



**BRACKNELL FOREST BOROUGH COUNCIL**

**STANDARD CONDITIONS OF CONTRACT: SERVICES**

**ISSUE DATED: November 2017**

**NURSING CARE SERVICES – BLOCK CONTRACT**

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## CONDITIONS OF CONTRACT: NURSING

The provisions of Schedule 1 ([section in blue](#)) of the Council's Standard Conditions of Contract: Services, Issue dated: May 2015 shall apply to this Contract as follows:-

### 1. Definitions

**In respect of the existing definitions the following shall not apply:-**

"Invitation to Tender"	means the Invitation to Tender of the Council dated
"Sub Contract"	means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract

**In respect of the existing definitions the following are amended and shall now read:**

"Commencement Date"	means the date on which the Contract begins, which shall be <a href="#">[insert date]</a> ;
"Contractor"	means the individual or group providing the Service, and shall also include reference to "Provider"
"Contractors Response"	means the Contractors Response dated <a href="#">[insert date]</a>
"Service"	means the provision of support to the Individual in accordance with the Specification, and the care or support to Individual's in accordance with the Specification and the Individual Purchase Order and further in accordance with this Contract and any other documents contained or referred to herein
"Specification"	means the care specification for the Service at Attachment B hereof;
"Term"	means the term of this Contract commencing on the Commencement Date and terminating upon <a href="#">[insert date]</a> unless extended in accordance with the provisions of this Contract

**In respect of the existing definitions the following shall be added:-**

“Block Price”	means the Block Price agreed between the Parties as detailed in Attachment C for commitments to purchase beds with continued obligations on payment of Block Price for Voids and shall also include reference to ‘Price’
“Care Plan”	means the contractual document of that name containing details of an Individual and a statement of outcomes following assessment, the contents of which are to be delivered as the Service
“Care Quality Commission (CQC)”	means the independent regulator of all health and social care services in England.
“Consent”	means:- a) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services: and/or b) any necessary consent or agreement from any third party needed either for the performance of the Provider’s obligations under this Contract or for the provision by the Provider of the Services in accordance with the contract
““Contracts Manager”	means the Head of Service who is responsible for the management of the Contract on behalf of the Purchaser;
“Embargo”	means the Provider has restrictions placed on them due to a quality concern, persistent defaults or a single event by either the Purchaser or the Regulatory Authority or self imposed. This may include suspension/part suspension of Services, restrictions on new placements or termination of Services in accordance with the Council’s Care Governance Procedures as detailed at Attachment E Providers Guide to Care Governance
“Equipment”	means the Provider’s equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under this Contract

“Individual/s”	means the person or people aged 18+ funded by the Purchaser who access the Service and where appropriate shall also include reference to anyone who is legally entitled to act on behalf of that person
“Individual’s Information”	means the personal information relating to an Individual and any other details of the Individual
“Individual Purchase Order”	means the contractual document of that name containing details of the Individual, the commencement date of the provision of the Service and any additional details of the Service (over and above that detailed in the Specification) required for the Individual, and the Price
“Intake Team”	means the team responsible for front line communications to be contacted for specific events as stipulated in the Contract. The Purchasers Contact Details are in Attachment F Information Sharing Protocol
“Losses”	means all damage, loss, liabilities, claims, actions, expenses (including the cost of legal and/or professional services), proceedings, demands and charges whether arising under statute, contract or at common law, but, excluding indirect losses
“Nominated Manager”	means the representative of the Provider responsible for the management of the Contract;
“Nursing Care “	means a care home where nursing care, personal care and accommodation services are provided to Individuals. This may be the Individuals sole place of residence or it may be their residence for just a short period of time.
“Outcomes”	means the positive result (as identified by the Individual) to be achieved through the provision of the Service;
“Personal Data”	means personal data as defined in the Data Protection Act 1998 that is processed by the Contractor in connection with the service.
“Processing”	has the same meaning as the term “Processing” under the Data Protection Act 1998

“Safeguarding Assessment”	means the process undertaken to look into Safeguarding concerns regarding the suspected abuse or harm of an adult at risk;
“Short Term Care”	means a placement for an Individual for a temporary period, such as respite, hospital discharges or emergency or temporary placements
“Temporary Period”	means the temporary period for any Short Term Care. The Individual Purchaser Order will indicate if a placement is for Short Term Care, and will indicate an end date, where this is known at the time of issue
“Void”	means a nursing care bed that is not occupied by an Individual. A void may be filled by the Purchaser making a Short Term Care placement, or by the Purchaser entering into an agreement with another local authority to make a placement in a void either permanent or for Short Term Care.

## 2. The Services

Shall be replaced with:

2.1 This Contract is for the supply of Services by the Contractor to the Council in the manner specified and at any place specified in the Contract.

2.2 The Services shall be provided to the reasonable satisfaction of the Council and shall conform in all respects with the Specification, with any particulars described in this Contract or any agreed variations thereto confirmed in writing between the parties

2.3 The Contractor shall carry out the Services using the highest standard of skill and care which is ordinarily exercised by experienced and competent suppliers performing the services of a similar nature to the Services.

2.4 Where Services include the provision of goods, material or plant these shall be of satisfactory quality and fit for any purpose specified or made known to the Contractor in writing by the Council during this Contract.

2.5 The Contractor shall:-

2.5.1 provide to the satisfaction of the Council such appropriately qualified and experienced staff including, as shall be necessary for the proper execution of the Services;

2.5.2 ensure that all persons involved in delivering the Services are sufficiently instructed with regard to the Services as specified in this Contract;

2.5.3 satisfy itself that the information, including documentation, provided by the Council is adequate and will not prejudice the performance of any of the Contractor's obligations under this Contract. The Contractor undertakes to inform the Council

immediately of any inadequacy whereupon the Council engage with the Contractor with a view to resolving the inadequacy;

2.5.4 have due regard to the Council's policies or other matters which the Council has disclosed to the Contractor;

2.6 The Contractor and the Individual shall agree a Resident's Statement of Terms and Conditions a copy of which shall be supplied to the Individual. In the event of any conflict between the Providers Resident's Statement of Terms and Conditions and the provisions of this Contract, then the provisions of this Contract shall prevail

### **3. Amendments to the Contract**

Shall apply

### **4. Inspection of Premises and Nature of Services**

Shall apply

### **5. Contractor Status**

Shall apply

### **6. Contractors Personnel**

Shall apply with the addition of:

6.6 The Provider shall endeavour to ensure that all Worker's consent to the Purchaser accessing their records and to be available for interview if required. Copies of the consent shall be made available to the Purchaser, on request

### **7. Manner of Carrying Out the Services**

Shall not apply to this Contract

### **8. Time of Performance**

Shall apply

### **9. Rejection of Services**

Shall apply

### **10. Intellectual Property**

Shall apply

### **11. Payment Provisions**

Shall not apply to this Contract, but substitute D1

## **12. Access to Premises**

Shall apply

## **13. Health and Safety**

13.1 shall be amended to read:

13.1 The Contractor shall in performing the Contract adopt safe methods of work in order to protect the health and safety of its own employees the employees of the Council, Individuals and of all other persons including members of the public and shall comply with the requirements of the Health & Safety at Work Act 1974, the Management of Health & Safety Regulations 1992, the Control of Substances Hazardous to Health (COSHH) Regulations 1988 and 1994 and the Road Traffic Act 1988, Health & Safety in Care Homes 2014, HSE guidance notes and approved Code of Practice and of any other Acts Regulations Orders or any European Directive pertaining to the health and safety of persons and shall have regard to the Council's health and safety policy see <http://schools.bracknell-forest.gov.uk/sites/default/files/assets/general-statement-of-policy-and-organisational-arrangements.pdf>

All other Clauses shall apply

## **14. Indemnity Insurance**

Shall not apply to this Contract, but substitute D8

## **15. Equal Opportunities**

Shall apply

## **16. Termination**

Shall not apply but substitute C5

## **17. Default**

Shall apply with the addition of:

17.3 If the Provider commits a Default then the Purchaser will be entitled to serve a Default Notice, detailing the default event, remedial action to be taken and timescale to rectify the default. This will be without prejudice to any other right or remedy which may be available to the Purchaser, either under this Contract or in law.

17.4 The Provider will carry out the actions specified in the Default, within the set timescale. If there is any disagreement between the parties as to whether a Default has occurred and/or about the action required to be taken and/or the timescale within which the action is to be taken, then either of the parties can refer the matter for resolution, in accordance with condition 32 Dispute Resolution.

17.5 If the Provider persistently commits a Default or fails to put right a Default within the timescale set out in the Default Notice concerned then the Purchaser will be entitled to terminate this Contract as a whole by giving not less than two weeks written Notice.

## **18. Recovery of Sums Due**

Shall apply

## **19. Notices**

Shall not apply, but substitute C18

## **20. Assignment and Sub-Contracting**

Shall apply with the addition of:-

20.5 Notwithstanding the provisions of condition 20.1 hereof, the Contractor shall be permitted to hire agency staff to cover the absence of permanent staff. The Contractor shall fully meet the staffing requirements in the Specification for all agency/sub contract staff

## **21. Data Protection**

Shall apply with the addition of:-

21.4 The Contractor shall comply with the data protection principles under the Data Protection Act 1998 ("the Act") and any equivalent or associated legislation and the Council's Data Protection policies from time to time (in so far as they are relevant) in respect of the Processing of the Personal Data;

21.5 Subject to compliance with the Act and any other clause in this Contract, upon the Council's request permit any authorised officers of the Council to inspect the Contractor's premises and data systems, and have access to, and be provided with, copies of any information (including, without limitation, Personal Data), to enable the Council to:

- 21.5.1 satisfy itself that the Contractor is complying with its obligations under this clause;
- 21.5.2 assess compliance with the Contract and the provision of the Service; and
- 21.5.3 comply with its own legal functions, duties and responsibilities in respect of the Service.

21.6 Only undertake Processing of Personal Data reasonably required to perform the Service and, in any event, strictly in accordance with the Act and the Council's instructions from time to time;

21.7 Not disclose Personal Data to any person other than to employees and sub contractors to whom disclosure is necessary for the performance of the Service;

21.8 Ensure that any disclosure to a sub-contractor is subject to a binding legal obligation upon the sub-contractor to comply with the obligations set out in this clause. For the avoidance of doubt, no such sub-contract shall relieve the Contractor of

its obligation to comply fully with this clause, and the Contractor shall remain fully responsible and liable for ensuring full compliance with this clause in all respects.

21.9 Immediately inform the Council of any request from an individual for access to their Personal Data, and comply with the Council's instructions in relation to complying with that request;

21.10 Have in place, and undertake to maintain during the term of the Contract, appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of Personal Data, and adequate security programmes and processes to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data;

21.11 Take all reasonable steps to ensure that any of its staff who have access to Personal Data are honest, reliable and competent.

## **22 Standards**

Shall apply

## **23 Bribery and Corruption**

Shall apply

## **24 Human Rights**

Shall apply

## **25 No Rights of Third Parties**

Shall apply

## **26 Waiver**

Shall apply

## **27 Freedom of Information**

Shall apply

## **28 TUPE**

Shall apply

## **29 Contractor's Property**

Shall apply

### **30 Confidentiality**

Shall apply

### **31 Term**

31.1 shall apply

31.2 shall be amended to read: The Contract may be extended by agreement between the parties by [\[insert details\]](#). The Price for any extension shall be in accordance with the conditions of D1.2. Any agreement to extend the Contract will be subject to confirmation in writing by the parties.

### **32 Dispute Resolution**

Shall apply

### **33 Governing Law**

Shall apply

### **Attachment A – Protection of Vulnerable Groups**

Shall not apply to this Contract, but substitute C11

**SCHEDULE 1            The Council's Standard Conditions of Contract: Services, Issue  
dated: May 2015**

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## 1 Definitions

In these conditions:-

“Commencement Date”	means the date of commencement of this Contract which shall be [ ]
“Contract”	means the Contract between the Council and the Contractor consisting of these conditions, the Specifications and any other documents or parts thereof specified in the Contract;
“Contractor”	means the person firm or company detailed in the Contract to whom this contract is issued;
“Contractors Response”	means the Contractors Response dated [ ] to the Invitation to Tender;
“Council”	means Bracknell Forest Borough Council;
“Employees” [ ]	means the following employees of the Contractor [ ];
“Invitation to Tender”	means the Invitation to Tender of the Council dated [ ];
“IP”	means all intellectual property rights of whatsoever nature including (without limiting the generality of the foregoing) copyright (and rights in the nature of copyright), design rights, database rights, trade marks, patents and patentable inventions (and the right to apply for any of the foregoing);
“Mediator”	means the neutral person agreed and appointed by the Parties to facilitate the resolution of a contractual dispute;
“Premises”	means the location where the Services are to be performed as specified in the Contract;
“Price”	means the price for the Services detailed in the Contract;
“Prohibited Act”	means the following which constitute Prohibited Acts:  (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

(c) committing any offence:

(i) under the Bribery Act 2010;

ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council;

or

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

“Services” means the services to be provided as specified in this Contract and shall, where the context so admits, include any materials articles and goods to be supplied thereunder

“Specifications” means the technical and other specifications, plans, drawings, examples, patterns and any other document or material issued or agreed by the Council relating to the Services as may be specified in this Contract.

“Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract

“Term” means the term of this Contract commencing on the Commencement Date and terminating upon [ ] unless extended in accordance with the provisions of this Contract

As used in this Contract the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

A 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 statute, enactment, enactment, order, regulation or instrument as contained in an subsequent re-enactment thereof.

A reference to any document shall be construed as a reference to the document as at the date of execution of this Contract.

Each party shall comply with any express obligation in this Contract to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Contract.

Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

These conditions may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

In respect of all Services to be supplied by the Contractor in accordance with the Specifications and Contract the following conditions shall apply:-

## **2 The Services**

2.1 This Contract is for the supply of Services by the Contractor to the Council in the manner specified and at any place specified in the Contract.

2.2 The Services shall be provided to the reasonable satisfaction of the Council and shall conform in all respects with the Specifications, with any particulars described in this Contract or any agreed variations thereto confirmed in writing between the parties

2.3 The Contractor shall carry out the Services using the highest standard of skill and care which is ordinarily exercised by experienced and competent suppliers performing the services of a similar nature to the Services.

2.4 Where Services include the provision of goods, material or plant these shall be of satisfactory quality and fit for any purpose specified or made known to the Contractor in writing by the Council during this Contract.

2.5 The Contractor shall:-

2.5.1 provide to the satisfaction of the Council such appropriately qualified and experienced staff including, where appropriate, Employees named in the Contractors Response, as shall be necessary for the proper execution of the Services and shall not remove or replace such persons without the prior written approval of the Council. The Council shall reserve the right to interview or review any Employees proposed by the Contractor prior to such approval;

2.5.2 ensure that all persons involved in delivering the Services are sufficiently instructed with regard to the Services as specified in this Contract;

2.5.3 satisfy itself that the information, including documentation, provided by the Council is adequate and will not prejudice the performance of any of the Contractor's obligations under this Contract. The Contractor undertakes to inform the Council immediately of any inadequacy whereupon the Council engage with the Contractor with a view to resolving the inadequacy;

2.5.4 have due regard to the Council's policies or other matters which the Council has disclosed to the Contractor;

### **3 Amendments to the Contract**

3.1 This Contract shall not be varied or amended unless such variation or amendment is agreed in writing by duly authorised representatives of the Council and the Contractor.

### **4 Inspection of Premises and nature of Services**

4.1 The Contractor is deemed to have inspected the Premises before giving its quotation or tender so as to have understood the nature and extent of the Services to be carried out and satisfied itself in relation to all matters connected with the Services and Premises

4.2 The Council shall at the request of the Contractor grant such access as may be reasonable for this purpose

### **5 Contractor status**

5.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Council. Accordingly:-

5.1.1 the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Council; and

5.1.2 nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council its staff or agents

### **6 Contractors personnel**

6.1 The Contractor shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from the involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and, if required by the Council, the Contractor shall replace any person moved under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered

6.2 If and when instructed by the Council the Contractor shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require

6.3 The decision of the Council as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has

furnished the information or taken the steps required by it under this condition shall be final and conclusive

6.4 The Contractor shall bear the cost of any notice instruction or decision of the Council under this condition

6.5 In the event that the Contractor is required under the Contract to undertake a regulated activity, as defined by the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012 the provisions of Attachment A hereto ( Protection of Vulnerable Groups) shall apply. The Contractor shall undertake to co-operate fully with the Council should the above become necessary, and shall agree to organise such checks as may reasonably be required by the Council. The Council undertakes to give the Contractor reasonable notice of any such requirements.

## **7 Manner of carrying out the Services**

7.1 The Contractor shall make no delivery of materials plant or other things nor commence any work on the Premises without obtaining the Council's prior consent

7.2 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable it to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Council may reasonably require

7.3 The Council shall have the power at any time during the progress of the Services to order in writing:-

7.3.1 the removal from the Premises of any materials which in the opinion of the Council are either hazardous noxious or not in accordance with the Contract, and/or

7.3.2 the substitution of proper and suitable materials, and/or

7.3.3 the removal and proper re-execution of any work which in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract

7.4 On completion of the Services the Contractor shall remove its plant equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition

## **8 Time of performance**

8.1 The Contractor shall begin performing the Services on the date stated in the Contract and shall complete them by the date stated in the Contract or continue to perform them for the period stated in the Contract (whichever is applicable). Time of performance is of the essence in this Contract. The Council may by written notice require the Contractor to execute the Services in such order as the Council may decide. In the absence of such notice the Contractor shall submit any detailed programs of work and progress reports as the Council may from time to time require

## **9 Rejection of Services**

9.1 The Council may by notice to reject any Services which it does not consider to have been carried out in accordance with the Contract and the Contractor shall, without prejudice to the Council's other rights, promptly and at its own expense, remedy the deficiency identified in the Services as required by the Council.

9.2 If the Contractor fails to remedy the deficiency promptly in accordance with the Council's notice, the Council may remedy or cause to be remedied any deficiency at the Contractor's cost.

## 10 Intellectual Property

10.1 All patents, copyright and other IP rights in all documents (including but not limited to drawings, working notes and books), transparencies, prints, photographs, negatives, tapes, discs, software information or other items created or supplied by the Council to the Contractor in connection to this Contract shall remain the property of the Council. All originals and copies thereof shall be delivered to the Council upon provision of written notice to the Contractor and the Supplier shall be required to certify that none are retained in its possession.

10.2 Without prejudice to any pre-existing rights of third-parties or of the Contractor, all patents, copyright and other IP rights arising from the performance of the Services shall vest in the Council and the Contractor waives in favour of the Council all rights therein.

10.3 The ownership of and sole right to the copyright in any document prepared by the Contractor in connection with this Contract shall vest in the Council from the outset.

10.4 The Contractor shall not have the right to use any data, reports, drawings, specifications, designs, inventions, plans, programs or other material referred to in clause 10.1 and under clause 10.3 for its own commercial purposes except upon obtaining the prior written consent of the Council and then only upon such terms as may be imposed in connection therewith.

10.5 It shall be a condition of the Contract that, except to the extent that the execution of the Services incorporate designs furnished by the Council, the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of IP of any third party and the Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.

10.6 All IP rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material:-

10.6.1 prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to the Council, and the Contractor shall not and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not (except when necessary for the implementation of the Contract) without the prior written consent of the Council, use or disclose any such IP and IP rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

10.7 Upon the termination of the Contract the Contractor shall immediately return to the Council all material, work or records held, including any back up media.

10.8 The provisions of this Condition shall apply during the continuance of this Contract and for no less than 6 years after its expiry or termination.

## 11 Payment Provisions

11.1 Unless otherwise stated in the Contract payment of invoices which the Council has determined are valid and undisputed will be made within 30 days of the date of receipt and agreement of such invoices, submitted monthly in arrears, for work completed to the satisfaction of the Council.

11.2 Where the Contractor submits invoices to the Council in accordance with condition 11.1 the Council will consider and verify such invoices in a timely fashion. In the event that the Council fails to comply with this undertaking and there is an undue delay in considering and verifying any invoice, the invoice will be regarded as valid and undisputed for the purposes of condition 11.1 after a reasonable time has passed.

11.3 If the Council fails to pay any amount payable by it under this Contract, the Contractor shall be entitled but not obliged to charge the Council interest on the overdue amount from the due date up to the date of actual payment at the rate of two percent above the base rate for the time being of Lloyds TSB Bank plc

11.4 Value Added Tax where applicable will be shown separately on all invoices as a net extra charge

11.5 No increase in the Price will be accepted by the Council unless agreed by the Council in writing before the execution of the Contract and detailed therein

11.6 The Council may withhold all or part of any payment due hereunder if the Council is not for any reason satisfied with the Services to which the payment relates.

## 12 Access to Premises

12.1 Any access to Premises and any labour and equipment that may be provided by the Council in connection with provision of Services shall be provided without acceptance by the Council of any liability whatsoever and the Contractor shall indemnify the Council in respect of any actions claims demands charges losses costs and expenses which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of its sub-contractors

12.2 Where any access to the Premises is necessary in connection with delivery or installation or the provision of Services the Contractor and its sub-contractors shall at all times comply with the reasonable security requirements of the Council

## 13 Health and Safety

13.1 The Contractor shall in performing the Contract adopt safe methods of work in order to protect the health and safety of its own employees the employees of the Council and of all other persons including members of the public and shall comply with the requirements of the Health & Safety at Work Act 1974, the Management of Health & Safety Regulations 1992, the Control of Substances Hazardous to Health (COSHH) Regulations 1988 and 1994 and the Road Traffic Act 1988, HSE guidance notes and approved Code of Practice and of any other Acts Regulations Orders or any European Directive pertaining to the health and safety of persons and shall have regard to the Council's health and safety policy see <http://schools.bracknell-forest.gov.uk/sites/default/files/assets/general-statement-of-policy-and-organisational-arrangements.pdf>

13.2 The Contractor shall, prior to the commencement date of this Contract provide to the Council on request with a written copy of its health and safety working procedures relating to the performance of the Contract.

13.3 The Contractor shall review its health and safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices and shall notify the Council in writing of any such revisions if required by the Council. The Council may require the Contractor to amend its health and safety policy and safe working procedures to comply with any change in legislation or working practices.

13.4 The Contractor shall advise the Council of the name address and telephone number of the person within his organisation responsible for health and safety and welfare matters.

13.5 The Contractor shall be responsible for ensuring compliance (and that of any sub-contractor) with aforementioned safety policies.

#### 14 **Indemnity Insurance**

14.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and indemnities pursuant to the Contract the Contractor shall indemnify the Council against all actions claims demands losses charges costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the performance by the Contractor of the Services or the negligent or wrongful act or omission of the Contractor

14.2 The Contractor shall have in force and shall require any sub-contractor to have in force:-

14.2.1 employers liability insurance in accordance with any legal requirements for the time being in force; and

14.2.2 public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Council in writing and detailed in the Contract.

14.3 In the event that as part of the provision of the Services the Contractor is providing professional advice to the Council then the Contractor shall for the term of the Contract and for a period of three years from the date of satisfactory completion of the Services have and keep in force professional indemnity insurance in the sum of no less than £2,000,000 or such other sum as shall be detailed on the Contract

14.4 The policy or policies of insurance referred to in condition 14.2 shall be shown to the Council whenever it requests together with satisfactory evidence of payment of premiums

## 15 Equal Opportunities

15.1 The Contractor shall ensure that its Terms and Conditions of Employment and its policies and procedures relating to employment comply with all current legislation other legal requirements and codes of practice published by all relevant recognised bodies including but not limited to:-

- ACAS
- The Equalities and Human Rights Commission
- The Department of Communities and Local Government
- The Department for Business, Enterprise and Regulatory Reform
- and shall upon request furnish the Council with such evidence of compliance with the same as the Council shall specify and require

15.2 The Contractor shall not discriminate or permit any employee or agent of the Contractor to discriminate in any way against any person on the basis of race gender disability age religion belief or sexual orientation or in any other way prohibited by law and shall comply at all times at its own expense with any requirements made by the Council to be observed by contractors in its policies to promote equality and diversity.

15.3 The Contractor shall comply with the Council's policies made pursuant to the Equality Act 2010 and for the promotion of equality and diversity published from time to time and shall if required to do so produce evidence satisfactory to the Council that the performance of the contract is consistent with and in accordance with those policies see <http://www.bracknell-forest.gov.uk/bracknellforestequalityscheme201216>

15.4 The Contractor shall be able to demonstrate that where appropriate (bearing in mind the nature of the Services to be provided) that those Services are accessible and delivered in a way that is appropriate to meet the needs of those people that the Services are intended to benefit

15.5 If required by the Council the Contractor shall prepare and monitor a plan to deliver fair and equal access to the Services to ensure delivery of the Services in accordance with condition 15.4 above and shall make this plan available to the Council upon request. The Contractor shall make such reasonable changes to his plan as may reasonably be required by the Council to ensure compliance with condition 15.4 above. Where relevant to the contract and as agreed between the contractor and the Council, the Contractor shall also be expected to monitor the representation within its workforce and provide the Council with a breakdown of job applicants and workforce on the basis of race gender disability age religion or belief

15.6 The Contractor shall ensure that its staff are properly trained in respect of the matters detailed in this clause to ensure compliance with the Contractor's duties relating to equality and diversity and fair access in the Contract

## 16 Termination

16.1 The Council may terminate the Contract by giving the Contractor at least [30] days prior written notice and such termination shall not affect the Council's obligation to pay for any Services to be performed up to the date of termination. The Council shall indemnify the Contractor against any direct, verifiable and non-recoverable costs which the Contractor has reasonably and properly incurred in connection with the Contract to the extent to which they would represent an unavoidable loss by the Contractor by reason of the termination of the Contract under this condition 16.1.

16.2 The Contractor shall notify the Council in writing immediately upon the occurrence of any of the following events:-

16.2.1 where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

16.2.2 where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity if any event in (16.2.1) or (16.2.3) of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

16.2.3 where the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the Court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors or an administrative receiver, receiver or manager is appointed by a creditor or by the Court, or possession is taken of any of its property under the terms of a charge

16.3 On the occurrence of any of the events described in condition 16.2 or if the Contractor shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Council in writing to do so, or where the Contractor is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 the Council shall be entitled to terminate this Contract by notice to the Contractor with immediate effect

16.4 In accordance with the provisions of the Public Contracts Regulations 2015 (PCR 2015), the Council may terminate this Contract by notice to the Contractor with immediate effect in the event that any one of the following grounds occur:-

16.4.1 The Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of PCR 2015;

16.4.2 The Contractor has, at the time of Contract award, been in one of the situations described in Regulation 57(1) of PCR 2015, including the additional provisions of Regulation 57(2), and should therefore have been excluded from the procurement procedure on mandatory exclusion grounds;

16.4.3 The Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

16.5 Termination under this condition 16 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council

## 17 **Default**

17.1 If the Contractor fails to deliver the Services or any portion thereof within the time specified in the Specifications or otherwise in accordance with the requirements of the Contract the Council shall be at liberty without prejudice to any other remedy for breach of contract and without prejudice to any further conditions detailed herein to determine the Contract either wholly or to the extent of such default and to purchase other Services as the case may be of the same or similar description to make good:-

17.1.1 such default; or

17.1.2 in the event of the Contract being wholly determined the Services remaining to be delivered

17.2 If the amount by which the costs of purchasing such other services exceeds the amount which would have been payable to the Contractor for them if they had been delivered in accordance with the Contract will be recoverable from the Contractor

## 18 **Recovery of sums due**

18.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor that sum may be deducted from any sum then due or which at any later time may become due to the Contractor under this Contract or under any other agreement or contract with the Council

## 19 **Notices**

19.1 Any notice to be given under the Contract shall be in writing and may be served by personal delivery, first class recorded or e-mail to the address of the relevant party set out in the Contract, or such other address as that party may from time to time notify to the other party in accordance with this clause:

19.2 Notices served as above shall be deemed served on the working day of delivery provided delivery is before 5.00pm on a working day. Otherwise delivery shall be deemed to occur on the next working day. An email shall be deemed delivered when sent unless an

error message is received.

19.3 Notices under may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery.

## 20 **Assignment and sub-contracting**

20.1 The Contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any portion of the Contract without written permission given on behalf of the Council by its duly authorised representative. Sub-contracting is prohibited without the consent of the Council

20.2 The Contractor shall be responsible for the observance of this requirement by sub-contractors employed in the execution of the Contract

20.3 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

(a) provisions having the same effect as conditions 11.1 and 11.2 of this Contract; and

(b) a provision requiring the counterparty to that Sub-Contract which it awards provisions having the same effect as conditions 11.1 and 11.2 of this Contract

20.4 In the event that the Council permits the Contractor to Sub-Contract all or part of the provision of the Services the Contractor shall remain and continue to remain liable for the work of the sub-contractor

## 21 **Data Protection**

21.1 The Contractor shall (and shall procure that any of its Contractor's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the Data Protection Act 1998 and shall duly observe all obligations under that Act, which arise in connection with the Contract.

21.2 Notwithstanding the general obligation in condition 21.1, where the Contractor is processing Personal Data as a Data Processor for the Council, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Act; and

(a) provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the Act;

(b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to condition 21.2; and

(c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Act.

21.3 The provisions of this condition shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## 22 Standards

22.1 In the event that the Services require compliance with an appropriate British Standard then the Council will accept any equivalent European Standard. In the event that no such standards exist then the Services shall be required to comply with best industry standards.

## 23 Bribery and corruption

23.1 The Contractor:

(a) shall not, and shall procure that any person employed by it or who acts as an agent of the Contractor shall not in connection with this Contract commit a Prohibited Act;

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

23.2 The Contractor shall:

(a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

(b) The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

23.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Contractor Party or Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.

23.4 If any breach of Condition 23.1 is suspected or known, the Contractor must notify the Council immediately.

23.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of Condition 23.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to see books, records and any other relevant documentation. This obligation shall continue for six years following the expiry or termination of this Contract.

23.6 The Council may terminate this Contract by written notice with immediate effect if the Contractor or any person acting on its behalf (in all cases whether or not acting with the Contractor's knowledge) breaches Condition 23.1

23.7 Any notice of termination under Condition 23.6 must specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Council believes has committed the Prohibited Act; and

(c) the date on which this Contract will terminate.

23.8 Any dispute relating to:

(a) the interpretation of condition 23.1; or

(b) the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.

23.9 Any termination under condition 23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## 24 **Human Rights**

24.1 The Contractor confirms that it will perform its obligations pursuant to the Contract in all respects in conformance with the Human Rights Act 1998

24.2 The Contractor hereby indemnifies the Council from and against all losses costs expenses liabilities damages and claims arising from the failure of the Contractor its servants or agents to duly perform its obligations pursuant to sub condition 24.1 above and arising further from any act or omission of the Contractor its servants or agents in respect of the non performance of the said obligations

24.3 The Contractor ensures the compliance of any of its sub contractor's in the performance of the Contract with the provisions of this condition and shall indemnify the Council accordingly in respect of any breach of the same by the sub contractor

## 25 **No rights of third parties**

25.1 The parties hereby declare that no term of the Contract is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded

## 26 **Waiver**

26.1 The failure of either party to insist upon the strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract

26.2 A waiver of any breach of contract shall not constitute a waiver of any such subsequent breaches

26.3 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing

## 27 **Freedom of Information**

27.1 The Council is under a statutory duty which may require the release of information under the Freedom of Information Act 2000. Such information may include matters relating to or arising out of or under this Contract. The Council shall be entitled to disclose such information in the event that it receives a request to do so. In this event the Council shall inform the Contractor of the request and give the Contractor details of the information that the Council intends to disclose.

## 28 TUPE

28.1 At any time during the period of nine (9) months before the expiry of the Contract term, or in the event that the Contract is terminated in accordance with these Conditions within 28 days of giving or receiving notice of such termination, or where this Contract is terminated forthwith within 28 days of termination, the Contractor shall on the written request of the Council collate whatever information is required for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (the "TUPE Information") which may include but shall not be limited to:

- (a) the number of staff, including supervisory and administrative staff, employed by the Contractor and any sub-Contractor employed in the Services;
- (b) the terms and conditions of employment of those staff; and
- (c) any other information relating to those staff as properly may be required by the Council under this Clause.

28.2 In the event that the Council commences procedures for inviting tenders to provide the Services, the Contractor shall make the TUPE Information available on request to any person who wishes to submit such a tender (a "Tenderer") provided that such Tenderer shall undertake to use the TUPE Information for the purposes of submitting a tender to the Council and for no other purpose.

28.3 Throughout the period specified in Clause 28.1 the Contractor shall maintain and amend the TUPE Information to the extent necessary to ensure that it is complete, accurate and up to date and in the event that such amendments are made the Contractor shall inform any person to whom it has made the TUPE Information available in accordance with this Clause of the nature extent and content of those amendments and the reasons for which they have been made.

28.4 The Contractor shall, if requested by the Council, provide the same information relating to employees of its contractors, sub-contractors and agents where relevant to the provision of the Services and shall do its utmost to procure co-operation from such contractors, sub-contractors and agents.

28.5 In the event that there is a transfer of employees pursuant to TUPE the Contractor shall co-operate, and where relevant do its utmost to procure the co-operation of its contractors, sub-contractors and agents, in the orderly transfer of any relevant personnel.

28.6 The Contractor shall indemnify the Council against any and all losses, costs, expenses, awards, liabilities incurred by the Council in connection with or as a result of any claims, demands or proceedings of whatever nature by any employee or former employee of the Contractor or its sub-contractors or agents arising out of any non-compliance with TUPE.

28.7 The Contractor gives no express indemnity nor should be taken to have given any implied indemnity whether particular to the Council or jointly arising in relation to any matter connected with or arising out of the application or non application or the compliance or non compliance with TUPE.

28.8 The Contractor shall not make any claim against the Council in connection with the effect on the Contract of TUPE.

28.9 The Contractor undertakes not to change personnel or Service delivery structure during the last twelve months of the Contract other than for bona fide economic or operational reasons related to provision of the Services under the Contract including but not limited to changes to preclude or promote application of TUPE upon termination or expiry of the Contract.

28.10 In the event of non-compliance by the Contractor with this Clause 28, then:

(a) the parties acknowledge that the Council shall be entitled to an injunction or an order for specific performance in order to obtain the TUPE information; and

(b) the Contractor shall reimburse all expenses incurred by the Council in enforcing the Contractor's compliance with this Clause. For the avoidance of doubt, this shall include the cost of Council officer time.

28.11 The Contractor shall on the date of this Contract secure for those former employees of the Council whose contracts of employment become by virtue of the TUPE regulations contracts of employment with the Contractor rights to acquire pension benefits which are the same as or count as being broadly comparable to or better than those rights that those former employees had, or had a right to acquire, as an employee of the Council.

28.12 The Council and the Contractor agree that the former employees referred to shall have the right to enforce the obligation to secure pension benefits against the contractor as if they were parties to this agreement, and that this right is conferred on those former employees under the Contracts (Rights of Third Parties) Act 1999.

## 29 **Contractor's Property**

29.1 All property of the Contractor shall be at the sole risk of the Contractor while on the Premises and the Council shall not be liable for any loss or damage to such property unless this results from the wilful act of default of the Council.

## 30. **Confidentiality**

30.1 For the purposes of this condition "Confidential Information" means all information (whether commercial, financial, technical, personal or otherwise) relating to the disclosing party its employees, sub-contractors, servants or agents disclosed to or otherwise obtained by the recipient party under or in connection with the Contract and which is designated as being confidential or which is by its nature clearly confidential

30.2 Each party undertakes in respect of Confidential Information for which it is the recipient:-

30.2.1 to treat such information as confidential;

30.2.2 not without the disclosing parties proper written consent to communicate or disclose any part of such information to any person except:-

30.2.2.1 only to those employees agents sub-contractors and other suppliers on a need to know basis who are directly involved in the Contract

30.2.2.2 the recipient's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to the knowledge of the Confidential Information in connection with the business of the recipient

30.2.2.3 to ensure that all persons and bodies mentioned in sub condition 30.2.2.2 are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the disclosing party and to use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this sub condition

30.2.2.4 not to use or circulate such information within its own organisation except to the extent necessary for the purposes of the Contract

30.3 The obligations in this condition will not apply to the Confidential Information:-

30.3.1 in the recipient's possession (with full right to disclose) before receiving it; or

30.3.2 which is or becomes public knowledge other than by breach of this condition; or

30.3.3 independently developed by the recipient without access to or use of the Confidential Information; or

30.3.4 lawfully received from a third party (with full right to disclosure)

30.4 The Contractor shall indemnify the Council from and against all claims losses expenses damages and costs arising from the breach of this condition by the Contractor its employees, servants agents and sub-contractors

30.5 The Contractor acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act ("the Act") the text of this Contract, and any Schedules to this Contract, is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Contract or its Schedules is exempt from disclosure in accordance with the provisions of the Act.

30.6 Notwithstanding any other term of this Contract the Contractor hereby gives its consent for the Council to publish this Contract, and Schedules in their entirety, including from time to time agreed changes to the Contract, to the general public in whatever form the Council decides.

30.7 Notwithstanding early termination of the Contract for any reason this condition shall continue in force for a period of three years following the date of such early termination or the expiry date of the Contract.

30.8 No public or press announcements shall be made with regard to the subject matter of this Contract unless the text of such announcement is first approved and initialled by the Council. The Contractor shall not make or authorise the making of any press release or other public statement or disclosure concerning this contract or any transaction contemplated by it without the prior written consent of the Council.

30.9 The Contractor shall arrange that all members of its staff requiring to access the Council's ICT systems or otherwise requiring access to sensitive data by virtue of their duties under the Contract, sign the ICT Security & Operational Standards Required of Third Party Organisations (copies of the current version are available on request). A duly authorised officer of the Council, whose decision shall be final and conclusive, will determine which staff members are required to sign this document. Completed forms shall be returned to the Council's authorised officer prior to commencement of any work. No such access shall be granted to any individual who fails to sign this document.

### 31. **Term**

31.1 This Contract shall commence on the Commencement Date and shall continue for the Term subject to the terms and conditions of this Contract

31.2 This Contract may be extended by the Council giving no less than [2 months] written notice to the Contractor before the end of the initial Term. Such period of extension shall be at the discretion of the Council but shall in any event be for a period of no more than [one year] from the date of the expiry of the initial Term

### 32 **Dispute Resolution**

32.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.

32.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in clause 32.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

32.3 If the parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

### 33 **Governing Law**

33.1 These conditions shall be governed by and construed in accordance with the Law of England and Wales and the Contractor hereby irrevocably submits to the jurisdiction of the English Courts

## **ATTACHMENT A**

### **A1. PROTECTION OF VULNERABLE GROUPS**

A1.1 The parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

A1.2 The Contractor shall:

A1.2.1 ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and

A1.2.2 monitor the level and validity of the checks under this Clause A1 for each member of staff.

A1.3 The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

A1.4 The Contractor shall immediately notify the Council of any information that it Reasonably requests to enable it to be satisfied that the obligations of this Clause A1 have been met.

A1.5 The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, children or adult at risk.

A1.6 The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

## **SCHEDULE 2            GENERAL CONDITIONS**

### **Contents**

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**In addition, the following General Conditions shall also apply to this Contract:-**

### **C1. Contract & Duration**

C1.1 The Provider shall perform the Service from the Commencement Date and shall continue thereafter until such time as either party terminates it in accordance with the Contract.

C1.2 All Services to Individuals shall be subject to the terms and conditions of this Contract.

C1.3 The Contract for the Service for the Individual shall be formed between the Provider and the Purchaser when the Purchaser receives an Individual Purchase Order signed by both parties for that Individual. The Provider shall counter-sign the Individual Purchase Order and return it to the Purchaser by the end of the next working day using the Purchaser's secure email system, or such other secure method as agreed by the Purchaser.

C1.4 The Provider shall supply the Purchaser with an email address for Individual Purchase Orders and other confidential information to be sent to. Access to this email address will be managed by the Provider on "need to know" principles. The Provider shall notify the Purchaser as soon as practicably possible in the event that the email address changes.

## **C2. Monitoring & Review**

C2.1 The Provider shall allow members of the Purchaser's staff reasonable access to any premises of the Provider at any time. Notice shall not necessarily be given to the Provider.

C2.2 The Purchaser shall be entitled to carry out a review of the Service and such other checks to monitor the performance of the Contract and to ensure the Provider's suitability to meet the requirements of the Contract and the Specification at any reasonable time. The Provider shall participate as reasonably requested. This will include (but is not limited to):

(a) Quality Assurance visits at a frequency and in a format to be determined by the Purchaser;

(b) Subject to the provisions of condition 21 (Data Protection) hereof, shall make available records of the Services provided to the Individual as required in the Contract and Specification and any other information reasonably required. This shall include reasonable access to staff and Individual's files;

(c) Such other information reasonably requested e.g. copies of accounts, policies and procedures etc;

(d) Such other Quality Outcome Indicators as listed at C14 (Quality Outcomes Indicators).

## **C3. Co-operation**

C3.1 The Parties must at all times act in good faith towards each other.

C3.2 The Provider must co-operate fully and liaise appropriately with:-

- the Purchaser;
- any third party provider who the Individual may be transferred to or from;
- any third party provider which may be providing care to the Individual at the same time as the Provider; and primary, secondary and social care services.

C3.3 In order to:

- ensure that a consistently high standard of care for the Individual is maintained at all times;
- ensure a co-ordinated approach is taken to promote the quality of Individual care across all pathways spanning more than one provider;
- achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Individuals, employees of the Provider or members of the public.

## **C4. Not Used**

## **C5. Termination, Suspension & Consequences of Suspension**

### **TERMINATION:**

C5.1 Subject to the other Terms of the Contract the Purchaser or the Provider may terminate this Contract upon giving no less than two months written notice (or shorter period by written, mutual consent).

C5.2 During any notice period given in accordance with this Condition the Provider shall be expected to continue to provide the Service save where circumstances render this impossible or when the Purchaser, in its absolute discretion, advises the Provider that it does not wish it to continue to provide the Service.

C5.3 The Purchaser may terminate this Contract forthwith upon written notice (or upon such notice as the Purchaser deems appropriate) in the event that the Provider fails to remain accredited as per condition C5.8 or as a result of a Regulatory Authority report, loss of Registration or action which is deemed as sufficiently serious by the Purchaser.

C5.4 The Purchaser may terminate this Contract forthwith upon written notice (or upon such period of notice as the Purchaser deems appropriate) in the event that the Provider shall fail to perform the Service or shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to rectify such breach within 30 days of being required by the Purchaser in writing to do so.

C5.5 The Contractor shall notify the Council in writing immediately upon the occurrence of any of the following events:-

C5.5.1 where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

C5.5.2 where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity if any event in (C5.5.1) or (C5.5.3) of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

C5.5.3 where the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the Court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors or an administrative receiver, receiver or manager is appointed by a creditor or by the Court, or possession is taken of any of its property under the terms of a charge.

C5.6 On the occurrence of any of the events described in condition C5.5 or if the Contractor shall fail to perform the Contract or shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach

within 30 days of being required by the Council to do so, or where the Contractor is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part V11 of the Mental Health Act 1983 the Council shall be entitled to terminate this Contract by notice to the Contractor with immediate effect

C5.7 The Purchaser may terminate this Contract forthwith upon written notice (upon such period of notice as the Purchaser deems appropriate) in the event that the Provider shall:

- fail to proceed diligently and regularly in the provision of the Service; or
- have failed to comply with legislative requirements; or
- is in breach of Condition 20 (Assignment and Sub-contracting); or
- is in breach of Condition 23 (Bribery and Corruption); or
- is in breach of Condition 30 (Confidentiality).

C5.8 By law, all organisations that provide Regulated Activities, as listed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, must be registered with the Care Quality Commission. Where a Provider is required to be registered with CQC, they shall notify the Purchaser immediately in the event:-

- that the Provider intends to de-register
- that CQC suspend or cancel registration

The Contract shall terminate forthwith with or without written notice in these circumstances.

C5.9 The Purchaser may terminate this Contract forthwith with or without written notice (or upon such period of notice as the Purchaser deems appropriate) if a significant or large scale safeguarding adults enquiry is upheld against the Provider or any member of staff. The decision as to whether, or not, such a complaint against the Provider is valid and justified shall be made by the Contracts Manager. This decision shall be final and conclusive. The Purchaser reserves the right to suspend the Service whilst any investigation into an allegation takes place.

C5.10 In the event that:

C5.10.1 the Contract is terminated in accordance with the provisions of this Condition; or

C5.10.2 the Provider shall fail to deliver the Service or any proportion thereof in accordance with the Contract then, in addition to any other common law remedies available to the Purchaser or any further remedies available to it pursuant to the terms of the Contract, the Purchaser may purchase other services similar to the Service to make good:

- such default or breach; or
- in the event that the Contract is terminated the Service remaining to be delivered:

The cost of purchasing other services so far as they exceed the amount which would have been payable to the Provider for them if they had been delivered in accordance with the Contract shall be recoverable from the Provider together with such sums as

shall compensate the Purchaser for the administrative costs incurred as a result of such default or termination. The provisions of this Condition are without prejudice to any other remedies available to the Purchaser for breach of contract.

C5.11 Termination under this condition C5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council.

### **SUSPENSION AND CONSEQUENCES OF SUSPENSION**

C5.12 A suspension event shall have occurred if:

C5.12.1 the Purchaser reasonably considers that a breach by the Provider of any obligation under this Contract:

- may create an immediate and serious threat to the health or safety of any Individual; or
- may result in a material interruption in the provision of any one or more of the Services; or

C5.12.2 the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each of the above is a **Suspension Event**).

C5.13 Where a Suspension Event occurs the Purchaser:

C5.13.1 may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Purchaser that it is able to and will perform the suspended Service, to the required standard; and

C5.13.2 will where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

C5.14 During the suspension of any Service under condition C5.12, the Provider must comply with any steps the Purchaser reasonably specifies in order to remedy the Suspension Event, including where the Purchaser's decision to suspend pursuant to condition C5.12 has been referred to dispute resolution under condition 32 (Dispute Resolution).

C5.15 During the suspension of any Service under condition C5.12, the Purchaser may remove any Individual from the Premises whilst any investigation into an allegation takes place or has reason to believe that the Individual/s are being placed at unacceptable risk. The Purchaser may terminate the Individual Purchase Order forthwith with or without written notice as the Purchaser deems appropriate.

C5.16 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Individuals as a result of the suspension of the Service.

C5.17 The Purchaser reserves the right to inform the Regulated Authority CQC and other Commissioning Authorities (including Health colleagues) across the South East Region (and

further if information is requested) of an Embargo.

C5.18 Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Purchaser in respect of any Losses directly and reasonably incurred by the Purchaser in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).

C5.19 Following suspension of a Service the Provider must at the reasonable request of the Purchaser and for a reasonable period:

C5.19.1 co-operate fully with the Purchaser and any successor provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Individuals, employees of the Purchaser or members of the public; and

C5.19.2 at the cost of the Provider:

(a) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative successor provider; and

(b) deliver to the Purchaser all materials, papers, documents and operating manuals owned by the Purchaser and used by the Provider in the provision of the suspended Service.

C5.20 As part of its compliance with condition C5.19 the Provider may be required by the Purchaser to agree a transition plan with the Purchaser and/or any alternative successor provider.

C5.21 If it is determined, pursuant to condition 32 (Dispute Resolution), that the Purchaser acted unreasonably in suspending a Service, the Purchaser must indemnify the Provider in respect of any loss directly and reasonably incurred by the Provider in respect of that suspension.

C5.22 During any suspension of a Service the Provider where applicable will implement the relevant parts of the Facilities Management Strategy to ensure there is no interruption in the availability to the relevant Service.

C5.23 The Purchaser operates a Cautions List through its Care Governance Board procedures, as detailed at Attachment E (Provider's Guide to Care Governance). In addition to any other remedies available to the Purchaser pursuant to the terms of the Contract, the Purchaser may suspend or terminate the Contract or an Individual Purchaser Order in accordance with Attachment E (Provider's Guide to Care Governance) in the event:-

- the Provider fails to meet CQC standards;
- a safeguarding or quality concern is raised;
- of financial concerns;

- complaints;
- a failure to provide information reasonably requested by the Purchaser in accordance with this Contract, or persistent failure to provide the information in a timely manner;
- fails to meet the requirements of C14 Quality Outcome Indicators

This list is not exhaustive.

C5.24 In the event of any suspension of any Service under condition C5.12, condition D1.5 shall apply.

## **C6. Emergency Closure**

C6.1 In the event of an emergency closure or a potential emergency closure of the Provider, the Purchaser shall be informed immediately by the Provider.

## **C7. Change of Ownership**

C7.1 The Provider shall immediately inform the Purchaser of any change affecting the ownership of the Provider in addition to notifying any relevant registration authority.

C7.2 The Provider must notify the Purchaser if:

- there is a change in who controls the majority of the shares in, or the voting rights of shareholders or members of the Provider; or
- the Provider merges with another organisation(s);
- the Provider transfers engagements to another organisation(s)
- as a result of any misconduct or mismanagement on the part of the Provider, a regulatory body directs an inquiry into, or makes an order of any kind in relation to, the Providers affairs; or
- any registration which the Provider must maintain in order to provide the Service is withdrawn or cancelled, or is threatened to be withdrawn or cancelled

C7.3 In the event that the Provider wishes to transfer the Contract to any new owner the Provider shall request that the Purchaser shall assign the Contract. The Purchaser may refuse any request for assignment in its absolute discretion.

## **C8. Declaration of Interests**

C8.1 The Provider shall inform the Purchaser in writing if any elected member or employee of the Purchaser is involved in any capacity with the Provider at any time during the term of the Contract.

## **C9. Conclusion of Contract**

C9.1 Subject to conditions 21 (Data Protection) and 30 (Confidentiality), upon the termination of this Contract the Provider shall give to the Purchaser or to any person the Purchaser may specify if requested, all data, information, files, records, documents and the

like (in whatever format they may be held) which the Purchaser has supplied to the Provider for the purposes of this Contract (which may have subsequently been altered by the Provider) in connection with the carrying out of the Providers obligations under this Contract.

C9.2 Unless the Purchaser authorises the Provider to do so, or it is required at law to do so, it must not retain any copies of the information etc referred to in Condition C9.1.

## **C10. Audit of Records**

C10.1 The Provider must comply with all reasonable requests made by CQC, the National Audit Office, any authorised person and the authorised representative of the Local Healthwatch for entry to the Providers premises and/or premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services.

C10.2 The Provider similarly agrees to make available all records maintained on volunteers and staff recruitment and training and in respect of Disclosure and Barring Check (DBS) and related checks as set out in the Specification at Attachment B. The Provider shall allow the Purchaser full access to its premises upon reasonable request to allow such inspection or audit to take place and shall provide all reasonable facilities, resources and assistance to support this process. In this Condition the term “records” means all records in any medium (whether written, computer readable or otherwise) including accounts, data, documents, drawings and private notes about the Purchaser and all copies and extracts of them made or required by the Provider in the course of this Contract.

## **C11. Safeguarding adults**

C11.1 If a member of the Provider’s staff or volunteer becomes aware of abuse or suspects that abuse may be happening to an adult, then the Provider’s Manager must inform the Intake Team, by telephone on the same day of the concern being raised (as laid out in the Berkshire Multi-agency Adult Safeguarding Policy and Procedures 2017 for safeguarding adults or any such document from the Purchaser that supersedes this publication). If a Provider has safeguarding concerns out of normal office hours, then they should contact the Emergency Duty Team by telephone.

C11.2 The Provider shall ensure that all staff and volunteers engaged in the provision of the Services are:

C11.2.1 registered with the Disclosure and Barring Service (DBS) in accordance with the Safeguarding Vulnerable Groups Act 2006 as amended and regulations or orders made thereunder; and a check against the adult’s barred list or the children’s barred list, as appropriate: and

C11.2.2 are subject to a valid enhanced DBS check; and

C11.2.3 the Provider shall monitor the level and validity of the checks under this condition for all staff and volunteers.

C11.3 The Provider warrants that at all times for the purposes of this Contract:

C11.3.1 it is appropriately registered in relation to all persons who are or will be employed or engaged by the Provider in the provision of the Services, and

C11.3.2 it has no reason to believe that any such person:

C11.3.2.1 is barred from the activity; or

C11.3.2.2 is not registered with the DBS, in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made there under, as amended from time to time.

C11.3.2.3 has in place a written procedure to comply with any CQC requirement regarding the need to undertake further DBS checks on their staff, a copy of which shall be provided to the Council upon request

C11.4 The Provider shall immediately notify the Purchaser of any information that it reasonably requests to enable it to be satisfied that the obligations of this condition C11 have been met.

C11.5 The Provider shall refer information about any staff carrying out the Services to the DBS where it removes permission for such staff to carry out the Services (or would have, if such staff had not otherwise ceased to carry out the Services) because, in its opinion, such staff has harmed or poses a risk of harm to the adult at risk.

C11.6 The Provider shall not, without the prior written consent of the Purchaser, employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out the Service, or may present a risk to Individuals or any other person.

C11.7 The Purchaser's consent under condition C11.6 shall be conditional on appropriate safeguards being put in place as the Purchaser in its absolute discretion, and in accordance with any directions made under the Safeguarding Vulnerable Groups Act 2006, may determine.

C11.8 The Provider agrees to follow the "Berkshire Multi-agency Adult Safeguarding Policy & Procedures 2017 and the Care Quality Commissions "roles and responsibilities for safeguarding children and adults" or any amended protocol thereunder or any relevant superseding protocol. Copies of this document can be found at:

<http://www.sabberkshirewest.co.uk/practitioners/berkshire-safeguarding-adults-policy-and-procedures/> (subject to change).

C11.9 The Provider and its staff and volunteers shall not act as either executors or as a witness to the will of any Person. Nor shall they accept power of attorney status for any Person or act in the capacity of a certificate Provider for a Lasting Power of Attorney or any

other Power of Attorney.

C11.10 The Provider shall respect the confidentiality of Individuals and adhere to the Information Sharing and Assessment Protocol within the Berkshire Multi-agency Adult Safeguarding Policy & Procedures 2017, which summarises local, 'arrangements to work effectively with other organisations to safeguard and promote welfare, including arrangements for sharing information;' (subject to any relevant provisions of the Data Protection Act).

C11.11 The Provider shall disseminate and implement 'appropriate whistle-blowing procedures, and a culture that enables issues about safeguarding and promoting the welfare of children to be addressed'.

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<sup>1</sup> Berkshire Multi-agency Adult Safeguarding Policy & Procedures

<http://www.sabberkshirewest.co.uk/practitioners/berkshire-safeguarding-adults-policy-and-procedures/>

<sup>11</sup> UK legislation: Safeguarding Vulnerable Groups Act 2006

<http://www.legislation.gov.uk/ukpga/2006/47/contents>

## **C12. Mental Capacity Act**

C12.1 The Provider shall comply with the requirements of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards (DOLS) which were set up under the Act to provide procedures for authorising the deprivation of liberty in a hospital or care home of someone who lacks the mental capacity to make decisions about their own care.

C12.2 There are 5 core principles that underpin the Mental Capacity Act 2005 as follows:

C12.2.1 A person must be assumed to have capacity unless it is established that they lack capacity.

C12.2.2 A person is not to be treated as unable to make a decision unless practicable (doable) steps to help them to do so unless all practical steps to help have been taken without success.

C12.2.3 A person is not to be treated as unable to make a decision merely because they make an unwise decision.

C12.2.4 An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.

C12.2.5 Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom on action.

C12.3 These principles must be followed in any assessment of or decision about a Person's capacity. The MCA 2005 and the Deprivation of Liberty Safeguards supplement can be found at:

[http://webarchive.nationalarchives.gov.uk/20130104224411/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://webarchive.nationalarchives.gov.uk/20130104224411/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476) (subject to change)

C12.4 Where an Individual is unable to express their views/decisions or has been assessed as lacking capacity and they have no family or friends who are appropriate to consult for their decision; the Provider will ensure that each Individual receives assistance with this process which may mean accessing the Independent Mental Capacity Advocate (IMCA) service under the Act.

### **C13. Quality Outcome Measures**

C13.1 The Provider must carry out the Services in accordance with the law and good clinical practice and must, unless otherwise agreed (subject to the law) with the Purchaser in writing:-

C13.1.1 Comply, where applicable, with the registration and regulatory compliance guidance of the Care Quality Commission (CQC) and any other Regulatory Body;

C13.1.2 Respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;

C13.1.3 Consider and respond to the recommendations arising from any audit, death, serious incident report or patient safety incident report;

C13.1.4 Comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;

C13.1.5 Respond to any reports or recommendations made by Local Healthwatch;

C13.1.6 Comply with the Quality Outcomes Indicators set out in C14 (Quality Outcomes Indicators).

C13.1.7 Comply with all relevant national standards, such as the Accessible Information Standard (SCCI1605) issued by NHS England.

### **C14. Quality Outcome Indicators**

Quality Outcomes Indicators	Threshold	Method of Measurement
Assessments completed within 48 hours of a request	95%	Data Collection
Rooms are ready for next occupants in accordance with 3.8.3 of Specification	99%	Data Collection
All correct Individual Purchaser Orders shall be signed	90%	Data

and returned within two working day of receipt		Collection
The Provider shall provide copies of current insurance certificates on an annual basis when requested by the Purchaser	100%	Data Collection
The Provider shall report any incidents detailed at C15 within the timescales indicated,	100%	Data Collection & Contract Monitoring
The Provider shall meet the requirements for staff training as detailed in Attachment B Specification	100%	Contract Monitoring

### **C15. Incidents Requiring Reporting**

C15.1 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify serious incidents to any Regulatory Body as applicable, in accordance with the Law.

C15.2 If the Provider gives a notification to the CQC or any other Regulatory Body under condition C15 which directly or indirectly concerns any Individual, the Provider must send a copy of it to the Purchaser within ten working days.

C15.3 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing lessons learned from serious incidents, patient safety incidents and non-Individual safety incidents that are agreed between the Provider and the Purchaser and set out in Attachment D (Incidents Requiring Reporting Procedure).

C15.4 Subject to the Law, the Purchaser shall have complete discretion to use the information provided by the Provider under this condition C15 (Incidents Requiring Reporting Procedure).

C15.5 The Provider shall:-

- (a) notify the Purchaser of any CQC Notifiable Incidents within five days of the incident being reported to CQC
- (b) Notify the Purchaser of any Enforcement or Warning Notice issued by CQC within three days of receipt of said Enforcement Notice
- (c) Inform the Purchaser of the outcome of any inspection by a local authority which leads to a flag/embargo status within one working day of being notified of the flag/embargo

- (d) Inform the Purchaser's Contracts Team if there is any change of registered manager within five days of the change

In accordance with condition C5.23 (Suspension & Consequences of Suspension) failure to provide this information may see the Provider referred to the Care Governance Board which might result in the Service being embargoed.

## **C16. Emergency Agreement**

C16.1 The Emergency Agreement process shall only be instigated when it is not possible to comply with the standard procedure for putting an Individual Purchase Order in place.

C16.2 Emergency Agreements may be for new placements, or extensions to existing placements, the details of which will be sent by the Purchaser to the Provider via email.

C16.3 An Individual Purchase Order will be issued within two working days of the Emergency Agreement process being instigated which shall record the start date of the package. The Individual Purchase Order shall replace completely the email issued as part of the Emergency Agreement process.

## **C17. Transport**

C17.1 The Provider shall ensure that all vehicles employed in the performance of this Contract are properly licensed, insured, taxed, and tested and that they comply with all regulations and requirements relating to the construction, maintenance, and operation of such vehicles. For the benefit of doubt, this shall apply whether the employee uses their own vehicle, or a vehicle owned by the Provider.

C17.2 All drivers of any vehicles used must be suitably qualified, insured, and possess the relevant valid driving licence.

C17.3 Any events that affect or alter a Worker's ability to drive or the validity of their driving licence must be reported to the Provider immediately.

C17.4 The Provider hereby indemnifies the Purchaser from and against all losses costs expenses liabilities damages and claims arising from the failure of the Provider its servants or agents to duly perform its obligations pursuant to conditions C17.1, C17.2 and C17.3 above and arising further from any act or omission of the Provider its servants or agents in respect of the non performance of the said obligations.

## **C18. Notices**

C18.1 No notice to be served upon the Provider shall be valid and effective unless it is delivered by hand or by post or by registered post or by the recorded delivery service or transmitted by telex telemessage facsimile transmission or other means of telecommunication, including email, resulting in the receipt of a written communication in permanent form and sent or transmitted to the Nominated Manager responsible for contracts

at the Providers principal place of business or to such other address as the Provider may have substituted

C18.2 No notice to be served upon the Purchaser shall be valid or effective unless it is delivered by hand or by post or by registered post or by the recorded delivery service or transmitted by telex telemessage facsimile transmission or other means of telecommunication, including email, resulting in the receipt of a written communication in permanent form and sent or transmitted to the Contracts Team Manager, Adult Social Services and Health Department at Bracknell Forest Council Time Square Market Street Bracknell Berkshire RG12 1JD or to such other address as the Purchaser may have substituted

C18.3 Any notice to be served shall be deemed to be given on the date that it is delivered by hand or transmitted by telex telemessage facsimile transmission or other means of telecommunication or if sent by post or by recorded delivery on the date when it would be delivered in the ordinary course of post in normal business hours.

## **SPECIAL CONDITIONS**

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D12	Falls
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In addition, the following Special Conditions shall also apply to this Contract:-

### **D1. Payment Terms**

D1.1 The Purchaser shall make payment to the Provider for Services properly performed, in accordance with the Specification and the Block Price and details set out in the Individual Purchase Order.

D1.2 The initial Block Price shall remain fixed for the first 12 months following the Commencement Date. Thereafter, in the event that the Council has sufficient funding the Block Price may be reviewed on the 1<sup>st</sup> April of each year, subject to a maximum adjustment no greater than the amount of the change in the Retail Prices all items index over the preceding year.

D1.3 Any increase will be confirmed by the Purchaser to the Provider in writing and be applied from the anniversary of the Commencement Date. In determining the level of funding the award from the Department of Health in respect of NHS Continuing Healthcare and NHS Funded Nursing Care or other grant funding, where this is applicable, will be taken into account.

D1.4 The Purchaser will send to the Provider an automated payment for every 28 day period, in accordance with Attachment G 4-weekly Period; which will be re-issued on an annual basis. Payments will be 14 days in arrears of the end of the 28 day payment period.

D1.5 Payment for a Void or an Individuals absence, planned or not planned, will be in accordance with the following, unless agreed otherwise with the Purchaser in writing:-

D1.5.1 After four weeks the Block Price shall be reduced to 80% and return to the full Block Price once the Void is filled or on the date an absent Individual returns

#### D1.6 Not Used

D1.7 Where the Provider is under an Embargo the Purchaser shall not pay the Provider for any Voids. This shall apply whether the Embargo is imposed by the Purchaser, or the Regulatory Authority, or during any self-Embargo, or whether provision is defined as permanent or Short Term Care.

D1.8 Where the Provider Embargo status has been lifted the Parties will agree a phased return on placement of new Individuals and the start date of when Void rates are entitled to be paid.

D1.9 Where the Provider is acting as appointee of an Individual it shall handle the Individuals affairs promptly and efficiently with due care. In particular, the Individuals Personal Expenditure Allowance due under Charging for Residential Accommodation Guidance, or other amounts due to the Individual shall be credited to the Individual by the Provider.

D1.10 In accordance with the provisions of Schedule 3 Payment Terms, the Provider may but is not obliged to charge interest at the rate of 2% over Lloyds base lending rate on any late payment save where any payment is properly disputed or has been suspended in accordance with the terms of this Contract.

D1.11 Payment of the Block Price shall not operate as a waiver of any rights of the Purchaser under the Contract. The Purchaser reserves the right to make a deduction from the Block Price where the Provider has been in breach of the Contract provided that the deduction shall be commensurate with the breach and notified by the Purchaser to the Provider in writing.

D1.12 Subject to Attachment C 1.1 the Block Price is the total price for the Service. The Purchaser shall not make any further payments to the Provider to take into account NHS Continuing Care funding or any further grant or other payments received by the Purchaser from other persons or statutory bodies

D1.13 The Purchaser may, following an assessment, require a contribution towards the Block Price of the Service from the Individuals which shall be calculated in accordance with any relevant legislation or any other relevant guidance.

D1.14 The amount and details of any contributions from other persons or statutory bodies received by the Provider in respect of the Individual must be notified by the Provider to the Purchaser. The Provider must notify the Purchaser immediately of any changes in such contributions. The Purchaser may amend the Block Price to reflect any changes in contributions.

D1.15 Where contributions are dependant on an assessment of an Individual's circumstances the Provider shall allow such access to the Individual and the Individual's Information as may reasonably be required to enable such an assessment to take place.

D1.16 In order to ensure that Individuals receive all possible benefits and that the Individuals Contribution is maximised, the Provider shall pass to the Individual all information required by and made available by the Purchaser to enable the Individual to receive his full

entitlement of benefits and/or income.

## **D2. Termination & Suspension of Services Provided to Individuals**

### Permanent Placements

D2.1 The first 30 days of the Term shall be regarded as a “trial period” in order to ensure that the Service provided meets the Individual’s assessed needs and if not either party may terminate the Individual Purchase Order by giving to the other Reasonable Notice in writing. “Reasonable Notice” shall normally be a period of seven days but shall be dependent on the circumstances. Examples of the latter are detailed in condition D2.1.1 (but without limitation).

D2.1.1 The Purchaser may terminate the Individual Purchase Order forthwith if following a safeguarding Assessment conducted under the Safeguarding Processes of the local authority for the area where the Service is provided a Safeguarding Plan has as an outcome that the Individual should no longer receive the Service from the Provider. The Safeguarding Plan shall be final and conclusive

D2.2 Following the trial period and subject to the other Terms of the Contract the Purchaser or the Provider may terminate the Individual Purchase Order upon giving no less than one months written notice in writing (or shorter period by written, mutual consent), subject to condition D2.1.1.

D2.3 During any notice period given in accordance with this condition the Provider shall be expected to continue to provide the Service save where circumstances render this impossible or when the Purchaser, in its absolute discretion, advises the Provider that it does not wish it to continue to Provide the Service.

D2.4 Where an Individual’s financial circumstances change and the Individual has capital over the threshold, the Individual shall become a self-funder, and will not be part of this contract.

D2.5 If, upon re-assessment by either party, the Individual’s needs are deemed to have changed to the extent that the Provider is unable to meet the assessed needs within the agreed funding or to the extent that the Provider does not have the appropriate staffing or expertise to maintain the delivery of the Service:

D2.5.1 the parties may by written mutual consent terminate the Individual Purchase Order forthwith;

D2.5.2 either party may terminate the Individual Purchase Order by giving to the other Reasonable Notice. “Reasonable Notice” shall normally be a period of seven days but shall be dependent on the circumstances.

D2.6 The Purchaser may remove an Individual from the premises and suspend the Individual Purchase Order forthwith with or without written notice (or upon such notice as the Purchaser deems appropriate) during any investigation into a safeguarding concern or enquiry.

D2.7 In the event that an Individual Purchase Order is suspended in accordance with the provisions of condition D2.6 and the complaint is upheld the Individual Purchase Order shall terminate from the date of suspension.

D2.8 The Purchaser reserves the right to suspend/cease any new placements and review current placements if the Regulated Authority determines that the Service has become inadequate. In this situation the Provider shall send the Purchasers Contracts Manager a copy of the action plan/s as soon as created.

D2.9 The Purchaser reserves the right to terminate placement/s without notice if the Registration Authority determines that the Service has been deemed inadequate. If this happens, the Purchaser will require action plans to be submitted with a copy of the assessment report.

D2.10 The Purchaser may terminate the Individual Purchase Order upon 30 days written notice to the Provider in the event that the Individual fails to pay the Individual's contribution

D2.11 In the event where an Individual is absent for a period of time and the Purchaser decides that it is not appropriate to keep the placement available, the Purchaser shall serve no less than one weeks written notice of termination (or shorter period by written mutual consent).

D2.12 In the event where an Individual is absent for a period of six weeks the Individual Purchaser Order will be deemed to have expired unless otherwise agreed.

D2.13 NOT USED

D2.14 In accordance with D2.13 upon the expiration of the notice period for an Individual Purchase Order, should there be property of the Individual remaining at the Premises, the Provider may pack up those belongings and keep them in a safe and secure place to free up a bedroom. Where the Purchaser is responsible for the removal of property, the Purchaser may enter into a separate agreement for the property. Where the responsibility for the property belongs to a third party, the Provider may (acting reasonably) wish to enter into a separate agreement regarding the storage / removal of the property.

D2.15 In relation to D2.1.1, D2.6 D2.7 D2.8 & D2.9 the Purchaser, acting reasonably, reserves the right not pay for any Void that occurs as a result of these conditions. The Block Price shall re-commence on the date the Void is filled.

### Short Term Care Placements

D2.15 Either party may terminate the Individual Purchase Order by giving to the other "Reasonable Notice" in writing. "Reasonable Notice" shall normally be a period of two days: but shall be dependent on the circumstances. Examples of the latter are detailed at D2.1.1 (but without limitation).

## **D3. Temporary Absences from the Premises**

D3.1 Should the Individual discharge himself from the Premises, this shall be treated as a temporary absence. The Provider shall inform the Purchaser immediately of such an absence (except where the absence is pre-planned e.g. for a holiday or visit to relatives).

D3.2 If the Individual should be admitted to hospital during the Term, or be absent for any other reason, the Provider shall inform the Purchaser by emailing the [homesupport.brokerageteam@bracknell-forest.gov.uk](mailto:homesupport.brokerageteam@bracknell-forest.gov.uk) within one working day of admission. The Brokerage Team will be responsible for informing the relevant team/practitioner

D3.3 Where there have been temporary absences, the Provider shall complete and return a Notification of Absence Form to the Finance Team within seven days of the end of the relevant month.

D3.4 Should the Individual be absent from the Premises (for hospitalisation or other reason) then:

D3.4.1 the Purchaser shall decide whether or not to keep the placement available for the Individual on his return

D3.4.2 Should the Purchaser decide not to keep the placement available for the Individual for the period of absence the Purchaser shall serve five days written notice of termination, or shorter period by written mutual consent

#### **D4. Death of the Individual**

D4.1 Should the Individual die the Provider shall inform the Purchaser within one working day.

D4.2 In accordance with condition D4.1 the Individual Purchaser Order shall automatically terminate two days after the date of death, regardless of whether the Individual dies in the Premises or elsewhere e.g.in hospital.

D4.3 In the event of the death of the Individual the Provider shall be responsible for agreeing the funeral arrangements with the Individual's family or representative and to arrange for the room to be cleared within two days after the date of death.

D4.4 If an Individual is admitted to hospital the Provider shall inform the Purchaser within one working day. If either party is subsequently informed that the Individual has died, that party shall inform the other party within one working day.

D4.5 Any expenses incurred by the Provider in relation to the Individual shall be the sole responsibility of the Provider save where previous agreement to those expenses being incurred has been agreed by the Purchaser in writing. For the avoidance of doubt the cost of obtaining an undertaker to remove the body of the Individual shall be an expense that must be authorised by the Purchaser where the Individual's family have not paid for this.

## **D5. Deprivation of Liberty**

D5.1 The Government has added provisions to the Mental Capacity Act 2005: the Deprivation of Liberty Safeguards (MCA DoLS). The Safeguards have been created to ensure that any decision to deprive someone of their liberty is made following defined processes and in consultation with specific authorities. Please refer to the code of practice which can be found at [http://webarchive.nationalarchives.gov.uk/20130104224411/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://webarchive.nationalarchives.gov.uk/20130104224411/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476) (subject to change)

D5.2 Every effort should be made, in both commissioning and providing support and treatment, to prevent deprivation of liberty. If deprivation of liberty cannot be avoided, it should be for no longer than is necessary. It should be proportionate and in the Person's best interests.

D5.3 The Provider must keep detailed records as part of the MCA DoLS process. To help meet this requirement, and to make sure the administration of the MCA DoLS systems is as simple as possible, the Department of Health has developed a number of standard forms. If used without alteration, these ensure the Provider complies with the required standards. Altogether there are six forms that the Provider may need. Should you need copies of these forms, email [DOLS@bracknell-forest.gov.uk](mailto:DOLS@bracknell-forest.gov.uk) (subject to change)

## **D6. Equipment**

D6.1 The Provider shall provide and maintain at its own cost (unless otherwise agreed in writing with the Purchaser) all Equipment necessary for the supply of the Services and in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services .

## **D7. First Party Top-ups &Third Party Top-Ups**

D7.1 The Provider shall not enter into a First Party Top-up or Third Party Top-Up arrangement direct with the Individual or third party, as relevant. In the event that an Individual or third party wishes to make a top-up the Provider shall refer the Individual to the Purchaser. Failure to do so could result in the Purchaser refusing to enter into a contract with the Provider for the Service, or moving the Individual to alternative accommodation

## **D8. Indemnity & Insurance Requirements**

D8.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and indemnities pursuant to the Contract the Contractor shall indemnify the Council against all actions claims demands losses charges costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly

from any defect in the performance by the Contractor of the Services or the negligent or wrongful act or omission of the Contractor

D8.2 The Contractor shall have in force and shall require any sub-contractor to have in force:-

D8.2.1 The Provider shall obtain Employers Liability insurance cover in the sum of not less than £5,000,000 (five million pounds) in respect of any such personal injury to or death of any person arising under a contract of service with the Provider and arising out of an incident occurring during the course of such person's. The Purchaser shall reserve the right to review the requirement in respect of the amount of cover annually.

D8.2.2 The Provider shall obtain Public Liability insurance cover in the sum of not less than £10,000,000 (ten million pounds) or such greater sum as the Provider may choose in respect of any one incident and the Provider's insurance policy effecting such cover shall have the interest of the Purchaser endorsed thereon, or shall otherwise expressly by its terms confer its benefits upon the Purchaser. The Purchaser shall reserve the right to review the requirement in respect of the amount of cover annually. This shall include an extension to cover clinical negligence (otherwise known as treatment risks or medical malpractice) where the provision or non-provision of any part of the Services (or any other services under this Contract) may result in a clinical negligence claim to the sum of £5,000,000 (five million pounds)

D8.2.3 The Provider shall obtain professional indemnity insurance in the sum of no less than £1,000,000 (one million pounds) throughout the Term and shall continue to maintain the same in force for a period of three years following the termination of the Contract. The provisions of this condition D8.2.3 (Indemnity & Insurance) shall survive the termination of the Contract and remain in full force and effect for six years following the date of termination.

D8.3 The policy or policies of insurance referred to in condition D8 shall be provided to the Council whenever it requests together with satisfactory evidence of payment of premiums

D8.4 Any damage caused to any Individuals property or any loss of Individuals property, by the Providers staff or agents acting negligently shall be made good by the Provider within 28 days of the damage having been caused and at its own expense. The Purchaser should be notified as soon as reasonably practicable, but no longer than two working days after the damage occurred, detailing the damage caused, how it was caused and the estimated cost.

## **D9. Handling Individual's Money**

D9.1 The Provider shall have a policy on Handling an Individual's Personal Money, which shall cover as a minimum, a requirement that the Provider maintains a separate account for each Individuals' money with appropriate audit trail of Individuals' contributions and expenditure. A copy of the policy shall be made available to the Purchaser on request.

D9.2 The Provider shall allow the Purchaser reasonable access to Individuals' records in order to audit compliance with the Purchasers policy and to investigate any financial concerns.

## **D10. Care Governance**

D10.1 In accordance with Attachment E Providers Guide to Care Governance, the Purchaser may offer advice and support to the Provider in order to assist the Provider to bring about sustained improvements and to provide a safe service. The Purchaser reserves the right to charge the Provider for the support. Where a charge is to be applied the Purchaser shall agree this with the Provider in advance and confirm the agreement in writing.

## **D11. Facilities Management**

D11.1 The Provider shall evidence to the reasonable satisfaction of the Purchaser, that they have a facilities management strategy that demonstrates an integrated approach to operating, maintaining, improving and adapting the buildings and infrastructure of the organisation in order to create an environment that strongly supports the primary objectives of that organisation in order to ensure that the Service is provided in a safe and effective environment. This will include:

D11.1.1 maintaining a log of dates indicating when services are required on equipment, and indicating the date the service was completed. Services should be carried out in accordance with the manufacturers guidance or industry best practice

D11.1.2 undertaking a general risk assessment of the premises to identify what controls are necessary and how the systems will be managed and maintained. The results of the general risk assessment should be taken into account when completing an Individuals Support Plan. This should include areas such as; staff locking an empty bathroom when leaving a bathroom with water in the bath; ensuring that the bath and shower water temperatures are thermostatically controlled in line with the HSE in order to prevent scalds; and that the temperature of circulating hot water is in line with the HSE in order to avoid risks associated with Legionella. This list is not exhaustive.

## **D12. Falls**

D12.1 The Provider shall have a procedure in place for dealing with falls by an Individual. This shall include completing an incident report form and notifying the Purchaser within two working days of an Individual requiring medical assistance following a fall.

## **D13. Exit Provisions**

D13.1 The Provider shall comply with the exit provisions set out in Attachment I.