

Dated

202X

HAMPSHIRE COUNTY COUNCIL

-and-

**[NAME OF COMPANY/CHARITY/PARTNERSHIP/SOLE
TRADER]**

CALL OFF CONTRACT FOR SERVICES

For delivery of Residential Nursing Services at the Home:

[NAME OF CARE HOME]

Lot 1/2/3/4

Reference: AS15180A

©Adults' Health and Care Department
Hampshire County Council
Elizabeth II Court
The Castle
Winchester SO23 8UJ

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THIS AGREEMENT is dated

202X

BETWEEN

- 1 **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire SO23 8UJ (the “**Council**”); and
- 2 **NAME OF COMPANY/CHARITY/PARTNERSHIP/SOLE TRADER**
[incorporated and registered in England and Wales with company number (INSERT NO.)] **OR** [a charity registered in England and Wales with charity number (INSERT NO.)] whose [registered (company)] [principal (charity)] office is at [INSERT ADDRESS] (the “**Home**”).

WHEREAS

- A. The Council published a call off from the **Care Home Framework** on the [XX XXX 202X] for eligible providers to deliver long term residential and or nursing care (“the Services”).
- B. The Council has selected the Home to provide the Services at the Home and the Home is willing and able to provide the Services in accordance with the terms and conditions of this Agreement.

AGREED TERMS

1. INTERPRETATION AND DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

- | | |
|-------------------------|--|
| Agreement: | the Conditions of Contract and all Schedules to this Agreement as the same may be amended, modified or supplemented from time to time in accordance with these provisions; |
| Applicable Laws: | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body which apply to the provision of the Services; |
| Audit: | means an audit conducted pursuant to clause 14; |

Auditor:	means an external or internal auditor as the context requires.
Background IPR:	any Intellectual Property Rights created, invested, authored, or developed by a party prior to the Commencement Date;
Best Industry Practice:	means standards, practices, methods and procedures conforming to the Applicable Laws and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
Branding Guidelines:	means the Council's branding guidelines which can be found www.hants.gov.uk/logos .
Business Continuity Plan:	a written plan which establishes a coherent framework that guards against business disruption in case of unforeseen events;
Call-Off Contract:	means the legally binding agreement(s) (made pursuant to the provisions of the Care Home Framework Agreement) for the provision of Services made between a contracting body and the Home comprising of the Home's tender at call-off stage and the contracting body's Call-Off Terms and Conditions
Call-Off Terms and Conditions:	means the terms and conditions published by the Contracting Bodies in respect of individual call-offs.
Care Certificate:	as defined by Skills for Care (the strategic workforce development and planning body for adult social care in England) or any successor body.
Care Plan:	the document setting out the care to be provided to an Individual by the Home;

Care Quality Commission:	the independent regulator of health and social care in England and any successor bodies.
Change:	any change to this Agreement including to any of the Services;
Change Control Procedure:	the procedures for varying provisions to this Agreement specified in Schedule 7;
Change of Control:	shall have the same meaning as set out in section 450 and 451 of the Corporation Tax Act 2010.
Choice of Accommodation Policy:	means the Council's published policy which advises of the process and underpinning ways of working that supports how the Council purchases placements for individuals who are assessed as having eligible needs.
Commencement Date:	[INSERT DATE]
Complaint:	means any formal complaint raised by any Contracting Body in relation to the performance of this Care Home Framework Agreement or any Call-Off Contract in accordance with Clause 29
Consents:	all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services;
Contracting Bodies:	means Hampshire County Council, Hampshire and Isle of Wight Integrated Care Board and Southampton City Council as set out in the Find a Tender Notice for the Care Home Framework. The term "Contracting Body" means any one of the Contracting Bodies and shall include any successor bodies.
Contract Year:	a period of twelve (12) months commencing on the Commencement Date or on an anniversary of the Commencement Date;

Controller, Processor, Data Subject, Personal Data, Special Category Data, Personal Data Breach, Data Protection Officer:

take the meaning given in the UK GDPR.

Council's Data:

any data (including any Personal Data relating to the Staff, Individuals or suppliers of the Council), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to the Home by or on behalf of the Council, or which the Home is required to generate, process, store or transmit pursuant to this Agreement;

Council's Representative:

the person appointed by the Council to be the Home's first point of contact for all matters relating to this Agreement whose details are set out in the Particulars as amended from time to time;

Data Loss Event:

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

Data Protection Impact Assessment:

an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.

Data Protection Legislation:

- (i) all Applicable Laws relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and
- (ii) (to the extent that it may be applicable) the EU GDPR. The UK GDPR and EU GDPR are

defined in section 3 of the Data Protection Act 2018.

Data Subject Access Request:	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Default:	any failure by either party in complying with its obligations under this Agreement;
DPA 2018:	Data Protection Act 2018
Environmental Information Regulations:	the Environmental Information Regulations 2004 (SI 2004/3391) together with any codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Extension Period:	up to 6 years which can be taken as either a single extension or across multiple extensions;
Financial Year:	the period commencing on 01 April and concluding on 31 March each year of the Term;
Find a Tender Notice:	means the contract notice published on Find a Tender on [INSERT DATE].
Force Majeure:	means any circumstance affecting a Party's performance of its obligations under this Agreement not within a Party's reasonable control including, without limitation: <ul style="list-style-type: none">• acts of God, flood, drought, earthquake or other natural disaster;• epidemic or pandemic (excluding Covid19);• terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;• nuclear, chemical or biological contamination or sonic boom;

- any Applicable Law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- collapse of buildings, fire, explosion or accident; and
- any labour or trade dispute, strikes, industrial action or lockouts; and
- interruption or failure of utility service

but excluding any industrial dispute relating to the Home or the Home's Staff or any other failure in the Home or a Sub-Contractor's supply chain.

Fraud:

means any offence under any Applicable Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Care Home Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any Contracting Body.

Guidance:

means any guidance issued or updated by HM Government from time to time in relation to the Regulations.

Home:

The residential/nursing home as registered with CQC that the Provider will be delivering the Services from;

Home's Staff:

all persons engaged by the Home to perform its obligations under this Agreement including all employees, bank, locum and agency staff used in the performance of its obligations under this Agreement;

Host Authority:

the public authority responsible for the geographical area within which the Council makes a placement;

Indicative Annual Contract Value:

the indicative annual contract value that will be paid for the Services which the Council will make to the Home in return for the provision of the Services

described in Schedule 1 (*Service Specification*). This amount is calculated using the Weekly Contract Price using the calculation 'Weekly Contract Price divided by 7 and multiplied by 365'. Details of the Indicative Annual Contract Value are set out on Schedule 5 (*Payment and Invoicing*);

Individual: a person assessed by the Council's Adults' Health and Care Directorate as having needs which are met by the provision of the Services;

Information: has the meaning given under Section 84 of the Freedom of Information Act 2000.

Intellectual Property Rights: all copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, rights in designs, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

IMPACT: the Council's Learning and Development Team or any future iterations thereof;

Long Term Service: a continual placement within a residential and or nursing home with no fixed end date at the point of placement.

Management Information means the following information which the Council may reasonably request from the Home throughout the Term:

- a) details of any prosecutions, notifications of infringements or other notices or other actions by

the Health & Safety Executive, or other enforcing body over the last 12 months, in respect of any breach or suspected breach by the Home of health and safety or equivalent legislation;

- b) where relevant, details of any warnings, prosecutions, enforcement or other actions by the Care Quality Commission over the last 12 months;
- c) details of any safeguarding incidents, investigations, remediation or action plans or other actions over the last 12 months;
- d) details of any order of any kind in relation to the affairs of the Home or the issuing to the Home any warning notices or suspension whether as a result of any misconduct or mismanagement on the Home's part or otherwise;
- e) notification of any breaches committed by the Home over the last 12 months of contracts to provide similar services;
- f) certificate of compliance with anti-bribery and corruption requirements; and
- g) such other information as the Council may reasonably require.

means a calendar month;

Month:

means an offence committed under the Modern Slavery Act 2015;

MSA Offence:

the types of needs with which Individuals may present when requiring a long term residential and or nursing Placement;

Needs Profile:

Needs Profile Rate Bandings:	the weekly price range for each Needs Profile within which the Council will make Placements for Individuals;
Parent Company:	shall have meaning as set out in section 1162 of the Companies Act 2006;
Party:	means the Council and or the Home;
Payment Plan:	as detailed in Schedule 5;
Pen Picture:	is a GDPR compliant summary used by the Council's brokerage team when initially approaching a Home to make a referral.
Placement:	an assessment undertaken by the Council, which has identified an Individual as having an eligible need for support as defined by the Care Act 2014, determining the Individual's needs will be best met within a residential and or nursing setting;
Prevent Duty:	guidance for specified authorities in England and Wales on the duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism;
Processor Personnel:	all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor;
Protective Measures:	appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the

Prohibited Act:	<p>effectiveness of such measures adopted by it;</p> <p>offering giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward: for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council; entering into this Agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by the Home or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; committing any offence: under the Prevention of Corruption Act 1916, the Bribery Act 2010; or under legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or defrauding or attempting to defraud or conspiring to defraud the Council;</p>
Purchase Confirmation:	<p>the agreement between the Council and the Home for a Placement made by the Council for the benefit of an Individual;</p>
Quality Officers:	<p>Hampshire County Council Adults' Health and Care Directorate quality assurance and monitoring officers.</p>
Regulated Activity:	<p>shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as amended;</p>

Regulatory Body:	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any Applicable Law to supervise, regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of the Parties;
Regulatory Standards:	any principle, rule or Applicable Law the Home is required to comply with as part of their registration to provide Services;
Remediation Notice:	a written notice given by the Council to the Home pursuant to clause 10 to initiate the Remediation Plan Process;
Remediation Plan:	the plan agreed in accordance with clause 10 for the resolution of any identified issues or the Home's Default;
Remediation Plan Process:	the process for resolving certain any of the Home's Defaults as set out in clause 10;
Replacement Home:	any third party supplier of Replacement Services appointed by the Council from time to time;
Replacement Services:	any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Agreement whether those services are provided by the Council internally or by any Replacement Home;
Request(s) for Information:	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.
Right to Work Check:	the Home's check, as an employer, of documentation and information to confirm any relevant individual(s) are legally permitted to work in the UK.
Service Charges:	the charges levied by the Home to the Council made in accordance with the

	tariffs, scales, charges, invoicing methods and terms of payment set out in this Agreement;
Service Provider	an organisation which operates one or more Homes under any Call Off Contract awarded under the Care Home Framework Agreement;
Service Specification:	the document attached at Schedule 1 which sets out the services to be delivered and the performance measures to be applied to the services;
Short Term Service:	a temporary service where placements are time limited and have a defined end date;
Sub-Contract:	an agreement between the Home and third party provider engaged by the Home to perform any part of the Services;
Sub-Contractor:	any third party provider engaged by the Home to perform any part of the Services;
Sub-Processor:	any third Party appointed to process Personal Data on behalf of the Home related to this Agreement.
Suspension:	a cessation of new referrals to the Home by the Council in accordance with clause 20.
Term:	From the Commencement Date until terminated in accordance with clause 21;
UK GDPR:	the UK General Data Protection Regulation.
Warning Notice:	a warning notice issued by the Council to the Home in accordance with clause 9;
Weekly Contract Price:	the weekly payment which the Council will make to the Home in return for the provision of the Services as set out in Schedule 5 (<i>Payment and Invoicing</i>);
Working Days:	a day (other than a Saturday, Sunday or public holiday in England) when

banks in London are open for business.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.8 A reference to writing or written includes e-mails but not faxes.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement, references to paragraphs are to paragraphs of the relevant schedule.
- 1.10 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.11 If there is any conflict or ambiguity between the clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.11.1 Purchase Confirmation
 - 1.11.2 Schedule 1 (Service Specification)
 - 1.11.3 Terms and Conditions of the Call Off Contract and remaining Schedules (save Schedule 9)
 - 1.11.4 Care Home Framework
 - 1.11.5 Home's Tender and Clarifications (Schedule 9).
- 1.12 Where the consent of a party is required under this Agreement such consent shall not be unreasonably withheld or delayed.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall take effect from and including the Commencement Date and shall continue unless terminated earlier in accordance with clause 21 (*Termination*).
- 2.2 The Council may make new Placements from the Commencement Date until the end of the Term, including any Extension Periods.
- 2.3 Unless terminated in accordance with clause 21 this Agreement and all Purchase Confirmations made thereunder shall remain in effect until the last Purchase Confirmation is terminated or expires.
- 2.4 The Council may extend this Agreement in whole or in part beyond the Term by a further period or periods of up to six (6) Years (each such extension together with any such extensions, being the "Extension Period"), up to a maximum Agreement Period of nine (9) Years. If the Council wishes to extend this Agreement, it shall give the Home at least three (3) Months' written notice of such intention before the expiry of the Initial Term or before the end of any previous Extension Period (as the case may be).

3. WARRANTIES AND REPRESENTATIONS

- 3.1 The Home warrants that:
- 3.1.1 the Council has delivered or made available to the Home all of the information and documents that the Home considers necessary or relevant for the performance of its obligations under this Agreement;
- 3.1.2 it has satisfied itself before submitting its tender and entering into this Agreement as to the accuracy and sufficiency of any information provided by the Council;
- 3.1.3 it has satisfied itself as to the nature and extent of the risks assumed by it under the Agreement including the accuracy of the Weekly Contract Price and other financial information stated in the Home's tender, which shall (except in so far as is otherwise provided in the Agreement) cover all the Home's obligations under the Agreement;
- 3.1.4 it has obtained for itself all the necessary information as to risks, contingencies, and any other circumstances whatsoever which might reasonably influence or affect the Home's tender;
- 3.1.5 it has entered into this Agreement in reliance on its own due diligence;
- 3.1.6 it has full capacity, authority and all necessary Consents (including, where its procedures so require, the consent of its Parent Company) to enter into

and to perform its obligations under this Agreement;

- 3.1.7 this Agreement is executed by a duly authorised representative of the Home;
- 3.1.8 there are no actions, suits or proceedings or regulatory investigations pending or, threatened against or affecting the Home before any court or administrative body or arbitration tribunal that might affect the ability of the Home to meet and carry out its obligations under this Agreement;
- 3.1.9 it will perform and procure the performance of its obligations under this Agreement in compliance with all Applicable Laws;
- 3.1.10 it has, and will continue to hold, all Consents and regulatory approvals necessary to fulfil its obligations under this Agreement;
- 3.1.11 it shall discharge its obligations under this Agreement using staff of the required skill, experience and qualifications and with all due skill, care and diligence and in accordance with Best Industry Practice;
- 3.1.12 all equipment supplied by the Home shall be fit for purpose in accordance with clause 24 (*Equipment*).
- 3.1.13 all information that it provides in connection with its obligations under this Agreement (save for information which originated with the Council) shall in all material respects be accurate, complete and not misleading;
- 3.1.14 in entering into this Agreement, it has not committed any Fraud or fraudulent misrepresentation;
- 3.1.15 it has not committed any Prohibited Act;
- 3.1.16 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Home or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Home's assets or revenue; and
- 3.1.17 neither the Home nor any of its officers, employees, agents or Sub-Contractors has:
- 3.1.17.1 committed an MSA Offence;
 - 3.1.17.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - 3.1.17.3 is aware if any circumstances within its supply chain that could

give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

3.1.18 where relevant, in the three (3) years prior to the date of this Agreement:

3.1.18.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

3.1.18.2 it has been in full compliance with all applicable securities, Applicable Laws and regulations in the jurisdiction in which it is established; and

3.1.18.3 it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Home's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.

3.1.19 at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Home in the provision of the Services:

3.1.19.1 has a relevant conviction; or

3.1.19.2 is barred from carrying out Regulated Activity.

3.2 Except as may be expressly set out in the Agreement, the Council does not warrant the accuracy of any representation or statement of fact or law including, without limitation, the frequencies or volumes set out in the Service Specification or other tender document given to the Home by the Council, its servants or agents at any time before the execution of this Agreement.

3.3 Subject to clause 3.4, the Council shall not be liable to the Home for any loss or damage which the Home may sustain as a result of relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to this Agreement or not); and

3.4 Clause 3.3 shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Agreement which was induced by Fraud, for which the remedies available shall be all those available under any Applicable Law.

3.5 Each of the Parties hereby confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into the

Agreement save for any such representation, warranty or undertaking expressly set out in this Agreement. This clause 3 shall not apply so as to restrict the liability of any Party hereunder in respect of any Fraud or fraudulent misrepresentation.

4. SCOPE AND PROVISION OF THE SERVICES

- 4.1 Schedule 1 (*Service Specification*) sets out the scope of the Services to be provided by the Home. The Home shall at all times:
- (a) provide the Services in accordance with Best Industry Practice, the Essential Standards of Quality and Safety (Health and Social Care Act 2008) and the Care Homes Regulations 2001 (SI 3965 of 2001) and any amendment or re-enactment of the same, and the Hampshire Joint Operational Policy for NHS Continuing Health Care and Funded Nursing Care March 2013;
 - (b) obtain, maintain and comply with all Consents;
 - (c) allocate sufficient resources to provide the Services in accordance with the terms of this Agreement;
 - (d) ensure that any of the Home's Staff who are engaged in the provision of any of the Services shall, if required by the Council, attend such meetings at the premises of the Council or elsewhere as may be reasonably required by the Council; and
 - (e) provide such reasonable co-operation and information in relation to the Services to such of the Council's other contractors or agents as the Council may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that the Council may reasonably require.
- 4.2 During the Term the Home shall maintain appropriate registrations with the Care Quality Commission for the Regulated Activity of providing accommodation for persons who require nursing or personal care in respect of a residential and or nursing care home and shall employ a Registered Manager in respect of this registration for the home.
- 4.3 If the Home ceases to be registered for the Regulated Activity of providing accommodation for persons who require nursing or personal care in respect of a residential and or nursing care home, the Home shall notify the Council within 2 Working days.
- 4.4 If the Home ceases to employ a Registered Manager in respect of the Care Quality Commission's registration, the Home shall notify the Council of such cessation within 2 Working days and the Home shall provide the Council with details of the replacement Registered Manager within 2 Working days.

- 4.5 The Home acknowledges that it is not being appointed as an exclusive supplier of any of the Services and the Council may at any time perform any part of the Services itself or procure them from a third party.
- 4.6 The Home acknowledges that this Agreement does not guarantee the Council will make any placements with the Home. Placements will be made in line with the tender documents.
- 4.7 If any services, functions or responsibilities not specifically described in this Agreement are an inherent, necessary or customary part of the Services and are required for proper performance or provision of the Services in accordance with this Agreement or are required or are reasonably necessary for the proper performance and provision of the Services, they shall be deemed to be included within the scope of the Services to be delivered for the Service Charges, as if such services, functions or responsibilities were specifically described in this Agreement.
- 4.8 The Home shall deal promptly with queries or problems relating to the use or performance of the Services and shall use all reasonable endeavours promptly to correct or procure the correction of any failure to perform the Services in accordance with the terms of this Agreement (including any defective or delayed provision of the Services).
- 4.9 The Home shall allow the Council's Representative or any person authorised by it, together with appropriate Staff, at all reasonable times to inspect or witness the provision of the Services.
- 4.10 The Home shall ensure a copy of this Agreement and Service Specification is held in the Home and the Registered Manager understands the contents and ensures service provision is consistent with these documents.
- 4.11 In making Placements the Council shall issue Purchase Confirmations.

5. HOME'S STAFF

- 5.1 The Home shall employ sufficient numbers of staff of sufficient ability, skill, knowledge, training and experience so as properly to provide the Services. The Home shall ensure that its recruitment policies and procedures are compliant with the provisions of the Equalities Act 2010 and that where possible its employees shall match the characteristics of the Individual.
- 5.2 The Home shall provide sufficient management and supervisory staff to ensure that the Home's Staff are at all times:
- (a) adequately supervised and properly perform their duties to the Service Specification;

- (b) sufficiently trained and instructed with regard to all relevant policies, rules, procedures and standards of the Home or the Council set out in Schedule 8 (*Standards and Policies*) or any Regulatory Body or the Care Quality Commission;
- (c) sufficiently trained, instructed and assessed to meet the requirements of the Care Certificate, or any amendments/replacements to these standards, within the time frames set out by the Department of Health and Social Care;
- (d) sufficiently trained and instructed with regard to all relevant rules and procedures concerning health and safety at work legislation and able to identify risks or potential safety hazards;
- (e) sufficiently trained and instructed in the use of any specialist equipment required for the provision of the Services and in the moving and handling of equipment and people.
- (f) have the qualifications, competence, skills and experience to provide care safely as outlined in Care Quality Commission Quality Statements.

5.3 The Home shall maintain a training plan and a record of training for all persons engaged in the delivery of its obligations under this Agreement. The Home shall make the training plan and training records available to the Council upon request.

5.4 Where either party to this Agreement identifies at any time that the Home's Staff require further training for the proper delivery of the Services, the Parties shall work together to agree and implement a training programme to meet such training needs with the Home bearing the costs of the agreed programme.

5.5 The Home assumes full responsibility for the Home's Staff including staff employed via an agency and for the actions of such Staff while performing the Services pursuant to this Agreement and shall be solely responsible for their supervision, daily direction and control, payment of income including income tax, insurance contributions and levies of any kind, relating to or arising out of the employment of any person engaged by the Home, and shall fully and promptly indemnify the Council in respect of any liability of the Home in respect thereof.

5.6 The Council acting reasonably may at any time raise with the Home concerns about the performance of the Services or the performance of any named Staff involved in providing the Services. Where necessary, the Council may request the Home to remove or substitute a named person upon provision of evidence of concern, or, where the concern sufficiently warrants it, to request the Home temporarily to remove a named person pending investigation of a concern. If the Home does not agree with the request to remove a named person it shall provide reasons for its actions and confirm any plan in place to safeguard Individuals. If there is a dispute concerning the removal or substitution of a named person, this

shall be subject to expedited dispute resolution as per Clause 17 (*Dispute Resolution*). This clause does not prejudice the Council from taking any additional action under its statutory powers or in the enforcement of this Agreement.

- 5.7 The Rehabilitation of Offenders Act 1974 does not apply and therefore all persons engaged by the Home in the delivery of the Services are required to declare any previous convictions. The Home shall ensure that Staff, volunteers and other persons engaged to provide or supervise the provision of the Services successfully completed the clearance checks set out in Clause 6 (*Safeguarding and Quality Assurance*) below and that such clearance is obtained at least once in every three (3) years and on such other occasions as is appropriate. Where a member of the Home's Staff is the subject of a prior criminal conviction the Home shall carry out a risk assessment and draft a plan (the "Risk Management Plan") and make it available to the Council on request.
- 5.8 In the event that the Council becomes aware that the Home's Staff are working in excess of the limits set out in the Working Time Directive, the Home shall on request from the Council provide documentary evidence that those Staff have voluntarily signed an opt-out form as permitted under the Working Time Directive.
- 5.9 The Home shall notify the Council if it sponsors Staff from overseas to deliver the Services at the Home's premises. This notification to the Council must include the following:
- 5.9.1 The specific roles and responsibilities that the sponsored Staff will be conducting and confirmation that the Home considers these are suitable for sponsorship.
- 5.9.2 Confirmation that the Home has completed the required Right to Work Checks and these have been recorded.
- 5.9.3 The percentage of the total workforce on sponsorship licence.
- 5.9.4 Confirmation that the sponsored Staff have the necessary skills, qualifications and professional accreditations to undertake their roles and responsibilities and keep copies of documents evidencing this.
- 5.9.5 Confirmation that the Home is in compliance with Applicable Law (i.e., Employment Law legislation) currently in force and any successor legislation.

6. SAFEGUARDING AND QUALITY ASSURANCE

Safeguarding

- 6.1 The Parties acknowledge that the Home is performing a Regulated Activity and has ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Protection of Freedoms Act 2012.
- 6.2 The Home shall:
- a) 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 (“DBS”) including a check against the adults' barred list or the children’s barred list, as appropriate; and
 - b) monitor the level, i.e., enhanced or standard, and validity of the checks under this clause 6.2 for each member of the Home’s Staff.
- 6.3 The Home warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged in the provision of the Services is barred from the Regulated Activity as defined by the Protection of Freedoms Act 2012 and any regulations made thereunder, as amended from time to time. The Home 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 Individuals.
- 6.4 The Home shall immediately notify the Council of any information that it reasonably requests to enable the Council to be satisfied that the obligations of this clause 6 have been met.
- 6.5 The Home shall refer information about any person carrying out the Services to the DBS where the Home 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 Individuals.
- 6.6 The Home shall have in force and shall maintain a policy or policies that maintain the safeguarding of vulnerable adults and children which shall set out and require compliance by the Home’s Staff with the obligations detailed in this clause 6 and the principles and procedures laid down in the policies cited in the following sub-clause 6.7 in order that there can be effective joint action to protect vulnerable adults and children from abuse.
- 6.7 The Home shall comply with the ‘4LSAB Multi-Agency Safeguarding Adults Policy and Guidance (June 2020)’ and with the ‘4 Local Safeguarding Children Partnerships’. These policies can be viewed here:

https://www.hampshiresab.org.uk/professionals-area/hampshire_4lsab_multiagency_safeguarding_adults_policy_guidance/

and are collectively known as the “Multi-Agency Safeguarding Policies” for the purposes of this clause 6. This applies even if the home is based outside of Hampshire, and we would expect providers to engage with host authority processes.

- 6.8 The Home shall have in place a robust safeguarding training programme for all the Home’s Staff (including volunteers) appropriate to their level of responsibility, and, as a minimum standard, they will reflect the outcomes identified for the relevant safeguarding courses in the Council’s AHC Learning and Development provider training provision [IMPACT](#). Furthermore, the Home shall maintain appropriate records of training for the Council’s audit purposes.
- 6.9 The Home shall establish clear policies to deal with dangerous, exploitative, or unsafe behaviour and practice and provide training to all the Home’s Staff to develop appropriate skills and knowledge.
- 6.10 The Home shall have in place and shall have implemented robust up-to-date procedures, (including when to make a safeguarding referral, whistle-blowing policy and recruitment checks), for preventing, and responding to the risk or experience of suspected physical, sexual, psychological, financial or material abuse, discriminatory abuse, domestic abuse, organisational abuse, modern slavery, neglect and acts of omission and self-neglect. Such procedures shall be reviewed at least once every year. All procedures adopted by the Home shall be made available in a printed and accessible format and location on the Home’s premises.
- 6.11 The Home shall ensure that its disciplinary procedures are compatible with the responsibility to protect vulnerable adults. This will include making provision to suspend an employee, for example, pending the outcome of a safeguarding enquiry. It should be noted that suspension may be in the best interests of the employee and/or the alleged person to have been harmed. Decisions on suspension from duty will be the outcome of a risk assessment, which process will incorporate consideration of the potential harms/dangers to the individual/individuals concerned. The Home must take account of Applicable Laws. Decisions on whether or not to suspend an employee will be the responsibility of the Home and must be fully documented by them and communicated to the Council in writing within 24 hours.
- 6.12 In the event that a safeguarding enquiry is initiated by the Council it will be conducted in accordance with the Multi-Agency Safeguarding Policy. The Council may initiate such an enquiry without prejudice to any action anticipated to be taken by any regulator, and the Home agrees and acknowledges that any action taken by a regulator which does not result in the deregistration of the

Home by the Care Quality Commission or any other regulator will not be binding upon the Council nor require the Council to conclude its own enquiry. For the avoidance of doubt the Council may at its discretion provide prior written notification of a visit to the Home to look at their safeguarding processes and practice but shall be under no obligation to provide prior written or other notification of such a visit by the Council to the Home, particularly where the Council believes that providing prior notification would not be in the best interests of the Individuals.

- 6.13 In the event that the Council acting reasonably decides in its absolute discretion that it is no longer in the best interests of the Individuals to remain on the Home's premises, it may remove those Individuals to alternative premises after gaining consent from those Individuals that have capacity and following a best interests meeting for those that lack capacity. The Home shall cooperate with any requests of the Council and shall not interfere with or obstruct any actions of the Council to remove any Individuals from the Home.
- 6.14 In the event that the Council through the course of a safeguarding enquiry identifies that remedial action is required in respect of this Agreement, the Council will follow the procedures set out in clauses 9, 10, 20 and 21 below.
- 6.15 The Home undertakes to co-operate with any enquiry and or investigation which the Council or the Care Quality Commission or other applicable professional or Regulatory Body may carry out into a complaint referred to them.
- 6.16 Upon reasonable request, the Home shall supply the Council's Representative with a copy of its records relating to complaints made in relation to the Services and the Home's response.

Quality Assurance

- 6.17 The Home agrees and acknowledges that matters relating to quality assurance and performance of the Services by the Home shall be subject to the process set out in Schedule 6 (*Safeguarding and Quality Assurance*). The Home will work with the Council's IMPACT team or an equivalent agreed training provider to complete relevant training to enable improvements in the quality of service delivery. The Home will allow access to and work with staff from the Council and or the Host Authority in respect of this Agreement as is appropriate. The Council's staff will work with the Home and or the Host Authority to identify and support improvements and measure the on-going sustainability of any improvements made, in order to achieve positive outcomes for improved service delivery.
- 6.18 Information received as part of the work carried out as a result of this clause 6 will be shared as appropriate with the Care Quality Commission, NHS partners, other commissioners of health and social care services, the police and the emergency services and other relevant stakeholders.

- 6.19 The Council will notify the Home in writing that it has concerns about the Home's performance of the Services and shall work collaboratively with the Home in order to resolve any problems which the Council has identified either directly or through communication from other partner agencies. Such communication may be received from the police, the NHS or other commissioners. In the event that the Council considers in its absolute discretion that the Home's performance is unsatisfactory it shall follow the processes set out in clauses 9, 10, 20, and 21 below.

Notification

- 6.20 The Home shall upon receipt of either a Warning Notice from the Care Quality Commission, a professional or Regulatory Body or other interested stakeholder, or a Notice from a Host Authority notifying the Home that it is in breach of this Agreement immediately notify the Council, Care Quality Commission and any other Authority or Health that has current placements with the Home.
- 6.21 In the event that the Council receives any written notification from the Care Quality Commission, a professional or Regulatory Body or other interested stakeholder concerning the Home the Council reserves the right to issue an equivalent notice to the Home and to carry out a risk assessment of the Home, its premises and the Services being delivered. If the Home is in Hampshire the Council also reserves the right to inform other Authorities who currently have placements in the Home.

Records

- 6.22 The Home shall at all times co-operate with the Council's processes for inspection, monitoring, evaluations, quality audit and safeguarding in whatever way is reasonably requested by the Council's Representative, and the Home shall comply with the provisions of Schedule 6 (*Safeguarding and Quality Assurance*). Accordingly, the Council's Representative may request access to records held by the Home regarding Individuals and the Home's Staff where necessary under the multi-agency policies listed in clause 6.7.
- 6.23 The records held by the Home referred to in clause 6.22 above may include the Care Plan of any Individual concerned who is resident at the Home's premises and in receipt of the Services.

Prevent Duty

- 6.24 The Home shall comply with their Prevent Duty. The Home must not be engaged in any extremist activity or espouse extremist views. The Home must:
- 6.24.1 protect vulnerable people and Staff from being drawn into terrorism by having robust safeguarding policies in place to identify vulnerable people at risk, and intervening as appropriate;

6.24.2 assess the risk of vulnerable people and Staff being drawn into terrorism, including support for extremist ideas that are part of terrorist ideology. This should be based on an understanding, shared with partners, of the potential risk in the local area;

6.24.3 ensure the Home's Staff have a good understanding of the Prevent Duty and are trained to recognise vulnerability to being drawn into terrorism and are aware of available programmes to deal with this issue (Channel¹);

6.24.4 ensure the Home's Staff are aware of and know how to contribute to Prevent-related activity in their area where appropriate;

6.24.5 ensure the Prevent Duty is considered in other relevant policies such as IT policies, and use of premises;

6.25 The Council reserves the right to terminate this Agreement in accordance with clause 21 should the Home fail to comply with any of the provisions set out in this clause.

6.26 The Home will not apply any additional charges above those currently agreed with the Council to meet the requirements of this clause 6.

7. CONTRACT MANAGEMENT

7.1 The Home shall at all times properly manage and monitor the Services.

7.2 Notices, information, instructions or other communications given by the Council in any format identified in clause 35 shall be deemed to have been given to the Home.

7.3 The Home shall ensure that at all times the Council's Representative is provided with up-to-date contact details for any temporary or permanent replacement including name, work address, work and mobile telephone numbers.

7.4 A duly authorised and competent representative of the Home shall be available to meet the Council's Representative at all reasonable times and shall provide such written reports as the Council's Representative may reasonably require prior to such meetings or generally.

7.5 The Home shall operate a self-regulatory system of quality assurance and quality measures relevant to this Agreement which ensures that the Services are provided in accordance with the requirements of this Agreement. The Home's quality management system will incorporate as a minimum the terms set out in Schedule 6 (*Safeguarding and Quality Assurance*).

¹ <https://www.gov.uk/government/publications/channel-guidance>
http://course.ncalt.com/Channel_General_Awareness/01/index.html

- 7.6 The Home shall for the proper performance and management of the Services and this Agreement have in place as a minimum the policies listed in Schedule 8 (*Standards and Policies*) and shall ensure that the Home's Staff comply with the provisions of such policies.
- 7.7 The Home shall compile, maintain and make available to the Council as requested such information as the Council may reasonably require so that the Council is able to monitor and evaluate the provision and performance of the Services.
- 7.8 The Home shall have in place robust financial management systems and shall adopt sound accounting and other financial procedures to ensure effective and efficient running of its business and its continued financial viability.
- 7.9 The Home shall operate open book accounting for the Services based on the model published from time to time by the Chartered Institute of Public Finance and Accountancy so that specific accounting and other data is accessible to the Council upon reasonable request.

8. BUSINESS CONTINUITY

- 8.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. The Home shall have in place prior to the Commencement Date, a robust Business Continuity Plan that allows for the continued delivery of the Services following an emergency or disruptive occurrence, for the avoidance of doubt this may include, both planned and unplanned events, critical shortages of the Home's Staff or any disruption that may be the day to day business of a Home. The Business Continuity Plan shall set out the procedures to be followed and actions to be taken if a disruptive event occurs affecting the Services.
- 8.2 The Home shall review the Business Continuity Plan annually to ensure it is up to date and any amendments have been effected.
- 8.3 The Home shall make copies of the Business Continuity Plan available to the Council upon request.
- 8.4 The Home shall notify the Council within one Working Day if an incident occurs which activates the Business Continuity Plan, and details of how it managed any such incident. Where required the Council may request details of any subsequent amendments made to processes or systems.
- 8.5 The Home shall annually test as a matter of course its Business Continuity Plan or when there has been any change to the mode or method in which the Services are provided or when there has been a change to any business processes or on the occurrence of any event which may increase the likelihood of the need to implement the business continuity arrangements.

- 8.6 The Home shall notify the Council within 14 calendar days when a Business Continuity Plan test takes place.
- 8.7 The Home, on request by the Council, shall provide evidence by way of a written report summarising the results of any Business Continuity Plan test and shall promptly implement any actions or remedial measures which the Council may consider to be appropriate as a result of such tests.
- 8.8 The Home shall undertake and be able to demonstrate to the Council as required, a regular review process for its business continuity arrangements in relation to the provision of the Services.
- 8.9 The Business Continuity Plan must be accessibly placed within the Home with all of the Home's Staff knowing where it is and aware of the contents of the plan.

9. WARNING NOTICES AND INCREASED MONITORING

- 9.1 Without prejudice to the Council's other rights or remedies, if at any time the Home has committed a Default then the Council may serve a Warning Notice on the Home, within five Working Days of the relevant event, setting out the matters giving rise to such notice and containing a reminder to the Home of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.
- 9.2 Without prejudice to the other rights or remedies of the Council, if the Home receives a Warning Notice, the Council may reasonably increase its monitoring of the Home until such time as the Home has demonstrated, to the reasonable satisfaction of the Council, that it will perform (and is capable of performing) its obligations under this Agreement. If the Home has committed a Default or receives a Warning Notice, the Council may suspend the Home in accordance with clause 20.
- 9.3 The Home will not apply any additional charges to those currently agreed with the Council to meet the requirements of clause 9.
- 9.4 The Home shall promptly reimburse the Council for any additional direct costs reasonably and necessarily incurred by the Council in respect of any such additional monitoring.

10. REMEDIATION PLAN PROCESS

- 10.1 If the Home commits a Default and the Default is capable of remedy, the Council may not terminate this Agreement without first operating the Remediation Plan Process set out in this clause 10 unless sub-clause 10.2 applies. If the Home commits such a Default, the Council shall give a Remediation Notice requesting the Home to submit a Remediation Plan and review the purchasing status which may result in purchasing restrictions being applied to the Home. The

Remediation Plan shall specify the Default and the actions the Home needs to take with respect to remedying the Default.

- 10.2 The Council shall be under no obligation to initiate the Remediation Plan Process if it issues a Termination Notice pursuant to clause 21.1(a) in the circumstances set out in clause 21.1(d)(ii) and clause 21.1(d)(v).
- 10.3 Within the time period stated in the Remediation Notice the Home shall either:
- (a) submit a draft Remediation Plan, regardless of whether or not the Home disputes the Default and/or the matters for which it is responsible for as set out in the Remediation Notice; or
 - (b) inform the Council that it does not intend to submit a Remediation Plan, in which event the Council shall be entitled to serve a Termination Notice.
- 10.4 The Council shall either approve the draft Remediation Plan within ten Working Days of its receipt pursuant to clause 10.3, or it shall inform the Home why it cannot accept the draft Remediation Plan. In the latter such circumstance, the Home shall submit a revised Remediation Plan which addresses all concerns raised by the Council within the timeframe set by the Council.
- 10.5 If, despite the measures taken under clause 10.4, a Remediation Plan cannot be agreed within ten Working Days to the reasonable satisfaction of the Council then the Council may elect to end the Remediation Plan Process and serve a Termination Notice.
- 10.6 Once agreed, the Home shall immediately start work on the actions set out in the Remediation Plan.
- 10.7 If a Remediation Plan is agreed between the Parties, but the Home fails to implement or successfully complete the Remediation Plan in the timeframe set by the Council, the Council may at its discretion:
- (a) terminate this Agreement by serving a Termination Notice; or
 - (b) give the Home a further opportunity to resume full implementation of the Remediation Plan; or
 - (c) escalate any issues arising out of the failure to implement the Remediation Plan under the Dispute Resolution Procedure set out at clause 17.
- 10.8 The Council shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default as had previously been addressed in a Remediation Plan following the conclusion of such previous Remediation Plan. In such event, the Council may serve a Termination Notice.

10.9 The Home will not apply any additional charges above those currently agreed with the Council to meet the requirements of clause 10.

11. SUB-CONTRACTING AND ASSIGNMENT

11.1 Except as expressly set out in this Agreement the Home shall not be entitled to give, bargain, sell, assign, let or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the Council.

11.2 The Home undertakes at all times during the term to demonstrate objectivity and professionalism in determining whether to provide any part of the Services itself or to secure their provision through a Sub-Contractor.

11.3 The Home shall not sub-contract any part of its obligations to perform any Regulated Activities under this Agreement without the prior written approval of the Council save that the Home may, without the prior written approval of the Council, sub-contract the provision of part of the Services to the Approved Sub-Contractors identified in Schedule 4 (*Approved Sub-Contractors*) in relation to those parts of the Services specified in that Schedule as approved for sub-contracting to those Parties. Where the Home has an urgent staffing need and employs a temporary staff member the existence of such a contract with a newly appointed Sub-Contractor must be notified to the Council in writing no later than 24 hours following the agreement of the temporary contract.

11.4 The use of agency staff by the Home to support the delivery of the Regulated Activities shall not constitute sub-contracting and therefore prior approval of the Council is not necessary, however the Home warrants that all agency staff are suitably trained to deliver Regulated Activities in accordance with clause 5. The Council reserves the right to request information to ensure agency staff are suitably qualified, trained and are eligible to work.

11.5 The Home acknowledges that the Council giving the Home consent to sub-contract will not relieve the Home of its obligations under this Agreement and the Home will be responsible for the acts, defaults and neglect of any Sub-Contractor or any employee, agent of any such Sub-Contractor, as if they were the Home's own acts, defaults and neglect. This will be the case even if as a condition of the Council giving consent, the Council requires the Sub-Contractor to agree directly that it will carry out all the Home's obligations under this Agreement.

11.6 Subject to clause 11.3, with respect to any of the obligations that the Home proposes to sub-contract, the Home shall provide the Council with full details of

- (i) the specific elements of the Services which it proposes to sub-contract;
- (ii) the scope of the proposed sub-contract;

- (iii) the identity, and to the extent known by the Home, the qualifications, experience and financial standing of the proposed Sub-Contractor;
- (iv) how such arrangements shall enable the Home to meet its obligations to provide the Services; and
- (v) such further information as the Council may reasonably request.

11.7 Where the Home sub-contracts any of its obligations under this Agreement, the Home shall remain the Council's sole point of contact for all matters falling within the scope of this Agreement and shall procure that each Sub-Contractor complies with and is bound by the requirements of this Agreement as they apply to the Home.

11.8 The Home shall procure that the Council and or its auditors are permitted to review the financial records and data security policies of each Approved Sub-Contractor to the extent relevant to the provision of the Services.

11.9 Where in the Council's reasonable opinion:

- (i) the performance of an Approved Sub-Contractor is deficient; or
- (ii) misrepresentations were made concerning the identity, qualifications, experience or financial standing of an Approved Sub-Contractor at the time the Council grants approval, the Council may notify the Home of any concerns relating to such Approved Sub-Contractor

the Home shall promptly investigate the matters raised by the Council and shall seek in good faith to address the Council's concerns. The Home shall inform the Council in writing within the timeframes stated by the Council of the actions it has taken to remedy the concerns raised by the Council. If the Council, acting reasonably, is unsatisfied with the actions taken it may at its absolute discretion require the Home to remove the relevant Approved Sub-Contractor from performance of the Home's obligations under this Agreement.

11.10 The Home shall notify the Council within 3 Working Days if:

- 11.10.1 there is a change in who controls the majority of the shares in, or the voting rights amongst shareholders or members of, its organisation;
- 11.10.2 the Home merges with another organisation;
- 11.10.3 the Home transfers its commercial operations to another organisation;
- 11.10.4 the Home in any way transfers its obligations under this Agreement or any Purchase Confirmations awarded in respect to this Agreement to another organisation;

- 11.10.5 as a result of any misconduct or mismanagement on its part a Regulatory Body directs an inquiry into, or makes an order of any kind in relation to, its affairs; or
 - 11.10.6 any registration or Consents which the Home must maintain in order to provide any of the Services is withdrawn or cancelled or is threatened to be withdrawn or cancelled.
- 11.11 The Home's failure to provide any information requested by the Council pursuant to this clause 11 or elsewhere in this Agreement will give the Council the right to withhold payment of any sums due to the Home.
- 11.12 The Council reserves the right to seek reimbursement of its reasonable costs in effecting any novation/Sub-Contract arrangement requested by the Home if the Council has given consent in accordance with clause 11.1.

12. FORCE MAJEURE

- 12.1 Provided it has complied with clause 12.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 12.2 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 12.3 The Affected Party shall:
- 12.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 24 hours from its start, in the event the Home is the Affected Party, the Home must notify the Council by telephone via the Adults Social Care contact centre set out in the information pack or via the micro-site of the Force Majeure Event, the date on which the Force Majeure Event started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
 - 12.3.2 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 3 Working Days from its start, in the event the Council is the Affected Party, the Council must notify the Home of the Force Majeure Event, the date on which the Force Majeure Event started, its likely or potential duration and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

12.3.3 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than thirty (30) calendar days, the Party not affected by the Force Majeure Event may terminate this Agreement by giving fourteen (14) calendar days' written notice to the Affected Party.

13. PAYMENT AND INVOICING

13.1 In consideration of the Home delivering the Services in accordance with this Agreement, the Council shall pay the charges to the Home in accordance with the Payment Plan set out in Schedule 5 (*Payment and Invoicing*).

13.2 The Council will make payments through its automatic payments process as set out in Schedule 5 (*Payment and Invoicing*).

13.3 When a Placement ends the Home will notify the Council within the timeframes set out in Schedule 5 (*Payment and Invoicing*).

13.4 Unless expressly agreed on a case by case basis, the Parties agree the Council shall solely be liable to the Home in respect of the Services delivered under this Agreement and the Home shall not seek payment of costs from the Individual or Individual's representatives in respect of any element of the Services.

13.5 The Weekly Contract Price is exclusive of VAT.

13.6 The Weekly Contract Price shall be reviewed annually by the Council as set out in Schedule 5 (*Payment and Invoicing*) and any changes as a result of the annual price review will take effect in line with the DWP change for the next Financial Year. The Council will notify the Home in advance in writing of the amount of the increase or decrease (if any) to be applied to the Weekly Contract Price.

13.7 If any sum payable under this Agreement is not paid within 30 calendar days of the due date, the party to whom the same is due reserves the right to charge interest from the date due for payment to the actual date of payment at the rate of two per cent (2%) above the base rate of the Bank of England from time to time in force. No interest shall be payable on any amount that is the subject matter of a bona fide dispute between the Parties.

13.8 Unless otherwise expressly agreed between the Parties, the Weekly Contract Price stated on the Purchase Confirmation or associated documentation and such other amounts expressed to be payable by the Council under this Agreement shall constitute the Council's entire payment liability to the Home under this Agreement and the Home hereby indemnifies the Council against any liability to any third party for costs or charges relating to the Services.

- 13.9 The Home shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Agreement. Such records shall be retained for inspection by the Council for six (6) years from the end of the Contract Year to which the records relate.
- 13.10 The Home shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Agreement under the terms of this Agreement and all reasonable steps have been taken with the Council to maintain delivery.
- 13.11 Where the Home enters into a Sub-Contract for the purpose of performing this Agreement, it shall cause a term to be included in such Sub-Contract that requires payment to be made of undisputed sums by the Home to the Sub-Contractor within a specified period not exceeding 30 calendar days from the receipt of a valid invoice, as defined by the Sub-Contract requirements. Where the Home is required to make any payments to a Sub-Contractor they shall do so within 30 calendar days of receipt of a valid invoice.
- 13.12 Where funding is withdrawn altogether for the delivery of the Services, the Council will serve notice to terminate the Agreement to the Home.
- 13.13 Where funding for the delivery of the Services is reduced, the Parties will work together to redefine the Services and agree any relevant adjustments to the Weekly Contract Price and payment thereof.

14. AUDIT, INSPECTION AND REVIEW

- 14.1 Except where an audit is imposed on the Council by a Regulatory Body, the Council may at any point during the Term and any Extension Period and for a period of 12 months following the expiry or termination of this Agreement, conduct its own audit for the following purposes:
- (a) to verify the accuracy of the Service Charges (and proposed or actual variations to them in accordance with this Agreement);
 - (b) to review the integrity, confidentiality and security of the Council's Data;
 - (c) to review any records created during the provision of the Services;
 - (d) to review any books of account kept by the Home in connection with the provision of the Services;
 - (e) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 and the Local Audit and Accountability Act 2014 of the economy, efficiency and effectiveness with which the Council has used its resources;

- (f) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
 - (g) to review the Home's compliance with the Data Protection Legislation, in accordance with clause 27 (*Data Protection*) and the Freedom of Information Act 2000 pursuant to clause 28 (*Freedom of Information*) and any other Applicable Laws.
- 14.2 Notwithstanding anything stated in clause 14.1, the Council may at any time and as often as is necessary conduct an audit to review the Home's compliance with its obligations under clauses 6 (*Safeguarding Vulnerable Adults and Children*); 8 (*Business Continuity*); 25 (*Health & Safety*) and 30 (*Human Rights Act*) and compliance with any of the Home's policies or the standards and policies set out in Schedule 8 (*Standards and Policies*).
- 14.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Home or delay the provision of the Services.
- 14.4 Subject to the Council's obligations of confidentiality, the Home shall on demand provide the Council (and or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Council (and or its agents or representatives) within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Home and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Home's Staff.
- 14.5 The Council shall endeavour (but is not obliged) to provide at least 15 Working Days' notice of its intention to conduct an audit.
- 14.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 14, unless the audit identifies a material Default by the Home in which case the Home shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 14.7 If an audit identifies that:
- (a) the Home has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a remedial plan in accordance with clause 10 (*Remediation Plan Process*). If the Home's failure relates to a failure to provide any information to the Council about the Service Charges, proposed charges or the Home's costs, then the

remedial plan shall include a requirement for the provision of all such information;

- (b) the Council has overpaid any charges, the Council will recover the overpayment via a credit against the next payment to the Home. If at the point of the audit identifying an overpayment the Home does not have any Council funded residents the Council will issue an invoice for the overpayment;
- (c) the Council has underpaid any Service Charges, the Council shall pay to the Home the amount of the under-payment (less the cost of audit incurred by the Council if this was due to a Default by the Home) within 20 Working Days of receipt of a valid invoice from the Home.

15. BRIBERY ACT

15.1 The Home:

- (a) shall not, and shall procure that any Sub-Contractor and all Home Staff shall not, in connection with this Agreement 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 Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

15.2 The Home 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 2010;
- (b) within 28 Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Home) compliance with this clause 15 by the Home and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Home shall provide such supporting evidence of compliance as the Council may reasonably request.

15.3 The Home shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent the Home or the Home's Staff from committing a Prohibited Act and shall enforce it where appropriate.

15.4 If any breach of clause 15.1 is suspected or known, the Home must notify the Council immediately.

- 15.5 If the Home notifies the Council that it suspects or knows that there may be a breach of clause 15.1, the Home must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for six years following the expiry or termination of this Agreement.
- 15.6 The Council may terminate this Agreement by written notice with immediate effect if the Home, or the Home's Staff (in all cases whether or not acting with the Home's knowledge), breaches clause 15.1. In determining whether to exercise the right of termination under this clause 15.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Home's Staff, Sub-Contractor or supplier not acting independently of the Home. The expression "not acting independently of" (when used in relation to the Home's Staff, a Sub-Contractor or a supplier) means and shall be construed as acting:
- (a) with the Council; or,
 - (b) with the actual knowledge of any one or more of the directors of the Home or the Sub-Contractor (as the case may be); or
 - (c) in circumstances where any one or more of the directors of the Home, the Home's Staff, Sub-Contractor or supplier (as the case may be) ought reasonably to have had knowledge.
- 15.7 Any notice of termination under clause 15.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (c) the date on which this Agreement will terminate.
- 15.8 Despite clause 17 (*Dispute Resolution*), any dispute relating to:
- (a) the interpretation of clause 15; 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.
- 15.9 Any termination under clause 15.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

16. RECOVERY OF SUMS DUE

- 16.1 The Council reserves the right to reclaim from the Home any monies that have been wrongly claimed by the Home under this Agreement.
- 16.2 The Council reserves the right to reclaim any monies that have been paid for the Services where the Home has failed to deliver or complete the Services or to deliver the Services to the level required by this Agreement.
- 16.3 Any overpayment by the Council, shall be a sum of money recoverable by the Council from the Home.
- 16.4 Wherever under this Agreement any sum of money is recoverable from or payable by the Home (including any sum that the Home is liable to pay to the Council in respect of any breach of this Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Home under this Agreement or under any other Agreement or contract with the Council.
- 16.5 The Home shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Home has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Home.

17. DISPUTE RESOLUTION

- 17.1 Without prejudice to clause 16 above, any question or difference or dispute arising in connection with the construction, meaning or operation of this Agreement or any matter arising out of or in connection with this Agreement, shall in the first instance be referred to the Council's Representative for discussion and resolution. If the matter is not resolved within ten (10) Working Days of such referral, the matter shall be referred to the next level of the Council's and the Home's management which shall be directors or other senior representatives of the Parties with authority to settle the dispute.
- 17.2 If the dispute is not resolved under clause 17.1 the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing ("**ADR notice**") to the other Party to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than twenty (20) calendar days after the date of the ADR notice.
- 17.3 No Party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

17.4 If the unresolved matter is having a serious effect on the Services and/or the Individuals, the Parties shall use every reasonable endeavour to reduce the elapsed time in completing the process. Neither Party may initiate any legal action until the process has been completed, unless such Party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have.

18. INDEMNITY

18.1 Neither Party to this Agreement limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or
- (b) fraud by it or its employees; or
- (c) breach of any obligation as to title implied by statute; or
- (d) any act or omission, liability for which liability may not be limited under Applicable Law.

18.2 The Home shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) (each a "Claim") suffered or incurred by the Council arising out of or in connection with:

- (a) any breach of the warranties contained in clause 3;
- (b) the Home's breach or negligent performance or non-performance of this Agreement;
- (c) any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with this Agreement;
- (d) any claim made against the Council by a third party arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Home's Staff, agents or Sub-Contractors;
- (e) any claim made against the Council by a third party for death, personal injury or damage to property arising out of or in connection with the Home's performance of the Agreement, to the extent that the default is attributable to the acts or omissions of the Home's Staff, agents or Sub-Contractors.

- (f) any interest of penalty howsoever arising whether wholly or in part resulting from a breach of the Modern Slavery Policy of the Home.

18.3 If any third party makes a Claim, or notifies an intention to make a Claim, against the Council which may reasonably be considered likely to give rise to a liability under this indemnity (a "Relevant Claim"), the Council shall:

- (a) as soon as reasonably practicable, give written notice of the Relevant Claim to the Home, specifying the nature of the Relevant Claim;
- (b) not make any admission of liability, agreement or compromise in relation to the Relevant Claim without the prior written consent of the Home, provided that the Council may settle the Relevant Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Home, but without obtaining the Home's consent) if the Council reasonably believes that failure to settle the Relevant Claim would be prejudicial to it in any material respect;
- (c) subject to the Home providing security to the Council to the Council's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Home may reasonably request to avoid, dispute, compromise or defend the Relevant Claim.

18.4 If a payment due from the Home under this clause 18 is subject to tax (whether by way of direct assessment or withholding at its source), the Council shall be entitled to receive from the Home such amounts as shall ensure that the net receipt, after tax, to the Council in respect of the payment is the same as it would have been were the payment not subject to tax.

18.5 Nothing in this clause shall restrict or limit the Council's general obligation at law to mitigate a loss which it may incur as a result of a matter giving rise to a Claim.

19. INSURANCE

19.1 The Home shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Home, arising out of the Home's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Home.

19.2 The Home shall maintain in force the following insurance policies:

- 19.2.1 Employer's Liability Insurance Policy of not less than five million pounds sterling (£5,000,000.00) for each and every claim, act or occurrence or series of claims, acts or occurrences;

19.2.2 If relevant Professional Indemnity Insurance Policy of not less than two million pounds sterling (£2,000,000.00) for each and every claim, act or occurrence or series of claims, acts or occurrences which policy shall be maintained for a period of six (6) years;

19.2.3 Public Liability Insurance Policy of not less than five million pounds sterling (£5,000,000.00) for each and every claim, act or occurrence or series of claims, acts or occurrences;

19.2.4 If relevant Motor Insurance of not less than ten million pounds sterling (£10,000,000) for each and every claim, act or occurrence or series of claims, acts or occurrences for damage to property and motor insurance cover of an unlimited amount in respect of each and every claim, act or occurrence or series of claims, acts or occurrences for personal injury claims.

19.2.5 If relevant Medical Malpractice Insurance Policy of not less than two million pounds sterling (£2,000,000.00) for each and every claim, act or occurrence or series of claims, acts or occurrences which policy shall be maintained for a period of six (6) years.

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

19.4 If, for whatever reason, the Home fails to give effect to and maintain the insurances required by this Agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Home.

19.5 The terms of any insurance or the amount of cover shall not relieve the Home of any liabilities under this Agreement. It shall be the responsibility of the Home to determine the amount of insurance cover that will be adequate to enable the Home to satisfy any liabilities arising under this Agreement.

20. SUSPENSION

Temporary Voluntary Suspension of Referrals by the Home

20.1 The Home may apply to the Council to cease acceptance of any new referrals under this Agreement and any associated Purchase Confirmations for a short term period.

20.2 Upon receipt of an application to cease acceptance the Council may request:

20.2.1 information to justify the request; and

20.2.2 an action plan completed by the Home detailing:

- i. how the Home will continue to deliver the Services to current Individuals; and
- ii. the proposed duration of the suspension;
- iii. actions the Home proposes to undertake during the cessation period and how they plan to move from voluntary cessation to fully operational again; and
- iv. any other information requested by the Council.

Council Cessation of Referrals

20.3 The Council reserves the right to suspend making new referrals and review the purchasing status if the Home:

20.3.1 is being investigated as part of a Quality Outcomes and Contract Monitoring and or a safeguarding investigation; or

20.3.2 is subject to any remediation or action plans under this Agreement until these are concluded to the Council's reasonable satisfaction; or

20.3.3 is not within the geography of Hampshire and the Council is notified that the Host Authority has placed purchasing restrictions on the Home;

20.3.4 is in Default and a remediation plan is agreed in accordance with clause 10;

20.3.5 has received more than three Warning Notices in any 12 month period relating to the same or different matters.

20.4 The Council may apply any suspension to any combination of some or all of the Needs Profiles identified in Schedule 2.

20.5 Suspension will only be valid following the Home's receipt of a letter from the Council which must state it is a Suspension Notice in its title.

20.6 The Home will not apply any additional charges above the original weekly rates set out in Schedule 5 for Purchase Confirmations to meet the requirements of clause 20.

21 TERMINATION

Council's right to terminate

21.1 Where the Council wishes to terminate this Agreement due to the Home's Default:

- (a) subject to clause 10 the Council may terminate this Agreement, immediately or on the expiry of the notice period specified in the Termination Notice, by giving written notice to the Home if one or more of the circumstances set out in clause 21.1(d) occurs or exists;
- (b) where the Council is terminating this Agreement for a material Default, it may rely on a single material Default or on a number of Defaults or repeated Defaults that, taken together, constitute a material Default;
- (c) the Council shall also inform the Home in the Termination Notice of the duration of the Termination period during which it requires the Home to continue to provide, and/or procure the provision of, some or all of the Services. The Council may extend or shorten such period by giving the Home at least ten (10) Working Days' notice;
- (d) the events which shall entitle the Council to issue a Termination Notice are as follows:
 - (i) the Home is in material Default of this Agreement and such Default is not remedied in accordance with the Remediation Plan Process set out in clause 10; or
 - (ii) the Home is in the Council's opinion in material Default of this Agreement, which is irremediable; or
 - (iii) the Parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process set out in clause 10; or
 - (iv) the Home fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process set out in clause 10; or
 - (v) the Home has received more than three Warning Notices in any 12 month period relating to the same or different matters; or
 - (vi) the Home has been suspended for a continuous period of at least six months.

21.2 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, the Council may terminate this Agreement immediately (or following such notice period as it sees fit), without liability to the Home if:

- (a) the Home suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or

- (b) the Home commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Home being a company; or
- (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Home; or
- (e) a floating charge holder over the assets of the Home has become entitled to appoint or has appointed an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over the assets of the Home or a receiver is appointed over the assets of the Home; or
- (g) the Home, being an individual, is the subject of a bankruptcy petition or order; or
- (h) a creditor or encumbrancer of the Home attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (i) any event occurs, or proceeding is taken, with respect to the Home in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 21.2(a) to clause 21.2(h) (inclusive); or
- (j) the Home suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (k) the Home, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- (l) there is a change of control of the Home.
- (m) the Council is of the opinion that the Home no longer meets all the eligibility criteria for either admission onto the Care Home Framework or this Agreement.

21.3 The Council may terminate this Agreement without cause (and without liability to the Home) in whole or in relation to any one of the Services upon six months' prior written notice to the Home.

Home's right to terminate

21.4 The Home may terminate this Agreement without cause (and without liability to the Council) in whole or in relation to any one of the Services upon six months' prior written notice to the Council.

Termination of Purchase Confirmations

21.5 The Council may terminate a Purchase Confirmation by giving twenty one (21) calendar Days' notice (or such other period as may be agreed) to the other Parties.

21.6 The Home may terminate a Purchase Confirmation where the Home is no longer able to meet the Individual's needs set out in the Care Plan, or where the Individual's conduct is having a detrimental effect on other Individuals, residents or the Home's Staff. The Home shall inform the Council of its intention to terminate and shall supply the Council with detailed written evidence of the reasons for such termination no later than twenty eight (28) calendar days prior to the date of the proposed termination. Where the Home does not give the required notice (or such other period as may be agreed) the Council reserves the right to deduct from any money due to the Home a sum equivalent to the cost of the package which normally would have been provided or recover such sum as a debt.

21.7 Termination of a Purchase Confirmation shall not constitute termination of this Agreement.

21.8 Where the Home has committed a material Default in delivering the Services the Council reserves the right to terminate the Purchase Confirmation(s), serving written notice, in respect of the Individual with immediate effect and without further payment to the Home.

21.9 The Purchase Confirmation shall end immediately upon the death of the Individual in accordance with Part 2 of Schedule 5 (*Payment and Invoicing*) which states the Council shall pay the Weekly Contract Price on a pro rata basis for two (2) calendar days following an Individual's death.

21.10 Where the Council is informed of a permanent planned change to an Individual's care in accordance with Part 2 of Schedule 5 (*Payment and Invoicing*) the Purchase Confirmation shall end with immediate effect and the Council's obligations thereunder including the obligation to pay the Weekly Contract Price shall terminate with immediate effect.

21.11 Where the Council is informed of an unplanned change to an Individual's care in accordance with Part 2 of Schedule 5 (*Payment and Invoicing*) such as an emergency admission to hospital, the Council shall continue to pay the Weekly Contract Price for up to a maximum of twenty eight (28) calendar days during the

hospital stay. Where the Council is informed that an Individual will not be returning to the Home the Purchase Confirmation shall end with immediate effect and the Council's obligations thereunder including the obligation to pay the Weekly Contract Price shall terminate with immediate effect.

- 21.12 In accordance with Part 3 of Schedule 5 (*Payment and Invoicing*) the Home shall ensure adequate safe and secure storage of any personal items belonging to an Individual for two (2) calendar days following the end of the relevant Purchase Confirmation.
- 21.13 The cessation of a Purchase Confirmation shall not affect the liability of either Party in respect of sums due and payable up to and including the date on which the Purchase Confirmation ends.
- 21.14 If there is an agreed evidenced change in care needs following a relevant assessment by a Council Representative, the Council will follow the Choice of Accommodation Policy and its associated published processes. If the Home can still meet the Individual's needs, are signed up to the correct Needs Profiles as set out in Schedule 2, the Individual and/or their legal representative agree to the Placement and both Parties agree a Weekly Contract Price within the Needs Profiles range, the Parties agree to the immediate termination of the original Purchase Confirmation and commencement of a new Purchase Confirmation from the date the Council agrees the new Weekly Contract Price. If the Weekly Contract Price cannot be agreed within the new Needs Profile Banding, the Choice of Accommodation Policy will apply.
- 21.15 If there is an agreed evidenced change in care needs following a relevant assessment by a Council representative, the Council will follow the Choice of Accommodation Policy and its associated published processes. If the Home either cannot meet the Individual's care needs, decline to meet the Individual's care needs (care need and or cost) the Purchase Confirmation will be terminated with up to twenty eight (28) calendar days' notice. If a new Placement for the Individual can commence sooner the Purchase Confirmation shall end on this date and payment in respect of the previous Placement will cease on the last date of care.
- 21.16 If there is a change in an Individual's care needs and the Parties cannot agree to the level of care, the Council's decision shall be final and absolute. This may result in the Individual being moved to another residential and or nursing care home and the Purchase Confirmation ceasing.
- 21.17 Termination of this Agreement shall not affect any rights, remedies or obligations of the Parties that have accrued or become due prior to termination.
- 21.18 The Council may apply this clause 21 (*Termination*) to the entire agreement or in relation to any one of the Needs Profile Assessments identified in Schedule 2.

21.19 As both this Agreement and the Care Home Framework are open for applicants throughout the term, the Council will state in the Termination letter any minimum period before a Home may apply again. Any Homes reapplying would have to satisfy the Council through the due diligence process that any issues have been resolved and mitigated against.

22. CONSEQUENCES OF TERMINATION

22.1 Following service of a Termination Notice for any reason, the Home shall continue to provide and/or procure the provision of the Services in accordance with this Agreement and shall ensure that there is no degradation in the standards of the Services until the termination period comes to an end.

22.2 Upon termination or expiry of this Agreement, the Home shall:

- (a) repay to the Council within 30 calendar days of the date of termination or expiry any amount which it may have been paid in advance in respect of Services not provided;
- (b) within 30 calendar days of the date of termination or expiry return or transfer (as the case may be) to the Council ownership of any assets capital or otherwise (whether tangible or not) purchased pursuant to this Agreement using any part of the Weekly Contract Price;
- (c) within 30 days of the date of termination or expiry of all Purchase Confirmations, return to the Council any data (including Personal Data) and Confidential Information for which the Council is Data Controller and the Home is a Processor in the Home's possession, power or control, either in its then current format or in a format nominated by the Council, together with all other related documentation, and any other information and all copies thereof owned by the Council or developed by the Home pursuant to this Agreement and thereafter irretrievably delete any such information stored on any magnetic or optical disk or memory and all matter derived from such sources;
- (d) if relevant, arrange the transfer to the Council or other Party nominated by the Council the remainder of any licence or agreement effected with any portion of the Weekly Contract Price and required for the continued delivery of the Services by the Council or such other person appointed by the Council;
- (e) provide access, during normal working hours, to the Council and/or the Replacement Home for up to six months after the expiry or termination of this Agreement to:
 - (i) such information relating to the Services as remains in the possession or control of the Home; and

- (ii) such members of the Home's Staff as have been involved in the design, development and provision of the Services and who are still employed by the Home, provided that the Council and/or the Replacement Home shall pay the reasonable costs of the Home actually incurred in responding to requests for access under this clause 22.2 unless this Agreement has been terminated by the Council pursuant to clause 21.1 or clause 21.2 in which event such costs shall be for the sole account of the Home.

22.3 The provisions of clause 1 (*Interpretation and Definitions*), clause 3 (*Warranties and Representations*), clause 13 (*Payment and Invoicing*), clause 14 (*Audit, Inspection and Review*), clause 18 (*Indemnity*), clause 23 (*Intellectual Property Rights*), clause 26 (*Confidentiality*), clause 27 (*Data Protection*) and clause 28 (*Freedom of Information*) shall survive the termination for any reason or expiry of this Agreement.

23. INTELLECTUAL PROPERTY RIGHTS

23.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by or for the Home by the Home's Staff, agent or sub-contractor of the Home on behalf of the Council for use or intended use exclusively for the purpose of performing the Services, shall vest in the Council upon creation.

23.2 The Home hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights prepared in accordance with clause 23.1 above, except for any Background IPR which shall remain vested in the Home. This assignment shall take effect on the date of this Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Home. The Home shall execute all documentation necessary to execute this assignment. In the event that the Home or the Council at any time devise, discover or acquire rights in any improvement that relates to the Services, they must promptly notify the other Party of the Intellectual Property Rights to which that Improvement relates giving full details of the improvement and whatever information and explanations as that Party may reasonably require to be able to use the improvement effectively and must assign to that Party all rights and title to such improvement without charge.

23.3 The Home shall procure that the Home's Staff, agents and Sub-Contractors shall waive absolutely and irrevocably their moral rights granted under the Copyright, Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in relation to such property.

23.4 The Home shall observe the Council's approval processes by obtaining, with suitable notice, the Council's written consent prior to engaging in any promotional activity, making public statements or issuing press releases in

relation to this Agreement. This permission will be sought and obtained by emailing corporate.communications@hants.gov.uk.

- 23.5 If the Council's approval is granted in accordance with clause 23.4 above the Home shall ensure any use of the Council's logo on publicity materials connected to this Agreement is in accordance with the Council's Branding Guidelines.
- 23.5 The Council shall grant a non-perpetual, non-assignable, non-exclusive licence to the Home to use the Council's logo in accordance with the Council's Branding Guidelines. In no circumstances shall the Home grant sub-licences of this licence and shall acquire no rights in respect of the Council's logo or branding. The Home shall not incorporate the Council's logo or branding into any other logo or advertising and shall not create any new logo to represent the Services in connection with this Agreement, except with the consent of the Council's communications team.

24. EQUIPMENT

- 24.1 It is the Home's responsibility to ensure that it has all the necessary equipment required to meet the needs of all Individuals placed under this Agreement.
- 24.2 Where the Home provides such equipment it shall be fit for purpose and such equipment shall be provided in line with the warranties set out in clause 3 (Warranties and Representations).
- 24.3 All equipment and materials owned by or hired or leased by or on loan to the Home other than that provided by the Council intended to be used in the performance of the Services shall be deemed to be at the risk of the Home and if prior permission is given by the Council's Representative to store such equipment at any location owned by the Council it shall be stored at the sole risk of the Home.
- 24.4 All equipment and materials owned by or hired or leased by or on loan to the Home other than that provided by the Council and used in the performance of the services shall be serviced and maintained by the Home in accordance with the manufacturer's recommendations and national regulations (Lifting Operations and Lifting Equipment Regulations ([Lifting Operations and Lifting Equipment Regulations - hse.gov.uk](http://www.hse.gov.uk))) and in any event such that the equipment is in a condition suitable for use in the provision of the Services. Where appropriate, the Home shall ensure that where there is a Statutory or other obligation to undertake testing of the equipment, such testing is carried out by suitably qualified and competent persons at regular intervals.

25. HEALTH AND SAFETY

- 25.1 The Home shall comply with the requirements of the Health and Safety at Work etc., Act 1974 and any other Applicable Laws, orders, regulations and codes of

practice relating to health and safety, which may apply to the Home's Staff and other persons in the performance of this Agreement.

- 25.2 The Home shall ensure that any information and data relevant to demonstrating its compliance with clause 25.1 above is made available to the Council on request.
- 25.3 The Home shall notify the Council immediately in the event of any incident occurring in the performance of this Agreement where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 25.4 The Home and any Sub-Contractor shall co-operate with the Council in any investigation into any incident reported to the Council, including providing access to any location, items of equipment, information or individual necessary for an effective and thorough investigation.
- 25.5 Where the investigation into an incident identifies the Home has failed to comply with clause 25.1 above, the Home shall take such steps as are necessary to fully address and rectify the failings.
- 25.6 The Home shall inform the Council of any Health and Safety regulatory intervention that impacts on or relates to the delivery of the Services.

26. CONFIDENTIALITY

26.1 The following definitions apply in this Agreement.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives or advisers (together its **Representatives**) to the other Party and that Party's Representatives in connection with this Agreement concerning:

- (a) the terms of this Agreement;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, Individuals receiving the Services, plans, intentions or market opportunities of the disclosing Party; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party (or of any member of the group of companies to which the disclosing Party belongs); and
- (c) any information developed by the Parties in the course of carrying out this Agreement.

- 26.2 The term "**Confidential Information**" does not include any information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this clause); or
 - (b) was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party; or
 - (c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party; or
 - (d) was known to the receiving Party before the information was disclosed to it by the disclosing Party; or
 - (e) the Parties agree in writing is not confidential or may be disclosed; or
 - (f) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 26.3 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement ("**Permitted Purpose**"); or
 - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 26.
- 26.4 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 26.
- 26.5 A Party may disclose Confidential Information to the extent required by any Applicable Laws, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction or in accordance with the Council's obligations under the Data Protection Legislation and the Freedom of Information Act 2000 as set out in clauses 27 and 28 below, provided that, to the extent it is

legally permitted to do so, it gives the other Party as much notice of such disclosure as possible.

26.6 The Council, in line with the Government's ongoing drive to open up the activities of the Public Sector to greater scrutiny, has prepared its transparency agenda and the Home hereby agrees that, notwithstanding anything set out in this clause 26 or elsewhere in this Agreement, the Council shall be entitled to publish this Agreement in whole or in part (including from time to time any agreed changes to the Agreement), in whatever form the Council may decide. The Home further agrees that the Council may publish any payments made by the Council to the Home under this Agreement.

26.7 On termination of this Agreement, each Party shall:

- (a) return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
- (b) erase all the other Party's Confidential Information from its electronic systems including where such Confidential Information and or data is held on a cloud hosted system (to the extent possible); and
- (c) certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by any Applicable Laws or any applicable governmental or regulatory authority.

26.8 The Home shall procure that each Sub-Contractor used by it in the provision of the Services under this Agreement executes a confidentiality undertaking in a form approved by the Council. The Home shall immediately notify the Council of any notification it receives from a Party to such an undertaking that it believes there to have been a disclosure of such information or of any reasonable suspicion it has that there has been a breach of such an undertaking.

26.9 The provisions of this clause 26 shall survive for a period of six years from termination of this Agreement.

27. DATA PROTECTION ACT

27.1 In the event of any conflict or inconsistency between this clause and the provisions of the main body of the Agreement and any Schedules thereto, this clause shall prevail over and supersede those provisions of the main body of the Agreement and any Schedules thereto to the extent of any such conflict or inconsistency. For the avoidance of doubt any provisions of the main body of the Agreement and any Schedules thereto which do not conflict and are not inconsistent with this clause shall remain in full force and effect save that they shall be construed and interpreted in accordance with this clause and its principles.

27.2 The Parties acknowledge that for the purposes of the Data Protection Legislation the Council is the Controller and the Home is the Processor for the Pen Pictures sent to the Home prior to brokerage confirming if the Council is progressing with the referral. At the point that the Council confirms that the Council is progressing with the referral the Council and Home will become independent Data Controllers.

Home is a Processor

27.4 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Home is the Processor. The only processing that the Processor is authorised to do is listed in Schedule 10 by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

27.5 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

27.6 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing.

27.7 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 10, processing may not be determined by the Processor unless it is required to do so by any Applicable Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless such notification is prohibited by any Applicable Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - i) nature of the data to be protected;
 - ii) harm that might result from a Data Loss Event;
 - iii) state of technological development; and
 - iv) cost of implementing any measures;
- (c) ensure that:
 - i) the Processor’s Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 10);

- ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement;
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
 - ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 UK GDPR or section 75 DPA 2018 as determined by the Controller;
 - iii) the Data Subject has enforceable rights and effective legal remedies;
 - iv) The Processor complies with its obligations under the Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by any Applicable Law to retain the Personal Data.

27.8 Subject to clause 27.9, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);

- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by any Applicable Law; or
- (f) becomes aware of a Data Loss Event.

27.9 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 27.8 (and insofar as possible within the timescales reasonably required by the Controller) including but not limited to promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request.
- (b) such assistance as is reasonably required by the Controller to enable the Controller to comply with a Data Subject request within the timescales as set out in the Data Protection Legislation.
- (c) the Controller, at its request, with any Personal Data it holds in relation to a data subject:
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as required by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

27.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

27.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

27.12 The Processor shall designate a Data Protection Officer if required by the Data Protection Legislation.

27.13 Before allowing any Sub-Processor to process any Personal Data related to this

Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Controller
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 27 such that they apply to the Sub-Processor; and
- (d) provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.

27.14 The Processor shall remain fully liable for all acts or omissions of any Sub-Processor.

27.15 The Processor agrees to indemnify the Controller against all losses, claims, liabilities costs and expenses (including reasonable legal costs) that the Controller incurs as a result of the Processor's failure or that of any Sub-Contractor to comply with the Data Protection Legislation as required by this clause 27.

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

27.17 Once the Home has accepted the referral the Home becomes an independent Controller (this enables the Home to carry out their own assessment of the Individual as a separate Data Controller and to provide Services under this Agreement once the Individual is accepted).

Home is a separate (independent) Controller

27.18 The Council and the Home acknowledge their obligations under the relevant Data Protection Legislation and will comply with their obligations under the relevant Data Protection Legislation in force at the time and not do anything to cause the other Party to be in breach of it.

27.19 The Home will be the independent Controller of Personal and Special Category Data that is held, collected and processed by it including Personal and Special Category Data provided to the Home by the Council for the purposes of providing Services under the terms of this Agreement.

27.20 The Home shall procure that the Home's Staff, Representatives and any Sub-Contractors shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this Agreement.

27.21 Following termination or expiry of this contract the Home will transfer or provide

Individual records to the successor Home, Replacement Home and or the Council as reasonably requested in order to enable the continuation of service provision.

- 27.22 The Home shall process the Personal Data for the purposes of providing Services under this Agreement and/or for complying with its statutory duties.
- 27.23 The Council will be an independent Controller for any Personal and Special Category Data held and processed by the Council including of any Personal and Special Category Data provided to the Council by the Home.
- 27.24 Each Party shall ensure that it has the necessary lawful basis, privacy notices and consents (where required) in place to enable lawful processing and transfer of the Personal Data for the purposes of this contract.
- 27.25 The Parties agree that in accordance with the Data Protection Legislation to enter into data sharing agreements with each other where appropriate.
- 27.26 The Personal Data shared between the Parties will be shared using secure methods of transfer.
- 27.27 Each Party shall have appropriate technical and organisational measures in place to protect the security, confidentiality, integrity and availability of the Personal Data and Special Category Data during all stages of the processing including transfer, storage, access and deletion to ensure a level of security appropriate to the risks and the measures shall as a minimum comply with the requirements of the Data Protection Legislation including as required by Article 32 UK GDPR.
- 27.28 The Home shall at the request of the Council provide such information about its data security including cyber security in order to demonstrate that the Home's processing is being performed in accordance with this Agreement, any data sharing agreement and the Data Protection Legislation. Such requests to be made no more than on an annual basis unless the Home has experienced a Data Loss Event affecting Personal Data relevant to this Agreement.
- 27.29 The Parties shall each deal with any Data Subject Rights Request made to them independently.
- 27.30 Each Party shall ensure that the Personal Data they process and share under this Agreement is accurate and up to date.
- 27.31 Each Party shall inform the other of any rectification or erasure of Personal Data or restriction of processing as required under Article 19 UK GDPR.
- 27.32 The Home shall notify the Council without undue delay on becoming aware of a Data Loss Event irrespective of whether there is a requirement to notify the Information Commissioner's Office or the Data Subject in respect of Personal Data processed under this Agreement. The Party responsible will investigate it. The Parties agree to provide reasonable assistance as is necessary to each other to

facilitate the handling of any potential Personal Data Breach in an expeditious and compliant manner.

27.33 The Home shall process Personal Data only within the UK or other country deemed adequate under the Data Protection Legislation

27.34 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

27.35 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

27.36 The Home shall be liable for and shall indemnify (and keep indemnified) the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Council which arise directly from a breach by the Home of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Home, the Home's Staff, servants, agents or Sub-Contractors.

28. FREEDOM OF INFORMATION ACT

28.1 The Home acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 and shall assist and co-operate with the Council (at the Home's expense) to enable the Council to comply with these information disclosure requirements.

28.2 The Home shall and shall procure that its Sub-Contractors shall:

- (a) transfer the request for information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
- (b) provide the Council with a copy of all information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.

28.3 The Council shall be responsible for determining at its absolute discretion whether the information is commercially sensitive and if it:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA; or
- (b) is to be disclosed in response to a Request for Information, and in no event shall the Home respond directly to a request for information unless expressly authorised to do so by the Council.

28.4 The Home acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice ("the Code") on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA to disclose information:

- (a) without consulting with the Home; or
- (b) following consultation with the Home and having taken its views into account

provided always that where clause 28.4(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Home advanced notice, or failing that, to draw the disclosure to the Home's attention after any such disclosure.

28.5 The Home shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

28.6 The Home acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 28.

29. EQUALITY ACT

29.1 The Home shall not unlawfully discriminate within the meaning and scope of any Applicable Laws, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment or in the performance of its obligations under this Agreement.

29.2 The Home shall take all reasonable steps to secure the observance of clause 29.1 by the Home's Staff, servants or agents of the Home and all Sub-Contractors employed in performance of this Agreement.

30. HUMAN RIGHTS ACT

30.1 The Home shall (and shall use its reasonable endeavours to procure that its servants, employees, agents or Sub-Contractors shall) at all times comply with

the provisions of the Human Rights Act 1998 in the performance of this Agreement.

- 30.2 The Home shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

31. NO PARTNERSHIP OR AGENCY

- 31.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute one party the agent of the other party, nor authorise a party to make or enter into any commitments for or on behalf of the other party.

32. VARIATION

- 32.1 A variation to this Agreement (including to the scope and nature of the Services) shall only be valid if it has been agreed in writing and signed by both Parties.
- 32.2 If the Council wishes to vary this Agreement then it shall serve on the Home a Change Control Notice in accordance with Schedule 7 (*Change Control Procedures*).

33. WAIVER

- 33.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by any Applicable Law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 33.2 The rights and remedies provided by this Agreement may be waived only in writing by the authorised representative of the relevant party in a manner that expressly states that such waiver is intended for and shall only be operative with regard to, the specific circumstances referred to in the notice of waiver.

34. SEVERANCE

- 34.1 If any provision of this Agreement (or part of any provision) is found by any court or other Council of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected.

35. NOTICES

- 35.1 Any notice or other communication required to be given under this Agreement, shall be sent electronically, in writing and shall be delivered personally, or sent

by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication at its address as set out herein or as otherwise specified by the relevant party by notice in writing to each other party.

For the Council

Name: Adults' Health and Care Contracts Team

Address: The Castle
Winchester
SO23 8UJ

Email Address: as.contracts@hants.gov.uk

For the Home: (for finance matters, registered manager, owner)

Name: Name of Home

Address: Address of Home

Telephone Number: Phone number of Home

Email: Email address of Home

35.2 The Home is required to notify the Council of any changes to the details in the notices section above.

35.3 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (d) if sent electronically (this may include email, electronic tendering or brokerage systems or other electronic means as designated by the Council) on a Working Day, deemed delivery shall be the Working Day of sending; or
- (e) if sent electronically on a non-business day, deemed delivery shall be the next Working Day.

35.4 A notice required to be given under this Agreement shall be validly given if sent Electronically in accordance with clause 35.

35.5 The provisions of this clause 35 shall not apply to the service of any proceedings or other documents in any legal action.

36. THIRD PARTY RIGHTS ACT

36.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999. The rights of the Parties to terminate rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

37. ENTIRE AGREEMENT

37.1 This Agreement and any documents referred to in it constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

37.2 Each party acknowledges that, in entering into this Agreement it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

37.3 Nothing in this clause shall limit or exclude any liability for fraud.

38. THE COUNCIL'S STATUTORY FUNCTIONS

38.1 Nothing in this Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

39. NON-SOLICITATION

39.1 Neither party shall (except with the prior written consent of the other) during the Term of this Agreement (including any Extension Periods) solicit the services of any senior Staff of the other party who have been engaged in the provision of the services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

40. GOVERNING LAW AND JURISDICTION

40.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the

laws of England and Wales. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

41. MODERN SLAVERY

41.1 The Home undertakes, warrants and represents that:

- (a) neither the Home nor the Home's Staff, officers, agents or Sub-Contractors has:
 - (i) committed an offence under the Modern Slavery Act 2015 (a "MSA Offence"); or
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- (b) it shall comply with the Modern Slavery Act 2015 and has a Modern Slavery Policy in place;
- (c) it shall notify the Council immediately in writing if it becomes aware or has reason to believe that the Home's Staff, agents or Sub-Contractors have, breached or potentially breached any of the Home's obligations under this Clause 41. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Home's obligations.

41.2 Any breach of this clause 41 by the Home shall be deemed a material Default of the Agreement and shall entitle the Council to terminate the Agreement in accordance with clause 21.

41.3 The Home shall fully co-operate with any requests of the Council in order to ensure compliance with this clause 41 and the Modern Slavery Act 2015.

42. MODIFICATIONS

42.1 The Parties agree that where a new provider replaces the Home as a consequence of universal or partial succession into the position of the Home, following corporate restructuring, takeover, merger, acquisition or insolvency, the Council may agree to the novation of this Agreement to the new provider, such agreement to be in writing, provided that:

42.1.1 the new provider fulfils the criteria for qualitative selection initially established during the procurement of this Agreement;

42.1.2 the result of the universal or partial succession does not entail other substantial modifications to the contract; and

42.1.3 the succession complies with Regulation 72 of the Public Contract Regulations 2015.

42.2 The Parties agree the following modifications made during the Term of the Agreement and any Extension Periods shall not constitute substantial modifications:

42.2.1 Changes or updates to the Service Specification which may include, but are not limited to amendments to any KPIs and Needs Profiles;

42.2.2 Changes to the Weekly Contract Price;

42.2.3 Changes to the ways in which the Council makes payment of the Weekly Contract Price to the Home;

42.2.4 Changes to the payment of the Weekly Contract Price from gross to net;

42.2.5 Changes to the Needs Profile Rate Bandings;

42.2.6 Changes to the way in which the Weekly Contract Price and the Needs Profile Rate Bandings are reviewed as set out in Schedule 5 (*Payment and Invoicing*);

42.2.7 Changes to the system or processes that the Council use to make Placements.

42.2.8 Changes to the reporting requirements set out in the Schedule 1 (*Service Specification*) and this Agreement including information and frequency of reporting;

42.2.9 Changes to Council's Choice of Accommodation policy and or any other Council policies;

42.2.10 Changes to allow the Council to make Placements on behalf of other Contracting Bodies.

42.2.11 Changes to the contents of Purchase Confirmations or replacement of the Purchase Confirmations with any other confirmation of purchase which holds the relevant information. As a minimum this would include the Individual's name, person identifier number, Weekly Contract Price and start date of Placement.

42.3 Where any modifications are made under this Agreement, the Parties shall work together in good faith to agree such variation. Any such variation shall be recorded

in writing and shall comply with the provisions of Regulation 72 of the Public Contracts Regulations 2015.

43. CHANGE IN LAW

- 43.1 If, due to any change in Applicable Law or regulations or their interpretation by any court of law or other governing body having jurisdiction subsequent to the date of this Agreement, performance of any provision of this Agreement shall become impracticable or impossible, the Parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.
- 43.2 In the event of a change in Applicable Law as contemplated in clause 43.1 occurring the Parties may modify this Agreement to give effect to the consequences of such change.

This Agreement has been entered into on the day and year first before written.

Signed for and on behalf of **HAMPSHIRE COUNTY COUNCIL**

.....

Authorised Signatory

.....

Authorised Signatory

Signed for and on behalf of **[INSERT NAME OF HOME]**

.....

Director

.....

Name of Director

.....

Director/Company Secretary
(delete as appropriate)

.....

Name of Director/Company Secretary

OR

.....

Director

.....

Name of Director

.....

Witness Signature

.....

Name of Witness

Witness Address

.....

.....

.....

OR

.....
Authorised Signatory/Witness Name of Authorised Signatory/Witness
(delete as appropriate)

.....
Designation/Occupation

Witness Address

.....

.....

.....

SCHEDULE 1 SERVICE SPECIFICATION

SCHEDULE 2 NEEDS PROFILES

The Home has met the requirements including agreeing to the price range for the following Needs Profiles;

Needs Profile	Yes/No
Residential Standard	
Residential Enhanced	
Nursing Standard	
Nursing Enhanced	
Complex Care	

SCHEDULE 3 ARRANGEMENT FOR PURCHASE OF SERVICE FOR RESIDENTIAL AND OR NURSING CARE

Purchase Confirmation (Example below)



Adults Health & Care

Email: adults_services@hants.gov.uk
Tel: 0300 555 1386

Purchase Confirmation

Person ID
Provision ID
Date 14/12/2023

This is confirmation of the agreement between Adults Health & Care and the parties named below to purchase care commencing on 01/01/2024.

Provider Details **Service User Details**

Vendor Id:

Service Details

Provider Portal Service Delivery Id:

Service Start Date: 01/01/2024 Service End Date:

Service Type: Older Adults - Residential : Long Term Stay :

Service Details: Elderly Very Dep with Dementia : Negotiated

Hours/Units	Rate	Weekly Cost
0.0000		£924.00

This placement has been made under the Terms and Conditions of your contract. For more information, please refer to your contract documentation, or contact the Adults Health and Care Contracts Team AS.Contracts@hants.gov.uk

SCHEDULE 4 APPROVED SUB-CONTRACTORS

Name and address of Sub-Contractor	Registered address and company number	Service description	Term of Sub-Contract	Price expressed as a percentage of total Weekly Contract Price

SCHEDULE 5 PAYMENTS AND INVOICING

Part 1 - Payment Detail

The Weekly Contract Price shall be paid by the Council on a monthly basis using the Council's automated payment process. The first payment will be made within six weeks of the Placement commencing and will include a backdated payment to the Commencement Date.

The monthly payment will be calculated as the Weekly Contract Price stated on the Purchase Confirmation divided by 7 then multiplied by the number of days in the month.

Placements will be made within the Needs Profile Rate Bandings as set out in the tender documentation and varied from time to time. The Weekly Contract Price for the Placement will be displayed on the Purchase Confirmation. There may be exceptional circumstances where the Weekly Contract Price may be outside of the Needs Profile Rate Bandings, for example where there are shared funding arrangements in place.

All variations to the Needs Profile Rate Bandings will be published through the Council's electronic tendering system.

Review of Weekly Contract Price and Needs Profile Rate Banding

The annual price review shall follow the methodology outlined below and shall apply to the Weekly Contract Price and Needs Profile Rate Banding:

The Council will review the Weekly Contract Price on an annual basis calculated on the basis of 60% of the EARN03 Index and 40% of the CPIH Index (using the published figures for July each year).

The Council reserves the right to adjust the result of the calculation by an increase or decrease of up to 10%.

For new Purchase Confirmations this % uplift of the Weekly Contract Price will apply to the midpoint of each Needs Profile Rate Banding and accommodate £50 either side, to set the Needs Profile Rate Bandings for the following Financial Year in line with the date of the DWP change in benefits.

Example:

- *The Council uses the methodology above to calculate a 5% uplift shall be applied to the Weekly Contract Price.*
- *The uplift is applied to all existing Placements.*
- *The uplift is also used to increase the mid-point of the Needs Profile Rate Banding by 5% so the new Needs Profile Rate Banding will be £50 either side of the increased Weekly Contract Price.*

i.e. if the Needs Profile Rate Banding is £100 - £200 and the uplift is 5%, the mid-point will be increased to £157.50 and the new Needs Profile Rate Banding will be £107.50 - £207.50

Any changes to the Weekly Contract Price changes as a result of the annual price review will take effect for the following Financial Year in line with the date of the DWP change in benefits.

The Council will only accept requests to review the Weekly Contract Price outside of the annual price review through the Council's agreed processes.

Where legislative changes or planned economic changes e.g. national living wage announcements, take place within a Financial Year but are not yet reflected in the above index the Council at its absolute discretion may choose to uplift the Weekly Contract Price by a further amount to reflect these changes.

As set out in Schedule 1 (*Service Specification*), an Individual which has previously funded themselves or has been funded by their representatives, family, a charity or any other Authority (shared or total funding) on either a long or short term basis, and becomes eligible for Hampshire County Council Local Authority financial support for a long term residential and or nursing placement within a home, the Council will follow its Choice of Accommodation Policy. Having been followed, should the Individual wish to remain in their current Home and the Home is registered to deliver the relevant Needs Profile, then the Home shall accept that Individual within the relevant Needs Profile Rate Banding.

Part 2 – End of Placement

Death of an Individual

Where a bed becomes vacant due to the death of an Individual, the Home shall notify the Council via the Adult Social Care contact centre within 1 Working Day by telephone or via the online professional referral form which can be found on the Council's Residential and Nursing micro-site or within the information pack. Homes must include the information as outlined in their information pack for the reporting of deaths.

Payment of the Weekly Contract Price on a pro rata basis will be made to the Home for a period of two (2) calendar days following the Individual's date of death.

Permanent Planned Change

A permanent planned change may include but is not limited to a move from residential to nursing care which cannot be accommodated by the Home and will be known as a 'Planned Change' and the Council's obligations thereunder including the obligation to pay the Weekly Contract Price shall terminate with immediate effect.

Temporary Planned Change

Any temporary planned change not included above may include but not be limited to an Individual visiting their family will be known as a 'Temporary Planned Void'. The Home

shall notify the Council of any period in excess of 48 hours during which a bed has been or will be unoccupied. The Home shall notify the Council via the Adult Social Care contact centre within 1 Working Day of the Home being informed of the temporary change by telephone or via the online professional referral form which can be found on the Council's Residential and Nursing micro-site or within the information pack. The Council reserves the right to adjust the Weekly Contract Price for such a period in consultation with the Home.

Unplanned Change

An unplanned change may include but not be limited to an emergency admission of the Individual to hospital. The Home has an obligation to notify the Council within 24 hours of any unplanned change. The Home shall notify the Council via the Adult Social Care contact centre by telephone or via the online professional referral form which can be found on the Council's Residential and Nursing micro-site or within the information pack. The Council will continue to pay the Weekly Contract Price up to a maximum of 28 calendar days during the hospital stay. Where any unplanned changes exceed 28 calendar days but the Individual will return to the Home the Parties may negotiate a reduction to the Weekly Contract Price which will not exceed 50%. This negotiation may be managed by any relevant member of the Council's staff.

Where a decision is made that the Individual will not be returning to the Home the Council's obligations thereunder including the obligation to pay the Weekly Contract Price shall terminate with immediate effect with the Council writing to inform the Home of the termination. Council will recover any overpayment by credit or invoice if unable to apply a credit.

Recovery of Overpayments.

Where an overpayment has been made by the Council as a result of a change being notified subsequent to any payment made, the Council will recover the overpayment via a credit against the next payment to the Home. If at the point of the Placement ending the Home does not have any other Council funded residents the Council will issue an invoice for the overpayment.

Part 3 – Storage

The Home will ensure adequate safe and secure storage of any personal items belonging to Individuals for two (2) calendar days after the end of the Purchase Confirmation.

Part 4 – Payment

Purchase Confirmations shall be sent to the Home within 6 weeks of a Placement being made.

The Home can contact the Council if they have not received the Purchase Confirmation for residential and or nursing Care six (6) weeks after the start of the Placement.

If any payments are subject to VAT, a VAT invoice will be required from the Home.

Unless otherwise agreed on a case by case basis, the Council will pay the Home the full amount including any top up or client contributions and the Council will be responsible for collecting these.

SCHEDULE 6 QUALITY ASSURANCE AND GOVERNANCE

Quality Outcomes & Contract Monitoring (QOCM)

The QOCM framework is designed to ensure Adults' Health and Care (AHC) has a robust mechanism for monitoring and responding to information in respect of the services the Council commissions.

It aims to provide a system that allows the information held across the directorate to bring together to provide an overview and contemporaneous assessment of how a service is performing and responding to market conditions.

The directorate works collaboratively with other commissioners and partners to review available insights and intelligence to ensure evidence-based decision making.

The Council in accordance with the QOCM framework may ask the Home to undertake a **pre-defined self-assessment** (see section 2.1) of the Services at least annually and return this to the Council.

The QOCM framework is coordinated by a central team that can support the Home to maintain or improve their organisations overall assurance and governance systems. The team can be contacted by emailing: ahc.qualityteam@hants.gov.uk

AHC makes use of indicators of a Home's quality, available in the public domain, internally and through liaison with partners and people in receipt of Services, to apply a RAG rating as a forward-looking measure of quality. The RAG rating is a three-tiered approach, and the outcome of the assessment informs how the central Provider Quality Team interacts with the Home. Information available is assessed within each of the following areas:

- Care Quality Commission (CQC) Rating
- Large Scale Safeguarding Enquiry (LSSE)
- Information gathered under the QOCM framework.
- AHC or any other Local Authorities Purchasing Status or Restriction.
- Enforcement Action taken by any enforcement agency or legal body.
- Information relevant to the leadership of the Service.
- Intelligence shared by partner agencies or people in receipt of Services.
- The history of working with the provider quality team.

For the purposes of this Agreement the RAG rating tool is only used for Homes regulated by the Care Quality Commission to provide Regulated Activity.

All provider RAG ratings will be followed up by the Provider Quality team and may result in a visit to the Home's premises, a telephone assessment or the Home may be asked to self-assess against a set criterion.

AHC Provider Self-Assessment

The Council's aim is to support the Home to deliver and sustain a good quality service. Any homes that have been RAG rated as green (the lowest risk rating) will be sent a [provider quality self-assessment](#).

The purpose of the self-assessment is to enable the Home to review the information the Council has used to assess the service, to ensure the information sourced is correct, contemporaneous and an accurate interpretation of the service.

When the self-assessment is returned, the information will be reviewed, and the risk rating will be updated, if appropriate. The Home will either remain green, change to amber or red.

The Homes will be contacted by a member of the provider quality team, if its rating changes, to discuss the outcomes and how assurance can be gained to ensure the rating can return to green.

Enforcement

The Home shall advise the Council of any enforcement or legal action taken against the provider by any enforcement agency within 24 hours of receiving notification of such action.

The Care Provider Quality Assurance and Governance systems

The Home shall operate a self-regulatory system of quality assurance and governance oversight relevant to this Agreement which ensures that the Services are provided in accordance with the requirements of this Agreement, including the following measures as a minimum.

The Home shall commit to:

- Focussing on people's strengths and ensure the user of the service is at the heart and centre of delivery.
- Enabling independence, self-reliance, and personal responsibility for the individuals it supports.
- Delivering a supportive and inclusive service.
- Ensuring dignity and respect is maintained in all interactions.
- Helping people to understand and manage risk.
- Supporting people to maximise and maintain their mental, physical health and overall wellbeing.

- Supporting people to develop knowledge and social skills to maintain support networks.
- Operating within a robust governance and quality assurance framework and a culture of continuous improvement.
- Enabling a positive risk-taking culture that allows people independence, choice and decision making and that this is reflected in personalised care and support planning.
- Assessing, mitigating, managing and recording any identified risks for the individuals supported.
- Having policies, procedures, and arrangements in place to ensure appropriate and efficient staff recruitment, management, and retention.
- Ensuring compliance with Data Protection Legislation.
- Having processes in place to ensure the Services are always adequately staffed by competent and trained staff.
- Ensuring compliance with all contractual timescales.
- Maintaining and monitoring all contractual or relevant performance indicators.
- Regularly reviewing structures and processes to ensure continued safe delivery of care and support.
- Ensuring serious incidents are recorded, reported, and managed and that lessons are learned.
- Understanding the requirements of all Applicable Laws and ensure staff are trained and work within the remit of the legislation.
- Ensuring the views and experiences of supported people, carers, staff, and the local community are considered in the planning, delivery, review, and evaluation of the Services.
- Working closely with community partners and encouraging those it supports to actively engage in their community.
- Seeking out and exploring volunteering and work opportunities for the individuals it supports.
- Educating supported people in respect of managing their personal finances, by enabling opportunities for them to manage day to day financial transactions.

- Working with partner agencies and the wider community to develop and maintain a robust contingency and continuity plan so that the Service can continue in extraordinary circumstances.
- Ensuring all partners acknowledge and recognise the individual.
- Providing support in environments which will promote an individual's human rights and never be used to deliberately inflict pain, punish, or humiliate.
- Recognising that behaviour communicates distress or unmet needs and used by a person to fulfil an important function i.e., obtain something tangible or meet a sensory need.
- Restrictions, i.e., locked doors, access to food, lap belts in wheelchairs, escorts for community access, will always be used as a last resort and will be monitored and regularly reviewed. Wherever possible, plans will be made to reduce the restrictions over time. Deprivation of Liberty Safeguards must be used appropriately.
- Monitoring the restrictions used across a service to identify any trends or environmental factors which contribute to restrictions.
- Promoting tailored inclusive communication which accounts for a person's preferences and communication needs.
- Fostering environments which encourage increased quality of life and long-term outcomes for both the person it cares for and their network.
- If restrictions are needed, using a scientific approach to design restrictions based on data about the person's needs and proportionate to the risks.
- Tailoring our approach for each person, recognising their personal goals, history, needs and risks.
- Regularly reviewing all structures and processes to ensure continued safe and effective delivery of care, and that there are properly organised and efficient systems and processes in place between the Home and any Sub-Contractors to enable full understanding and agreement concerning the Services which are to be provided and the necessary liaison with the Council.
- Managing and report any potential conflicts of interest.

Quality Improvement support

The Provider Quality Team and staff within operational teams will work with the Home to support the service to make or sustain improvements.

The Council reserves the right to find alternative accommodation for people living in a Home's premises if that Home is considered by the Council to have received support over a continuous six-month period and has not made significant improvements to its care delivery, practices, or governance processes.

Complaints

The Home shall maintain a system for receiving and investigating complaints and keep details of the number of complaints received and how each complaint has been responded to.

The Home shall:

- Publicise the complaints procedure to Individuals and their representatives.
- Ensure that complaints are speedily dealt with and that complainants receive a written statement of the Home's response.
- Ensure that complainants who are not satisfied with the Home's response are informed of their right to refer their complaints to the Council's Representative.
- Ensure that complainants are made aware that they may make a complaint to the Local Government Social Care Ombudsman or its successor in title, or other applicable professional or Regulatory Body, interested stakeholder or other commissioner to investigate the matter further.

Records

Representatives of the Council will require access to records as part of safeguarding or quality improvement work.

The Home will ensure all records for Individuals and employees are stored in line with current regulations.

The records held by the Home referred to above will include the Care Plan, risk assessment and management plans and all other care records of any Individual concerned, for example incident forms, medication administration records and any charts associated with care.

In addition to records held on Individuals, the Home will provide as reasonably required by the Council, a list of all current Individuals and their commissioners including those Individuals that fund their own care. It may also be necessary to access records relating to staff such as recruitment, supervision, and training records. Access to records will assist in the early identification of any risks and the monitoring of quality concerns. The Home shall obtain the Data Subject's consent before disclosing such information.

IMPACT's role in the QOCM process is to support Homes to focus their workforce development activity and resources effectively to achieve compliance with the

workforce requirements of the Regulatory Standards. IMPACT is able to provide direct support to managers to identify areas requiring development.

The Home shall accept and bear the costs of any learning interventions recommended by IMPACT to support service improvement. The Home will also accept any subsidised training and free learning resources offered by the Council.

SCHEDULE 7 CHANGE CONTROL PROCEDURES

1. Principles

- 1.1 Where the Council or the Home considers any changes to this Agreement are necessary the Council may at any time request, and the Home may at any time recommend, such change only in accordance with the formal Change Control Procedure (“CCP”) as set out at paragraph 2.
- 1.2 The Home shall not unreasonably withhold its agreement to any change.
- 1.3 Until such time as a change to this Agreement is made in accordance with the Change Control Procedure, the Council and the Home shall, unless otherwise agreed in writing, continue to supply the Services specified in this Agreement as if the request or recommendation had not been made.
- 1.4 Any discussions which may take place between the Council and the Home in connection with a request or recommendation before the authorisation of a resultant change to this Agreement shall be without prejudice to the rights of either party.
- 1.5 Any work undertaken by the Home’s Staff, its Sub-Contractors or agents which has not been authorised in advance by a change to this Agreement and which has not been otherwise agreed in accordance with the provisions of paragraph 1.3 shall be undertaken entirely at the expense and liability of the Home.

2. Procedures

- 2.1 Discussion between the Council and the Home concerning a change to this Agreement shall result in any one of the following:
 - 2.1.1 no further action being taken;
 - 2.1.2 a change to this Agreement.
- 2.2 Once the change is agreed, the Council shall issue a Change Control Notice (“CCN”) which shall contain:
 - 2.2.1 the title of the change;
 - 2.2.2 the reason for the change;
 - 2.2.3 full details of the change including any specifications;
 - 2.2.4 a timetable for implementation, if applicable;
 - 2.2.5 a sequential number;

2.2.6 provision for signature by the Council and by the Home.

2.3 A CCN validly signed by the Council and by the Home shall constitute an amendment to this Agreement.

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SCHEDULE 8 STANDARDS AND POLICIES

Home's Policies

The Home must have the following Policies/Procedures in place:

- Anti-Bribery Policy / Gifts and Inducements
- Bullying & Harassment
- Complaints
- Confidentiality
- Data Protection
- Critical Incident
- Business Continuity Plan
- Equalities
- Health and Safety
- Mental Capacity Act
- Recruitment and Retention
- Safeguarding / Protection of Vulnerable Adults (and/or Children)
- Whistleblowing
- Manual Handling
- Dealing with Violence
- Client Payments Policy
- Medication
- Infection Control
- Lone working
- Supervision
- Managing challenging behaviour
- Prevent
- Modern Slavery

SCHEDULE 9 HOME'S TENDER AND CLARIFICATIONS

SCHEDULE 10 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This schedule is relevant only where the Council is the Controller and the Home is the Processor i.e., for the Pen Pictures sent to the Home prior to Council's brokerage team confirming if the Council is progressing with the referral.

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule.

Description Details

The subject matter is described within the definitions and descriptions of Services as set out in the Agreement and Schedule 1 (Service Specification).

Duration of the processing

It is expected that the only Personal Data processed under the Controller/Processor relationship will be the Pen Pictures provided by the Council which must be destroyed by the Processor within 72 hours of Council's brokerage team confirming the referral will not be proceeded with or if the Home declines the referral.

Should any other Personal Data be processed under the Controller/Processor relationship it will only be processed for the duration of this Agreement unless required longer:

1. for retention purposes; or
2. as required by any Applicable Law and in either of those cases as confirmed in writing by the Controller.

Nature and purposes of the processing

Such processing as is necessary to enable the Processor to comply with obligations under this Agreement to include any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.

The purpose of the processing is the performance of the Home's obligations under this Agreement including the performance of functions required or requested by the Council.

Type of Personal/Special Category Data:

*HCC Individual identifier
Address,(postcode only)
Age
Health information,
Religious Belief
Personal data relating to criminal convictions and offences detail, etc.*

Categories of Data Subject:

*Members of the public,
Individuals and their representatives.*

**Plan for return and destruction of the data once the processing is complete
UNLESS requirement under domestic law to preserve that type of data.**

Unless otherwise agreed in writing all Pen Pictures are to be destroyed within 72 hours of brokerage confirming that the referral will not be proceeded with or within 72 hours of the Home declining the referral.

It is expected that the only Personal Data processed under the Controller/Processor relationship will be the Pen Pictures provided by the Council which will be destroyed within 72 hours of the Council's brokerage team confirming the referral will not be proceeded with or if the Home declines the referral.

For the avoidance of any doubt all Personal Data processed under the Controller/Processor relationship will be destroyed at the end of the contract and confirmation of this will be provided in writing to the Controller.