Provider or any of its Staff pursuant to any of their applicable terms:

36.1.1 the Council may recover from the Service Provider any Losses which it suffers or incurs as a result of or in connection with any such termination (including, but not limited to, the costs reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period, subject always to the Council taking reasonable steps to mitigate such additional expenditure.

36.1.2 no further payments shall be payable by the Council to the Service Provider for Services supplied by the Service Provider prior to the date of termination until the Council has established the final cost of making the other arrangements envisaged under clause 36.1.1 of this Contract.

36.2 Save as otherwise expressly provided in this Contract, any termination or expiry of this Contract:

36.2.1 shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

36.2.2 shall not affect the continuing rights, remedies or obligations of the Council or the Service Provider under clauses 13, 14, 18, 19, 20, 22, 27, 30, 31, 36, 40 or any other provision of this Contract which is either expressly or impliedly intended to survive its termination or expiry;

36.2.3 shall not affect the validity or enforceability of any Call Off Contract entered into by the Parties from time to time pursuant to this Contract and any such Call Off Contract shall only terminate or expire in accordance with its own applicable provisions.

36.3 Notwithstanding clause 36.2.2, where any Call Off Contract survives the termination or expiry of this Contract, then the applicable terms of this Contract shall be deemed to remain in full force and effect to ensure that the Parties' rights and obligations pursuant to such Call Off Contract are not affected.

37. DISRUPTION

The Service Provider shall use all of its best endeavours to ensure that in the performance of its obligations under this Contract and/or under any applicable Call Off Contract it does not disrupt the operations of the Council, its staff or any other service provider engaged by the Council under any other contract.

38. FORCE MAJEURE EVENTS

- 38.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract and/or under any applicable Call Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Notwithstanding the foregoing, each Party shall use their reasonable endeavours to continue to perform its obligations under this Contract or under any applicable Call Off Contract for the duration of such Force Majeure Event. However, if such a Force Majeure Event prevents either Party from performing its material obligations under this Contract and/or under any applicable Call Off Contract for a period in excess of three (3) months, either Party may terminate this Contract and/or any applicable Call Off Contract with immediate effect by notice in writing.
- 38.2 If either Party becomes aware of a Force Majeure Event which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 38.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

39. BUSINESS CONTINUITY PLAN

- 39.1 In accordance with the Civil Contingencies Act 2004 the Council is required to continue providing essential services such as the Services at all times regardless of emergencies or business interruptions.
- 39.2 The Service Provider shall ensure that it develops a Business Continuity Plan which complies with the applicable provisions of the Civil Contingencies Act 2004 and all of the Service Provider's regulatory obligations prescribed by the CQC (or any other applicable regulator) from time to time prior to the delivery of any Services on behalf of the Council and that it updates the same every 12 months during the Contract Period.
- 39.3 Following the occurrence of a Disaster with respect to any of the Services, the Service Provider shall immediately:
- 39.3.1 implement and comply with the provisions of the Business Continuity Plan;
 - 39.3.2 continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and
 - 39.3.3 restore the affected Services to normal within the period laid out in the Business Continuity Plan.
- 39.4 The Council shall have the right (acting reasonably) to notify the Service Provider in writing that it wishes to inspect the current iteration of the Business Continuity Plan and the Service Provider shall promptly afford the Council or its representatives access to such Service Continuity Plan.
- 39.5 The Service Provider shall (at its own cost) test the effectiveness of its Business Continuity Plan from time to time during the Contract Period and during the term of any applicable Call Off Contract to see whether it is fit for purpose and inform the Council of the result of such tests and promptly rectify any material issues or errors in such Business Continuity Plan following the outcome of the tests.

40. GOVERNING LAW AND JURISDICTION

Subject to the provisions of clause 41, this Contract and any applicable Call Off Contract shall be subject to the exclusive jurisdiction of the English courts and the Parties agree that any disputes arising from or in connection with this Contract and any applicable Call Off Contract shall be governed and construed according to English Law.

41. DISPUTE RESOLUTION PROCESS

41.1 The Council's Commissioning Lead and the Service Provider's Representative shall attempt in good faith to negotiate the resolution to any dispute between them arising out of or in connection with this Contract and/or any applicable Call Off Contract within ten (10) Working Days of either Party referring the dispute to the above representatives.

41.2 If the dispute cannot be resolved by the representatives referred to in clause 41.1 then the dispute shall be referred to the Council's Assistant Director for Health and Care and a director within the Service Provider's organisation in order for them to attempt to resolve such dispute.

41.3 If any dispute cannot be resolved by the Parties pursuant to clause 41.2 the Parties shall refer it to mediation pursuant to the procedure set out in clause 41.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Service Provider does not agree to mediation in which case each Party may refer such dispute to the courts for determination.

41.4 The obligations of the Parties under the Contract and/or under any applicable Call Off Contract shall not cease, or be suspended or delayed by the referral of any dispute to mediation or the courts for determination and the Service Provider and the Staff shall comply fully with the requirements of this Contract and/or any applicable Call Off Contract at all times.

41.5 The procedure for any referral of a dispute shall be as follows:

41.5.1 a neutral adviser or mediator (the "**Mediator**") shall be appointed by the Centre for Effective Dispute Resolution;

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

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

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

41.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion

shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract and/or any applicable Call Off Contract without the prior written consent of both Parties; and

- 41.5.6 if the Parties fail to reach agreement in the structured negotiations within thirty (30) Working Days of the Mediator being appointed, or such longer period as may be agreed by the authorised representatives of the Parties, then any dispute or difference between them may be referred to the courts for determination.

- 41.6 Nothing in this Dispute Resolution Process 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.

42. CONTINUOUS IMPROVEMENT

- 42.1 The Service Provider acknowledges and agrees that the Council is under a duty regarding Best Value and the provisions of this clause are intended to assist the Council in complying with such duty.

- 42.2 The Service Provider shall have an ongoing obligation during the Contract Period and at times during the term of any applicable Call Off Contract to identify new or potential improvements to the Services.

- 42.3 As part of its obligations the Service Provider shall identify and notify to the Contract Manager from time to time whether it has:

42.3.1 adopted any new or emerging technological or product / service developments that can be used to improve the Services to be provided under any applicable Call Off Contract and deliver increased benefits to each Resident, the Service Provider and the Council; and

42.3.2 made any improvements to the Service Provider's service offering in areas such as people skills, support, knowledge, quality, individual satisfaction and contract performance, in areas such as leadership and management.

- 42.4 The provisions of clause 42.3 provides an indicative list, not an exhaustive one.

- 42.5 In undertaking the Services, the Service Provider shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual obligations and of the Services as a whole, including specifically the cost of the Services, the time, cost, quality and health and safety standards of the various processes involved in delivery of the Services and generally to provide Best Value outcomes to the Council as are set out in the Specification, and further the Service Provider shall co-operate with the Council and others to the extent required so that the Council can keep under review the performance required under this Contract and this clause 42 in particular.

43. MODERN SLAVERY ACT 2015

In performing its obligations under this Contract or any applicable Call Off Contract, the Service Provider shall comply with all applicable anti-slavery and

human trafficking Laws (including, but not limited to, the Modern Slavery Act 2015).

Schedule 1

Part A – The Particulars

1. For the purposes of this Contract and for any applicable Call Off Contract, the Service Provider's particulars are as follows:

Service Provider		
Name of Service Provider		
Registered Office Address		
Registered Website Address (Enter N/A if not applicable)		
Trading Status		
	<input type="checkbox"/>	<i>public limited company</i>
	<input type="checkbox"/>	<i>limited company</i>
	<input type="checkbox"/>	<i>limited liability partnership</i>
	<input type="checkbox"/>	<i>other partnership</i>
	<input type="checkbox"/>	<i>sole trader</i>
	<input type="checkbox"/>	<i>third sector</i>
	<i>If other, please specify:</i>	
Company Registration (Enter N/A if not applicable)		
Charity Registration N° (Enter N/A if not applicable)		
Head Office DUNS N° (Enter N/A if not applicable)		
Registered VAT N° (Enter N/A if not applicable)		
CQC Registration N° (or equivalent)		
Details of Immediate Parent Company (Enter N/A in EVERY box if not applicable)		
Full Name		
Registered Office Address		
Registration N°		
Head Office DUNS N°		

Head Office VAT N°	
Details of Ultimate Parent Company (Enter N/A in EVERY box if not applicable)	
Full Name	
Registered Office Address	
Registration N°	
Head Office DUNS N°	
Head Office VAT N°	

Care Home			
Trading Name			
Trading Address			
Registered Manager Name			
- Telephone N°			
- Email Address (Enter N/A if not applicable)			
Responsible Individual Name			
- Telephone N°			
- Email Address Enter N/A if not applicable)	k)		
QC Location ID	m)		
Interest in the Premises of the Care Home		Freehold	
		Leasehold or Licence	
Landlord / Licensor Name Enter N/A if not applicable)	u)		
- Address Enter N/A if not applicable)	w)		
	x)		
	y)		
- Email Address (Enter N/A if not applicable)			
- Telephone N° (Enter N/A if not applicable)			
Lots	Residential		Nursing
	<input type="checkbox"/>	Lot 1	<input type="checkbox"/> Lot 6 (Nursing -

<i>(Enter the lots set out in Schedule 4 of this Contract in respect of which the Service Provider has been successfully appointed to under the DPS)</i>		(Residential - Older People)		Older People)
	<input type="checkbox"/>	Lot 2 (Residential - Dementia)	<input type="checkbox"/>	Lot 7 (Nursing - Dementia)
	<input type="checkbox"/>	Lot 3 (Residential - Physical Disability)	<input type="checkbox"/>	Lot 8 (Nursing - Physical Disability / Sensory Impairment)
	<input type="checkbox"/>	Lot 4 (Residential - Learning Disability)	<input type="checkbox"/>	Lot 9 (Nursing - Learning Disability / Autistic Spectrum Disorder)
	<input type="checkbox"/>	Lot 5 (Residential - Mental Health)	<input type="checkbox"/>	Lot 10 (Nursing – Mental Health)

Part B – The Specification

DEFINITIONS

1. In this Specification the following defined terms shall have the meanings given to them below, unless the context otherwise requires:

“Action Plan”	has the meaning ascribed to it Schedule 2 of the Contract;
“Bespoke Equipment”	means any equipment which is not Standard Equipment;
“Care Home Without Nursing”	means a Care Home which is appropriately registered with CQC to provide help and assistance with personal care, continence management, food and diet and simple treatments;
“Care Home With Nursing”	means a Care Home which is appropriately registered with CQC to provide help and assistance with personal care and which also has professional registered nurses and experienced care assistants in constant attendance that can provide 24 hour nursing care services for more complex health needs. These Care Homes are for people who have been assessed as requiring a healthcare professional (nurse) to deliver elements of care;
“Care Management Review”	means a review of a Resident’s care and support needs in accordance with paragraphs 3.9 to 3.14 (inclusive) of this Specification;
“Care Manager”	means the officer nominated by the Council or by its Nominated Partner(s) in relation to the assessment and care management of a Resident;
“Care Plan”	means a person centred plan drawn up by the Service Provider and agreed with the Resident which demonstrates how the Resident’s care and support needs and their outcomes will be met by the Services and is aligned to the care and support needs and outcomes identified by the High Level Support Plan and Risk Assessment;
“Communication Passport”	means a document which supports a Resident with communication difficulties and draws together complex information and distils it into a clear, positive and accessible format;

“CSSIW”	means the Care and Social Services Inspectorate Wales (CSSIW) being the independent regulator of health and social care services in Wales;
“Discharge to Assess”	means a hospital model designed to support patients to be discharged from hospital and then assessed in their home environment. Each Clinical Commissioning Group (CCG) may use different terminology for this model of assessment;
“End of Life Care”	means the diagnosis of a life limiting condition where it is anticipated that the Resident is going to die within the next 12 (twelve) months; including (without limitation) cancer, cardiovascular disease, respiratory disease, neurological disorders, dementias or otherwise;
“Gold Standards Framework (GSF)”	means a model of good practice that enables a gold standard of care for all people who are nearing the end of their lives;
“Guardianship”	means the circumstances where a guardian has been appointed under the Mental Health Act 1983 to take decisions on a Resident’s behalf where these decisions are in the Resident’s best interests;
“Health”	means any NHS body (including hospitals, Clinical Commissioning Groups and Partnership Trusts);
“Health Action Plan”	means an accessible personal plan for individuals with learning disabilities which sets out what (1) they are doing to keep fit and well (2) other things they want to do to be healthy and (3) help they may need to keep healthy;
“Health Care Services”	means those specialist health or nursing care services which are properly provided by Health;
“Health Passport (Hospital Information Passport)”	means a document which assists individuals with learning disabilities to provide hospital staff with important information about them and their health when they are admitted to hospital;
“Key Lines of Enquiry”	means the five key questions used by the CQC to assess the Services;
“National Minimum Standards”	means the set of standards set out in The Care Homes (Wales) Regulations 2002 (as amended) which every Resident has a right to expect and below which the provision of regulated activities and the care provided must not fall;
“Older Person (People)”	means an individual aged sixty-five years and above whose primary need arises through their older-age frailty;

“Palliative Care”	means the active holistic care of individuals with advanced progressive illness, including the management of pain and other symptoms and the provision of psychological, social and spiritual support, the goal of which is the achievement of the best quality of life for individuals;
“Personal Care”	has the meaning ascribed to it in Schedule 1 (regulated activities) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
“Registered Nursing Staff”	means Staff who are officially registered and qualified to perform all nursing duties;
“Section 117”	means section 117 of the Mental Health Act 1983 (as amended by section 75 of the Care Act 2014);
“Standard Equipment”	has the meaning ascribed to it in paragraph 8.3 of this Specification;
“Wellbeing Outcomes”	has the meaning ascribed to it in paragraph 2.9 of this Specification.

1. INTRODUCTION

- 1.1 This Contract is let by the Council in partnership with its Nominated Partners to whom it has delegated some of its functions in relation to the assessment and care management of individuals. For the purposes of this Contract, however, the Council is the contracting authority and any referrals of individuals will be made by the Council to the Service Provider.
- 1.2 The Council has developed this Specification with valuable input from Health, and individuals receiving care home services. This approach demonstrates the merits and value of partnership working in the public sector.
- 1.3 This Specification has been developed to go beyond meeting the Council’s statutory obligations and duty of care, in order to work with service providers to deliver quality improvement in the Services that meet the needs of individuals.
- 1.4 This Specification and its appendices specify the requirements with which the Service Provider must comply with in the provision of the Services to Residents whose needs fall within the Lots, and who have been referred to the Service Provider through the Dynamic Purchasing System, and have been admitted to the Care Home pursuant to the terms of the Contract and a Call Off Contract:
 - 1.4.1 Part B of Schedule 1 sets out both the specific requirements which apply to the provision of the Services to Residents whose primary need falls within Lot 1 (Residential Older People) and the generic requirements which apply to the provision of the Services to Residents whose needs fall within any one of Lot 2 (Residential Dementia), Lot 3 (Residential Physical Disability/Sensory Impairment), Lot 4 (Residential

Learning Disability / Autism Spectrum Disorder), Lot 5 (Residential Mental Health), Lot 6 (Nursing Older People), Lot 7 (Nursing Dementia), Lot 8 (Nursing Physical Disability/Sensory Impairment), Lot 9 (Nursing Learning Disability /Autistic Spectrum Disorder) or Lot 10 (Nursing Mental Health);

- 1.4.2 Appendix 1 (Nursing Care) to Part B of Schedule 1 sets out the additional requirements which apply to the provision of the Services to Residents whose assessed needs fall within any one of Lot 6 (Nursing Older People), Lot 7 (Nursing Dementia), Lot 8 (Nursing Physical Disability/ Sensory Impairment), Lot 9 (Nursing Learning Disability/Autistic Spectrum Disorder) or Lot 10 (Nursing Mental Health);
 - 1.4.3 Appendix 2 (Dementia) to Part B of Schedule 1 sets out the additional requirements which apply to the provision of the Services to Residents whose primary need falls within either Lot 2 (Residential Dementia) or Lot 7 (Nursing Dementia);
 - 1.4.4 Appendix 3 (Learning Disabilities) to Part B of Schedule 1 sets out the additional requirements which apply to the provision of the Services to Residents whose primary need falls within either Lot 4 (Residential Learning Disability/Autism Spectrum Disorder) or Lot 9 (Nursing Learning Disability/Autism Spectrum Disorder);
 - 1.4.5 Appendix 4 (Physical Disabilities (including Sensory Impairment)) to Part B of Schedule 1 sets out the additional requirements which apply to the provision of the Services to Residents whose primary need falls within either Lot 3 (Residential Physical Disability/Sensory Impairment) or Lot 8 (Nursing Physical Disability/Sensory Impairment);
 - 1.4.6 Appendix 5 (Mental Health Needs) to Part B of Schedule 1 sets out the additional requirements which apply to the provision of the Services to Residents whose primary assessed need falls within either Lot 5 (Residential Mental Health) or Lot 10 (Nursing Mental Health).
- 1.5 In circumstances where a Resident has been assessed by the Council or its Nominated Partner as having multiple care needs, their primary need will determine the Lot within which they will be placed. The Service Provider will however be required to have regard to any further requirements set out in each Appendix to this Specification relating to their secondary needs.
 - 1.6 In consideration of the Contract Price, the Service Provider shall provide the Council with the Services for the benefit of each applicable Resident, which shall include (without limitation) accommodation and care which is ordinarily provided in care homes under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended) without prejudice to any other provision of this Contract which expressly authorises the Service Provider to make a charge to a Resident for any Services which are not covered by the applicable Contract Price. The applicable provisions relating to the Contract Price are more particularly set out

in paragraph 2 of Schedule 3 (Call Off Terms) of the Contract and Schedule 2 of each applicable Call Off Contract.

Purpose of the Services

- 1.7 The purpose of the Services is to provide accommodation, care, support and stimulation to those people in the client group for whom it is not appropriate, either in the short or longer term, to live in their own homes. The Service Provider should offer Residents the opportunity to enhance their quality of life by providing a safe, manageable and comfortable home environment. The Service Provider shall help Residents to maximise their wellbeing and to achieve the outcomes that matter to them. The Services shall be safe, effective, caring, responsive and well-led. The Services shall provide care and support in a good quality, safe, well-managed, comfortable and stimulating environment. The Services provided shall be person-centred and tailored to meeting individual needs; as determined by their applicable High Level Support Plan and Assessment, and shall for each Resident include the occupancy of a single Room (unless it is the Resident's wish to share), access to communal areas/facilities, meals on a full board basis, provision of daytime and evening activities, provision of personal care and where appropriate Nursing Care, and on-site supervision on a 24-hour basis.
- 1.8 The Services shall primarily be aimed at persons for whom the Council is responsible for meeting their care and support needs and who have been assessed as requiring accommodation in a care home setting in order to ensure their needs are met.

Key Legislation and Regulation

- 1.9 The provisions of clauses 1.10 to 1.16 of this Specification shall apply to service providers whose care homes are located in England and therefore subject to regulation by the CQC.
- 1.10 When providing the Services, the Service Provider shall at all times comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended).
- 1.11 The Service Provider shall at all times comply with The Care Quality Commission (Registration) Regulations 2009. The Service Provider shall therefore be registered with the CQC and maintain its registration with the CQC as the provider of residential accommodation together with Personal Care and/or Nursing Care throughout the term of the Contract and any Call Off Contract.

Fundamental Standards

- 1.12 The Service Provider shall as a minimum at all times meet the Fundamental Standards which are set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended) and any other regulatory requirements in force from time to time. The Service Provider shall therefore ensure that:

- 1.12.1 care and treatment must be appropriate and reflect Residents' needs and preferences (Regulation 9);
 - 1.12.2 Residents must be treated with dignity and respect (Regulation 10);
 - 1.12.3 care and treatment must only be provided with consent (Regulation 11);
 - 1.12.4 care and treatment must be provided in a safe way (Regulation 12);
 - 1.12.5 Residents must be protected from abuse and improper treatment (Regulation 13);
 - 1.12.6 Residents' nutritional and hydration needs must be met (Regulation 14);
 - 1.12.7 all premises and equipment used must be clean, secure, suitable and used properly (Regulation 15);
 - 1.12.8 complaints must be appropriately investigated and appropriate action taken in response (Regulation 16);
 - 1.12.9 systems and processes must be established to ensure compliance with the Fundamental Standards (Regulation 17);
 - 1.12.10 sufficient numbers of suitably qualified, competent, skilled and experienced staff must be deployed (Regulation 18);
 - 1.12.11 persons employed must be of good character, have the necessary qualifications, competence, skills and experience, and be able to perform the work for which they are employed (Regulation 19); and
 - 1.12.12 registered persons must act in an open and transparent way with relevant persons in relation to care and treatment provided to individuals in carrying on a regulated activity (Regulation 20).
- 1.13 Having regard to the CQC's Key Lines of Enquiry as set out in the CQC's guidance to providers, the Service Provider must be able to demonstrate that the Services are:
- 1.13.1 safe: Residents are protected from abuse and avoidable harm;
 - 1.13.2 effective: Residents' care, treatment and support achieves good outcomes, promotes a good quality of life and is evidenced-based where possible;

- 1.13.3 caring: Staff involve and treat Residents with compassion, kindness, dignity and respect;
- 1.13.4 responsive: Services are organised so that they meet Residents' needs;
- 1.13.5 well-led: the leadership, management and governance of the organisation assure the delivery of high-quality person-centred care, support learning and innovation, and promote an open and fair culture.

CQC Inspection Ratings

- 1.14 The Service Provider shall ensure that the Care Home maintains at a minimum an overall rating over the five Key Lines of Enquiry of "requires improvement" by the CQC at all times during the Contract Period or the term of any Call Off Contract. The Service Provider shall however strive to maintain an overall rating of either "good" or "outstanding" during such periods.
- 1.15 If the Service Provider receives an overall rating of "requires improvement" in any inspection which is carried out by the CQC at the Care Home during the term of the Contract and any Call Off Contract, then;
 - 1.15.1 the Service Provider shall complete any actions required by the CQC within the time frames set; and
 - 1.15.2 the Council may request a Contract Review Meeting or carry out a Quality Assurance Visit in accordance with Schedule 2 of the Contract.
- 1.16 Save where otherwise expressly stated in the Contract, if the Service Provider receives an "inadequate" rating in any inspection which is carried out by the CQC at the Care Home during the Contract Period or the term of any Call Off Contract, or if the Service Provider has an "inadequate" rating at the Commencement Date, then the inadequate rating shall be deemed to be either a breach or a Material Breach (as applicable) of the Contract by the Service Provider in which case the suspension or termination provisions set out in the applicable provisions of the Contract shall apply.

Regulatory Framework in Wales

- 1.17 Paragraphs 1.18 to 1.21 (inclusive) of this Specification shall apply to Service Providers whose Care Homes are located in Wales and therefore subject to regulation by the CSSIW.
- 1.18 When providing the Services, the Service Provider shall at all times comply with The Care Homes (Wales) Regulations 2002 (as amended by The Care Homes (Amendment) (Wales) Regulations 2003, The Care homes (Wales) (Amendment No 2) Regulations 2003 and The Care Homes (Wales) (Miscellaneous Amendments) Regulations 2011).

- 1.19 Throughout the term of the Contract and any Call Off Contract, the Service Provider shall maintain the National Minimum Standards which are set out in the Care Standards Act 2000.
- 1.20 If, following any inspection which is carried out at the Care Home during the Contract Period or the term of any Call Off Contract by the CSSIW, the CSSIW either serves a non-compliance notice, or urgently imposes conditions on the registration of the Care Home, or decides to proceed with criminal prosecution against the Service Provider, then the Council will consider whether there has been a breach or Material Breach (as applicable) of the Contract by the Service Provider of a severity which triggers the suspension or termination provisions set out in the applicable provisions of the Contract.
- 1.21 It is acknowledged by the Council and the Service Provider that The Regulation and Inspection of Social Care (Wales) Act 2016 became law on 18 January 2016, and that this legislation establishes a new system of workforce regulation with effect from April 2017, together with new processes for the regulation and inspection of Service Providers with effect from April 2019. The Service Provider shall comply with future regulatory processes and the provisions of paragraphs 1.18 to 1.20 (inclusive) of this Specification shall be varied accordingly.
- 1.22 In circumstances where the provisions of the Contract or any Call Off Contract impose any standard or obligation which is higher than the Fundamental Standards or the National Minimum Standards (as applicable) or any equivalent regulatory standard or obligation, then the Service Provider shall comply with the relevant higher standard in the Contract or any such Call Off Contract. However, in all other cases where there is a conflict between the Fundamental Standards or National Minimum Standards (as applicable) or any other regulatory standard and the Contract or any Call Off Contract, then the Fundamental Standards or National Minimum Standards (as applicable) or other regulatory standards shall take precedence.

Regulatory Framework(s) outside England and Wales

- 1.23 The Council may from time to time award Call Off Contracts to service providers whose Care Homes are located outside the borders of England and Wales. In such circumstances, the regulatory framework in force in the country in question shall apply to the Services and the Care Home and the Service Provider shall at all times diligently comply with the applicable regulator's standards and processes. Failure to do so may result in the Council exercising its termination and/or suspension rights pursuant the Contract.

2. PROVISION OF THE SERVICES

Services Availability

- 2.1 The Parties acknowledge that by entering into the Contract the Service Provider gives no guarantee that it will enter into any Call Off Contract for the provision of

the Services. The Service Provider shall however operate the Services in readiness to enter into Call Off Contracts with effect from the Commencement Date and through the term of the Contract, and operate the Services thereafter throughout the term of any applicable Call Off Contract in accordance with the terms of the Contract and any applicable Call Off Contract.

- 2.2 The Services shall be provided both during the day and the night, twenty-four (24) hours per day, throughout seven (7) days per week, fifty-two (52) weeks per year, and be able to provide a timely response to both the planned and unplanned care needs of Residents.

Staffing Requirements

- 2.3 The Service Provider shall ensure that it has the ability to provide the necessary Services at all times, with sufficient numbers of trained and competent Staff necessary to provide care for each Resident. The Service Provider shall ensure that each member of Staff responsible for the delivery of the Services is fully aware of the requirements of the Contract as well as the Fundamental Standards and National Minimum Standards (as applicable) and be able to demonstrate a commitment to maintaining and delivering high quality Services for adults with a variety of needs and/or conditions and provide the Services where all aspects of a Resident's assessed care needs are met.
- 2.4 The Service Provider shall review its staffing levels at the Care Home as frequently as required to meet both the individual and collective needs of residents at all times during the Contract Period and the term of any applicable Call Off Contract.

The Care Act 2014 and The Social Services and Well-being (Wales) Act 2014

- 2.5 The Service Provider shall have regard to:
- 2.5.1 if the Care Home is located in England, the Care Act 2014 and the Care and Support Statutory Guidance issued from time to time under the Care Act 2014 by the Department of Health;
 - 2.5.2 if the Care Home is located in Wales, the Social Services and Well-being (Wales) Act 2014 and the Code of Practice and Statutory Guidance issued from time to time under The Social Services and Well-being (Wales) Act 2014.
- 2.6 The Service Provider shall ensure that the Services are delivered in a manner which is compatible with the following duties placed on the Council under the Care Act 2014:
- 2.6.1 the duty to promote individual wellbeing (Section 1);
 - 2.6.2 the duty to prevent the need for care and support (Section 2);

- 2.6.3 the duty to promote the integration of care and support with health services (Section 3);
 - 2.6.4 the duty to provide information and advice (Section 4);
 - 2.6.5 the duty to promote diversity and quality in the provision of services (Section 5);
 - 2.6.6 the duty to co-operate with partners (Section 6);
 - 2.6.7 the duty to carry out safeguarding enquiries (Section 42).
- 2.7 The Service Provider shall therefore provide Services that:
- 2.7.1 meet the needs of each individual Resident and are provided by competent Staff in a way that supports the safety and security of each individual Resident;
 - 2.7.2 are responsive and reliable and maintain a Resident's dignity and respect at all times;
 - 2.7.3 are accessible and delivered with understanding and without discrimination;
 - 2.7.4 enable, where possible, each individual Resident to maximise their independence, health and wellbeing and support their social, spiritual and emotional needs.
- 2.8 The Service Provider shall ensure that all of its Staff:
- 2.8.1 have regard for each Resident's equality and diversity, uphold Residents' human rights (in line with the guidance outlined in the Report of the Equality and Human Rights Commission Inquiry), and do not discriminate against people for any reason. The Service Provider's policies will incorporate respect for both Staff and Residents;
 - 2.8.2 work in an enabling way that allows Residents to increase or maintain their level of independence, develop self-caring and move to a reduction in support, where appropriate;
 - 2.8.3 understand that part of their caring role is to spend time talking to, relating with, and understanding the lives of individual Residents and supporting them with appropriate activities at the Care Home.

Promoting Wellbeing

- 2.9 The principle of wellbeing underpins the Care Act 2014 and the Care and Support Statutory Guidance which set out and describe the obligations of the Council to

promote individual wellbeing when carrying out its care and support functions. Therefore, through the provision of the Services, the Service Provider shall support Residents to achieve or make progress towards the achievement of the following Wellbeing Outcomes:

- 2.9.1 to have personal dignity, including being treated with respect;
 - 2.9.2 to better manage physical and mental health and emotional wellbeing;
 - 2.9.3 to be protected from abuse and neglect;
 - 2.9.4 to have control over day-to-day life, including over care and support provided and the way it is provided;
 - 2.9.5 to participate in work, education, training or recreation;
 - 2.9.6 to have social and economic wellbeing;
 - 2.9.7 to develop and maintain domestic, family and personal relationships;
 - 2.9.8 to have suitable living accommodation;
 - 2.9.9 to contribute to society and their community.
- 2.10 The Council shall measure the Service Provider's achievement of the Wellbeing Outcomes in accordance with Schedule 2 of the Contract.

3. CARE AND SUPPORT PLANNING AND DELIVERY

- 3.1 The Council or its Nominated Partner(s) shall work with each individual whose assessed care and support needs must be met in a Care Home setting to agree a High Level Support Plan and Assessment, which, unless stated otherwise in this Contract, shall be shared with the Service Provider prior to the commencement of the individual's Placement at the Care Home following the formation of an applicable Call Off Contract. In the event of a Placement made through the Emergency Award Procedure, the Council shall either provide the Service Provider with the High Level Support Plan and Assessment as soon as reasonably practicable after the Placement has taken place or beforehand if possible. The Care Manager shall be responsible for ensuring that the High Level Support Plan and Assessment reflects all the care and support needs stated by the Care Manager in the Resident's Pen Portrait.
- 3.2 Within five (5) Working Days after the commencement of a Resident's Placement at the Care Home, the Service Provider shall carry out its own full person-centred needs and risk assessment and shall agree a Care Plan with the Resident which identifies how the Resident's care and support needs and outcomes will be met by the Services. The Service Provider shall ensure the Care Plan aligns with the

needs and outcomes identified by the Council or its Nominated Partner through the High Level Support Plan and Assessment and shall upon request provide a copy of the Care Plan to the Council.

- 3.3 The Service Provider shall advise the General Practitioner (GP) and/or any other appropriate Health professional of a Resident's Placement at the Care Home within one (1) Working Day of commencement of the Placement and request that they undertake a medical assessment of the Resident within 2 (two) weeks.
- 3.4 Through a structured approach to care and support planning, the Service Provider shall ensure that each Resident receives Services that are personalised specifically to them, and that each Resident receives appropriate person-centred Services that are based on an assessment of their needs, wellbeing, and preferences.
- 3.5 In developing and delivering effective care and support planning processes, the Service Provider must observe and comply with Regulation 9 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (i.e. care and treatment must be appropriate and reflect Residents' needs and preferences).
- 3.6 It will be necessary from time to time for employees of the Council or its Nominated Partner(s) to be allowed access to individual Care Plans. The Service Provider shall ensure that such access is facilitated in accordance with the Contract. The Service Provider shall therefore permit, and provide assistance to, the Council or its Nominated Partner(s) to enable them to carry out reviews or assessments of Residents' care and support needs, including (upon request) contribution to such reviews or assessments and the provision of any relevant information which is within the knowledge or control of the Service Provider (or its Staff).
- 3.7 The Council or its Nominated Partner(s) may review and unilaterally amend its assessment of a Resident's care and support needs at any time, make changes to the High Level Support Plan and Assessment and, having notified any changes to the Service Provider by way of a Unilateral Notice, the Service Provider shall then promptly amend its Care Plan for the Resident in question. The Service Provider shall be responsible for immediately making the necessary adjustments to the Services which it provides for the Resident in question, in order to comply with the amended Care Plan. The Service Provider shall ensure that the Care Plan is continually updated to reflect the care and support needs of the Resident in question.
- 3.8 The Service Provider shall comply diligently with any request by the Council or its Nominated Partner(s) to be kept informed about a Resident's condition, or otherwise to monitor a particular aspect of a specified Resident's High Level Support Plan and Assessment.

Care Management Reviews

- 3.9 The Service Provider shall inform the Council or its applicable Nominated Partner if they consider that there has been a material change in a Resident's needs, or in the way that a Resident would prefer to have their Services provided, which may require the Council to review its High Level Support Plan and Assessment.
- 3.10 A Care Management Review will be held as often as the Care Manager considers necessary, or as requested by the Resident and/or their next of kin/representative, or by the Service Provider but at least annually.
- 3.11 The Care Management Review will involve the Resident and/or their representative, the Care Manager or their representative, and, where appropriate, the Service Provider (or their designated representative), and any other professional as deemed appropriate by the Council or its Nominated Partner(s). Consideration will be given to ensure convenience and adequate notice for all participants wherever possible.
- 3.12 The Care Management Review will consider the extent to which the outcomes set out in the Resident's High Level Support Plan and Assessment are being met and will identify future objectives.
- 3.13 In circumstances where the Service Provider considers that there has been a material change in a Resident's needs which requires the provision of either Funded Nursing Care (FNC) or Continuing Health Care (CHC), then the Council shall ensure that the Care Management Review process includes an assessment of the Resident's Nursing Care needs in order to determine whether the NHS Continuing Health Care criteria are being met.
- 3.14 Where applicable, the Resident's Call Off Contract will be amended or terminated as appropriate following the outcome of the Care Management Review in accordance with paragraph 2.9 of Schedule 3 if the needs of the Resident have **changed**.
- 3.15 The Service Provider shall ensure that where appropriate opportunities are provided for Residents to manage their own care or treatment. Where a Resident requests, or is agreeable to receive, information regarding self management of their health related condition in order to maintain their health and well being, the Service Provider shall make arrangements for the Resident to access appropriate services (for example, NHS community services (Community Matron, Community or Specialist Nurse) or local authority services).
- 3.16 The Service Provider shall use evidence-based risk assessment tools to identify risk. The Service Provider shall put in place, and regularly review, a plan for each risk identified to optimise each Resident's health status and safety in regard to: skin integrity, concordance with medication, continence, infection prevention, nutrition and hydration, breathing and risk of falls, working in partnership with GP practices to ensure that health of Residents is viewed holistically.

Mobility and Falls

- 3.17 The Service Provider shall ensure that:
- 3.17.1 a mobility assessment (including a falls risk assessment) is completed on Placement and monitored and reviewed at least monthly;
 - 3.17.2 a manual handling risk assessment is completed and reviewed on Placement and at least monthly thereafter;
 - 3.17.3 mobility is maximised at a level which is appropriate relative to the ability of the Resident;
 - 3.17.4 the risk of falls is minimised;
 - 3.17.5 privacy and dignity is maintained at all times;
 - 3.17.6 fall prevention strategies are implemented as appropriate.

Assistive Technology

- 3.18 Standard Equipment, including assistive technology, as set out in paragraph 8.3 of this Specification, shall be utilised by the Service Provider where this could maximise a Resident's mobility at no additional cost to the applicable Total Care Price. The Service Provider shall:
- 3.18.1 support Residents to remain as independent as possible, with the use of assistive technology where appropriate;
 - 3.18.2 encourage and actively support the use of assistive technology to support with the achievement of each Resident's individual person centred outcomes;
 - 3.18.3 actively work in partnership and utilise the skills and resources of the Council in respect of assistive technology; and
 - 3.18.4 undertake regular reviews in respect of understanding the impact of the provision of assistive technology for each Resident.

Advocacy

- 3.19 The Service Provider shall work with local advocacy groups to provide Residents and their relatives/representatives with access to independent advocates.

Mental Capacity and Deprivation of Liberty Safeguards

- 3.20 The Service Provider shall comply with the Mental Capacity Act 2005 (MCA) and the Deprivation of Liberty Safeguards (DoLS) and shall have in place policies and procedures for:
- 3.20.1 the provision of MCA and DoLS training for its Staff;
 - 3.20.2 the maintenance of records in relation to:
 - (a) specific capacity assessments and best interests decisions;
 - (b) lasting powers of attorneys or deputies held by next of kin/representatives of Residents;
 - (c) use of restraint and the promotion of least restrictive measures.
 - 3.20.3 the reporting to the CQC or CSSIW (as applicable) of all applications and outcomes of DoLS.

Pathways for Care

- 3.21 The Service Provider shall ensure that good pathways for care are maintained between the Service Provider and hospital admission staff. If a Resident is transferred to hospital the Service Provider shall ensure that an up-to-date summary of the Resident's existing conditions/medications, and (where appropriate) a Do Not Attempt Resuscitation (DNAR) form/order accompanies the Resident.
- 3.22 The Service Provider shall work with the GP of the Resident's choice (or the choice of the next of kin/representative) or relevant health professional and each individual Resident to enable ongoing health reviews as frequently as appropriate.

Discharge to Assess

- 3.23 In the event of the Placement of a Resident at the Care Home upon discharge from hospital, the Service Provider shall deliver to the relevant Discharge to Assess model for the hospital in question. The Service Provider shall work with Health colleagues to ensure there are no unnecessary delays to hospital discharge.

Communications

- 3.24 The Service Provider shall ensure that all Residents, including potential residents, and their next of kin/representatives are provided with accessible information about the Services.
- 3.25 The Service Provider shall ensure that Residents are fully supported to be actively involved in any communications relevant to them including attendance to meetings and copies of any relevant documentation.

- 3.26 The Service Provider shall have mechanisms in place to collect and act upon Resident and next of kin/representative feedback and complaints. These actions shall be well documented and complaints responded to in a timely manner.
- 3.27 The Service Provider shall invite Residents and/or next of kin/representatives to complete a feedback survey(s) relating to their Placement in the Care Home and to report this feedback to the Council as requested through quality assurance processes..
- 3.28 The Service Provider shall complete a Continuing Healthcare Checklist when requested to do so by the Council or its Nominated Partner and shall supply supporting documentation if necessary to assist with the Resident's assessment for Continuing Healthcare eligibility.

Medication

- 3.29 The Service Provider shall ensure medication is administered in accordance with current best practice.
- 3.30 The Service Provider shall ensure there is a well-developed culture of safety to protect the Residents and Staff from harm that can be caused by medicines. This shall include (but not be limited to) the following:
- 3.30.1 ensuring that an appropriately qualified member of Staff is on site to administer medication;
 - 3.30.2 delivering the Service in accordance with the NICE quality standards guidance for the management of medicines within Care Home environments;
 - 3.30.3 ensuring well-established links with the GP and the supplying community pharmacy for appropriate advice and support;
 - 3.30.4 implementing infection control measures during the administration of medicines;
 - 3.30.5 promoting a reflective learning culture to enable Staff to address previous medicines incidents including near-misses and errors;
 - 3.30.6 ensuring that there is a policy, and that Staff adhere to procedures, for the receipt, recording, storage, handling, administration and disposal of medicines;
 - 3.30.7 Residents are able to take responsibility for their own medication if they wish within a risk management framework;

- 3.30.8 ensuring Residents can access appropriate prescriptions from primary care.
- 3.31 Where a Resident is Placed at the Care Home from home or another community setting, it is expected that they will be admitted with the medication(s) being taken at the time.

4. POLICIES AND PRACTICES

- 4.1 The Service Provider shall ensure that all residents are at all times protected from the risk of abuse.
- 4.2 The Service Provider shall follow the safeguarding procedures set out in the publication "Staffordshire and Stoke-on-Trent Adult Safeguarding Enquiry Procedures (June 2016)" or the successors to these procedures.
- 4.3 The Service Provider shall ensure that clear policies and practices are operated at the Care Home in relation to the following:
 - 4.3.1 for the safe and effective management, use and administration of medicines (to include homely remedy policies);
 - 4.3.2 for obtaining consent to care and treatment in accordance with the requirements of the MCA and associated code of practice;
 - 4.3.3 for working with other providers or bodies in case of major incidents and emergency situations, including fires, floods, and natural disasters;
 - 4.3.4 for the prevention and control of infection in care homes;
 - 4.3.5 for the prevention and reduction of falls and fractures in care homes.
- 4.4 The Service Provider shall apply where relevant the tools, guidelines and quality statements issued by the National Institute for Health and Care Excellence (NICE) pertinent to improving quality and practice in Care Homes.
- 4.5 The Service Provider shall ensure that clear policies and practices are operated in line with the Council and The Mental Health Act 2007, including and not limited to individuals with a Guardianship or Section 117 in place.

5. PROVISION OF GENERAL NURSING CARE

- 5.1 Where specified in the Particulars, the Services shall include the provision of Nursing Care. Where the Care Home is registered as a location for the provision of accommodation with Nursing Care under the Health and Social Care Act 2008,

then the Service Provider shall also provide appropriate general Nursing Care Services as set out in Appendix 1 to this Specification to each applicable Resident subject to the overriding requirements of their assessed care and support needs. Such general Nursing Care Services shall include (without limitation) the provision of continence Services and aids in so far as the provision of the same is not the responsibility of Health, but excluding (without limitation) specialist continence advice.

Health Care Services

- 5.2 If it appears to the Service Provider that, having regard to the relevant High Level Support Plan and Risk Assessment and the individual Resident's assessed need for care and support, a Resident should receive some form of specialist health or Nursing Care which has been refused, then the Service Provider shall promptly notify the Council (or its Nominated Partner) in writing so that the matter may be taken up with Health.

6. END OF LIFE CARE

- 6.1 The Service Provider shall be proactive in recognising the need for End of Life Care and shall ensure that good quality End of Life Care is provided. The Service Provider shall have in place:
- 6.1.1 mechanisms to discuss, record and communicate the views, wishes, feelings, beliefs and preference of Residents regarding their End of Life Care;
 - 6.1.2 mechanisms to ensure the Resident's needs for End of Life Care are assessed and reviewed on an on-going basis;
 - 6.1.3 processes to ensure Residents who are dying are entered onto health care pathways and for joint working arrangements for wider End of Life Care services;
 - 6.1.4 a programme for Staff training, development and continued learning needs around Palliative Care and End of Life Care;
 - 6.1.5 mechanisms to review the appropriateness of all transfers of the Resident between the Services and other services when approaching the end of their life;
 - 6.1.6 arrangements for the provision of support to Staff, carers and other Residents following bereavement.

- 6.2 The Service Provider shall promote independence and quality of life to Residents with advanced, progressive, incurable illness until they die.
- 6.3 The Service Provider shall:
- 6.3.1 ensure, if a DNAR order/form (issued and signed by a doctor) has been recorded in the Resident's medical notes, that Staff are aware of and act in accordance with the DNAR status and review regularly;
 - 6.3.2 ensure Staff are aware of the content of any Advance Decision to Refuse Treatment orders (ADRT) and ensure they are applied when appropriate;
 - 6.3.3 have mechanisms in place to discuss, record and (where appropriate) communicate the wishes and preference of the Resident approaching end of life (advance care planning);
 - 6.3.4 offer each Resident and their next of kin/representatives (as appropriate) assistance in devising an advance care plan in order to record end of life choices and preferences and shall assess and review such advance care plan on an ongoing basis;
 - 6.3.5 ensure the Advance Care Plan (including preferred place of death) has been completed within one (1) month of the Resident's Placement at the Care Home;
 - 6.3.6 provide appropriate end of life planning and care communication skills training for relevant Staff;
 - 6.3.7 engage with specialist Palliative Care teams and other healthcare professionals, as applicable;
 - 6.3.8 ensure principles of the Gold Standards Framework (GSF) are applied to Residents in the last year of life including use of End of Life tools such as preferred priority of care;
 - 6.3.9 ensure for all expected deaths that the End of Life Care pathway is followed;
 - 6.3.10 ensure appropriate clinical supervision, consistent with occupational standards;
 - 6.3.11 signpost relatives and other residents to appropriate after death support.

6.4 The Service Provider shall ensure that Staff have an understanding of the management of care of Residents through the use of syringe drivers. The Service Provider shall therefore ensure that Staff understand:

6.4.1 the basic principle of syringe drivers and Palliative Care medication;

6.4.2 how to recognise problems and liaise with appropriate district nursing and Palliative Care teams.

6.5 The Service Provider shall comply with a recognised End of Life Care pathway. In delivering the Services to a Resident having End of Life Care needs, the Service Provider shall ensure compliance with the Department of Health's National End of Life Care Strategy including the use of End of Life tools including (but not limited to):

6.5.1 Gold Standards Framework;

6.5.2 advance care planning;

6.5.3 preferred priorities of care;

6.5.4 NICE Quality Standard 13 (<http://guidance.nice.org.uk/QS13>)

6.6 The Service Provider shall:

6.6.1 when the Resident is nearing the end of their life and they have expressed a wish to remain in the Care Home, wherever possible work with the Resident, their next of kin/representatives, and Health to avoid the admission of the Resident to hospital, ensuring that care continues to be provided within the Care Home;

6.6.2 ensure that the End of Life Care in the final few days of life are of optimal quality of the Resident and their next of kin/representative;

6.6.3 involve next of kin/representatives in End of Life Care decisions to the extent that they and the Resident wish;

6.6.4 have an appropriate system for the audit and review of the quality of End of Life Care;

6.6.5 identify and meet the training needs of all Staff as they apply to End of

Life Care, and in particular take account of the training needs of Staff involved in discussing End of Life Care issues with Residents.

Palliative Care

6.7 The Service Provider shall ensure that there is a named champion for Palliative Care who:

6.7.1 has responsibility for the appropriate induction and training of Staff; and

6.7.2 works in partnership with specialist Palliative Care teams, GPs and other healthcare professionals to identify support and resources required to meet each Resident's needs and to anticipate changes in their condition.

6.8 The Service Provider shall ensure that its Staff are trained to be aware of what they can do to recognise the value of Palliative Care, are open and supportive of families and other residents both before and after the death.

7. ACCOMMODATION

7.1 The Service Provider shall ensure that the Care Home's premises and Standard Equipment meet the requirements of Regulation 15 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended) (i.e. premises and equipment used must be clean, secure, suitable and used properly).

7.2 Subject to paragraph 7.3 of this Specification, the Service Provider shall:

7.2.1 permit each Resident to occupy and enjoy a Room which is allocated to them in the Care Home at the time of their Placement and thereafter throughout the duration of their Placement, to enable them to be provided with the Services (subject to paragraph 7.4 of this Specification);

7.2.2 ensure that each Room is furnished with adequate furniture, bedding and other furnishings, including curtains and floor coverings, together with any Standard Equipment or Bespoke Equipment required to meet the needs of the Resident occupying the Room in question;

7.2.3 not designate any other room(s) or accommodation in the Care Home by way of a temporary substitute for any Room without first consulting with the Resident in question and/or their next of kin/representative. If no agreement can be reached, then the matter shall be referred to the

relevant Care Manager for resolution.

- 7.3 If the Service Provider considers (acting reasonably) that a Resident's care needs can no longer be met in their allocated Room and that as a consequence they require a permanent move to an alternative Room, then the Service Provider shall inform the Care Manager and request a Care Management Review.

Use of Communal Areas and Facilities

- 7.4 The Service Provider shall:

- 7.4.1 give each Resident access to and the use of the communal rooms/facilities in the Care Home at all times during their Placement;
- 7.4.2 put in place safe and appropriate arrangements for Residents who wish to smoke, which respect the rights of both smokers and non-smokers, and comply with any applicable Government legislation;
- 7.4.3 permit each Resident to stay in their Room during the daytime if they so wish and shall not insist that Residents occupy and use communal rooms in the Care Home if they would prefer not to, provided that the Service Provider shall be entitled to require a Resident to leave their Room temporarily when the Service Provider requires access to carry out maintenance and cleaning.

Infection Control

- 7.5 The Service Provider shall ensure compliance with the applicable provisions of the Health and Social Care Act 2008 with respect to the prevention and control of infections, and the code of practice for health and adult social care on the prevention and control of infections and related guidance (Department of Health).

Fire Safety

- 7.6 The Service Provider shall comply with the Regulatory Reform (Fire Safety) Order 2005 and the HM Government Guide "Fire Safety Risk Assessment – Service User Care Premises.
- 7.7 The Service Provider shall ensure that a personal emergency evacuation plan (PEEP) is developed and incorporated into each Resident's Care Plan.

8. PROVISION OF STANDARD EQUIPMENT AND BESPOKE EQUIPMENT

- 8.1 The Service Provider shall provide all Standard Equipment suitable for meeting the generic care and support needs of Residents, recognising variations in height, weight and size of Residents and recognising the type of care for which the Care Home is registered to provide. The Standard Equipment provided must be used and maintained in accordance with manufacturers' instructions, and Staff/Residents must receive appropriate training and instruction. The operation and use of the Standard Equipment must be subject to a risk assessed and risk managed approach, and the Service Provider shall be mindful of and comply with its health and safety obligations.
- 8.2 The Service Provider shall ensure that all necessary Standard Equipment required to meet the individual and collective needs of residents as detailed within the applicable High Level Support Plan and Assessment is appropriately:
- 8.2.1 procured and made available for the benefit of the applicable Resident in a timely manner;
 - 8.2.2 managed and maintained including regular safety checks and replacement in a way that complies with relevant legislation and Good Industry Practice.

Standard Equipment

- 8.3 For the avoidance of doubt, the Service Provider shall be responsible for the provision of all Standard Equipment, materials and associated consumables to support the delivery of the Services including the following non-exhaustive list.
- 8.3.1 Mobility:
 - (a) Slide sheets (one per Resident);
 - (b) Hoists, Standing Hoists;
 - (c) Hoist Slings (one per Resident);
 - (d) Handling Belt;
 - (e) Transit Wheelchairs;
 - (f) Over-bed trolley tables;

(g) Bed-rails and protectors;

(h) Bathing equipment including bath hoists and shower chairs;

(i) Scales and hoist scales;

(j) Grab rails.

8.3.2 Skin:

(a) Chairs of a variety of styling and heights.

8.3.3 Elimination:

(a) Commodes and commode chairs;

(b) Bed pans, urinals (male and female);

(c) Raised toilet seats.

8.3.4 Assistive Technology:

(a) Communication aids and signs for impairment needs including hearing, visual and cognitive;

(b) Call systems with accessible alarms;

(c) Bed, chair and tap/bath/shower sensors;

(d) Phone/door flashing lights;

(e) Door Alarms.

8.3.5 Nutrition:

(a) Adaptive cutlery and crockery;

(b) Non slip mats;

(c) Feeding cups.

8.3.6 Emotional and social needs:

(a) Access to local/onsite amenities.

8.3.7 Maintaining a safe environment:

(a) Telecare technology;

(b) Wander alarms;

(c) Pressure mats/pads

(d) Mattresses.

Bespoke Equipment

8.4 Where the Service Provider considers (acting reasonably) that the Standard Equipment listed in paragraph 8.3 of this Specification, or where applicable Standard Equipment in a Care Home with Nursing environment listed in paragraph 1.6 of Appendix 1 to this Specification reasonably provided to deliver the Services, is unsuitable for a Resident and the provision of Bespoke Equipment is necessary, the Service Provider shall notify the relevant Care Manager to request an assessment of the Resident's need for such Bespoke Equipment to be carried out.

8.5 Where Bespoke Equipment is required, the provision of such Bespoke Equipment via the Council's commissioned community equipment provider will be provided on the outcome of the Resident's assessment of need. The assessment shall be carried out by a health or social care practitioner appointed by the Council or its Nominated Partner(s) or other professional who is an authorized community equipment prescriber.

8.6 The provided Bespoke Equipment is to meet an identified assessed need, for a Resident who is eligible for community equipment provision via the Council's commissioned community equipment provider.

- 8.7 The provision of Bespoke Equipment will aim to promote the Resident's independence and quality of life and may alleviate the physical demands experienced by the Care Home Staff.
- 8.8 Bespoke Equipment provided via the Council's commissioned community equipment provider will be for the exclusive use of the Resident for whom it was prescribed in the environment for which it was assessed.
- 8.9 All repair, replacement and maintenance of Bespoke Equipment provided via the community equipment provider will be carried out by the community equipment provider.
- 8.10 Bespoke Equipment will be provided via the Council's commissioned community equipment provider for as long as required by that Resident.
- 8.11 Following assessment and the resulting provision of Bespoke Equipment, the community equipment prescriber will ensure safe use of the Bespoke Equipment has been demonstrated to the Resident and the relevant members of Staff at the Care Home.
- 8.12 The Service Provider shall be responsible for ensuring safe use by its Staff and that they are competent and confident in using the Bespoke Equipment when caring for the Resident.
- 8.13 Day to day visual checks and cleaning, pre and post-use are the responsibility of the Service Provider. The manufacturers' recommended instructions for use should be complied with as well as any local or additional guidelines provided by the community equipment prescriber.
- 8.14 The Service Provider shall be responsible for contacting the community equipment provider to report any problems or faults with the Bespoke Equipment or to arrange collection of the Bespoke Equipment when no longer required for the Resident.
- 8.15 The Service Provider shall be responsible for reporting any changes of concerns for that Resident in regard to the safe use of Bespoke Equipment, to the Care Manager, in order to arrange or refer for a re-assessment of the Resident.

- 8.16 The Service Provider shall accept responsibility for the safe use of the Bespoke Equipment and facilitate access by the community equipment provider to enable timely servicing and maintenance of such Bespoke Equipment, the costs of such being the responsibility of the community equipment provider.
- 8.17 The Service Provider shall be liable for the replacement of the Bespoke Equipment or the reasonable cost of repairs due to poor management of the Bespoke Equipment including neglect, abuse, mistreatment or unapproved adaptation.
- 8.18 The Service Provider shall notify the community equipment provider when the Bespoke Equipment is no longer required for the named Resident and shall make arrangements with the community equipment provider for collection of the Bespoke Equipment into the possession of the community equipment provider. The Service Provider shall be liable for the reimbursement of the full cost of replacing or repairing all Bespoke Equipment which is not returned or is returned damaged.

Care Home Equipment Policy

- 8.19 As soon as possible following the formation of the Contract, the Council shall provide the Service Provider with an electronic copy of its Care Home Equipment Policy which details the responsibilities of Care Homes and the community equipment provider for the provision of items of Standard Equipment and/or Bespoke Equipment.

9 MEALS

- 9.16 In providing all meals, drinks and snacks to Residents, the Service Provider must observe and comply with Regulation 14 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended). The Service Provider shall therefore:
- 9.16.1 provide Residents with a balanced, healthy diet to meet their nutritional and hydration needs, and must be alert to any signs of malnutrition;
- 9.16.2 ensure that Residents have twenty-four hour access to a choice of food and drink that takes into account their preferences, diverse needs and dietary requirements and are given information about meals and meal times;
- 9.16.3 provide Residents with food and drink in environments that promote their dignity and give residents a choice about whether to eat alone or with company;

- 9.16.4 ensure that its Staff offer where appropriate suitable eating and drinking utensils (by way of example adaptive cutlery and crockery, non-slip mats, and feeding cups) and give appropriate prompting, supervision and assistance to Residents in a manner which maximises their own potential to feed themselves.
- 9.17 The Service Provider shall ensure that:
- 9.17.1 an assessment of a Resident's nutritional needs is completed on the commencement of their Placement using the Malnutrition Universal Screening Tool (MUST) (or equivalent tool) and thereafter monitor and review as appropriate;
- 9.17.2 a policy is in place which ensures that any change in a Resident's weight or dietary intake is responded to appropriately and in a timely manner;
- 9.17.3 fortified/liquidised diets are made available for Residents where appropriate.
- 9.18 The Service Provider shall be aware of the risk factors for malnutrition and dehydration for each Resident and shall prevent all ill-health associated with malnutrition and dehydration. If a Resident experiences unplanned weight loss or gain the cause shall be identified and addressed. If the involvement of a GP is required, the Service Provider shall make a referral in a timely manner to prevent rapid deterioration of the Resident to enable the GP to make any necessary referrals to, by way of example, a dietician.
- 9.19 In circumstances where a Resident has special dietary requirements, the Service Provider shall ensure that the Resident's next of kin/representatives are made aware of any restrictions in order to avoid the nutritional needs of the Resident being compromised.

10 LAUNDRY AND CLOTHING

- 10.1 Whilst the Resident shall be responsible for providing their own clothing, where needed the Service Provider shall support the Resident to ensure they are appropriately clothed and that they have an adequate supply of clothing.
- 10.2 The Service Provider shall provide sufficient bed linen and towels of reasonable quality to meet the Resident's needs. Laundry items supplied by the Service Provider shall be changed regularly and not less than once per week, except in the case of soiled items which shall be changed immediately they come to the attention of a member of Staff.

- 10.3 The Service Provider shall carry out all personal laundry, except dry cleaning, for the Resident and ensure that personal laundry is identified and returned to the Resident to ensure that the Resident has sufficient clean and appropriate clothing of their own to meet their immediate needs.

11 PERSONAL PROPERTY

- 11.1 The Service Provider shall:

- 11.1.1 permit each Resident to bring their personal effects into the Room which is allocated to them, if they so wish during their stay at the Care Home (insofar as this is reasonably practicable);
- 11.1.2 take reasonable steps to safeguard each Resident's personal property while it is in the Care Home (or otherwise in the control of the Service Provider and its Staff);
- 11.1.3 provide a place where the money and valuables of Residents may be deposited for safe keeping and make arrangements for Residents to acknowledge in writing the return to them of any money or valuable so deposited;
- 11.1.4 require each Resident to declare any individual personal possessions which have a value in excess of £500 and shall maintain an inventory. The Service Provider shall encourage residents and their next of kin/relatives to take out their own insurance for any such personal possessions.

- 11.2 The Service Provider shall provide fire, theft, flood, storm and tempest insurance for each Resident's goods and possessions while they are in the Care Home, up to a total value of £1,500 (including up to £500 for any single item) with an excess not exceeding £100. The excess shall be borne by the Resident, subject however to the contrary provisions in paragraphs 11.3 and 11.4 of this Specification.

- 11.3 The Service Provider shall (to the reasonable satisfaction of the Council) immediately reimburse any affected Resident for the full replacement cost or value (as applicable) of any of their cash, or any of their personal belongings, or other property (whether real or personal) which is/are either lost, or damaged, or destroyed, in circumstances where the Council is satisfied (acting reasonably) that on the balance of probabilities the loss, or damage, or destruction, which has been suffered by the relevant Resident:

- 11.3.1 was due to an act or omission committed by a member of Staff, or;
- 11.3.2 occurred at a time when the items in question were in the possession of

either the Service Provider or its Staff, or;

- 11.3.3 was due to any breach of this Contract or any applicable Call Off Contract committed by (or on behalf of) the Service Provider.
- 11.4 The Service Provider shall comply fully and promptly with paragraph 11.3 of this Specification regardless of any excess under its relevant insurance policies (i.e. so that the Service Provider shall bear any applicable excess) and regardless of whether or not the Service Provider has actually received any insurance pay out from its insurer in relation to the incident in question.

Items for Personal Use/Consumption

- 11.5 The Service Provider:
- 11.5.1 may by arrangement with any Resident and at the cost of the Resident in question (as opposed to the Council which shall not be liable for any such sums) supply special items or products for personal consumption and use by the Resident at the Care Home (including special toiletries and oral hygiene products) which are not otherwise provided for in the Contract. Any such arrangements shall not form part of the Contract;
- 11.5.2 shall at the request of the Council promptly supply the Council with details of any arrangements which are made by it under paragraph 11.5.1 of this Specification, whether these involve irregular, regular weekly, fortnightly, or other periodic payments, or any wholly novel payment by any Resident (or any person acting on their behalf, with or without the Resident's knowledge).

12 PRIVATE ARRANGEMENTS

- 12.1 The Service Provider shall at all times ensure that none of its Staff enter into any private arrangement or contract with any Resident.

13 GENERAL PROVISIONS

- 13.1 The Parties shall liaise and co-operate with the Council and its Nominated Partner(s) in a considerate, open and professional manner at all times throughout the Contract Period and the term of any Call Off Contract, so that the Services operate as efficiently as possible and in particular to avoid misunderstandings and disagreements.
- 13.2 The Service Provider shall:

- 13.2.1 not impose any excessive rules, conditions, or restrictions on the Residents or on their visitors in relation to their use of the Care Home;
- 13.2.2 subject to paragraph 13.2.1 of this Specification, be entitled to require each Resident to comply with all reasonable and usual operational arrangements which it requires, to facilitate the efficient day to day management and running of the Care Home;
- 13.2.3 allow generally unrestricted access to the Care Home at all reasonable hours for visitors whom each Resident is willing to see;
- 13.2.4 give each Resident reasonable access to a telephone at the Care Home for which the Service Provider may make a reasonable charge;
- 13.2.5 require each Resident to act in a reasonable, courteous and considerate manner towards Staff and other residents at the Care Home (and their property).

Prohibited Practices

13.3 The Service Provider shall ensure that its Staff:

- 13.3.1 do not use the facilities which are provided at the Care Home for the benefit of its residents, for their own purposes (unless, in the case of Staff, this is expressly authorised by the Service Provider and is not in any way detrimental to the best interests of any Resident of the Care Home);
- 13.3.2 do not entertain their family or friends at the Care Home, or otherwise allow or encourage such persons to visit the Care Home, unless this is ancillary to the provision of the Services;
- 13.3.3 do not sell items of property to, or make purchases from, any Resident;
- 13.3.4 do not sell professional services to any Resident;
- 13.3.5 do not use their friends, or family, or acquaintances to provide any services for any Resident for any consideration;
- 13.3.6 do not take any unauthorised person into any Resident's Room.

13.4 Save where expressly stated otherwise in the Contract, the Service Provider shall:

- 13.4.1 not enter into any agreement or arrangement with any Resident in order to regulate the ownership, use or application of any state benefits,

allowances or other income to which any such Resident shall be entitled from time to time;

- 13.4.2 not encourage, allow or permit any Resident to pay for items of furniture, furnishings, fittings, equipment or any other items or facilities which are intended primarily to be for the benefit of any other residents of the Care Home, or for communal/collective use by such residents (whether at the Care Home, or elsewhere) unless this is first agreed in writing by the Council (such agreement not to be unreasonably withheld or delayed);
- 13.4.3 not encourage, allow or permit any Resident to incur expenditure which relates to the repair or maintenance of the Care Home and its facilities, or which is otherwise the responsibility of the Service Provider;
- 13.4.4 not require any Resident to pay any sum (whether via any mobility allowance, or any other state benefits to which they are entitled from time to time) as a contribution towards any fund which is intended by the Service Provider to pay for transport facilities or other additional services for the collective benefit of the residents of the Care Home (subject to any contrary written approval by the Council which shall not be unreasonably withheld or delayed). Any additional payments must be a voluntary contribution payment at the choice of the Resident to partake in additional services.

Travel Outside the Home for Health Reasons

- 13.5 If it is necessary for a Resident to travel outside the Care Home during their stay, in order to visit a clinic or for other health reasons, and it is necessary for transport to be provided for the Resident or for the Resident to be escorted because there is no relative or friend available to transport or accompany them, then the Service Provider shall provide or arrange for appropriate transport and an appropriate competent and reliable escort where practicable for the Resident and may make a reasonable extra charge to the Resident for this Service to cover any costs directly incurred by the Service Provider as a consequence. The Service Provider shall keep any charges under this paragraph to a reasonable minimum. No charge for transport shall be made by the Service Provider to a Resident where responsibility for such transport lies with Health.

Activities and Social Interaction

- 13.6 The Service Provider shall ensure that Residents are supported to achieve an optimal level of psychological and emotional wellbeing, and shall ensure that Residents have the opportunity to engage in meaningful occupation and activities.

The Service Provider shall:

- 13.6.1 provide appropriate activities plans and equipment to support such activities;
 - 13.6.2 actively consult Residents as part of activity planning;
 - 13.6.3 encourage and support Residents to pursue their own leisure pursuits both inside and outside of the Home;
 - 13.6.4 regularly review Resident engagement in activities and provide additional support where required to facilitate Resident involvement;
 - 13.6.5 promote the inclusion of Residents within the community and other social care initiatives available to the general public.
- 13.7 The Service Provider shall be knowledgeable of the services available in the local community and where identified in the High Level Support Plan and Risk Assessment shall ensure the Resident is enabled to access these services. The Service Provider shall make use of relevant community groups and services to ensure that Residents enjoy a good quality of life, a range of activities and achieve a sense of belonging through active involvement in their local community.

Funeral Arrangements

- 13.8 If any Resident dies during their Placement and has no relatives who can undertake the making of their funeral arrangements, then the Service Provider shall be responsible for contacting the Environmental Health Section of the relevant District or Borough Council as soon as possible in order to secure the making of adequate and appropriate funeral arrangements for the deceased Resident.
- 13.9 Following the death of a Resident, the Service Provider shall:
- 13.9.1 comply with its obligations under paragraph 4.1A of Schedule 3 of the Contract; and
 - 13.9.2 the Service Provider shall be sensitive to the family's needs when dealing with the deceased Resident's personal effects and any subsequent viewings of that room.

Notifications to the Council

- 13.10 Without prejudice to its responsibilities under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Service Provider shall notify the Council's Contract Manager immediately if any or the following events occur:
- 13.10.1 a serious accident, serious illness or serious injury to the Resident;
 - 13.10.2 voluntary discharge by a Resident and/or their next of kin/representative;
 - 13.10.3 a significant change to the physical condition or mental health of the Resident.
- 13.11 The Service Provider shall notify the Council's Contract Manager within 24 (twenty-four) hours of the relevant event occurring if any of the following events occur:
- 13.11.1 any circumstances where the Resident has consistently refused provision of the Services, medication, or medical attention;
 - 13.11.2 an enquiry related to Safeguarding of Vulnerable Adults is instigated;
 - 13.11.3 inappropriate restraint of a Resident;
 - 13.11.4 an outbreak of notifiable infectious disease in the Care Home;
 - 13.11.5 any emergency situation e.g. fire, flood;
 - 13.11.6 any legacy or bequests to the Service Provider and/or its Staff.
- 13.12 The Service Provider shall also notify the Council's Contract Manager within five (5) Working Days if there has been:
- 13.12.1 change to the Registered Manager/Nominated Individual;

- 13.12.2 a change to the registration of the Service Provider with the CQC (or any other applicable regulator);
 - 13.12.3 a change to the rating awarded to the Care Home following an inspection by the CQC (or any other applicable regulator);
 - 13.12.4 any absence of the Registered Manager/Nominated Individual in excess of 4 (four) weeks.
- 13.13 The Service Provider shall notify the Council's Contract Manager in writing within one (1) Working Day of its receipt of any formal notice of enforcement action which is served upon it by the CQC or CCSIW (as applicable) in relation to the Care Home.

Provision of Additional Information to the Council

- 13.14 At all times during the Contract Period or the term of any applicable Call Off Contract the Council shall be entitled to require the Service Provider to provide the Council's Contract Manager with additional information as is set out in sections 19 and 48 to 57 (inclusive) of the Care Act 2014.

14 RECORDS AND PROVISION OF INFORMATION

- 14.12 The Service Provider shall at all times throughout the Contract Period or the term of any Call Off Contract operate appropriate, effective and good working practices in relation to record keeping in accordance with the relevant requirements of Regulation 17 (Good Governance) of the Social Care and Health Act 2008 (Regulated Activities) Regulations 2014.
- 14.13 In addition to keeping the records which are required by the Social Care and Health Act 2008 (Regulated Activities) Regulations 2014 and under the provisions of the Contract, the Service Provider shall also maintain the following up-to-date and comprehensive written records for each Resident:
- 14.13.3 details of any accident which occurs at the Care Home which causes injury to any Resident;
 - 14.13.4 details of any illness suffered by any Resident;
 - 14.13.5 details of any occasion when any Resident goes missing, or is absent from the Care Home without apparent reason;

- 14.13.6 the names, addresses and telephone numbers of the Resident, their next of kin/representatives and any other agreed contact person;
- 14.13.7 a copy of the Service Provider's health and safety/risk assessment relating to the Resident.
- 14.14 The Service Provider shall maintain an up to date list of Residents and other individuals residing at the Care Home who are funded from sources other than the Council. The list shall include details of their next of kin/representatives and funding status. In circumstances where the Council has concerns over the continuation of delivery of the Service at the Care Home, the Service Provider shall immediately upon request provide a copy of such list to the Council's Contract Manager.

15 CONTRACT AND PERFORMANCE MONITORING

- 15.12 The Council shall be responsible for monitoring the quality of the Services provided under the Contract and for reviewing the delivery of individual High Level Support Plan and Assessments and identified outcomes. The Council shall therefore periodically monitor the delivery of the Services by the Service Provider:
 - 15.12.3 to ensure compliance with the Contract, including (without limitation) the Contract Standards, the Fundamental Standards or National Minimum Standards (as applicable) and any service outcomes that may be established and agreed between the Parties from time to time;
 - 15.12.4 to assess the quality and performance of the Services being delivered to Residents in relation to meeting their outcomes.
- 15.13 The Service Provider shall cooperate with the Council in the implementation of the arrangements for monitoring and reviewing the quality, performance and delivery of the Services as set out in Schedule 2.

APPENDIX 1: Additional Requirements applicable to the provision of Nursing Care in a Care Home with Nursing

- 1.1 This Appendix 1 sets out the requirements additional to those set out in paragraphs 1 to 15 (inclusive) of the Specification in circumstances where the Services to be delivered include the provision of Nursing Care.
- 1.2 Where an individual is assessed as requiring Nursing Care the Service Provider shall provide Nursing Care Services to each of the Resident's placed in the Care Home pursuant to an applicable Call Off Contract and in accordance with their High Level Support Plan and Assessment.
- 1.3 Health will provide or procure the provision to each Resident of such specialist nursing equipment (subject to the conditions of Health's applicable policy in force at that time) as is required. The Service Provider is required to provide all other Standard Equipment for each Resident which is appropriate and fit for purpose. Continence products which have been identified in the nursing assessment process and are as set out in the Resident's High Level Support Plan and Assessment will be provided by Health.
- 1.4 The Service Provider shall ensure that its Staff liaise with the Care Manager as needs dictate regarding the care of individual Residents, and play a key role in the developing and reviewing of the Services.
- 1.5 The Service Provider shall provide the type of support that the Resident would receive in their own home under the guidance of a GP or nurse practitioner, or the broader Health team.

Additional Standard Equipment for Care Homes with Nursing

- 1.6 Where the Service Provider is registered to provide Nursing Care the Standard Equipment as set out in paragraph 8.3 of the Specification shall additionally include:
 - 1.6.1 height adjustable / variable hospital bed where clinically indicated;
 - 1.6.2 pressure relieving devices including: beds and mattresses (a suitably specified mattress shall be provided for each Resident with or at risk of developing pressure ulcers); overlays; chairs and chair cushions (suitable chairs shall be provided into which the Resident can fit comfortably);

- 1.6.3 respiratory support: ventilators, nebulisers, suction machines and catheters;
 - 1.6.4 consumables for the administration of prescribed enteral feeds;
 - 1.6.5 syringe drivers and consumables for End of Life Care.
- 1.7 The Service Provider shall implement where appropriate for Residents in the Care Home the use of the NHS Harm Free Care / Safety Thermometer which is a tool for measuring patient safety and monitoring of residents.

Tissue Viability

- 1.8 The Service Provider shall ensure that:
- 1.8.1 all policies and procedures at the Care Home comply with good practice guidelines regarding tissue viability and are in alignment with Health policies;
 - 1.8.2 all Staff delivering Nursing Care within the Care Home are aware of their role in wound care prevention and treatment;
 - 1.8.3 Nursing Care Staff undertake sufficient training in wound care so that they are able to recognise complications as they occur and seek specialist advice from appropriate sources;
 - 1.8.4 it and its Staff collaborate with appropriate Health professionals to consider the cause of all pressure care and wound care clinical incidents and take preventative action with respect to all Residents.

Staffing

- 1.9 The Service Provider shall employ Registered Nursing Staff who are suitably qualified and have received appropriate training to enable them to plan, deliver and evaluate the Services in order to meet the individual and collective assessed needs of each Resident.
- 1.10 The Service Provider shall have a system to ensure that all registrations of Registered Nursing Staff are current and appropriate.

Notifications

- 1.11 In addition to the notification requirements set out in paragraphs 13.10 and 13.11 of the Specification, the Service Provider shall also notify Health of any serious incident (as defined in the NHS Serious Incident Framework) affecting the health, safety and well-being of a Resident.

APPENDIX 2: Additional Requirements applicable to the provision of Services to the Residents with Dementia

- 2.1 This Appendix 2 sets out the requirements additional to those set out in paragraphs 1 to 15 (inclusive) of this Specification in circumstances where the Services are delivered to Residents aged eighteen (18) years or older whose primary care need is dementia.
- 2.2 Dementia is a term used to describe a syndrome that may be caused by a number of illnesses in which there is progressive decline in multiple areas of function, including decline in memory, reasoning, communication skills and the ability to carry out daily activities. Alzheimer's disease is the most common type of dementia, with other types of dementia including vascular dementia, dementia with Lewy bodies and frontotemporal dementia. Although dementia is predominantly a disorder of later life, it is a disease which also affects people under the age of 64 (sixty-four).

Description of Services

- 2.3 The Service Provider shall:
- 2.3.1 provide person centred support for each Resident with dementia;
 - 2.3.2 tailor care and support to meet the individual needs of each Resident with dementia;
 - 2.3.3 be flexible and responsive to any change in condition;
 - 2.3.4 support Residents at all stages of their condition,
 - 2.3.5 enable Residents to participate in meaningful activities, including those which stimulate them socially, physically and mentally.
- 2.4 The Service Provider shall ensure that care and support is provided to Residents with dementia by a consistent team of Staff.
- 2.5 The Service Provider shall minimise the use of medication through an appropriate understanding of each individual Resident's needs, the creation of a positive environment and the use of alternative therapies and/or interventions where appropriate.
- 2.6 The Service Provider shall actively seek next of kin/representative engagement in

the care planning process where the Resident lacks the capacity to engage in care planning or to identify such additional support themselves.

- 2.7 The Service Provider shall ensure as far as is reasonably possible that Staff engage with Residents with dementia, and their families, to discuss issues such as advanced statements, lasting power of attorney, preferred priorities of care, and advanced decisions to refuse treatment should they have appropriate capacity, within a reasonable time period of Placement, and on a regular basis thereafter, and shall do so in conjunction with professionals as appropriate. The Service Provider shall ensure that the Resident's next of kin/ representatives are provided with access to current information on dementia conditions, and are made aware of appropriate support networks.
- 2.8 The Service Provider shall ensure that an appropriate personalised and person-centred level of assistance, motivation and/or supervision is delivered to Residents with dementia in accordance with their High Level Support Plans and Assessments.
- 2.9 The Service Provider shall use such additional devices as necessary and are applicable in this context to aid a person-centred approach, such as communication charts and decision making tools which should include using tools such as (but not limited to) *Progress for Service Providers: Checking your progress in delivering personalised support for people living with dementia (Helen Sanderson Associates)*,
- 2.10 The Service Provider shall create and maintain links with specialist organisations appropriate to each Resident's condition including, by way of example, the Alzheimer's Society.
- 2.11 The Service Provider shall ensure that Care Plans detail each Resident's abilities and where appropriate recognise changes in their behaviour. In addition, the Service Provider shall ensure that each individual Care Plan reflects the "life story" of the Resident in question and captures past life and events so that Staff have an understanding of their individual experiences. The importance of social stimulation and activities, and flexibility of routine, care tasks and dietary needs shall be of paramount importance to enable Staff to undertake care and support tasks with Residents when they are more receptive. Staff shall maintain a person-centred approach and use appropriate tools to facilitate communication and to support a Resident's sense of identity.
- 2.12 The Service Provider shall ensure that the Care Home:
 - 2.12.1 Is conducive to meeting the cognitive, communication, behavioural, psychological, social and cultural needs of all residents with dementia;
 - 2.12.2 enables and aids orientation, attention having been paid to lighting, colour schemes, floor coverings, assistive technology, signage, garden

design, and access to and safety of the external environment; and

2.12.3 is supportive and therapeutic.

Training

- 2.13 The Service Provider shall ensure that all Staff delivering the Services to Residents with dementia have the appropriate individual and collective training, skills and experience to appropriately deliver the specialist Services and support that the Care Home offers to Residents with dementia.
- 2.14 The Service Provider shall ensure that Staff responsible for the assessment and care planning of Residents' needs receive specific and appropriate training on dementia assessments and the appropriate tools to use.
- 2.15 When providing the Services, the Service Provider shall, and shall ensure that its Staff, have regard to the person-centred dementia competency framework which is published on the Health Education England (HEE) West Midlands learning site dedicated to improving the care people living with dementia and their carers receive by developing the skills, knowledge and behaviours of staff within the West Midlands.

Communication

- 2.16 The Service Provider shall also ensure that the Resident and their next of kin/representatives are provided with access to current information on dementia conditions, and are made aware of appropriate support networks.
- 2.17 The Service Provider shall ensure that all notices and signage within the Care Home are in an appropriate format to meet the communication needs of each individual Resident.

Relevant Legislation and Guidance for the provision of care to Residents with Dementia

- 2.18 The Service Provider shall comply with National Institute for Health and Care Excellence (NICE) guidance on supporting people with dementia and their carers in Health and Social Care.

APPENDIX 3: Additional Requirements applicable to the provision of Services to Residents with Learning Disabilities and/or Autistic Spectrum Disorder

- 3.1 This Appendix 3 sets out the requirements additional to those set out in paragraphs 1 to 15 (inclusive) of the Specification in circumstances where the Services are delivered to Residents aged eighteen (18) years or older whose primary care need is Learning Disabilities and/or Autistic Spectrum Disorder.
- 3.2 The Service Provider shall deliver a holistic, person-centred, outcome focused package of care and support for all Residents who have a mild, moderate, severe or profound Multiple Learning Disability and/or Autistic Spectrum Disorder.
- 3.3 The Service Provider shall provide care and support for each Resident's additional needs that may include, but are not limited to, epilepsy, complex and enduring mental health needs, challenging behaviours, dementia, complex physical disabilities (including sensory impairments), forensic needs, and substance misuse issues.
- 3.4 The Service Provider shall ensure that the Services are built around each Resident, based upon a person centred, outcome focused Care Plan, where such outcomes shall be:
 - 3.4.1 specific, measurable, achievable, realistic and timely (SMART);
 - 3.4.2 based upon the Resident's aspirations and what is important to them.
- 3.5 The Service Provider shall empower each Resident to contribute meaningfully to the care and support planning process, through the implementation of a range of person centred tools and practices, provision of appropriate support and communication aids and techniques, empowering them to lead the process where appropriate, thus promoting ownership.
- 3.6 The Service Provider shall ensure that each Resident's family members, relatives, friends and professionals (Circle of Support) are actively engaged and contribute to the care and support planning process.
- 3.7 The Service Provider shall ensure that:
 - 3.7.1 each Resident's Care Plan is responsive to individual needs and promotes flexibility in service delivery thus enabling the Resident to achieve and maintain good health and wellbeing;
 - 3.7.2 the Services delivered evolve with the Resident and reflect their

changing needs, personalised outcomes and aspirations for citizenship.

- 3.8 The Service Provider shall undertake at regular intervals (to be determined on the basis of individual needs and circumstances) person centred, outcome focused reviews with each Resident and their Circle of Support (as appropriate) in order to understand progress made against the SMART outcomes identified in their Care Plan.
- 3.9 In circumstances where SMART outcomes have been achieved, the Service Provider shall take lead responsibility for designing further SMART outcomes for the Resident in question.
- 3.10 The Service Provider shall work with each Resident in an enabling manner, promoting resilience and independence in all areas of daily living to maximise independence.
- 3.11 In circumstances where a Resident no longer requires the provision of the Services in a Care Home setting, the Service Provider shall work in partnership, alongside the Care Manager and Circle of Support, to seek appropriate alternative accommodation and support, in a timely manner.
- 3.12 The Service Provider shall ensure that each Resident is encouraged and actively supported to take advantage of opportunities offered by other agencies and community groups (for example: volunteer services, social clubs, sports centres, local community groups etc.) and has links to other agencies within the community allowing them to make a contribution to their local communities in a valued way, as other citizens do. This shall include exploring volunteer, training and employment opportunities.
- 3.13 The Service Provider shall ensure that each Resident has:
 - 3.13.1 a Health Action Plan and Communication Passport (unless the Resident chooses not to have one) which is inclusive of all actions and requirements in respect of the Resident achieving and sustaining optimum physical and emotional wellbeing;
 - 3.13.2 and utilises when required, a Health Information Passport (also known as a Hospital Passport) when visiting their GP or hospital.
- 3.14 The Service Provider shall ensure that referrals are made to the specialist Community Learning Disability Team, or other relevant specialists, when required to support each Resident with specialist and/or complex needs. The Service Provider shall be responsible for ensuring that all recommendations are co-ordinated and that advice is implemented upon without delay.

Policy, Practice and Guidance

- 3.15 In respect of national policy, practice and guidance, the Service Provider shall have regard to the following:
- 3.15.1 John O'Brien's Five Accomplishments;
 - 3.15.2 Positive and Proactive Care – Reducing the need for restrictive interventions (Department of Health April 2014);
 - 3.15.3 “Think Local, Act Personal” (Department of Health (January 2011));
 - 3.15.4 Winterbourne View – Time for Change: transferring the commissioning of services for people with learning disabilities and/or autism (2014) and Winterbourne View: Transferring Care Two Years On; and
 - 3.15.5 Caring for our Future: Reforming Care and Support White Paper (July 2012).

Training

- 3.16 The Service Provider shall provide training opportunities for Staff on general and specific areas of Learning Disabilities and/or Autistic Spectrum Disorder including, but not limited to, by way of example a learning disability induction award or Learning Disability Qualification (LDQ) core knowledge sets or their reasonable equivalent.
- 3.17 The Service Provider shall ensure that each Resident is supported, taking a person-centred approach to that support: for example all Staff will receive person-centred awareness training; health and wellbeing awareness; and where appropriate aspects of personal hygiene awareness, autism training and awareness, and communication skills.

Challenging Behaviour

- 3.18 Where Staff are supporting Residents who are seen as posing a challenge, the Service Provider shall ensure that Staff are appropriately trained. Training shall include, but is not limited to:
- 3.18.1 Understanding challenging behavior;

- 3.18.2 positive behavioural interventions;
 - 3.18.3 communication awareness;
 - 3.18.4 managing violence and aggression;
 - 3.18.5 positive risk taking;
 - 3.18.6 behaviour recording, including the use of appropriate person centred tools.
- 3.19 The Service Provider shall maintain a record of the number of hours of care and support provided by its Staff to each individual Resident in order to document how the Residents have been supported through the provision of the Services.

APPENDIX 4: Additional Requirements applicable to the provision of Services to Residents with Physical Disabilities (including Sensory Impairment and Acquired Brain Injury)

- 4.1 This Appendix 4 sets out the requirements additional to those set out in paragraph 1 to 15 (inclusive) of the Specification in circumstances where the Services are delivered to Residents aged eighteen (18) years and over with a primary need of Physical Disabilities and/or Sensory Impairment.
- 4.2 A physical disability is a limitation on a person's physical functioning, mobility, dexterity or stamina. Other physical disabilities include impairments which limit other facets of daily living, such as acquired brain injury, respiratory disorders, blindness, epilepsy and sleep disorders.
- 4.3 The Service Provider shall ensure that the Services meet the needs of each Resident who has a physical disability and/or a sensory impairment as their assessed primary need for care.
- 4.4 The Service Provider shall follow the principles set out in the National Service Framework for Long Term Conditions when providing the Services in relation to a Resident with a physical disability and/or a sensory impairment.

Service Description

- 4.5 The Service Provider shall provide person centred support for each applicable Resident. The Service Provider shall ensure that its Services are tailored to meet individual needs and are flexible and responsive to any change in condition, including the prevention/minimisation of secondary impairments.
- 4.6 The Service Provider shall support Residents:
 - 4.6.1 to remain as mobile and independent as possible, with the use of assistive technology where appropriate;
 - 4.6.2 with appropriate and timely rehabilitation;
 - 4.6.3 with the introduction and use of effective compensatory techniques if functional recovery is not possible.
- 4.7 The Service Provider shall enable each Resident to participate fully in daily life and to have the opportunity to participate in meaningful activities, including activities that stimulate each Resident socially, physically and mentally.

- 4.8 The Service Provider shall ensure that care and support is provided to each Resident from a consistent team of Staff.

Accommodation

- 4.9 The Service Provider shall ensure that the Care Home environment is fully accessible to Residents with physical disabilities/sensory impairments.

Staffing

- 4.10 The Service Provider shall ensure that all Staff are appropriately trained in physical disabilities at a level appropriate to their role in order that they are able to meet the needs of each individual Resident.

Communication

- 4.11 The Service Provider shall ensure that any form of communication and information with each Resident with physical disabilities and their carers is available in a variety of formats (i.e. different language and formats such as braille, easy read etc.) to ensure it is accessible to people with a range of needs.
- 4.12 The Service Provider shall ensure that all notices and signage within the Care Home are in an appropriate format to meet the communication needs of each Resident with a physical disability and/or sensory impairment.
- 4.13 The Service Provider shall ensure that its Staff use appropriate tools to facilitate communication e.g. hearing loop, communication charts, braille.

Transport

- 4.14 The Service Provider shall ensure that any transport provided is fully accessible for each Resident with a physical disability and that such transport meets the applicable British Standard.

Acquired Brain Injury (ABI)

- 4.15 Where the Resident has a diagnosis of Acquired Brain Injury (ABI) with complex neurological needs as either their primary or secondary need for care the Service Provider shall:

- 4.15.1 ensure that the Services meet the needs of such Residents;
- 4.15.2 minimise disability;
- 4.15.3 reduce dependency and long-term support;
- 4.15.4 enable functional recovery where possible;
- 4.15.5 introduce effective compensatory techniques if functional recovery is not possible;
- 4.15.6 recognise that rehabilitation and management is a continuous process that manages the changing needs for Residents with brain injuries and appropriately supports each Resident and their next of kin/representatives.
- 4.15.7 deliver a model of care specific to Residents presenting with neurological needs.

Complex Progressive Neurological Conditions

- 4.16 Where the Resident has a diagnosis of a complex progressive neurological condition, the Service Provider shall:
 - 4.16.1 ensure that the Services meet the needs of such Residents who have a range of physical, cognitive, behavioural, psychological, emotional and/or mental health needs and/or complex health care needs including by way of example but not limited to cognition, communication, nutrition and respiration;
 - 4.16.2 provide timely access to Services that are responsive to changing needs;
 - 4.16.3 deliver Services that take account of each Resident's needs which will change according to the deterioration of their condition and include preventing, or at least minimising, secondary impairments and disabilities through appropriate and timely rehabilitation;
 - 4.16.4 take all reasonable measures to ensure the appropriate support is accessed from Health including the GP.

- 4.17 With regard to the specific needs of Residents, the Service Provider shall ensure Staff are appropriately trained and can evidence such training in:
- 4.17.1 managing the complex needs of Residents with an ABI including the physical, psychological, behavioural and cognitive aspects of care;
 - 4.17.2 understanding of both general physical disability and of the Resident's specific ABI, including knowledge of prior or co-existing conditions; the severity of the brain injury; and the Resident's age and developmental stage and the time lapse since the injury;
 - 4.17.3 advanced communication skills and who are afforded sufficient time to enable effective communication for those Residents who are unable to speak;
 - 4.17.4 supporting Residents who have weak swallow and/or supervised feeding and thickened fluids;
 - 4.17.5 enteral feeding tubes such as PEG, RIG, NG;
 - 4.17.6 non invasive ventilation;
 - 4.17.7 use of a cough assist machine;
 - 4.17.8 oral suctioning;
 - 4.17.9 use of a nebulizer;
 - 4.17.10 administering medication by the prescribed route;
 - 4.17.11 the ability to position the Resident's appropriately and to recognize when a Resident is unable to lie flat.

Sensory Impairment

- 4.18 The Department of Health (1995 "***Think Dual Sensory***") states:

"Persons are regarded as deafblind if their combined sight and hearing impairment causes difficulties with communication, access to information and

mobility. This includes people with a progressive sight and hearing loss". Most of them will have some vision or hearing. Increased awareness in Care Homes is thus imperative for older people with sensory needs to be met. Once the sensory needs of Residents are managed effectively, there is a real chance of improving the quality of their lives in the Care Homes.

4.19 The Service Provider shall ensure that its Staff undertake training and awareness in:

4.19.1 diagnosing and managing Residents' sensory loss, in order that they may be part of the daily routine of the Home;

4.19.2 the management of hearing aids (basic hearing aid care and maintenance etc.) and ensuring that hearing loss is identified;

4.19.3 regular sensory awareness training (e.g. reducing background noise by not having the TV or radio on constantly etc., manage environmental factors to maximise sensory awareness e.g. seating arrangements, marking steps, handrails etc., acoustics e.g. carpeting, curtains etc., communication techniques as to understand and the Residents' communication needs e.g. lip-reading, BSL, Braille etc., improving lighting, increased knowledge of specialist sensory equipment e.g. amplified or hearing aid compatible telephones, induction loops, assistive technology etc.).

4.19.4 social prescribing to maximise community assets and strengths to help the Residents achieve the best outcomes by having the use of local resources e.g. Blind Groups, Deaf Hubs, access to resources e.g. Braille, Easy Read, BSL interpreters etc.

APPENDIX 5: Additional Requirements applicable to the provision of Services to Individuals with Mental Health Needs

- 5.1 This Appendix 5 sets out the requirements additional to those set out in paragraphs 1 to 15 (inclusive) of the Specification in circumstances where the Services are delivered to Residents aged eighteen (18) years and over with a primary Mental Health need.

Fundamental Mental Health Problems

- 5.2 Functional mental health problems, are a type of illness that have a predominantly psychological cause. There can be multiple or unspecified causes of mental illness that can react to drug treatments or talking therapies. These causes might include changes in brain chemistry, traumatic experiences, misuse of substances, and so on. Functional Mental Health Problems may include, but are not limited to:

5.2.1 depression and general anxiety disorders, including Obsessive Compulsive Disorder;

5.2.2 schizophrenia;

5.2.3 bipolar disorder;

5.2.4 personality disorders.

- 5.3 The Service Provider shall provide care and support and have awareness of any physical health or co morbidity which may include, but not be limited to:

5.3.1 epilepsy;

5.3.2 diabetes;

- 5.3.3 learning disability including autism and Asperger's syndrome;
- 5.3.4 dementia;
- 5.3.5 complex physical disabilities including sensory impairments;
- 5.3.6 substance misuse.

Recovery

- 5.4 The Service Provider shall recognise and respect that everybody who experiences mental health problems has the right to individually tailored support to achieve their person-centred definition of recovery (Recovery) that matches their preferences, their strengths and their needs. Recovery is personal and social, leading to a satisfying and hopeful life with meaning and purpose.
- 5.5 The Service Provider shall employ a Recovery approach to supporting Residents with functional mental ill health, with a focus on a recovery, rehabilitation and reablement approach which focuses on social inclusion principles and takes a person centred whole systems approach within the community. The Recovery approach includes the process through which people find ways to live meaningful lives, with or without the on-going symptoms of their condition.
- 5.6 The Service Provider shall ensure that:
 - 5.6.1 each Resident is actively involved in the support planning process, as is appropriate to their individual presenting need;
 - 5.6.2 each Resident's Care Plan is responsive to individual needs and promotes flexibility in service delivery thus enabling the Resident to achieve and maintain good health and wellbeing;
 - 5.6.3 the Services delivered evolve with the Resident and reflect their changing needs, personalised outcomes and aspirations for citizenship.

- 5.7 Where the Resident has a diagnosis of functional mental illness then the Service Provider shall ensure that Staff have specific skills and training in regard to the effective management of, as a minimum:
- 5.7.1 the negative symptoms of schizophrenia;
 - 5.7.2 bi-polar affective disorder;
 - 5.7.3 personality disorders;
 - 5.7.4 depression and general anxiety disorders including obsessive compulsive disorders 9ICD);
 - 5.7.5 medication concordance including effects, side effects, therapeutic dosage;
 - 5.7.6 challenging behaviours.
- 5.8 In addition to the aforementioned list, the Service Provider shall ensure the provision of any additional / further training, based on the needs of the residents.

Challenging Behaviour

- 5.9 Where Staff are supporting Residents who are seen as posing a challenge, the Service Provider shall ensure that Staff are appropriately trained. Training shall include, but is not limited to:
- 5.9.1 understanding challenging behavior;
 - 5.9.2 positive behavioural interventions;
 - 5.9.3 communication awareness;

- 5.9.4 managing violence and aggression;
- 5.9.5 positive risk taking;
- 5.9.6 behaviour recording, including the use of appropriate person centred tools.

Section 117

- 5.10 If an individual has been detained for treatment under sections 3, 37, 45A, 47 or 48 of the Mental Health Act 2007 (amendments to the 1983 Act) (MHA) they may have needs that are eligible under Section 117 of the Act. The Care Act 2014 inserts a new subsection (5) to section 117 MHA to limit after-care services to:
 - 5.10.1 those arising from or related to the mental disorder; and
 - 5.10.2 those reducing the risk of a deterioration of the person's mental condition (and thereby the risk of readmission under the MHA).
 - 5.10.3 if an individual has been detained on qualifying Sections of the MHA they should engage in a review of their aftercare needs prior to being discharged from hospital. The review should identify what aftercare needs are eligible to be met under Section 117: note not all of a person's needs may be eligible.
- 5.11 High Level Support Plans and Risk Assessments must clearly identify which needs are eligible under Section 117 and additionally distinguish whether those needs relate to (a) health or (b) social care.
- 5.12 The duty to provide aftercare services that are eligible under Section 117 of the MHA continues until both authorities (Local Authority and CCG) are "satisfied" that the person no longer needs any after-care services – subject to review on a 6 monthly basis, which the Service Provider will be actively involved within.

- 5.13 The Service Provider shall maintain effective links with multi-agency partners including Mental Health Services to deliver the Resident's care using the Care Programme Approach (CPA) framework, ensuring Staff have the necessary specific skills and experience.
- 5.14 In addition the Service Provider shall provide psychosocial interventions for Residents having such identified needs and seek to maximise social involvement of Residents in line with assessed abilities, which may continually change, and have due regard to assessed risk.
- 5.15 Where Residents are the subject of a community treatment order (CTO) the Service Provider shall work closely with relevant external agencies and services and ensure Staff delivering Services have appropriate training, knowledge and an understanding of the CTO process.

Guardianship Order

- 5.16 The purpose of Guardianship is to enable patients to receive care in the community where it cannot be provided without the use of compulsory powers. It provides a framework, as part of the overall care and treatment plan, for working with a patient to achieve as independent a life as possible.
- 5.17 Under the Act a guardian can be appointed with limited powers to take decisions on a person's behalf where these decisions are in the patients' best interest.
- 5.18 Section 7 of the Mental Health Act 1983 provides that Guardianship can be provided by either a local social services authority or a named individual. Section 8 of the Act provides that guardian with power to require that:
- 5.18.1 the patient lives in a specified place;
 - 5.18.2 the patient attends specified places for medical treatment, occupation, education or training;
 - 5.18.3 access is given to the patient by a doctor, approved mental health professional or other specified person.

- 5.19 The Service Provider shall ensure they act in accordance with the Council's policy and procedure, in its entirety, in respect of supporting a resident who is subject to Guardianship.

Schedule 2

Quality, Performance and Contract Monitoring

1 Introduction

1.1 Pursuant to clause 9 of this Contract, this Schedule 2 sets out the arrangements for how the Service Provider's provision of the Services and its compliance with the terms of this Contract and any applicable Call Off Contracts will be quality assured, performance managed and monitored.

1.2 Arrangements for quality, performance and contract monitoring will be subject to ongoing review and development by the Council during the Contract Period and during the term of any Call-Off Contracts. The Parties accept and acknowledge that the arrangements set out in this Schedule 2 shall change over time and that the Council may, acting reasonably, introduce new tools, measures and processes in order to satisfy itself that the Services are delivered effectively, offer Best Value and meet the requirements of the Contract. Where such a change is deemed by the Council to be material in nature, a variation to the Contract shall be made in accordance with clause 25 of the Contract.

1.3 The Council will monitor the Service Provider's performance and compliance with its quality obligations under this Contract and any applicable Call Off Contract through the use of;

1.3.1 self-monitoring returns;

1.3.2. outcome performance monitoring;

1.3.3 Contract Review Meetings;

1.3.4 quality assurance and Quality Assurance Visits; and

1.3.5 the Annual Return,

and the Service Provider shall comply (and shall procure that all of its Staff shall comply) with all forms of monitoring which are used or implemented by the Council from time to time, including (but not limited to) the introduction of any new monitoring tools.

1.4 This Schedule 2 should be read and construed in conjunction with the applicable requirements of the Specification and the Contract.

1.5 The Council may review and examine the manner in which the Service Provider or any applicable Sub-Contractor supplies any Services at the Care Home any time during a Working Day on giving five (5) Working Days' written notice to the Service Provider, save that the Council reserves the right to carry out an unannounced visit on any calendar day (without giving prior notice to the Service Provider or any applicable Sub-Contractor) where the Council has legitimate concerns about the Services being provided.

1.6 If the Council notifies the Service Provider in writing that the Council reasonably believes that any part of the Services do not meet the requirements of this Contract and/or any Call Off Contract or differs in any way from those requirements, and this is other than as a result of any act or omission by the Council, the Service Provider shall at its own expense deploy all necessary resources in order to re-schedule and

re-perform the Services or any applicable element thereof in accordance with the requirements of this Contract and/or any applicable Call Off Contract within such reasonable time as may be specified by the Council.

- 1.7 If, in the reasonable opinion of the Council, the Service Provider is unable to meet the needs of a Resident safely then the Council shall be entitled to require the Service Provider to disclose such information as the Council reasonably requires regarding the other residents in the Care Home in order to discharge its applicable statutory duties, including (but not limited to) who funds their placements and their relevant next of kin.

2 Performance and Contract Monitoring

Self Monitoring- ongoing monitoring tool

- 2.1 The Council shall apply and intends to further develop a balanced scorecard approach to performance and contract monitoring which, mindful of the need to avoid undue administrative burdens, shall make best use of available information sources. This approach will allow the Council to make a holistic assessment of the Service Provider's performance in delivering the Services and of the Service Provider's compliance with the requirements of the Contract and any applicable Call Off Contracts. This may include (without limitation) the Council reviewing and monitoring:
- 2.1.1 CQC inspection findings and associated intelligence, including any notices issued by the CQC or any other applicable regulator;
 - 2.1.2 information arising from visits made by the Council;
 - 2.1.3 complaints processes;
 - 2.1.4 whistleblowing processes;
 - 2.1.5 information arising from safeguarding processes, including serious case reviews;
 - 2.1.6 information received from Nominated Partners in connection with their role in providing assessment and care management services on behalf of the Council;
 - 2.1.7 reports and information from other agencies and public bodies, including (but not limited to) clinical commissioning groups, NHS provider trusts, Healthwatch, Public Health England, the police, fire and rescue services, the Health and Safety Executive and district/borough councils;
 - 2.1.8 activity measures under the DPS and related award procedures, including measures in relation to:
 - 2.1.8.1 responses to Invitations to Tender;
 - 2.1.8.2 Tenders that do not comply with the Award Criteria;
 - 2.1.8.3 Tenders which go on to be the individual's first choice for the delivery of the Services;

- 2.1.8.4 responsiveness in visiting the relevant individual to assess their needs;
- 2.1.8.5 responsiveness in returning signed copies of Call Off Contracts;
- 2.1.8.6 occurrences where the Service Provider submits a Tender and subsequently notifies the Council that the applicable Room is no longer available; and
- 2.1.8.7 the number of Tenders rejected by the Council in accordance with the provisions of clauses 4.32, 4.33 or 4.35 or paragraphs 3.1 to 3.4 (inclusive) of Schedule 11 of this Contract,
- 2.1.9 information captured through the Annual Return pursuant to paragraph 5 of this Schedule 2.

Outcomes Performance

- 2.2 The Council and/or its Nominated Partner shall be entitled to monitor and measure outcomes performance through the completion of Resident reviews in order to ensure that the applicable Resident's support and wellbeing outcomes are being achieved throughout the Placement.
- 2.3 To support the ongoing monitoring of outcomes performance of the Services, the Council may collate the monitoring of outcome performance from all of the Resident reviews within the Care Home.
- 2.4 The aim of the outcomes performance monitoring is to measure the outcomes for Residents for the following wellbeing principles:
 - 2.4.1 to have personal dignity, including being treated with respect;
 - 2.4.2 to better manage physical, mental health and emotional wellbeing;
 - 2.4.3 to be protected from abuse and neglect;
 - 2.4.4 to have control over day-to-day life, including over care and support provided and the way it is provided;
 - 2.4.5 to participate in work, education, training or recreation;
 - 2.4.6 to have social and economic wellbeing;
 - 2.4.7 to develop and maintain domestic, family and personal relationships;
 - 2.4.8 to have suitable living accommodation; and
 - 2.4.9 to contribute to society and their community.
- 2.5 The Council and the Service Provider will work in partnership with the social work practitioners to measure the benefits and impacts through outcomes performance monitoring.

Contract Review Meetings

- 3 The Parties shall, as appropriate and acting reasonably, agree to hold Contract Review Meetings as and when required throughout the Contract Period and during the term of any applicable Call Off Contract on the basis that:
- 3.1 Contract Review Meetings shall not be scheduled routinely but instead held as and when needed and at the request of either Party;
 - 3.2 a request to hold a Contract Review Meeting shall be made in writing (or by email) either by the Service Provider's Representative to the Contract Manager or by the Contract Manager to the Service Provider's Representative;
 - 3.3 any request to hold a Contract Review Meeting shall outline the reason for the request;
 - 3.4 any consent to hold a Contract Review Meeting shall not be unreasonably withheld or delayed by either Party and, acting reasonably, both Parties shall use their reasonable endeavours to hold the applicable Contract Review Meeting as soon as reasonably practicable following the date of any request;
 - 3.5 The purpose of a Contract Review Meeting shall ordinarily be to afford either Party an opportunity to:
 - 3.5.1 clarify or to raise concerns over how the Services are being delivered or how the Contract and/or any Call Off Contract is being managed by either Party;
 - 3.5.2 highlight a service development, demonstrate an area of continuous improvement (see clause 42 of the Contract) or to evidence Best Value; and
 - 3.5.3 help inform, review or validate the information held by the Council in support of its balanced scorecard approach to performance and contract monitoring (see paragraph 2.1 of this Schedule 2).

4 **Quality Assurance and Quality Assurance Visits**

- 4.1 The Parties acknowledge and agree that good quality and high performance enhances the reputation of care homes and therefore makes good business sense, as well as improving outcomes for residents.
- 4.2 The Council's approach to quality assurance shall build on the regulatory requirements set by the CQC (or any other applicable regulator), on NICE guidance and on local policies and procedures relating to safeguarding and service user experience. Aligned to the balanced scorecard approach, several perspectives are brought together to provide an overall view of the Service Provider's delivery of the Services.
- 4.3 The Council shall review the quality and performance of the Services and/or make a Quality Assurance Visit to the Care Home, usually on an annual basis and more frequently where significant or serious concern is identified in relation to the quality of the Services. The Council's reviews shall prioritise those care homes with greater levels of risk, and in assessing risk, the Council shall take into account any:

- 4.3.1 failures to comply with regulatory requirements or enforcement actions undertaken by the CQC (or any other applicable regulator);
 - 4.3.2 CQC ratings or those of any other regulator;
 - 4.3.3 Large Scale Enquiry required;
 - 4.3.4 actions plans required or actions not completed;
 - 4.3.5 serious and/or untoward incidents;
 - 4.3.6 safeguarding referrals substantiated; and
 - 4.3.7 actual or anticipated Insolvency Events.
- 4.4 In accordance with the applicable requirements of the Specification, the Service Provider shall meet the regulatory standards set by the CQC (or any other applicable regulator) and meet the Fundamental Standards, beneath which the Services must never fall.
- 4.5 In accordance with the applicable provisions of the Specification, the Service Provider and/or any applicable Sub-Contractor shall use all reasonable commercial endeavours to maintain an overall rating of either “good” or “outstanding” by the CQC (or any other applicable regulator) at all times during the Contract Period and during the term of any Call Off Contract.
- 4.6 Should the Service Provider, any applicable Sub-Contractor or the Care Home be judged by the CQC (or any other applicable regulator) to be “Inadequate” or to be served with a Warning Notice, a Notice of Proposal, a Notice of Decision, a Letter of Intent or any other enforcement action, then the Service Provider shall (and shall procure that any applicable Sub-Contractor shall) provide the Council with a copy of any action plan(s) at the same time as the Service Provider or any applicable Sub-Contractor submits these to the CQC (or any other applicable regulator).
- 4.7 The Service Provider shall (and shall procure that any applicable Sub-Contractor shall) apply where relevant the tools, guidelines and quality statements issued by the National Institute for Health and Care Excellence (NICE) pertinent to improving quality and practice in care homes, and in all cases those elements which have the potential to significantly or seriously affect the safety of residents.
- 4.8 Where concerns arise relating to the safeguarding of adults, and always in accordance with clause 10 of the Contract, the Service Provider shall (and shall procure that any applicable Sub-Contractor shall) take such necessary action as is set out in the Staffordshire and Stoke-on-Trent Adult Safeguarding Enquiry Procedures dated December 2016 (as amended from time to time), including providing to the Council an action or improvement plan and subsequent updates. The Service Provider shall (and shall procure that any applicable Sub-Contractor shall) co-operate with the Council and its Nominated Partners to enable them to validate where improvement actions have been undertaken.
- 4.9 Where the Council is alerted to concerns which do not reach the thresholds which trigger a safeguarding investigation or plan, the Council shall, where appropriate, raise the concern with the Service Provider via a Quality Assurance Form (QAF) and the Service Provider shall to provide an appropriate response to the Council within ten (10) Working Days of receiving the same. If the Council sends to the Service

Provider five (5) QAFs within any twelve (12) month period during the Contract Period or the term of any applicable Call Off Contract, then the Council may (at its discretion) instigate a Quality Assurance Visit or any other remedial action it deems appropriate.

- 4.10 The Council will give verbal feedback to the Service Provider on the day of the applicable Quality Assurance Visit and shall issue a written report detailing the full outcomes of the Quality Assurance Visit within six (6) weeks of it taking place. The Quality Assurance report may include an action plan (a **"Quality Assurance Action Plan"**); detailing the actions, timescales and expected outcomes, which the Service Provider will meet at their own expense.
- 4.11 The Council will issue a report in draft form to the Service Provider to enable them to review the contents for any factual inaccuracies. The Service Provider will have ten (10) Working Days to review the draft, after which the report will become final. If the Service Provider has not contacted the Council within the ten (10) Working Day period, the Council will assume there are no inaccuracies and issue the report in its final version. The Council will be entitled to share the final report with its Nominated Partners and other public bodies, including Clinical Commissioning Groups and the CQC (or any other applicable regulator)

5 **The Annual Return**

- 5.1 The Service Provider shall (and shall procure that any applicable Sub-Contractor shall) be required to submit to the Council, at least annually, an annual return in relation to each Care Home in accordance with this paragraph 5 of this Schedule 2 (the **"Annual Return"**). This requirement shall apply irrespective of whether or not the Service Provider has any Residents Placed at the Care Home under any applicable Call Off Contracts.
- 5.2 If requested to do so by the Council, the Service Provider and any applicable Sub-Contractor shall submit the first Annual Return within twelve (12) months of the Commencement Date.
- 5.3 The Annual Return shall be substantially in the form the set out in the Annex to this Schedule 2, unless otherwise notified in writing by the Council to the Service Provider from time to time.
- 5.4 In completing the Annual Return, the Service Provider and any applicable Sub-Contractor shall be expected to provide information aligned to but not limited to the focus of Quality Assurance Visits, including:
 - 5.4.1 training;
 - 5.4.2 policies and procedures;
 - 5.4.3 recruitment and selection processes;
 - 5.4.4 Staff records;
 - 5.4.5 residents' records;
 - 5.4.6 care and support;
 - 5.4.7 food, nutrition and hydration;

- 5.4.8 medication;
 - 5.4.9 activities;
 - 5.4.10 complaints
 - 5.4.11 safeguarding;
 - 5.4.12 quality assurance processes;
 - 5.4.13 accidents and incidents;
 - 5.4.14 the physical environment.
 - 5.4.15 assistive technology; and
 - 5.4.16 Business Continuity Plan.
- 5.5 The Council may request the Service Provider and any applicable Sub-Contractor to provide within five (5) Working Days supporting evidence in order to validate any part of an Annual Return submitted by the Service Provider, to help inform a Quality Assurance Visit or to otherwise demonstrate that the requirements of this Contract and any applicable Call Off Contracts are being met.
- 6 Sharing and Publication of Quality, Performance and Contract Monitoring Information**
- 6.1 Information about the Service Provider, any applicable Sub-Contractor, the Care Home and the Services shall be made publically available in order for prospective Residents, wider service users and their family members to make informed choices and to select their preferred care home.
- 6.2 The Council intends to develop and extend the information on care homes which it makes publically available. In developing this approach, and being mindful of the need to respect the commercial interests and the need to seek the views of Service Providers, the Council intends to draw upon information collected through its quality, performance and contract monitoring processes. In addition, it is envisaged that information to be made publically available may include; CQC ratings (or those of any other regulator), the availability of vacancies at care homes and occurrences of where the Service Provider's ability to participate in the DPS has been suspended in accordance with the applicable provisions of the Contract;
- 6.3 Without prejudice to the Council's obligations under the Contract, the Council may choose to share information arising from quality, performance and contract monitoring processes with Nominated Partners and other public bodies, including Clinical Commissioning Groups and the CQC or any other applicable regulator).
- 7 Process following concerns through monitoring**
- 7.1 Where information gathered through quality, performance and contract monitoring processes result in the Council having legitimate concerns about any element of the Services not being provided, in accordance with the terms of this Contract or any applicable Call Off Contract, the Council may at its sole discretion (acting reasonably) either:

- 7.1.1 require a Contract Review Meeting, in accordance with paragraph 3 of this Schedule 2;
 - 7.1.2 review and examine the manner in which the Service Provider or any applicable Sub-Contractor supplies any Services at the Care Home, in accordance with paragraph 1.5 of this Schedule 2;
 - 7.1.3 make a Quality Assurance Visit, in accordance with paragraph 4 of this Schedule 2;
 - 7.1.4 require the competition of a Quality Assurance Action Plan with stated timescales; or
 - 7.1.5 invoke its applicable suspension or termination rights in relation to the Contract and/or any applicable Call Off Contracts.
- 7.2 If any CQC action/plans/decisions (or those of any other applicable regulator) are in place these will determine the level of monitoring actioned by the Council. Where a CQC action plan (or an action plan of any other regulator) is in place the Council will support this process working in partnership with the CQC or any such other regulator.

ANNEX

Annual Return



Care Home Annual Return

Name of Service The name of the service

Date Completed The date that you completed this annual return

Type of Care Home Your 'Type of Service' as registered with CQC

Reporting Period
(inclusive)

to

1	Complaints	Data Field
1a	Number of Complaints in the reporting period	
1b	Number of Complaints Upheld in the reporting period	
1c	Number of Complaints Partially Upheld in the reporting period	
1d	Number of Complaints Not Upheld in the reporting period	
1e	Number of Complaints currently Open in the reporting period	
1f	Number of Complaints responded to within 28 days in the reporting period	

2	Current staffing information	Data Field
2a	Number of New Starters in the reporting period	
2b	Number of Staff Leaving in the reporting period	
2c	Current number of Staff Vacancies	
2d	Current number of Registered Nurses (if applicable)	
2e	Current percentage of staff who are Contracted	
2f	Current percentage of staff who are employed via an Agency	
2g	Number of average days sick per full time equivalent	
2h	Number of staff currently subject to a disciplinary process	

3	Hospital admissions in the reporting period	Data Field
3a	Number of residents admitted to hospital via a planned admission in the reporting period	
3b	Number of residents admitted to hospital via an emergency admission in the reporting period	

4	Short term placements in the reporting period	Data Field
4a	Number of short term (inc respite) placements in the reporting period	
4b	Number of short term placements (inc respite) that resulted in the service user returning home in the reporting period	

5	Current long term placements	Data F
5a	Current total number of registered beds	
5b	Current number of bed vacancies	
5c	Current total number of permanent placements at the care home	
5d	Current total number of Staffordshire Local Authority placements	
5e	Current total number of other Local Authority placements	
5f	Current total number of Continuing Healthcare (CHC) placements	
5g	Current total number of Self Funders placements	
5h	Current total number of other placements	

6	Bed usage breakdown (Nursing homes only)	Data F
6a	Current number of Residential beds	
6b	Current number of Nursing beds	

7	Safeguarding	Data F
7a	Have you adopted the Staffordshire and Stoke-on-Trent Adult Safeguarding Enquiry Procedures?	
7b	How many accidents or incidents took place in the reporting period?	
7c	How many Safeguarding referrals were made in the reporting period?	
7d	How many service users had a grade 1 or 2 pressure ulcer in the reporting period?	
7e	How many service users had a grade 3 or 4 pressure ulcer in the reporting period?	
7f	How many service user falls have resulted in no harm in the reporting period?	
7g	How many service user falls have resulted in harm in the reporting period?	
7h	How many service users were referred to a SALT (Speech and Language Therapist)?	

8	Deaths	Data F
8a	Total number of Deaths in this reporting period	
8b	Of those, how many died in hospital	
8c	How many of the deaths were on the end of life care pathway?	

9	Outbreaks	Data F
9a	How many outbreaks have you had in the reporting period?	
9b	Where these reported to CQC and Public Health England?	

10	Training	Data F
10a	Are all Staff up to date with Safeguarding training?	
10b	If all Staff are not yet up to date with Safeguarding training what percentage require training?	
10c	Are all required Staff up to date on Mental Capacity Act and DoLS training?	
10d	If all Staff are not yet up to date with Mental Capacity Act and DoLS training what percentage require training?	
10e	Are all required Staff up to date on Medication training?	
10f	If all Staff are not yet up to date with Medication training what percentage require training?	
10g	Are all required Staff up to date on Manual Handling training?	

10h	If all Staff are not yet up to date with Manual Handling training what percentage require training?	
------------	---	--

11	Business Continuity	Data F
11a	Is there are Business Continuity Plan for the service?	
11b	Has the Business Continuity Plan been reviewed in the past 12 months?	
11c	Does the Business Continuity Plan cover the use of alternative accomodation?	
11d	Does the Business Continuity Plan cover the use of alternative staffing cover?	

12	Audits	Data F
12a	Has a Medication audit been carried out in the reporting period?	
12b	Has a Care File audit been carried out in the reporting period?	
12c	Has a Infection Control audit been carried out in the reporting period?	
12d	Has an Environmental audit been carried out in the reporting period?	
12e	Has an Equipment audit been carried out in the reporting period?	

Schedule 3

The Call Off Terms

1 Call Off Contracts

- 1.1 If during the Contract Period, the Parties enter into a Call Off Contract then the applicable terms of the Contract, including (without limitation) all of the Call Off Terms shall automatically be incorporated by reference into every such Call Off Contract.
- 1.2 Each Call Off Contract shall (amongst other things) contain the following details:
 - 1.2.1 the name, date of birth and next of kin of the Resident;
 - 1.2.2 the Council's client identification number relating to the Resident;
 - 1.2.3 the commencement date of the Placement of the applicable Resident into the Care Home;
 - 1.2.4 the applicable expiry date of the Placement with respect to any Short Stay Placement only;
 - 1.2.5 the weekly Total Care Price and the Contract Price payable with respect to the Placement together (where applicable) with details of any applicable Statutory Contribution payable by the Resident or any Top Up Payment payable by an applicable Sponsor; and
 - 1.2.6 any other applicable terms which the Parties agree to incorporate, including (without limitation) in accordance with clause 4.10.2(d) of this Contract.
- 1.3 The Parties agree that the Placement in the Care Home of the Resident shall last until the relevant Call Off Contract either terminates or expires in accordance with the applicable terms of this Contract, including (without limitation) these Call Off Terms.
- 1.4 Where a Short Stay Call Off Contract expires or is due to expire and the Resident:
 - 1.4.1 needs to remain in the Care Home on a short term basis then the Parties shall be entitled to increase the term of the Call Off Contract in accordance with clause 25.1.1 of this Contract, provided always that any such increase shall not extend the maximum duration of the Resident's Placement in such Care Home beyond an aggregate of eight (8) weeks; or
 - 1.4.2 needs to be Placed into a care home on a long term basis then the Council shall Place the Resident on a Long Stay basis using either the Standard Award Procedure or the Emergency Award Procedure.

2 Contract Price and Payment Arrangements

- 2.1 Pursuant to paragraph 1.5 of Schedule 11, the Council shall be entitled to use the total care price submitted by the service provider with the highest scoring tender for the purposes of determining the applicable Resident's Personal Budget and the Council's Contract Price.

Long Stay Placements

- 2.1A Subject to paragraph 2.20 of this Schedule 3, if the Service Provider is awarded any Services under an applicable Call Off Contract to Place a Resident into the Care Home on a Long Stay basis, then the Contract Price payable by the Council shall be the weekly Total Care Price submitted by the Service Provider in its applicable Tender for performing the Services less any applicable:

2.1A.1 statutory contribution payable by the Resident in accordance with section 14 of the Care Act 2014, as amended from time to time, (the “**Statutory Contribution**”); and

2.1A.2 Topping Up Payment.

Short Stay Placements

- 2.2 Subject to paragraph 2.20 of this Schedule 3, if the Service Provider is awarded any Services under an applicable Call Off Contract to Place a Resident into the Care Home on a Short Stay basis, then the Contract Price shall be the weekly Total Care Price submitted by the Service Provider in its applicable Tender for performing the Services and for the avoidance of doubt shall include any applicable:

2.2.1 Statutory Contribution; and

2.2.2 Topping Up Payment.

Payment of the Contract Price

- 2.3 In consideration of the Service Provider providing any Services under any Call Off Contract in accordance with all of the applicable provisions of this Contract and the Call Off Contract, the Council shall pay the Service Provider the relevant Contract Price for each week (or any part of a week on a pro rata basis) during the term of the applicable Call Off Contract.
- 2.4 Payment of the Contract Price by the Council pursuant to paragraph 2.3 of this Schedule 3 shall be made as soon as reasonably practicable following the performance of the Services on a fortnightly basis in arrears.
- 2.5 Unless otherwise agreed in writing by the authorised representatives of the Parties, the Council shall pay the Contract Price to the Service Provider by way of BACS transfer to the relevant bank account notified to the Council by the Service Provider from time to time.

Variations to the Contract Price, the Statutory Contribution and/or the Topping Up Payment

- 2.6 Subject always to paragraph 2.15 of this Schedule 3, nothing in this Contract nor any applicable Call Off Contract shall entitle the Service Provider to increase or vary the Contract Price, the Total Care Price, the Topping Up Payment or any Statutory Contribution without the prior written agreement of the authorised representatives of the Council.
- 2.6A The Contract Price, together with any applicable Statutory Contribution and Topping Up Payment shall be set out in Schedule 2 of each Call Off Contract, and where the Council is unable to complete its financial assessment of the applicable Resident

before the Call Off Contract is entered into with the Service Provider to Place such Resident into the Care Home then the Parties acknowledge and agree that the Council shall have a unilateral right (acting reasonably) to amend the breakdown of any applicable Contract Price, Statutory Contribution and Topping Up Payment set out in the Call Off Contract by notice in writing to the Service Provider once the Council has completed the Resident's financial assessment.

- 2.7 Irrespective of any increase in the Service Provider's costs for providing the Services, nothing in this Contract or in any applicable Call Off Contract shall be construed as obliging the Council to increase the Contract Price at any time during the Contract Period and/or the term of any applicable Call Off Contract.
- 2.8 The Council shall have the option (but shall not be obliged) to elect whether to unilaterally increase the Contract Price and the Statutory Contribution (but, for the avoidance of doubt, not any applicable Topping Up Payment) under a Call Off Contract relating to a Long Stay Placement (but not, any Short Stay Placement) as soon as reasonably practicable during the months of October to December (inclusive) during each year of the Contract Period or during the term of any applicable Call Off Contract.
- 2.8A If the Council elects to apply any such increase to the Contract Price and the Statutory Contribution for any relevant Long Stay Placement then it shall notify the Service Provider by way of a Unilateral Notice as soon as reasonably practicable prior to the commencement of the Council's next financial year as to the extent of any such increase and the basis on which it may apply and any such increase shall have effect from the date in April in each applicable year on which the Department for Work and Pensions (or any successor thereto) makes any changes to the prevailing rates of state benefits in force from time to time.
- 2.9 If the scope of the Services change during the term of any Call Off Contract because the assessed needs of the applicable Resident change following any joint assessment by the Council (or its applicable Nominated Partner) and the Service Provider then the Council shall, subject at all times to paragraph 2.9A of this Schedule 3, have the option to either:
 - 2.9.1 unilaterally change (up or down) the Contract Price (as appropriate and depending on whether the assessed needs have increased or reduced) on a temporary basis by serving a Unilateral Notice on the Service Provider for the applicable period in order to address the change in needs of the Resident in question;
 - 2.9.2 carry out a re-assessment of the Resident's needs and submit an Invitation to Tender to all of the eligible service providers appointed on the applicable Lot relating to the Services in question through the DPS and award the revised Services in accordance with either the Standard Award Procedure or the Emergency Award Procedure and terminate the existing Call Off Contract with the Service Provider with respect to the applicable Resident with effect from the date upon which the Resident is re-located to an alternative care home; or
 - 2.9.3 unilaterally change (up or down) the Contract Price (as appropriate and depending on whether the assessed needs have increased or reduced) until the applicable Call Off Contract relating to the Placement expires or terminates by serving a Unilateral Notice on the Service Provider where the

outcome of any re-assessment of the Resident's needs establishes that re-locating the Resident in question to an alternative care home pursuant to paragraph 2.9.2 of this Schedule 3 would be contrary to the Council's statutory duty under the Care Act 2014 to promote the welfare and wellbeing of the Resident in question.

- 2.9A The Council's unilateral changes in the Contract Price under paragraph 2.9 of this Schedule 3 will relate and reflect only the extent to which the assessed needs of the Resident have changed and no other increases or decreases in the Contract Price, other than those which are reflective of or in proportion to the change in the Residents' assessed needs, will be made or permitted under paragraph 2.9 of this Schedule 3.

Statutory Contributions and Topping Up Payments

- 2.10 Subject to paragraphs 2.2 and 2.13 of this Schedule 3, payment of any applicable Statutory Contribution and Topping Up Payments shall be the responsibility of the Resident and the Sponsor respectively and the Service Provider shall be responsible for collecting such Statutory Contributions and Topping Up Payments relating to any Long Stay Placement, unless otherwise agreed in writing by the authorised representatives of the Parties.
- 2.11 The Service Provider shall ensure that all such Long Stay Statutory Contributions and Topping Up Payments are collected promptly from the applicable Resident and Sponsor (as the case maybe) either on a weekly or monthly basis, but in any event no later than one (1) month in arrears and the Service Provider shall ensure that each Resident and/or Sponsor either:
- 2.11.1 make any payments of any Long Stay Statutory Contributions and Topping Up Payments which are in arrears in full as soon as reasonably practicable; or
- 2.11.2 agree a re-payment plan of any such arrears and ensure that each applicable Resident and/or Sponsor complies with such repayment plan,
- and notify the Council's Contract Manager in writing of the outcome of whether the terms of paragraphs 2.11.1 or 2.11.2 of this Schedule 3 apply.
- 2.12 The Council shall be responsible for collecting all applicable Statutory Contributions with respect to any Short Stays and it shall notify the Service Provider as soon as reasonably practicable if there are any changes to the amount of any such Statutory Contributions during the term of any applicable Call Off Contract.
- 2.13 Without prejudice to the Service Provider's obligations under paragraph 2.11 of this Schedule 3, if any Resident and/or Sponsor fails to pay any Statutory Contribution and/or Topping Payment (the "**Unpaid Amounts**") then the Service Provider shall be entitled to recover any such Unpaid Amounts from the Council by submitting a valid written claim to the Council provided always that:
- 2.13.1 the Service Provider provides to the Council all such evidence as the Council reasonably requires with respect to such Unpaid Amounts and/or any claims relating to such Unpaid Amounts; and

2.13.2 any claim for any such Unpaid Amounts is submitted no later than eight (8) weeks following the end of the quarter in which the Unpaid Amounts relate to,

and the Council shall have no liability to the Service Provider to reimburse any Unpaid Amounts to the Service Provider if the Service Provider fails to comply with paragraphs 2.11.1, 2.11.2, 2.13.1 and/or 2.13.2 of this Schedule 3.

2.14 Subject always to the Service Provider complying with paragraph 2.13 of this Schedule 3, the Council shall pay any Unpaid Amounts to the Service Provider as soon as reasonably practicable following the submission by the Service Provider of any valid claim.

2.15 The Service Provider shall be entitled to increase the amount of any Topping Up Payment which it is paid pursuant to any agreement which it has with any Sponsor(s), subject always to:

2.15.1 the Service Provider serving not less than four (4) weeks' prior notice in writing to the Council's Contract Manager, the Resident and the applicable Sponsor(s) to separately inform them that they intend to apply such an increase and to state the total amount which the Topping Up Payment will be increased to;

2.15.2 the Service Provider shall not be entitled to exercise its right to increase the amount of any Topping Up Payment during the first twelve (12) months of the Placement of the applicable Resident into the Care Home;

2.15.3 the amount of any increase shall in no event exceed a maximum of one per cent of the applicable weekly Total Care Price; and

2.15.4 if any applicable Resident has more than one Sponsor, then the amount of any increase shall be divided equally between each applicable Sponsor.

Hospital Admissions and Absences from the Care Home

2.16 If any Resident is admitted into a hospital or is otherwise absent from the Care Home at any time during the term of any applicable Call Off Contract then:

2.16.1 the Service Provider shall immediately (but in any event within one (1) Working Day) notify the Council's Contract Manager of such admission and provide to the Council full details of the reason for such hospital admission or any other absence and any other information or assistance which the Council reasonably requests; and

2.16.2 subject to any earlier termination of the Call Off Contract relating to the Resident's Placement, the Council shall continue to pay the Service Provider the full Contract Price during any continuous period of the hospital admission or absence unless the same lasts for a continuous period of longer than six (6) weeks in which case the Contract Price for the seventh week and each subsequent week (or part thereof) shall be reduced by 20% for the remainder of the Resident's hospital admission or absence up until a continuous period of twelve (12) weeks whereupon the Council shall have the right to terminate the Call Off Contract by serving notice in writing on the Service Provider.

- 2.16A If the Service Provider fails to notify the Council in accordance with paragraph 2.16.1 of this Schedule 3 then, without prejudice to the Council's other rights and remedies under this Contract, the Council shall be entitled not to pay the Service Provider for any days during the term of the applicable Call Off Contract during which the Service Provider has not complied with its obligations under paragraph 2.16.1 of this Schedule 3.
- 2.17 If a hospital notifies the Service Provider that a Resident has been or is ready to be discharged from the hospital then the Service Provider shall immediately (but in any event within one calendar day of the date of such hospital notification) perform an assessment of the Resident's applicable needs and shall either:
- 2.17.1 without delay, collect the Resident from the hospital and return them to their Room in the Care Home if the outcome of the assessment establishes that the Service Provider is still capable of meeting the Resident's needs; or
- 2.17.2 notify the Council immediately that it is unable to meet the Resident's needs if this is the outcome of its assessment of such Resident whereupon:
- (a) if the Resident is medically fit and the Council is able to relocate the Resident to another care home using the Emergency Award Procedure, the Council shall be entitled to terminate the Service Provider's Call Off Contract in relation to the Services for such Resident with effect from the date of such re-location and the Council's liability to pay the Contract Price with respect to such Resident shall cease on the date of the Resident's assessment; or
- (b) if the outcome of the Service Provider's assessment determines that the Resident's health has deteriorated and they are not medically fit to be discharged from hospital, then the Service Provider will keep the Room available for the Resident until such time as the Service Provider is obliged to perform a further assessment of the Resident once the hospital notifies the Service Provider that the Resident is well enough to be discharged pursuant to paragraph 2.17 of this Schedule 3.
- 2.18 Without prejudice to the Council's other rights and remedies under this Contract or at Law, if the Service Provider fails to comply with the provisions of paragraph 2.17 of this Schedule 3, then the Council shall be entitled to:
- 2.18.1 not pay the Service Provider for any days during the term of the applicable Call Off Contract where the Service Provider is in breach of its obligations under such paragraph 2.17 of this Schedule 3; and/or
- 2.18.2 deduct from any subsequent instalment(s) of the Contract Price any Losses which the Council suffers or incurs as a result of such failure, including (without limitation) the amount of any delayed discharge charges, costs or other liabilities which any hospital levies on the Council as a result of any breach of paragraph 2.17 of Schedule 3 by the Service Provider.

NHS Funded Nursing Care

- 2.19 If any Resident is entitled to any NHS Funded Nursing Care with respect to their Placement in the Care Home then the relevant Total Care Price submitted by the Service Provider for such Placement shall exclude any costs or charges in relation to such NHS Funded Nursing Care.

Section 117 of the Mental Health Act 1983 Placements

- 2.20 Save where otherwise expressly agreed by the authorised representatives of the Parties, if any Services are awarded to the Service Provider under an applicable Call Off Contract to Place a Resident into the Care Home pursuant to section 117 of the Mental Health Act 1983 then the Contract Price which the Council shall be liable to pay to the Service Provider shall be the weekly Total Care Price set out in the Service Provider's applicable Tender for the provision of the Services and no Statutory Contribution or Topping Up Payment shall apply to such Placement.
- 2.21 Not used.

Overpayments

- 2.22 If, for any reason, the Council has overpaid any instalments of the Contract Price to the Service Provider in full or in part, including (without limitation) where the Service Provider has failed to notify the Council that a Resident has died, been admitted to hospital, is absent from the Care Home or otherwise then, without prejudice to its other rights and remedies under this Contract, any applicable Call Off Contract or under any Law, the Council shall either (i) be immediately able to recover such overpayments in full from the Service Provider as a contractual debt, or (ii) to deduct the full overpayment from any amounts which the Council owes to the Service Provider under any Call Off Contract or any other agreements which the Council has entered into with the Service Provider in accordance with clause 13.1 of this Contract.

VAT

- 2.23 Unless otherwise agreed by the authorised representatives of the Parties, any payment of the Contract Price by the Council shall be exclusive of any VAT, which shall not be charged by the Service Provider in relation to the performance of the Services.
- 2.24 Not used.

Suspension of Payments

- 2.25 The Council shall be immediately entitled to suspend the payment of any instalment(s) of the Contract Price by notice in writing to the Service Provider at any time during the term of any applicable Call Off Contract if the applicable Room is rendered unfit for the Resident to reside in for any reason or becomes unavailable at anytime during the term of any applicable Call Off Contract, save where such Room becomes unfit or unavailable due to any act or omission on behalf of the Council.

General

- 2.26 Save where expressly stated otherwise herein, during the Contract Period or during the term of any applicable Call Off Contract, the Service Provider shall not:
- 2.26.1 use any of the Resident's personal expenses allowance to pay off any arrears of any applicable Statutory Contribution;
- 2.26.2 receive nor manage any sum of money on behalf of the Resident, except where:

- (a) such Resident doesn't have the capacity to manage their own financial affairs and the Service Provider is unable to identify any relative of the applicable resident or any other third party to manage their financial affairs; and
- (b) the authorised representatives of the Council have notified the Service Provider in writing that it is entitled to manage any sum of money on behalf of the Resident.

2.26.3 and shall procure that all of its Staff shall not, accept or, illicit any bequest, loan, gift, gratuity, reward or any other financial benefit of any kind from the Resident or their relatives or other representatives which are more than twenty five (25) pounds.

2.27 If the Service Provider either (i) opts to act as an appointee for any Resident for the purposes of obtaining and collecting their state pension and/or benefits, or (ii) undertakes any role in the management of any Resident's financial affairs pursuant to paragraph 2.26.2 of this Schedule 3, then the Service Provider shall at all times during the term of any applicable Call Off Contract:

2.27.1 act in the best interests of the Resident;

2.27.2 ensure that the Resident has a sum of money available to spend each week as a personal allowance which shall not be less than the prevailing rate determined by the Department for Work and Pensions from time to time;

2.27.3 ensure that any interest earned by the Service Provider on any of the Resident's money is promptly credited to the Resident's account; and

2.27.4 maintain an up to date record of all sums received by the Service Provider from any applicable Resident and of all transactions made by the Service Provider on behalf of the Resident and shall make such records available for inspection by the Council at all times during and after the Contract Period and the term of any applicable Call Off Contract.

2.28 The Service Provider shall be entitled to:

2.28.1 charge the Resident for any reasonable and proportionate travel expenses which the Service Provider or its Staff incur as a result of taking such Resident to visit any planned clinic, hospital or any other similar premises (including, without limitation, the costs of sending an escort with the Resident to any such visit), subject always to the Service Provider and/or its Staff taking all reasonable steps to minimise the extent of such expenses;

2.28.2 enter into an agreement with the Resident for the Service Provider to supply special items to the Resident for their consumption, including (without limitation) cigarettes and alcoholic beverages,

provided always that the Council shall have no liability to pay to the Service Provider any costs or expenses which the Service Provider incurs pursuant to this paragraph 2.28 and the Service Provider being obliged to keep full records of such costs or expenses and allowing the Council to inspect such records upon reasonable notice during or after the Contract Period or any applicable Call Off Contract.

- 2.29 The Council shall have no liability for paying any retainer fees to the Service Provider to reserve a Room in the Care Home in the future in order to Place a Resident into such Care Home.

3 Not Used

4 Termination of Call Off Contracts

Automatic termination of a Call Off Contract relating to a Long Stay Placement or a Short Stay Placement

- 4.1A If any Resident dies during the term of any Call Off Contract relating to their Placement regardless of whether such Call Off Contract relates to a Long Stay or Short Stay Placement then:

4.1A.1 the Service Provider shall immediately (but in any event no later than by the end of the next applicable Working Day) notify the Contract Manager in writing of the death;

4.1A.2 the applicable Call Off Contract in question shall terminate automatically on the third calendar day after the date of the death of the Resident in question; and

4.1A.3 the Council shall have no liability to pay to the Service Provider any further instalments of the Contract Price to the Service Provider beyond the date of termination set out in paragraph 4.1A.2 of this Schedule 3.

- 4.1B If any applicable Sponsor dies during the term of any Call Off Contract which relates to either a Long Stay or Short Stay Placement of any Resident, then the Council shall, subject only to paragraph 4.1C of this Schedule 3, seek to Place the Resident into an alternative care home through the DPS using the Standard Award Procedure or the Emergency Award Procedure and the Service Provider's Call Off Contract in relation to the applicable Resident shall terminate on the date on which the Council transfers such Resident to an alternative care home.

- 4.1C If the Council elects not to Place a Resident into an alternative care home pursuant to paragraph 4.1B of this Schedule 3 because it is contrary to the Council's obligation to promote the wellbeing of the Resident under the Care Act 2014 it shall forthwith consult with the Service Provider in good faith in order to explore what alternative viable contractual and financial arrangements (if any) can be put in place to maintain the relevant Resident's Placement at the Care Home.

Termination of a Long Stay Placement due to a Resident

- 4.2 If any Resident either:

4.2.1 notifies the Service Provider that they wish to leave the Care Home; or

4.2.2 permanently vacates their Room,

then the Service Provider shall notify the Council of the same, as soon as practicable (but in any event within one (1) calendar day).

- 4.3 The applicable Call Off Contract with respect to the Long Stay Placement in question shall automatically terminate on the date on which the Resident leaves the Care Home.
- 4.4 The Service Provider shall, and shall procure that its applicable Staff shall, ensure that each Resident leaves the applicable Care Home promptly on the expiry or earlier termination of their applicable Call Off Contract with respect to their Long Stay Placement and the Service Provider shall ensure that any such Resident is able to wait in their Room within the Care Home during the day upon which they are due to vacate the Care Home.
- 4.5 If the Service Provider serves notice on the Council pursuant to paragraph 4.2 of this Schedule 3 then the Service Provider shall also ensure that its notice to the Council states:
- 4.5.1 the full name, address and client reference number of the Resident to whom the notice relates; and
- 4.5.2 the date upon which the Placement to the Care Home of the Resident in question was (or will be) terminated (as applicable).
- 4.6A Without prejudice to the Council's other rights and remedies under this Contract, any applicable Call Off Contract or at Law, if the Service Provider fails to comply with its notice obligations under paragraph 4.2 of this Schedule 3 then the Council shall either (i) be immediately able to recover any applicable overpayments in full from the Service Provider as a contractual debt, or (ii) to deduct the full overpayment from any amounts which the Council owes to the Service Provider under any other Call Off Contract or any other agreements which the Council has entered into with the Service Provider in accordance with clause 13.1 of this Contract.

Termination of a Long Stay Placement by the Service Provider

- 4.7 The Service Provider may terminate a Call Off Contract with respect to a Resident's Long Stay Placement at any time during its applicable term if the Service Provider is no longer:
- 4.7.1 financially viable to provide the Services for the Total Care Price by serving not less than eight (8) weeks' notice in writing to the Council; or
- 4.7.2 able to meet the care needs of the Resident by serving not less than four (4) weeks' notice in writing to the Council.
- 4.7A In the event that the Service Provider serves notice in accordance with paragraphs 4.7.1 or 4.7.2 of this Schedule 3 then the relevant Call Off Contract shall terminate on the earlier of:
- 4.7A.1 the expiry of the applicable twelve (12) or four (4) week notice periods referred to paragraphs 4.7.1 or 4.7.2 of this Schedule 3 above; or
- 4.7A.2 the date on which the Council is able to re-locate the Resident in question into an alternative Care Home.
- 4.8 Subject to paragraph 4.9 of this Schedule 3, if the behaviour of a Resident is, or becomes, Prejudicial to the welfare and wellbeing of either any other resident in the

applicable Care Home, or the Service Provider, or its Staff with the result (i) that it would be unreasonable for the Placement in question to continue and (ii) that it is apparent that the Resident represents a serious physical danger to either the Service Provider, to its Staff or to any other resident in the Care Home, then the Service Provider may serve notice of termination of the Call Off Contract with respect to the relevant Resident's Long Stay Placement to the Council, and the applicable Call Off Contract shall terminate on the date on which the Council is able to re-locate the Resident in question into an alternative Care Home.

4.9 For the purposes of paragraph 4.8 of this Schedule 3, a Resident's behaviour shall be regarded as "Prejudicial" if either:

4.9.1 the Service Provider is able to provide documentary evidence that the Resident in question has been responsible for repeated incidents at the Care Home involving abusive or threatening language or behaviour, in circumstances where the behaviour in question is not highlighted or addressed in the relevant Resident's High Level Support Plan and Assessment; or

4.9.2 the Resident in question has committed one or more act involving violence against any person or property during their Placement at the Care Home, in circumstances where the behaviour in question is not highlighted or addressed in the relevant Resident's High Level Support Plan and Assessment,

and the Service Provider's right to terminate any applicable Call Off Contract in relation to a Resident's Prejudicial behaviour shall be conditional on the Service Provider demonstrating that it and its Staff have used all reasonable endeavours to control and improve such behaviour and to minimize its effects.

Termination of a Long Stay Call Off Contract or a Short Stay Call Off Contract by the Council

4.10 The Council may terminate a Call Off Contract for convenience with respect to a Long Stay Placement of a Resident at the Care Home at any time during the term of any such Call Off Contract by giving at least four (4) weeks' notice to the Service Provider.

4.11 The Council may terminate a Call Off Contract with respect to either a Long Stay Placement or a Short Stay Placement of a Resident at the Care Home by notice in writing to the Service Provider at any time during the term of such Call Off Contract if:

4.11.1 the Service Provider or any of its Staff commits a Material Breach of the terms of this Contract or any Call Off Contract which is incapable of remedy;

4.11.2 the Service Provider or any of its Staff commits a Material Breach or Persistent Breach of its obligations under this Contract or any Call Off Contract, and fails to remedy the same within the timescales set out in any written notice from the Council requiring the Service Provider to remedy such Material Breach or Persistent Breach;

4.11.3 the Care Home has to close either on a temporary or permanent basis or there is a significant likelihood that the Care Home will close temporarily or permanently;

- 4.11.4 in the opinion of the Council (acting reasonably), the Service Provider or any of its Staff commits an act or omission which causes a serious and/or urgent risk to the welfare and wellbeing of the applicable Resident;
- 4.11.5 any revision to the applicable High Level Support Plan and Assessment relating to the Resident in question shows that the Service Provider can no longer meet the relevant Resident's needs;
- 4.11.6 as a consequence of any financial assessment/re-assessment of the Resident in question which has been carried out by the Council in accordance with the provisions of section 14 of the Care Act 2014, the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 and Annex A (Choice of Accommodation and Additional Payments) to the Department of Health's publication entitled "Care and Support Statutory Guidance (as amended from time to time) the Council concludes that the financial and other circumstances of the Resident are such that there ceases to be any justification for the Council arranging and paying for the care of the Resident pursuant to its duty under Section 8(1) and Section 18 of the Care Act;
- 4.11.7 if either the Resident in question (where they are responsible for paying a Topping Up Payment under any applicable deferred payment agreement) or their Sponsor, fail to pay off all arrears of their topping up payment, within two (2) weeks of receiving a demand in writing from the Council requiring payment of the arrears;
- 4.11.8 the Service Provider is the subject of any CQC enforcement action (or any similar enforcement action from any other applicable regulator) which in the opinion of the Council (acting reasonably) is sufficiently serious to warrant the termination of any such Call Off Contract, including (but not limited to) in relation to any serving by the CQC of any Warning Notices, Letters of Intent, Notices of Proposal and/or Notices of Decisions on the Service Provider;
- 4.11.9 subject to paragraph 4.13 of this Schedule 3, any Sponsor in relation to the Placement of the Resident in question, fails to sign and return executed copies of any agreement required between such Sponsor and the Council to govern the obligations of the Sponsor to pay any Topping Up Payments, within ten (10) Working Days of being requested to do so by the Council;
- 4.11.10 not used;
- 4.11.11 subject to paragraph 4.13 of this Schedule 3, it has been determined by the relevant Clinical Commissioning Group that the Resident in question is entitled to continuing health care funding to pay for their care;
- 4.11.12 the Service Provider undergoes any Insolvency Event;
- 4.11.13 the Service Provider notifies the Council that it has undergone is about to undergo a Change of Control, or the Council becomes aware that such Change of Control has occurred or is likely to occur unless any prior Approval has granted by the Council regarding any such Change of Control;
- 4.11.14 the Service Provider or any of its Staff commits a breach of its obligations under clauses 4.34, 7, 14, 10 or 18 or Schedule 2 of the Contract when performing the Services;

4.11.15 the Call Off Contract:

- (a) has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Regulations;
- (b) any of the mandatory or discretionary exclusions set out in regulation 57 of the Regulations either applied or apply (as the case may be) to the Service Provider at the time when this Contract was awarded or throughout the Contract Period;
- (c) any competent court makes an award for ineffectiveness of this Call Off Contract under the Regulations; or
- (d) the applicable Call Off Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations of the Treaty on European Union (TFEU) or the Public Contracts Directive 2014 that has been declared by the Court of Justice of the European Union under a procedure under Article 258 of the TFEU;

4.11.16 any central government or other third party funding which the Council relies on in full or in part to pay the Contract Price is ceased, reduced, clawed back or is otherwise no longer available to the Council; and

4.11.17 in the opinion of the Council (acting reasonably), the relationship between the Council and the Service Provider has materially broken down for any reason, including (but not limited to) due to any failure on the part of the Service Provider or its Staff to comply with the obligations in clause 8.3.2 of this Contract.

4.12 If the Council exercises its rights to terminate any Call Off Contract pursuant to paragraph 4.11 of this Schedule 3 then any such termination shall take effect on the date on which the Council re-locates the applicable Resident to an alternative care home.

4.13 The Council shall not terminate any Call Off Contract with respect to any Long Stay Placement of a Resident in an applicable Care Home pursuant to any of paragraphs 4.11.9 and 4.11.11 (inclusive) of this Schedule 3, without first consulting with the Service Provider in good faith in order to explore what viable alternative contractual and financial arrangements (if any) can be put in place to maintain the relevant Resident's Placement in the applicable Care Home.

Cessation of the Topping Up Payment by the Sponsor

4.14 If any Sponsor notifies the Service Provider that it wishes to cease paying any Topping up Payment with respect to a Resident at the Care Home then the Service Provider shall immediately notify the Council of the same in writing whereupon the Council shall either:

- 4.14.1 seek to Place the Resident in an alternative care home through the DPS whereby the Service Provider's Call Off Contract with respect to such Resident shall terminate on the date that the Resident is successfully relocated to such alternative care home;

- 4.14.2 elect to enable the Resident to remain in the Room at the Care Home if relocating them pursuant to paragraph 4.14.1 of this Schedule 3 is contrary to the Council's duty to promote the wellbeing of the Resident under the Care Act 2014, whereupon the Council shall be liable to pay the applicable Topping Up Payment to the Service Provider where no other Sponsor is able to be found to pay such Topping Up Payment whereupon the same shall be incorporated into the Council's applicable Contract Price.

Termination of Short Stay Placements

- 4.15 In circumstances where the Parties have entered into a Call Off Contract with respect to a Resident who has been Placed into a Care Home on a Short Stay basis and an unforeseen event or emergency occurs in relation to the Placement and/or Resident in question, then at any time before the planned expiration of the Call Off Contract:
- 4.15.1 either Party may serve notice on the other to terminate the Call Off Contract in relation to the Placement of the Resident in question; and
- 4.15.2 the applicable Call Off Contract shall terminate on the date upon which the Council is able to re-locate the applicable Resident into an alternative care home.
- 4.16 In circumstances where the Parties have entered into a Call Off Contract with respect to a Resident who has been Placed into the Care Home for a Short Stay but the provisions of paragraph 4.15 of this Schedule 3 do not apply, then at any time before the planned expiration of the applicable Call Off Contract either Party may terminate the applicable Short Stay Call Off Contract by serving written notice on the other and in such circumstances such Short Stay Call Off Contract shall cease to have effect on the date on which the Council re-locates the applicable Resident into an alternative care home.

Consequences of Expiry or Termination

- 4.17 If any Call Off Contract terminates or expires pursuant to this Contract or any applicable Call Off Contract, then the Council shall only be liable to pay the Service Provider for any Services which have been properly performed by the Service Provider up to and including the date of termination and have not yet been paid by the Council.
- 4.17A If the Council terminates any Call Off Contract due to any act or omission on the part of the Service Provider or any of its Staff then the Council shall be entitled to recover from the Service Provider any Losses which the Council suffer or incurs as a result of or in connection with any such termination, subject always to the Council taking reasonable steps to mitigate the extent of such Losses.
- 4.18 Any termination or expiry of a Call Off Contract shall be without prejudice to the rights of either Party to claim against the other with respect to any accrued breaches committed prior to the applicable date of termination.
- 4.19 The Service Provider shall provide all reasonable assistance to the Council and any Replacement Provider following the expiry or termination of any Call Off Contract to (amongst other things) enable any Replacement Provider to provide any services which are similar to the Services to any Resident, to ensure a seamless transition and to protect the welfare and the wellbeing of any such Resident.

- 4.20 Following the termination or expiry of any Call Off Contract the Service Provider shall:
- 4.20.1 promptly return to the Council all of the Council's Confidential Information, equipment, documents, materials or any other property owned or leased by it;
 - 4.20.2 either return or destroy (at the Council's sole discretion) any and all Personal Data and/or Sensitive Personal Data relating to a Resident or any third party and, if requested by the Council, certify in writing that it has done so.
- 4.21 If the Council terminates any Call Off Contract in accordance with paragraphs 4.11.1 to 4.11.4 (inclusive), 4.11.8 or 4.11.12 to 4.11.17 (inclusive) of this Schedule 3, then the Council shall also be entitled to:
- 4.21.1 terminate any other Call Off Contracts which the Council has entered into with the Service Provider by notice in writing and such Call Off Contracts will terminate on the respective dates on which the Council relocates residents into alternative care homes; and/or
 - 4.21.2 terminate the Contract by notice in writing to the Service Provider and in such circumstances the Service Provider's entitlement to participate in the DPS shall (amongst other things) cease on the date of termination set out in the Council's applicable notice; or
 - 4.21.3 suspend the Service Provider's ability to participate in the DPS and to submit any further tenders in relation to an Invitation to Tender in any of the Lots which the Service Provider is appointed by notice in writing and such suspension shall take effect until such time as the Council is satisfied (acting reasonably) that the Service Provider has taken all of the necessary Rectification Action; or
 - 4.21.4 terminate the Contract by notice in writing to the Service Provider if the Service Provider fails to take or to successfully complete any applicable Rectification Action within the timescales prescribed by the Council from time to time.
- 4.22 If the Council exercises its rights to terminate any Call Off Contract for any reason then the Service Provider irrevocably agrees to continue to provide the Services with respect to such Call Off Contract until the date that the Resident either dies or leaves the Care Home for any reason.

Schedule 4

The Lots

1. For the purposes of this Contract, the Services shall be split into the following Lots:

Lot 1 – Residential Older People	Lot 2 – Residential Dementia
Lot 3 – Residential Physical Disability	Lot 4 – Residential Learning Disability / Autistic Spectrum Disorder
Lot 5 – Residential Mental Health	Lot 6 - Nursing Older People
Lot 7 – Nursing Dementia	Lot 8 – Nursing Physical Disability/ Sensory Impairment
Lot 9 – Nursing Learning Disability / Autistic Spectrum Disorder	Lot 10 – Nursing Mental Health

Residential Care

2. Services in Lots 1 to 5 (inclusive) shall be provided either in Care Homes With Nursing or Care Homes Without Nursing (such terms are defined in the Specification) to individuals who:
- 2.1 require care and support over a twenty-four hour period, including observation and/or supervision to maintain safety;
 - 2.2 have a high level of assessed care needs;
 - 2.3 require assistance with most activities of daily living;
 - 2.4 require input by care workers on a daily basis;
 - 2.5 require nursing care provided by community services.
3. Services in Lots 6 to 10 (inclusive) shall be provided in Care Homes With Nursing to individuals who:
- 3.1 require care and support over a twenty-four hour period, including observation and/or supervision to maintain safety;
 - 3.2 have a high level of assessed care needs;
 - 3.3 are in receipt of NHS Funded Nursing Care;
 - 3.4 require assistance with most activities of daily living to maintain skills and independence;

- 3.5 require input by care workers on a daily basis;
- 3.6 require Nursing Care on a daily basis.

The Lots and Primary Care Needs

- 4. Once the Council or its Nominated Partner has assessed that an individual requires a placement in either a Care Home With Nursing or a Care Home Without Nursing, the Council will seek to place the individual in the Lot applicable to their primary assessed care need. Therefore:
 - 4.1 an individual who is aged sixty-five years and over and is frail will be placed in a care home in either Lot 1 (Residential Older People) or Lot 6 (Nursing Older People);
 - 4.2 an individual who is aged eighteen years and over and needs support to manage a dementia will be placed in a care home in either Lot 2 (Residential Dementia) or Lot 7 (Nursing Dementia);
 - 4.3 an individual who is aged eighteen years and over and has a physical disability or sensory impairment will be placed in a care home in either Lot 3 (Residential Physical Disability/Sensory Impairment) or Lot 8 (Nursing Physical Disability/Sensory Impairment);
 - 4.4 an individual who is aged eighteen years and over and has a learning disability or an autistic spectrum disorder will be placed in a care home in either Lot 4 (Residential Learning Disability/Autistic Spectrum Disorder) or Lot 9 (Nursing Learning Disability/Autistic Spectrum Disorder);
 - 4.5 an individual who is aged eighteen years and over and has mental health care needs will be placed in a care home in either Lot 5 (Residential Mental Health) or Lot 10 (Nursing Mental Health).

Schedule 5

Part A

Standard Variation

1. Pursuant to clause 25.1.1 of this Contract, if either Party wishes to vary this Contract using the Standard Variation Procedure it shall submit such a Standard Variation to the other in the form substantially set out below.
2. The provisions of any Standard Variation shall only become effective when such Standard Variation is executed by the authorised representatives of both Parties.

STANDARD VARIATION FORM

This Agreement has been entered into on

201[]

BETWEEN

- (1) **STAFFORDSHIRE COUNTY COUNCIL** of Number 1 Staffordshire Place, Tipping Street, Stafford, ST16 2DH (the “**Council**”); and
- (2) **[**INSERT THE NAME OF THE SERVICE PROVIDER**]** of **[**insert correct legal entity registration and address details of the service provider here**]** (the “**Service Provider**”),

and the Council and the Service Provider shall each be individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

BACKGROUND

- (A) The Parties have entered into an agreement entitled “The Dynamic Purchasing System Agreement for the Provision of Residential and Nursing Care Home Services at the **[**insert name of care home**]**” dated **[**insert**]**, as amended from time to time (the “**Contract**”).

Either

- (B) The Parties hereby wish to vary the provisions of the Contract in accordance with the terms of this Standard Variation.

Or

- (B) In accordance with the terms the Contract, the Parties have entered into a **[**Short Stay Call Off Contract**]****[**Long Stay Call Off Contract**]** to place the Resident in the above Care Home.
- (C) Pursuant to the terms of the Contract, the Parties hereby wish to vary the terms of such **[**Short Stay Call Off Contract**]****[**Long Stay Call Off Contract**]** in accordance with the terms of this Standard Variation.

IT IS HEREBY AGREED

1. In consideration of the mutual rights and obligations contained herein and with effect from **[**the date upon which an authorised representative of the second Party**

executes this Standard Variation**] [**or insert a alternative date**], the existing terms of the [**Contract**] [**Short Stay Call Off Contract**][**Long Stay Call Off Contract**] shall be varied as follows:

- 1.1 [**insert details of the variation which you wish to make**]
2. Any defined terms used in this Standard Variation whose meanings are not expressly defined herein shall have the same meanings given to them in the Contract.
3. When executed, this Standard Variation and the [**Contract**][**Short Stay Call Off Contract**][Long Stay Call Off Contract**] shall constitute and be construed as one and the same document and any references in the [**Contract**][**Short Stay Call Off Contract**][Long Stay Call Off Contract**] shall be read and construed as references to the [**Contract**][**Short Stay Call Off Contract**][Long Stay Call Off Contract**] as varied by this Standard Variation.
4. This Standard Variation is supplemental to the [**Contract**] [**Short Stay Call Off Contract**][Long Stay Call Off Contract**] whose provisions shall remain in full force and effect save and to the extent and in the manner provided herein.
5. Save as expressly stated otherwise herein, if there are any conflicts or inconsistencies between the terms of the [**Contract**][**Short Stay Call Off Contract**][Long Stay Call Off Contract**] and the terms of this Standard Variation, the terms of this Standard Variation shall prevail.
6. If any provision of this Standard Variation is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Standard Variation shall continue in full force and effect as if this Standard Variation had been executed with the invalid, illegal or unenforceable provision deleted.
7. Save as otherwise expressly stated herein, the Parties do not intend any third party to acquire any rights under this Standard Variation by virtue of the Contracts (Rights of Third Parties) Act 1999.
8. Any dispute between the Parties arising from or in connection with this Standard Variation shall be governed by the laws of England and determined by the English courts.
9. This Standard Variation can be executed in a number of counterparts, each of which will constitute an original but which will together constitute one agreement.

IN WITNESS where of the authorised representatives of the Parties have executed this Standard Variation as follows:

Signed for and on behalf of
Staffordshire County Council

Signed.....

Name.....

Title.....

Date.....

Signed for and on behalf of
[**insert the name of the Service Provider**]

Signed.....

Name.....

Title.....

Date.....

Part B

Unilateral Notice

1. Pursuant to clause 25.1.2 of this Contract, where the Council has an express unilateral right in this Contract to vary the terms of a Call Off Contract it shall be entitled to do so by serving a Unilateral Notice on the Service Provider which shall be substantially in the following form:

Unilateral Notice Form

[On SCC Headed Paper**]**

[Insert name of the [**Service Provider's Representative**][**Registered Manager**]**

[Insert the name of the Care Home**]**

Dear [**insert**]

I refer to the [**Short Stay Call Off Contract**][**Long Stay Call Off Contract**] relating to [**insert the name of the Resident**] at [**insert name of the Care Home**] dated [**insert date**].

In accordance with the terms of the [**Short Stay Call Off Contract**][**Long Stay Call Off Contract**], the Council has a unilateral right to vary the terms of the [**Short Stay Call Off Contract**][**Long Stay Call Off Contract**]. Accordingly, the Council hereby serves notice that with effect from [**insert date**] of this Unilateral Notice, the terms of the [**Short Stay Call Off Contract**][**Long Stay Call Off Contract**] shall be unilaterally varied as follows:

[**insert the details of the unilateral variation here. For example:

In accordance with paragraph 2.8A of Schedule 3 of the Contract the Council hereby wishes to increase the Contract Price from £xxx per week (or part thereof) to £xxx per week (or part thereof).

OR

In accordance with paragraph 2.9.1 of Schedule 3 of the Contract the Council hereby wishes to **change** the Contract Price from £xxx per week or part thereof (the "Original Contract Price") to £xxx per week or part thereof (the "New Contract Price") on temporary basis from [**insert date**] to [**insert date**] (the "Cessation Date") and, unless otherwise expressly agreed in writing by the authorized representatives of the Parties, the Council shall only be obliged to pay the Original Contract Price to the Service Provider for the Services following the expiry of the Cessation Date.

OR

Following the completion of the Council's financial assessment on the Resident and in accordance with paragraph 2.6A of Schedule 3 to the Contract the Council hereby varies the breakdown of the applicable Topping Up Payment, Statutory Contribution and Contract Price from the amount stipulated in the [**Short Stay Call Off Contract**][**Long Stay Call Off Contract**] to:

[**insert new breakdown details**]

OR

In accordance with paragraph 3.5 of Schedule 11 to this Contract, the Council wishes to amend its existing Reference Prices as follows:

[**insert new Reference Prices**]

Any defined terms used in this Unilateral Notice whose meanings are not expressly defined herein shall have the same meanings given to them in the Contract.

When executed, this Unilateral Notice and the [**Short Stay Call Off Contract**][Long Stay Call Off Contract**] shall constitute and be construed as one and the same document and any references in the [**Short Stay Call Off Contract**][Long Stay Call Off Contract**] shall be read and construed as references to the [**Short Stay Call Off Contract**][Long Stay Call Off Contract**] as varied by this Unilateral Notice.

This Unilateral Notice is supplemental to the [**Short Stay Call Off Contract**][Long Stay Call Off Contract**] whose provisions shall remain in full force and effect save and to the extent and in the manner herein provided herein.

Save as expressly stated otherwise herein, if there are any conflicts or inconsistencies between the terms of the [**Short Stay Call Off Contract**][Long Stay Call Off Contract**] and the terms of this Unilateral Notice, the terms of this Unilateral Notice shall prevail.

If any provision of this Unilateral Notice is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Unilateral Notice shall continue in full force and effect as if this Unilateral Notice had been signed with the invalid, illegal or unenforceable provision deleted.

Save as otherwise expressly stated herein, the Parties do not intend any third party to acquire any rights under this Unilateral Notice by virtue of the Contracts (Rights of Third Parties) Act 1999.

Any dispute between the Parties arising from or in connection with this Unilateral Notice shall be governed by the laws of England and determined by the English courts.

Signed for and behalf of Staffordshire County Council:

Name.....

Title.....

Date.....

Schedule 6
The Pen Portrait

PEN PORTRAIT

Client Ref:	Age:
Gender:	Religion:

Lot	
Proposed start date	
Proposed end date	

Reason for admission

--

Personal profile

--

Supporting You in Your Assessment *(based on a typical week)*

Do you have communication difficulties?	
---	--

Your Home and Living Situation *(based on a typical week)*

Your current living situation	
-------------------------------	--

Eating Healthily and Safely *(based on a typical week)*

Preparing meals/snacks/drinks - Your situation	
Preparing meals/snacks/drinks - How often do you need support?	
Eating and drinking - Your situation	
If you need someone else to feed you, are you able to have food and drink by mouth?	
If you need someone else to feed you, how long does this usually take?	

Do you have any dietary or eating difficulties that put you at risk or require skilled support?	
---	--

Details

Details text will show on the pen portrait

Your Personal Care *(based on a typical week)*

Using the toilet/managing continence - Your situation	
Using the toilet/managing continence - How often do you need support?	
Using the toilet/managing continence - Nature of support	
Maintaining personal hygiene (e.g. wash hands/face, hair, nails, shave) - Your situation	
Washing whole body (e.g. bath, shower, strip wash) - Your situation	
Washing whole body (e.g. bath, shower, strip wash) - How often do you need support?	
Dressing - Your situation	

Your Mobility *(based on a typical week)*

Transfers - Your situation	
To what extent does your weight impact on your mobility? (e.g. if overweight or underweight/frail)	
Staying comfortable/repositioning - Your situation	
Do you require regular support for a skin condition or to prevent one developing?	
Do you have any pressure ulcers?	
If pressure ulcer(s) are present, is treatment currently working?	

Staying Safe at Home *(based on a typical week)*

The support you need to stay safe at home during the day (consider risk of falls and/or wandering, and responding to emergencies)	
The support you need to stay safe at home	

during the night (consider risk of falls and/or wandering, and responding to emergencies)	
---	--

Risks *(based on a typical week)*

	Current risk
Current risk of falls	
Current risk of self-neglect causing deterioration to health/safety	
Current risk of harm to self (e.g. self-injury)	
Current risk of harm/injury to your carer	
Current risk of harm to others/property	

Your Mental Health and Wellbeing *(including mental wellbeing issues arising from physical conditions)*

	Yes/No
Do you or have you ever suffered from a serious mental health issue?	
Have you had contact with mental health services in the past year?	

Details

--

Memory/orientation	
Behaviour affecting self or others (e.g. aggression, self-harm)	
Impact of your mood or wellbeing on your acceptance of support	

Health Conditions and Disabilities that Impact Your Wellbeing *(based on a typical week)*

	Condition
Condition 1	
Condition 2	
Condition 3	
Condition 4	

How often do your needs significantly change/vary due to your condition(s)?	
---	--

Your Medication and Symptoms *(based on a typical week)*

Are you currently taking any prescribed medication?	
If 'Yes', what support do you need with taking or applying medication?	
Taking/applying medication - How often do you need support?	
Do you have any difficulties with breathing?	
Do you need equipment to help you to breathe?	
Do you have any difficulties maintaining consciousness? (e.g. due to epilepsy, seizures, blackouts)	

Schedule 7

Commercially Sensitive Information

1. The information set out in the Table below is deemed by the Service Provider to be Commercially Sensitive Information for the purposes of this Contract or any applicable Call Off Contract, although the Service Provider's attention is drawn to the provisions of clause 31 of this Contract.

Reference	Details of Commercially Sensitive Information

Schedule 8

Caldicott Principles

Summary of the 6 Caldicott General Principles

Principle 1: Justify the purpose(s)

Every proposed use or transfer of personally-identifiable information within or from an organisation should be clearly defined and scrutinised with continuing uses regularly reviewed by an appropriate guardian.

Principle 2: Don't use personally identifiable information unless it is absolutely necessary

Personally identifiable information items should not be used unless there is no alternative.

Principle 3: Use the minimum necessary personally identifiable information

Where use of personally identifiable information is considered to be essential each individual item of information should be justified with the aim of reducing identifiability.

Principle 4: Access to personally-identifiable information should be on a strict need to know basis

Only those individuals who need access to personally identifiable information should have access to it and they should only have access to the information items that they need to see.

Principle 5: Everyone should be aware of their responsibilities

Action should be taken to ensure that those handling personally identifiable information, irrespective of whether they are practitioner or non-practitioner Staff, are aware of their responsibilities and obligations to respect an individual's confidentiality.

Principle 6: Understand and comply with the law

Every use of personally identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

Schedule 9

The Short Stay Call Off Contract

SHORT STAY CALL OFF CONTRACT

DATED

201[**insert**]

BETWEEN

- (1) **STAFFORDSHIRE COUNTY COUNCIL** of Number 1 Staffordshire Place, Tipping Street, Stafford, ST16 2DH (the “**Council**”); and
- (2) [****INSERT THE NAME OF THE SERVICE PROVIDER****] of [****insert correct legal entity registration and address details of the service provider here****] the (the “**Service Provider**”),

and the Council and the Service Provider shall each be individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

BACKGROUND

- (A) The Parties have entered into an agreement entitled “The Dynamic Purchasing System Agreement for the Supply of Residential and Nursing Care Home Services at the [****insert name of care home****]” dated [****insert****], as amended from time to time (the “**Contract**”).
- (B) Pursuant to the terms of the Contract, the Parties have agreed to enter into this Short Stay Call Off Contract in order for the Service Provider to provide to the Council the Services set out herein.

IT IS HEREBY AGREED

1. This Short Stay Call Off Contract shall commence on [****insert date on when the placement will start****] and shall remain in full force and effect until [****insert expiry date****], unless this Short Stay Call Off Contract is terminated earlier in accordance with the terms of the Contract or under Law (the “**Term**”).
2. At all times during the Term, the Service Provider shall perform the Services set out in the High Level Support Plan and Assessment in accordance with the provisions of the Contract and this Short Stay Call Off Contract.
3. In consideration of the Service Provider complying with clause 2 of this Call Off Contract, the Council shall pay to the Service Provider the Contract Price set out in Schedule 2 of this Short Stay Call Off Contract.
4. The Special Conditions (if any) relating to the Services are set out in Schedule 3 hereto.

5. This Short Stay Call Off Contract shall incorporate the applicable terms of the Contract, including (without limitation) all of the Call Off Terms.
6. Any defined terms used in this Short Stay Call Off Contract whose meanings are not expressly defined herein shall have the same meanings given to them in the Contract.
7. Save as expressly stated otherwise herein, if there are any conflicts or inconsistencies between the terms of this Short Stay Call Off Contract and the terms of the Contract, the terms of this Short Stay Call Off Contract shall prevail.
8. If any provision of this Short Stay Call Off Contract is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Short Stay Call Off Contract shall continue in full force and effect as if this Short Stay Call Off Contract had been executed with the invalid, illegal or unenforceable provision deleted.
9. Save as otherwise expressly stated herein, the Parties do not intend any third party to acquire any rights under this Short Stay Call Off Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.
10. Any dispute between the Parties arising from or in connection with this Short Stay Call Off Contract shall be governed by the laws of England and determined by the English courts.
11. This Short Stay Call Off Contract can be executed in a number of counterparts, each of which will constitute an original but which will together constitute one agreement.

Schedule 1

High Level Support Plan and Assessment

Schedule 2

The Contract Price

1. Pursuant to paragraph 2 of Schedule 3 of the Contract, the Contract Price in relation to this Short Stay Call Off Contract is set out in the payment grid below.

Note: the table below is to be used for non-s117 placements – please delete this note and the table which doesn't apply from the final Call Off Contract.

	PAYMENTS GRID	Amount per week	Total sum payable during the Term
1	Statutory Contribution (if any) payable by the Resident to the Council <i>(to be notified in writing by the Council to the Resident)</i>		
2	Gross Contract Price payable by the Council to the Service Provider		
3	Topping Up Payment (if any) payable by the Sponsor to the Service Provider		
4	Contract Price payable to the Service Provider per week or part thereof (i.e. the sum of rows 1, 2 and 3 above)		

Note: the table below is to be used for s117 placements only – please delete this note and the table which doesn't apply from the final Call Off Contract.

	PAYMENTS GRID	Contract Price per week	Total Contract Price payable during the Term
1	Contract Price payable to the Service Provider per week or part thereof during the term of the Call Off Contract shall be the weekly Total Care Price set out in the applicable Tender:		

Schedule 3
Special Conditions

IN WITNESS whereof this Short Stay Call Off Contract has been executed by the authorised representatives of the Parties as follows:

Signed by an authorised signatory for and on
behalf of Staffordshire County Council:

Signed.....

Name:.....

Title.....

Signed by an authorised signatory for and on
behalf of **[**insert full name of Service Provider here**]**:

Signed.....

Name:.....

Title.....

Schedule 10

The Long Stay Call Off Contract

LONG STAY CALL OFF CONTRACT

DATED

201[insert**]**

BETWEEN

- (1) **STAFFORDSHIRE COUNTY COUNCIL** of Number 1 Staffordshire Place, Tipping Street, Stafford, ST16 2DH (the “**Council**”); and
- (2) **[**INSERT THE NAME OF THE SERVICE PROVIDER**]** of [**insert correct legal entity registration and address details of the service provider here**] the (the “**Service Provider**”),

and the Council and the Service Provider shall each be individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

BACKGROUND

- (A) The Parties have entered into an agreement entitled “The Dynamic Purchasing System Agreement for the Supply of Residential and Nursing Care Home Services at the [**insert name of care home**]” dated [**insert**], as amended from time to time (the “**Contract**”).
- (B) Pursuant to the terms of the Contract, the Parties have agreed to enter into this Long Stay Call Off Contract in order for the Service Provider to provide to the Council the applicable Services referred to herein.

IT IS HEREBY AGREED

1. This Long Stay Call Off Contract shall commence on [**insert date on when the placement will start**] and shall remain in full force and effect until it is terminated by either Party in accordance with the applicable provisions of Schedule 3 of the Contract or under Law (the “**Term**”).
2. At all times during the Term, the Service Provider shall perform the Services set out in the High Level Support Plan and Assessment in accordance with the provisions of the Contract and this Long Stay Call Off Contract.
3. In consideration of the Service Provider complying with clause 2 of this Long Stay Call Off Contract, the Council shall pay to the Service Provider the Contract Price set out in Schedule 2 of this Long Stay Call Off Contract.
4. The Special Conditions (if any) relating to the Services are set out in Schedule 3 hereto.

5. This Long Stay Call Off Contract shall incorporate the applicable terms of the Contract, including (without limitation) all of the Call Off Terms.
6. Any defined terms used in this Long Stay Call Off Contract whose meanings are not expressly defined herein shall have the same meanings given to them in the Contract.
7. Save as expressly stated otherwise herein, if there are any conflicts or inconsistencies between the terms of this Long Stay Call Off Contract and the terms of the Contract, the terms of this Long Stay Call Off Contract shall prevail.
8. If any provision of this Long Stay Call Off Contract is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Long Stay Call Off Contract shall continue in full force and effect as if this Long Stay Call Off Contract had been executed with the invalid, illegal or unenforceable provision deleted.
9. Save as otherwise expressly stated herein, the Parties do not intend any third party to acquire any rights under this Long Stay Call Off Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.
10. Any dispute between the Parties arising from or in connection with this Long Stay Call Off Contract shall be governed by the laws of England and determined by the English courts.
11. This Long Stay Call Off Contract can be executed in a number of counterparts, each of which will constitute an original but which will together constitute one agreement.

Schedule 1
High Level Support Plan and Assessment

Schedule 2

The Contract Price

2. Pursuant to paragraph 2 of Schedule 3 of the Contract, the Contract Price in relation to this Long Stay Call Off Contract is set out in the payment grid below.

Note: the table below is to be used for non-s117 Placements please delete this note and the table which doesn't apply from the final Call Off Contract.

	PAYMENTS GRID	Contract Price per week	
1	The weekly Total Care Price submitted by the Service Provider in its applicable Tender		
2	Less any applicable statutory contribution payable by the Resident to the Service Provider		
3	Less the Topping Up Payment (if any) payable by the Sponsor to the Service Provider		
4	Contract Price payable to the Service Provider during each applicable week (or part thereof) of during the Term of the Call Off Contract:		

Note: the table below is to be used for s117 placements only – please delete this note and the table which doesn't apply from the final Call Off Contract.

	PAYMENTS GRID	Contract Price per week	
1	Contract Price payable to the Service Provider per week or part thereof during the Term of the Call Off Contract shall be the weekly Total Care Price set out in the applicable Tender:		

Schedule 3
Special Conditions

IN WITNESS whereof this Long Stay Call Off Contract has been executed by the authorised representatives of the Parties as follows:

Signed by an authorised signatory for and on
behalf of Staffordshire County Council:

Signed.....

Name:.....

Title.....

Signed by an authorised signatory for and on
behalf of **[**insert full name of Service Provider here**]**:

Signed.....

Name:.....

Title.....

Schedule 11

The Award Criteria

1. General

- 1.1 This Schedule 11 sets out the applicable Award Criteria which the Council shall use when evaluating a Tender which has been submitted by the Service Provider in response to an Invitation to Tender.
- 1.2 Unless otherwise agreed by the authorised representatives of the Parties, the Council shall
 - 1.2.1 notify each service provider on the relevant Lot which is currently eligible to participate in the DPS which Award Criteria it intends to use in accordance with clause 4.10.2(c) of this Contract, prior to awarding any Call Off Contract for any Services under the Standard Award Procedure; and
 - 1.2.2 use the Option C Award Criteria set out in paragraph 2.3 of this Schedule 11 where it intends to award a Call Off Contract for any Services under the Emergency Award Procedure.
- 1.3 Subject always to paragraph 1.4 of this Schedule 11 and to the Council's rights not to award any Services with respect to an Invitation to Tender under clauses 4.31, 4.32 and 4.35 of this Contract, the Council shall award the applicable Call Off Contract for the Services to the service provider which has submitted the highest scoring tender which meets all of the needs of the individual contained in their Pen Portrait following the outcome of the Council's evaluation exercise.
- 1.4 The provisions of paragraph 1.3 of this Schedule 11 shall not apply and the Council shall be entitled to award a Call Off Contract for the applicable Services to an alternative service provider on the DPS which has submitted a tender to the Council in relation to the applicable Invitation to Tender where the individual in question exercises their right under the Care Act 2014 to be placed into a different care home of their choice and any relevant arrangements for a Topping up Payment are put in place.
- 1.5 Irrespective of whether the Council awards a Call Off Contract for any applicable Services in accordance with paragraphs 1.3 or 1.4 of this Schedule 11, the Council shall be entitled to use the weekly total care price comprised in the highest scoring tender which has been submitted by a service provider to determine what the relevant individual's Personal Budget is and to calculate what the Contract Price shall be.

2. Award Criteria Options

- 2.1 The Option A Award Criteria shall comprise of an 80% weighting based on price and a 20% weighting based on the Service Provider's current CQC rating which shall be

scored by the Council using the criteria set out in paragraphs 1 to 4 (inclusive) of the Annex to this Schedule 11, and:

- 2.1.1 subject always to paragraphs 1.4 and 1.5 of this Schedule 11, the Council shall be entitled to award a Call Off Contract for the applicable Services to the service provider which has submitted the highest scoring bid received following the Council's evaluation using the Option A Award Criteria; and
- 2.1.2 this option is intended to be used for the majority of placements under the DPS and in circumstances where Options B and C do not apply;
- 2.2 The Option B Award Criteria shall comprise of an 80% weighting based on price and 20% weighting based on a written statement which has been submitted by the service provider as part of its Tender, which shall be scored by the Council using the criteria set out in paragraphs 5 to 10 (inclusive) of the Annex to this Schedule 11 and:
 - 2.2.1 subject always to paragraphs 1.4 and 1.5 of this Schedule 11, the Council shall be entitled to award a Call Off Contract for the applicable Services to the service provider which submits the highest scoring bid received following the Council's evaluation using the Option B Award Criteria above;
 - 2.2.2 this option is intended for complex care packages including (but not limited to) Services relating to Lot 3 (Residential Physical Disability), Lot 4 (Residential Learning Disability/Autistic Spectrum Disorder), Lot 5 (Residential Mental Health), Lot 8 (Nursing Physical Disability/Sensory Impairment), Lot 9 (Nursing Learning Disability/Autistic Spectrum Disorder) and Lot 10 (Nursing Mental Health).
- 2.3 The Option C Award Criteria shall comprise of a 100% weighting based on price which shall be scored by the Council using the criteria set out in paragraphs 11 and 12 of the Annex to this Schedule 11 and:
 - 2.3.1 subject always to paragraphs 1.4 and 1.5 of this Schedule 11, the Council shall be entitled to award a Call Off Contract for the applicable Services to the service provider which has submitted the lowest weekly total care price set out in their tender which meets the needs of the individual contained in the Pen Portrait;
 - 2.3.2 the Council envisages using this option mainly to award Call Off Contracts under the Emergency Award Procedure but reserves the right to use it to award Call Off Contracts under the Standard Award Procedure from time to time.

3. The Reference Prices

- 3.1 Pursuant to clause 4.33 of the Contract, the Council shall use the Reference Prices to assist it to identify any Abnormally Low Tenders and/or Abnormally High Tenders which may be submitted by the Service Provider from time to time, and to assist it in deciding whether to either reject or accept any such Abnormally Low Tenders or

Abnormally High Tenders and to ensure that all placements are safe, affordable and represent Best Value.

- 3.2 The Reference Prices have been calculated based on placements made by the Council in care homes in Staffordshire in previous months and have been developed following feedback from the Council's existing service providers of care home and nursing home services during the consultation and engagement events held in January 2017.
- 3.3 The Council shall be entitled to reject any Abnormally Low Tenders where the weekly Total Care Price submitted by the Service Provider is materially less than the relevant Reference Prices pertaining to the applicable Lot (including where the Service Provider's Tender is the only bid received in response to an applicable Invitation to Tender), provided always that the Council complies with its obligations under the Regulations before rejecting any such Tender.
- 3.4 The Council shall further be entitled to reject any Abnormally High Tenders where the weekly Total Care Price submitted by the Service Provider materially exceeds the Reference Prices pertaining to the applicable Lot (including where the Service Provider's Tender is the only bid received in response to an applicable Invitation to Tender), save that prior to rejecting any such Abnormally High Tender the Council shall use its reasonable endeavours to ask the Service Provider to provide a breakdown of its weekly Total Care Price to ascertain whether it constitutes an Abnormally High Tender.
- 3.4A For Lots 3, 4, 5, 8, 9 and 10, the Council reserves the right to clarify costs using a care cost calculator tool and the Service Provider shall duly comply with any request for a breakdown of cost using a care cost calculator tool. The Care Funding Calculator from IESE is used by the Council, which may be subject to change from time to time.
- 3.5 The Council will review the amount of the Reference Prices from time to time and notify the Service Provider of any changes to the Reference Prices during the Contract Period by serving a Unilateral Notice.
- 3.6 As of the Commencement Date the Reference Prices for each Lot for Placements are as follows:

Lot Number	Reference Prices per week
Lot 1 – Residential Older People	£430 - £558
Lot 2 – Residential Dementia	£434 - £695
Lot 3 – Residential Physical Disability	£477 - £1,140
Lot 4 – Residential Learning Disability / Autistic Spectrum Disorder	£834 - £1,212

Lot 5 – Residential Mental Health	£465 - £882
Lot 6 – Nursing Older People	£450 - £568
Lot 7 – Nursing Dementia	£450 - £629
Lot 8 – Nursing Physical Disability / Sensory Impairment	£485 - £956
Lot 9 – Nursing Learning Disability / Autistic Spectrum Disorder	£712 - £1,512
Lot 10 – Nursing Mental Health	£517 - £961

ANNEX

Option A

1. The Council shall score the 80% price element of each applicable tender using the same methodology for Option C in paragraphs 11 and 12 of this Annex to Schedule 11 save that any reference in such paragraphs to one hundred (100) or 100% shall be substituted for eighty (80) or 80% as applicable.
2. The Council shall score the 20% quality element by awarding each service provider which has submitted a compliant tender the following score depending on its current CQC rating:

Inadequate	1 mark
Requires improvement	2 marks
Good	3 marks
Outstanding	4 marks
3. The mark(s) awarded to each applicable service provider shall then be divided by four (4) and multiplied by twenty (20) in order to calculate the applicable quality percentage. By way of an example, if a service provider which submits a tender and has a current CQC rating of "Good" then it shall score 15% (i.e. $\frac{3}{4} \times 20 = 15$).
4. The scores awarded to each service provider for the price and quality elements shall be added together to calculate a total percentage score and the highest score will be ranked first and the next highest score second and so on.

Option B

5. Where the Council elects to use the Option C Award Criteria, the 80% price element will be calculated in the same way set out in paragraph 3 of this Annex for Option B.
6. The 20% quality element will be evaluated based on scoring the written statement submitted by each applicable service provider.
7. The statement will have a maximum word limit which cannot be exceeded although there will be no obligation on the service provider to use the total word limit.
8. The Council shall award the following scores in relation to evaluating any written statement submitted by a service provider in accordance with paragraph 2.3 of Schedule 11.

• Category	• Response	• Score
(A) Unacceptable	• No response to the question or the response is highly inaccurate.	• 0
(B) Poor	• Limited response	• 1

	provided or a response that is inadequate substantially irrelevant, inaccurate or misleading or only partially addresses the question.	
(C) Acceptable	<ul style="list-style-type: none"> An acceptable response submitted in terms of level of detail, accuracy and relevance. The response is good but there are either some omissions of important factors or negative indications that reduce the extent to which the care needs of the individual will be achieved. 	<ul style="list-style-type: none"> 2
(D) Good	<ul style="list-style-type: none"> A comprehensive response submitted in terms of detail and relevance and clearly meets the outcomes and needs of the individual no negative indications or inconsistencies. 	<ul style="list-style-type: none"> 3
(E) Excellent	<ul style="list-style-type: none"> A more than comprehensive response in terms of detail and relevance. Clearly meets or exceeds requirements with no negative indications. 	<ul style="list-style-type: none"> 4

9. The score awarded to each service provider will be divided by the maximum score available and multiplied by twenty (20) (i.e. the 20% quality element) to calculate the percentage score which the applicable service provider will be awarded. For example:

If a service provider scored 3 for their written statement then they will be awarded a 15% score for the quality element (i.e. $\frac{3}{4} \times 20 = 15$).

10. The applicable scores awarded to each service provider for the price and quality elements shall be added together to calculate a total percentage score and the highest score will be ranked first and next highest score ranked second and so on.

Option C

11. The Council shall award a score of 100% to the service provider which tenders the lowest weekly total care price which meets all of the needs of the individual contained in the relevant Pen Portrait and rank the applicable service provider in first place.

12. The other service providers which have submitted a tender shall be awarded a score below 100% and ranked accordingly as follows:

12.1 the lowest weekly total care price referred to in paragraph 1 of this Annex shall be divided by the weekly total care price submitted by the service provider in question and multiplied by one hundred (100). For example:

If the lowest weekly total care price submitted by a service provider in response to an Invitation to Tender is £400, and only two other tenders are received by the Council for £450 and £500 per week then the Council shall score and rank the service providers as follows:

Tender 1 = weekly total care price of £400 is awarded a percentage score of 100% and ranked number 1.

Tender 2 = weekly total care price of £450 therefore $\frac{£400}{£450} \times 100 = 88.89\%$ and ranked number 2.

Tender 3 = weekly total care price of £500 therefore $\frac{£400}{£500} \times 100 = 80\%$ and ranked number 3

IN WITNESS whereof this Contract has been executed by the authorised representatives of the Parties as follows:

Signed by an authorised signatory for and on
behalf of Staffordshire County Council:

Signed.....

Name:.....

Title.....

Signed by an authorised signatory for and on
behalf of **[**insert full name of Service Provider here**]**:

Signed.....

Name:.....

Title.....