

Pre-placement Agreement

for

Social Care Placements into Residential Care and Nursing Homes*
(In County)

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** This Agreement shall apply to all Service Users aged 18 years and over, unless specific clauses or appendices state otherwise*

DOCUMENT CHANGE HISTORY			
Version*	Date	Comments	Amended/Approved by
1.0	[2025]	First publication	
1.1			
1.2			
1.3			
1.4			
1.5			
1.6			

* Admin note change version number in footer if amendments are made to agreement

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SECTION A: AUTHORISED SIGNATORY TO THE AGREEMENT AND DEFINITIONS OF TERMS

1. AUTHORISED SIGNATORY TO THE AGREEMENT – RETURN FORM

1.1	This Agreement will commence on:	As per date this Return Form is signed. (Section A: clause 1.9)
1.2	and will terminate on:	Subject to Section B: Standard Conditions, clauses 10,11,12
1.3	This Agreement is made between:	Devon County Council, County Hall, Topsham Road, Exeter, EX2 4QR (the Service Purchaser)
1.4	and;	[Provider Enter Name of Home and Address] (the Service Provider)
1.5	For the provision of:	[Parent Company Name, Address and Company Number] Social care placements into residential care and nursing homes (the Service)
1.6	In respect of:	[Identify the specific care home – e.g. name, address, registration number]
1.7	Address for formal communications (Service Purchaser):	Procurement – People Services, Devon County Council, County Hall, Topsham Road, Exeter, EX2 4QR procurementpeople-mailbox@devon.gov.uk
1.8	Address for formal communications (Service Provider):	[Service Providers Details]
1.9	This Agreement is signed by the duly Authorised Signatory on behalf of the Service Provider:	Name:
		Position:
		Signature:
		Date:
1.10	This Agreement is signed by the duly Authorised Signatory on behalf of the Service Purchaser:	Name: [Name]
		Position: [Position]
		Signature: [Signature]
		Date: [Date]

2. DEFINITIONS OF TERMS

2.1 In this Agreement the following words and expressions shall have the following meanings:

<p>“ADASS National Competence Framework for Safeguarding Adults”</p>	<p>means the Association of Directors of Adult Social Services competency framework that maps out the competencies required by all Staff to work to safeguard vulnerable adults from abuse.</p>
<p>“Affected Party”</p>	<p>means the given to the term in Section B: Standard Terms, clause 15.2.</p>
<p>“Agency Staff”</p>	<p>means as defined in the UK Agency Workers Regulations 2010 as an individual who:</p> <ul style="list-style-type: none"> a. is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer. b. has a contract with the temporary work agency, which can be either: <ul style="list-style-type: none"> (i) a contract of employment with the agency, or (ii) any other contract to perform work or services personally. <p>The individual is not self-employed but works under an employment contract with a temporary work agency. The hirer is responsible for managing the individual's work and day-to-day activities during their assignment. The temporary work agency initiates or is involved as an intermediary in arranging the work.</p>
<p>“Agreed Purposes”</p>	<p>means in relation to data processed for the purpose of providing residential and nursing care from the Service Provider while the Data Subject remains in the care of that provider. The purpose is statutory under the Care Act 2014 and other relevant legislation and regulation. Data will be stored securely and may be shared with health providers where necessary. The origin of the data is ongoing assessment and review. Data will be made available to the data Controller when required for an Information disclosure request. This also includes the use of CCTV as per Section C: Particulars, clause 21.</p>
<p>“Agreement”</p>	<p>means this Agreement, for social care placements into residential care and nursing homes, which consists of Section A: Authorised Signatory to the Agreement and Definitions of Terms, Section B: Standard Conditions, Section C: Particular Conditions and Section D: Service Specification and any appendices listed in the contents.</p>
<p>“Agreement Period”</p>	<p>means the period of the Agreement from its commencement date as shown in Section A: Authorised Signatory to the Agreement and</p>

	Definitions of Terms, clause 1.1 and its termination date as shown in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clause 1.2.
“Approval” and “Approved”	means the written consent of the Service Purchaser.
“Assessed Charge”	means an amount calculated by a Devon County Council financial assessment in accordance with statutory regulations and policy, that the Service User must contribute towards their care.
“Auditor”	means an auditor appointed by the Service Purchaser.
“Authorised Individual”	means the Service Purchaser’s representative(s) entering a residential care and nursing home who has been given the legal authority to perform specific duties and responsibilities related to the care and support of service users. This authority is typically granted under the Care Act 2014 and other relevant legislation.
“Authorised Signatory”	means the persons who are entitled to sign this Agreement on behalf of the Service Purchaser and the Service Provider.
“Best Interest”	means as per the Mental Capacity Act 2005 (MCA), this covers any decision made, or action taken on behalf of a Service User who lacks the mental capacity to make that decision for themselves. An act done, or decision made, under the MCA for or on behalf of a person who lacks capacity must be done, or made, in their best interests. Please refer to s4 of the Mental Capacity Act (2005).
“Caldicott Principles”	means a set of standards identified by the 1997 Caldicott Committee, which govern the use of personally identifiable Information in the health service and councils with social services responsibilities.
“Capacity Tracker”	means Section 277A of the Health and Care Act 2022 enabling the Secretary of State to require regulated providers of adult social care to provide information relating to themselves; their activities in connection with provision of adult social care in England; persons to whom they have provided such care.
“Care Act”	means the Care Act 2014 (and any subsequent legislation).
“Care Direct Plus (CDP)”	means the assessment, review, brokerage, and the arranging support team (including bed bureau) teams based in the three locality areas (Eastern, Southern and Northern) covering Devon or

	any subsequent title given to teams dealing with adult social care services.
“Care Practitioner”	means the person appointed by the Service Purchaser to assess need and to plan, arrange, monitor and Review Services for Service Users.
“Care Quality Commission (CQC)”	means the independent regulator of health and social care in England who regulates care provided by NHS, local authorities, private companies, and voluntary organisations.
“Change of Control”	means any change of control within the meaning of Section 1124 of the Corporation Tax Act 2010.
“Commencement Date”	means the date specified in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clause 1.1, which is the first date on which the Service Provider is obliged to provide the Services as per this Agreement.
“Complaints Procedure”	means a procedure for Service Users or their representatives to raise complaints, concerns or issues regarding the way or the manner in which the Services have been delivered to Service Users.
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and sensitive Personal Data within the meaning of Data Protection Legislation.
“Contract Year”	means a period of 12 months commencing on the Commencement Date and/or each anniversary of the Commencement Date.
“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Processing and Appropriate Technical and Organisational Measures”	means the meaning given in the Data Protection Legislation.
“Data Discloser”	means a party that discloses Shared Personal Data to the other party.

<p>“Data Loss Event”</p>	<p>means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.</p>
<p>“Data Protection Impact Assessment”</p>	<p>means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.</p>
<p>“Data Protection Legislation”</p>	<p>means:-</p> <ul style="list-style-type: none"> a. the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time. b. the DPA 2018 (and regulations made thereunder) to the extent that it relates to processing of Personal Data and privacy; c. all applicable Law about the processing of Personal Data and privacy.
<p>“Day Opportunities Spot Contract”</p>	<p>means the Service Purchaser’s contract for non-CQC regulated activities where Service Users, who have been identified as having social care needs, can participate in group-based activities alongside others. These needs can typically be met without the care and support activities falling under the CQC’s definition of regulated activities.</p>
<p>“Default Notice”</p>	<p>means a notice which either Party issues to the other which sets out the nature of the Default and the time scale in which it must be put right. Any such time scale must be reasonable in all the circumstances.</p>
<p>“Default”</p>	<p>means any failure by either Party to perform its obligations under this Agreement</p>
<p>“Deprivation of Liberty Safeguards”</p>	<p>means the safeguards introduced into the Mental Capacity Act 2005 through the Mental Health Act 2007 to protect the interests of an extremely vulnerable group of individuals.</p>
<p>“DSAS”</p>	<p>means Devon Safeguarding Adults Service.</p>
<p>“Environmental Information Regulations”</p>	<p>means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.</p>
<p>“Equality Act”</p>	<p>Means the Equality Act 2010 (or any other subsequent legislation)</p>

<p>“Extras”</p>	<p>means additional services or support that go beyond the basic care and support needs identified in a Service User's Your Care and Support Plan. These might include services, such as:</p> <ul style="list-style-type: none"> ▪ Additional therapies (e.g., physiotherapy, occupational therapy) ▪ Recreational activities (e.g., social clubs, outings) ▪ Supplemental health services (e.g., dental, vision care) ▪ Hairdressing / dry-cleaning <p>These Extras are often designed to manage or prevent conditions and improve overall well-being, but they are not considered essential or core services under the Care Act.</p>
<p>“First Party Top-Up”</p>	<p>means a contribution agreed to and paid by the Service User, in addition to their Assessed Charge where they have exercised a choice in selecting a care home.</p>
<p>“Fixed Term Placement”</p>	<p>means a placement of a Service User on a temporary arrangement for a specified period.</p>
<p>“FOIA”</p>	<p>means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.</p>
<p>“Force Majeure”</p>	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; plagues (including epidemics and pandemics) explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any industrial action occurring within the Service Provider's organisation.</p>
<p>“Fraud”</p>	<p>means any offence under Laws creating offences in respect of fraudulent acts or at common Law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Service Purchaser.</p>
<p>“Good Industry Practice”</p>	<p>means adhering to the highest standards of care, ensuring compliance with Laws and regulations, ensuring all activities meet legal requirements and industry regulations. Providing high-quality</p>

	<p>care that meets the needs of residents, including medical, emotional, and social support. Employing well-trained and experienced staff who follow best practices. Maintaining a safe environment that respects the dignity and rights of residents. Regularly updating practices based on the latest research and feedback to improve care quality standards.</p>
<p>“Health Service Agreement”</p>	<p>means a form used for Hospital Discharge placements and issued by the Service Purchaser incorporating the Service User’s care plan and specifying the Service to be delivered by the Service Provider to an individual Service User made pursuant to this Agreement.</p>
<p>“Historic YCSP”</p>	<p>means a form incorporating a Service User’s care plan and specifying the service to be delivered by the Service Provider to an individual made under the terms and conditions of a previous agreement (and separate to this Agreement) made between the Service Provider and Service Purchaser.</p>
<p>“Hospital Discharge”</p>	<p>means a Service User has completed their acute medical care and is leaving the acute setting to move to an environment best suited to meet any ongoing health and care needs they may have. For residential care, this means a temporary placement for a specified period, of community bed-based care, pending assessment of any longer-term care needs.</p>
<p>“Information”</p>	<p>means the meaning given under section 84 of the FOIA.</p>
<p>“Initial Period”</p>	<p>means the first 28 days of a long-term placement.</p>
<p>“Intellectual Property Rights”</p>	<p>means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.</p>
<p>“Law”</p>	<p>means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a</p>

	relevant court of Law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply.
“LED”	means the Law Enforcement Directive (Directive (EU) 2016/680).
“Long Term Placement”	means a placement where the Service User will reside in a residential care and/or nursing home for an extended period, often indefinitely.
“Mental Capacity”	means as defined under the Mental Capacity Act 2005 (MCA).
“Month”	means calendar Month.
“NHS Continuing Healthcare (NHS CHC)”	means (as per the National Framework for NHS Continuing Healthcare and NHS funded Nursing Care) a package of ongoing care that is arranged and funded solely by the National Health Service (NHS) where the individual has been assessed and found to have a ‘primary health need’ as set out in this National Framework. Such care is provided to an individual aged 18 or over, to meet health and associated social care needs that have arisen as a result of disability, accident, or illness.
“NHS-Funded Nursing Care (FNC)”	means a provision where the NHS contributes to the cost of nursing care for individuals living in nursing homes. This funding is specifically for the nursing care component of the fees.
“Parent Company”	means any company which is the ultimate Holding Company of the Service Provider. The term "Holding Company" shall have the meaning ascribed in Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto.
“Permitted Recipients”	means the parties to this Agreement, the employees of each Party, any third parties engaged to perform obligations in connection with this Agreement.
“Party” or “Parties”	means those individuals or organisations listed in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clauses 1.3 and 1.4 .
“Persistent Default”	means where either Party has committed more than two Defaults during any period of six consecutive Months, whether these are the same Defaults or different Defaults.
“Price”	means the price for the provision of the Services set out or otherwise calculated in accordance with Appendix One – Residential and Nursing Homes Placement Fees .

<p>“Prohibited Act”</p>	<p>means:</p> <ul style="list-style-type: none"> a. to directly or indirectly offer, promise or give any person working for or engaged by the Service Purchaser or its members, a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; b. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c. an offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Service Purchaser; or d. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice, or conduct had been carried out in the UK.
<p>“Protective Measures”</p>	<p>means the appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.</p>
<p>“Quality Standards”</p>	<p>means the standards defined by the Service Purchaser, this Agreement, and any additional standards from the Service Provider, ensuring compliance with Care Quality Commission (CQC) requirements, safeguarding procedures. This includes following CQC regulations on notifiable incidents, adhering to safeguarding guidelines to safeguard adults. The Service Provider is responsible for effective incident reporting, continuous service improvement, and participating in monitoring and audit activities to maintain accountability and quality of care.</p>

<p>“Regulatory Body” or “Regulatory Bodies”</p>	<p>means those government departments and regulatory, statutory, and other entities, committees, ombudsmen, and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Service Purchaser.</p>
<p>“Relevant Requirements”</p>	<p>means all applicable Law relating to bribery, corruption, and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.</p>
<p>“Replacement Provider”</p>	<p>means any third-party Service Provider appointed by the Service Purchaser to provide any Services which are substantially similar to any of the Services and which the Service Purchaser receives in substitution for any of the Services following the expiry, termination, or partial termination of the Agreement.</p>
<p>“Request for Information”</p>	<p>means the meaning set out in the FOIA or the Environmental Information Regulations as relevant.</p>
<p>“Return Form”</p>	<p>means the signed copy of the document in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clause 1.</p>
<p>“Review”</p>	<p>means a Review of a Service Users requirements.</p>
<p>“Risk Assessment”</p>	<p>means an assessment which identifies the dangers to Service Users, Staff and the community and should include actions to be taken by the Service Provider to minimise each risk.</p>
<p>“Serious Default”</p>	<p>means a Default which materially prejudices the health, safety or welfare of a Service User or Service Users.</p>
<p>“Service Descriptors”</p>	<p>means the descriptions that defines the various service groups and will be used by CDP teams to assess the needs of Service Users to support the placement into a residential care and/or nursing home.</p>
<p>“Service Provider Personnel”</p>	<p>means all directors, officers, employees, agents, consultants, and contractors of the Service Provider and/or of any sub-contractor engaged in the performance of its obligations under this Agreement.</p>
<p>“Service Provider”</p>	<p>means the individual or organisation responsible for providing the Service, as set out in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clauses 1.4.</p>

<p>“Service Purchaser”</p>	<p>means Devon County Council or any successor and any other organisation with responsibility for purchasing the Service.</p>
<p>“Service Record Form”</p>	<p>means the form completed by the Service Provider showing the use of the Service by Service Users.</p>
<p>“Service Specification”</p>	<p>means the details of the Service to be provided, which form Section D: Service Specification of this Agreement.</p>
<p>“Service User”</p>	<p>means an individual who uses the Service under this Agreement.</p>
<p>“Service” or “Services”</p>	<p>means the services provided in accordance with the conditions of this Agreement and the Service Specification and the Appendices.</p>
<p>“Shared Personal Data”</p>	<p>means the personal data to be shared between the parties under Section B: Standard Conditions, clause 28.2 of this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:</p> <p>Personal data -</p> <ul style="list-style-type: none"> ▪ Identifiers such as name, postal address and email address; ▪ Bank accounts ▪ National Insurance Numbers <p>Sensitive Personal Data -</p> <ul style="list-style-type: none"> ▪ Biometric data Genetic data ▪ Political opinions ▪ Racial or ethnic origin ▪ Religious or philosophical beliefs ▪ Sexual life ▪ Sexual orientation ▪ Trade union membership
<p>“Staff Vetting Procedures”</p>	<p>means the vetting procedures more particularly described in Section C: Particular Conditions, clauses 7.1 to 7.12.</p>
<p>“Staff”</p>	<p>means all persons employed, including any volunteers, by the Service Provider to perform its obligations under the Contract together with the Service Provider’s servants, agents, and suppliers used in the performance of its obligations under the Agreement.</p>
<p>“TECS”</p>	<p>means Technology Enabled Care and Support</p>
<p>“Third Party Top-Ups”</p>	<p>means a payment made by an individual or organisation who is not the Service User in addition to the Assessed Charge made by the</p>

	Service User and Devon County Council towards the cost of the Weekly fee.
“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
“Week”	means a continuous period of seven days, often starting on a specific day (e.g., Monday to Sunday).
“Working Days”	means between 9.00am and 5.00pm Monday to Friday inclusive but does not include any days that are Bank Holidays or public holidays.
“Your Care and Support Plan”	means a document issued by the Service Purchaser incorporating the Service User’s care plan and specifying the Service to be delivered by the Service Provider to an individual Service User made pursuant to this Agreement. Where the Your Care and Support Plan is issued in respect of an individual Service User, it shall incorporate the terms and conditions of the Agreement.

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SECTION B: STANDARD CONDITIONS

1. INTERPRETATION

- 1.1 The interpretation and construction of this Agreement shall be subject to the following provisions:
- 1.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa.
 - 1.1.2 words importing the masculine include the feminine and the neuter.
 - 1.1.3 reference to a clause is a reference to the whole of that clause unless stated otherwise.
 - 1.1.4 references to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended by any subsequent enactment, modification, order, regulation, or instrument as subsequently amended or re-enacted.
 - 1.1.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.
 - 1.1.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation."
 - 1.1.7 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
 - 1.1.8 the schedules (appendices or attachments) 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.
 - 1.1.9 unless otherwise stated, references to "this Agreement" or "the Agreement" shall be interpreted as being a reference to this Agreement and/or any Your Care and Support Plans and Health Service Agreements (if applicable), as the context may require; and
 - 1.1.10 unless otherwise stated, references to "the home" or "the care home" shall be interpreted as being a reference to the care home identified in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clause **1.6**.
 - 1.1.11 unless otherwise stated, any policies, guidelines, or other documents referenced in this Agreement must be accessed through the links provided on the designated webpages in real-time. The Service Provider shall acknowledge that these documents may be updated periodically, and it is the Provider's responsibility to review the most current versions available through the provided links at the time of access.

2. ENTIRE AGREEMENT

- 2.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels, or nullifies any previous agreement between the Parties in relation to such matters.
- 2.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement.
- 2.3 Nothing in Section B: Standard Conditions, clauses **2.1** or **2.2** shall operate to exclude Fraud or fraudulent misrepresentation.
- 2.4 In the event of and only to the extent of any conflict between the Your Care and Support Plan/ Health Service Agreement (if applicable), the clauses of this Agreement and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -
- a. Your Care and Support Plan/ Health Service Agreement (if applicable).
 - b. Return Form
 - c. the clauses of this Agreement; and
 - d. any other document referred to in the clauses of this Agreement.

3. PROVIDER'S STATUS

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

4. SERVICE PURCHASER'S OBLIGATIONS

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

5. NHS FUNDED NURSING CARE (FNC) AND NHS CONTINUING HEALTHCARE (CHC)

- 5.1 This Agreement covers responsibilities of adult social care needs by the local authority. Where Service Users are assessed to be eligible for FNC or CHC, the Service Provider will be required to sign up to

the NHS Devon Nursing Home contract to cover the required services; for the avoidance of doubt, FNC and CHC are not within the scope of this Agreement.

6. NOTICES AND FORMAL COMMUNICATIONS

- 6.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party sending the communication.
- 6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery Service) or electronic mail. All formal communications concerning this Agreement shall be made using the contact details in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clause **1.7** and **1.8**.
- 6.3 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or within four (4) Working Days, in the case of electronic mail or hand delivery or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
- 6.4 The Service Provider shall inform the Service Purchaser in writing, within one week's notice of any change to the contact details provided in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clauses **1.4**, **1.6** or **1.8**.

7. MISTAKES IN INFORMATION

- 7.1 The Service Provider shall be responsible for the accuracy of all documentation and Information supplied to the Service Purchaser by the Service Provider in connection with the provision of the Services and shall pay the Service Purchaser any extra costs reasonably incurred by the Service Purchaser as a result of any discrepancies, errors, or omissions therein.

8. VARIATIONS

- 8.1 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the authorised representatives of both Parties and is expressed to be for the purpose of such amendment or variation.

9. SUB-CONTRACTING AND ASSIGNMENT

- 9.1 The Service Provider shall not assign, novate, subcontract, or otherwise dispose of any of his rights and duties under this Agreement to any individual or organisation without the prior written consent of the Service Purchaser, except for the hiring of Agency Staff in cases of emergency or to cover absence. All Agency Staff shall be subject to the same vetting arrangements as Staff employed directly by and under the responsibility of the Service Provider. The Service Provider shall remain responsible for full regulatory compliance in relation to this.

- 9.2 Should the Service Provider novate the contract to a third party, the Service Purchaser reserves the right to charge the Service Provider a fee as a condition of consenting to the novation. This fee may be charged for intra-company group transfers for restructuring purposes or other reasons, such as the provider exiting the market.
- 9.3 The Service Purchaser will inform the Service Provider of the set fee upon notification of the request to novate the Agreement.
- 9.4 Where the Service Purchaser has consented to the Service Provider sub-contracting any part of the Service, the Service Provider shall remain responsible for the acts, omissions, Defaults, and neglect of any sub-contractor as if they were its own acts and omissions.
- 9.5 The Service Provider shall remain responsible for any tax liabilities arising from sub-contracting any part of the Service.
- 9.6 Where in agreement with the Service Purchaser the Service is sub-contracted to individuals who are self-employed, the Service Provider is responsible for ensuring that such individuals are properly trained, supervised, and insured in accordance with Section B: Standard Conditions, clause 21.
- 9.7 Notwithstanding the Service Provider's obligations at Section B: Standard Conditions, clause 11.2, the Service Provider shall inform the Service Purchaser of any intention to undergo a Change of Control, giving a minimum notice of at least 28 days of such intention.
- 9.8 For the avoidance of doubt, the Service Purchaser may, at its discretion, assign, novate, or otherwise dispose of any or all of its rights, obligations, and liabilities under this Agreement to a body other than the Service Purchaser which performs any of the functions that previously had been performed by the Service Purchaser.
- 10. TERMINATION ON DEFAULT**
- 10.1 If either Party considers that the other is in Default of their obligations under this Agreement, they shall issue a Default Notice setting out the nature of the Default and, if the Default is capable of remedy, specifying a reasonable timescale within which the Default shall be put right.
- 10.2 If the Default has not been put right within the specified time frame, or the Default is not capable of remedy then the Party which issued the Default Notice will be entitled to terminate this Agreement and/or the Your Care and Support Plans/Health Service Agreements (if applicable) by giving the other Party not less than three Months' written notice. Alternatively, the Party which issued the Default Notice shall be entitled to withdraw from this Agreement that part of the Service which is the subject of the Default Notice.
- 10.3 If the Default is a Serious Default or a Persistent Default (in either case, the Default Notice must say so), then the Party which issued the Default Notice will be entitled to terminate this Agreement and the Your Care and Support Plans/Health Service Agreements (if applicable) immediately on notice and, in the case of the Service Purchaser, take whatever other action may reasonably be deemed necessary to protect the health, safety or welfare of any or all of the Service Users.

- 10.4 The Service Purchaser may issue a Default Notice where the Service Provider receives an overall Inadequate rating (or equivalent) from CQC (or any successor bodies), or where the overall rating is requires improvement (or equivalent) with 1 or more domains rating inadequate.
- 10.5 Where appropriate the Service Purchaser may also inform any relevant Regulatory Bodies or other local authorities, about the Serious Default referred to in Section B: Standard Conditions, clause **10.3** or temporarily or permanently remove the Service Provider from any list of approved providers.
- 10.6 In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Service Purchaser in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 10.7 Save where Section C: Particular Conditions, clause **12** (Recovery of Sums Due) applies, if the Service Purchaser fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Service Purchaser in writing of such failure to pay. If the Service Purchaser fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Service Provider may terminate the Agreement in writing with immediate effect.

11. TERMINATION ON INSOLVENCY, CHANGE OF CONTROL, AND BREACH OF WARRANTIES

- 11.1 The Service Purchaser may terminate this Agreement and the Your Care and Support Plans/ Health Service Agreements (if applicable) with immediate effect by giving notice in writing to the Service Provider where:-
- a. the Service Provider 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
 - b. the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;
 - c. the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - d. a petition is filed, a notice is given, a resolution is passed, or an order is made, for, or in connection with, the winding up of the Service Provider (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;

- e. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company, limited liability partnership or partnership);
- f. the holder of a qualifying floating charge over the assets of the Service Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- g. a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- h. the Service Provider (being an individual) is the subject of a bankruptcy petition, application, or order;
- i. a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days;
- j. any event occurs, or proceeding is taken, with respect to the Service Provider, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Section B: Standard Conditions, clause **11.1(a)** to clause **11.1(j)** (inclusive); or
- k. the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.2 In addition to the Service Provider's obligations at Section B: Standard Conditions, clause **9.7**, the Service Provider shall notify the Service Purchaser immediately if the Service Provider undergoes a Change of Control. The Service Purchaser may terminate this Agreement and/or the Your Care and Support Plans/Health Service Agreements (if applicable) by giving notice in writing to the Service Provider with immediate effect within six (6) Months of:

- a. being notified that a Change of Control has occurred; or
- b. where no notification has been made, the date that the Service Purchaser becomes aware of the Change of Control;

but shall not be permitted to terminate where the prior written approval of the Service Purchaser was granted before the Change of Control.

11.3 Without affecting any other right or remedy available to it, the Service Purchaser may terminate this Agreement and the Your Care and Support Plans/ Health Service Agreements (if applicable) with immediate effect by giving written notice to the Service Provider if any warranty given by the Service Provider in Section B: Standard Conditions, clause **24** (Warranties) of this Agreement is found to be untrue or misleading.

11.4 If this Agreement is terminated by the Service Purchaser for cause then subject to Section B: Standard Conditions, clause **21.4**, such termination shall be at no loss or cost to the Service Purchaser and the Service Provider hereby indemnifies against any such direct loss or costs which the Service Purchaser may suffer as a result of any such termination for cause including the cost of procuring and implementing replacement services.

12. TERMINATION FOR OTHER REASONS

- 12.1 It is hoped that it will not become necessary to end this Agreement and the Your Care and Support Plans/Health Service Agreements (if applicable) as a result of either Party not keeping to its obligations. The Service Provider shall notify the Service Purchaser immediately if temporarily unable to meet the conditions of this Agreement. This will not necessarily affect the continuation of the Agreement, and the Service Purchaser may at its absolute discretion assist the Service Provider in continuing to provide the Service.
- 12.2 Either Party shall have the right to terminate the Agreement and/or the Your Care and Support Plans/Health Service Agreements (if applicable) for any reason. This must be done via a formal notice in writing, giving not less than (3) three Months' notice and stating the reasons for this action.
- 12.3 In the event of the Service Provider giving notice in accordance with Section B: Standard Conditions, clause **12.2** to the Service Purchaser then the Service Purchaser will make appropriate arrangements for Service Users to transfer to alternative accommodation and the Your Care and Support Plans/Health Service Agreements (if applicable) shall end on the date on which the Service User vacates the home or sooner.
- 12.4 The Service Purchaser shall be entitled to end the Agreement and any Your Care and Support Plans/Health Service Agreements (if applicable) with immediate effect where the Service Provider has committed an offence under the Bribery Act 2010 or Section 117 (2) of the Local Government Act 1972 or the Equality Act 2010.

13. CONSEQUENCES OF EXPIRY OR TERMINATION

- 13.1 Where the Service Purchaser terminates this Agreement and/or any Your Care and Support Plans/Health Service Agreements (if applicable) under Section B: Standard Conditions, clause **10** (Termination on Default), clause **11** (Termination on Insolvency, Change of Control, and Breach of Warranties) or clause **28** (Data Protection) and then makes other arrangements for the provision of Services, the Service Purchaser may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Service Purchaser throughout the remainder of the term of this Agreement. The Service Purchaser shall take all reasonable steps to mitigate such additional expenditure. Where this Agreement or the Your Care and Support Plans/Health Service Agreements (if applicable) are terminated under Section B: Standard Conditions, clause **10** (Termination on Default), no further payments shall be payable by the Service Purchaser to the Service Provider until the Service Purchaser has established the final cost of making those other arrangements.
- 13.2 Save as otherwise expressly provided in this Agreement or the Your Care and Support Plans/Health Service Agreements (if applicable):
- a. termination or expiry of this Agreement or the Your Care and Support Plans/Health Service Agreements (if applicable) shall be without prejudice to any rights, remedies or obligations accrued

under this Agreement or the Your Care and Support Plans/Health Service Agreements (if applicable) prior to termination or expiration and nothing in this Agreement or the Your Care and Support Plans/Health Service Agreements (if applicable) shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

- b. termination of this Agreement or the Your Care and Support Plans/Health Service Agreements (if applicable) shall not affect the continuing rights, remedies or obligations of the Service Purchaser or the Service Provider under Section B: Standard Condition, clauses **13** (Consequences of Expiry or Termination), **17** (Governing Law), **20** (Cumulative Remedies), **21** (Liabilities and Indemnities), **28** (Data Protection), **29** (Confidential Information), **30** (Freedom of Information) and **32** (Prevention of Fraud and Bribery); Section C: Particular Conditions, clauses **11** (Payment Arrangements and VAT) and **12** (Recovery of Sums Due).

13.3 Where this Agreement is terminated howsoever arising, the Service Provider shall cooperate fully with the Service Purchaser and provide all reasonable assistance to ensure an orderly migration of the Services to the Service Purchaser, or, at the Service Purchaser's request, a Replacement Provider.

13.4 On the termination of this Agreement and/or the Your Care and Support Plans/Health Service Agreements (if applicable) for any reason, the Service Provider shall, at no cost to the Service Purchaser:

- a. immediately return to the Service Purchaser all Confidential Information, Personal Data and sensitive Shared Personal Data and other documents and Information in its possession or in the possession or under the control of any permitted suppliers which was obtained or produced in the course of providing the Services; in compliance with Section B: Standard Conditions, clause **28**;
- b. if requested by the Service Purchaser, assist and co-operate with the Service Purchaser to ensure an orderly transition of the provision of the Services, including relevant information in support of the Service User's care, to the Replacement Provider and/or the completion of any work in progress;
- c. promptly provide all Information concerning the provision of the Services which may reasonably be requested by the Service Purchaser for the purposes of adequately understanding the manner in which the Services have been provided.

13.5 If the Service Provider fails to comply with Section B: Standard Conditions, clause **13.4(a)**, the Service Purchaser may recover possession thereof and the Service Provider grants a licence to the Service Purchaser or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers where any such items may be held.

13.6 **Appendix Seven – TUPE** shall apply to this Agreement.

14. STAFFING DISRUPTION

14.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Agreement it does not disrupt the staffing operations of the Service Purchaser, its employees or any other service provider employed by the Service Purchaser.

- 14.2 The Service Provider shall immediately inform the Service Purchaser of any actual or potential industrial action, whether such action be by its own Staff or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.
- 14.3 In the event of industrial action by the Staff, the Service Provider shall provide all reasonable endeavours seek the Service Purchaser's Approval to its proposals for the continuance of the provision of the Services in accordance with its obligations under the Agreement.
- 14.4 If the Service Provider's proposals referred to in Section B: Standard Conditions, clause **14.3** are considered insufficient or unacceptable by the Service Purchaser acting reasonably, then the Agreement may be terminated with immediate effect by the Service Purchaser by notice in writing.
- 14.5 If the Service Provider is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business directly caused by the actions of the Service Purchaser, an appropriate allowance by way of extension of time will be approved by the Service Purchaser.
- 14.6 The Service Provider shall have in place a business continuity plan for minimising disruption to the Services due to emergencies or unforeseen circumstances, including loss of Staff, and shall remain responsible for meeting the requirements of this Agreement at all times. The business continuity plan should set out the detailed procedures and processes to be followed and actions to be taken to ensure continuation of the Services during a disruptive event. The Service Provider shall inform the Service Purchaser of any impending incident or situation which may affect the Service Provider's ability to deliver the services as soon as reasonably practicable.
- 14.7 The Service Provider shall make the business continuity plan available for inspection by the Service Purchaser on request. The Service Purchaser reserves the right to attend any business continuity plan test undertaken by the Service Provider.
- 15. FORCE MAJEURE**
- 15.1 Subject to the remaining provisions of this clause (Section B: Standard Conditions, clause **15**), neither Party shall in any circumstances be liable to the other Party for any delay, or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
- 15.2 In the event that either Party (the "**Affected Party**") is delayed or prevented from performing its obligations under this Agreement due to a Force Majeure Event, the Affected Party shall:
- a. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and the extent of such delay or prevention, the cause thereof, its estimated duration and any action proposed to mitigate its effect;
 - b. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - c. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 15.3 The Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect, or failure to take reasonable precautions against the relevant Force Majeure Event.
- 15.4 As soon as practicable, following the Affected Party's notification, pursuant to Section B: Standard Conditions, clause **15.2**, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 15.5 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.
- 15.6 The Service Purchaser may, during the continuation of any Force Majeure Event, terminate this Agreement by written notice to the Service Provider in the event that a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Working Days.

16. COMPLAINTS

- 16.1 The Service Provider shall at all times have in place a Complaints Procedure in an accessible format that is made available to all Service Users and their representatives. As a minimum requirement, the Complaints Procedure shall be clear as to how a Service User or their representatives can make a complaint, including how to raise a complaint directly with the Service Purchaser. Further, the Complaints Procedure shall make provision for independent advocacy to support a Service User to make a complaint where that Service User is unable to make the complaint themselves or does not have family members available to assist in making the complaint.
- 16.2 Where the Service Provider receives a complaint about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials, methods or procedures used or about any other matter connected with the performance of the Service Provider's obligations under this Agreement and or/the Your Care and Support Plan/Health Service Agreements (if applicable), then the Service Provider shall take all reasonable steps to investigate fully the complaint in accordance with the Complaints Procedure and address any issues arising there from.
- 16.3 Where a complaint is received by the Service Purchaser that the Service Provider has either failed to follow the procedure outlined in Section B: Standard Conditions, clause **16.2** or having followed the Complaints Procedure the complainant is dissatisfied with the outcome then the Service Purchaser shall investigate the matter in accordance with its Complaints Procedure. The Service Purchaser may, in its sole discretion, uphold the complaint, or take further action in accordance with Section B: Standard Conditions, clause **10** (Termination on Default).

16.4 Complaints made directly to the Service Purchaser shall, where the consent of the Service User making the complaint has been obtained, be forwarded to the Service Provider to investigate and respond. The Service Provider must send a copy of its response to the Service Purchaser prior to it being sent by the Service Provider to the complainant. Where it is not possible to obtain the consent of the Service User the complaint shall be investigated in full by the Service Purchaser and the Service Provider must co-operate fully in to assist the Service Purchaser in its investigation.

16.5 The Service Provider shall ensure that all complainants are aware that if they remain dissatisfied with the response from the Service Provider, they have the right to then complain to the Service Purchaser. The Service Provider shall also ensure that all complainants are aware of their right to go to the Local Government Ombudsman (or equivalent) if they remain dissatisfied with the response of the Service Purchaser.

17. GOVERNING LAW

17.1 This Agreement shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

18. DISPUTE RESOLUTION

18.1 The Service Provider and Service Purchaser shall use their reasonable endeavours to resolve by agreement any dispute between them.

18.2 Either party may use the following procedure: -

- a. Request a meeting between the Service Purchaser's and Service Provider's contacts within 10 Working Days of the dispute arising, or such other period that might be agreed.
- b. If the dispute remains unresolved, then a further meeting involving senior representatives of the Parties may be requested within a further 10 Working Days of the date of the meeting referred to in Section B: Standard Conditions, clause **18.2(a)**, or such other period that might be agreed.

18.3 If the dispute is still not resolved, then the matter may, if both Parties agree, be referred to independent mediation as soon as reasonably practicable. The mediator shall be an individual or organisation agreeable to both Parties. The costs of mediation shall be borne in equal parts between the Parties unless:

- a. the Service Purchaser considers that the dispute is not suitable for resolution by mediation; or
- b. the Service Provider does not agree to mediation.

18.4 The procedure for mediation and consequential provisions relating to mediation are as follows:-

- a. a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working

Days of notice to either Party that he is unable or unwilling to act, apply to the [Centre for Effective Dispute Resolution](#) ("CEDR") to appoint a Mediator;

- b. the Parties shall within 10 Working Days of the appointment of the Mediator, meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
- c. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- d. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- e. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties; and
- f. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

18.5 The obligations of the Parties under this Agreement shall not cease or be suspended or delayed by the reference of a dispute to mediation and the Service Provider and the Staff shall comply fully with the requirements of this Agreement at all times.

18.6 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

18.7 Use of the dispute procedure set out in this Agreement will not delay, or take precedence over, any use of the Default or Termination procedures.

19. SEVERABILITY

19.1 If any provision of this Agreement is held invalid, illegal, or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

19.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Service Purchaser and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

20. CUMULATIVE REMEDIES

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

21. LIABILITIES AND INDEMNITIES

21.1 Nothing in this Agreement shall limit or exclude the Service Provider's or the Service Purchaser's liability for:

- a. death or personal injury caused by its negligence, or the negligence of its personnel, agents, or subcontractors;
- b. fraud or fraudulent misrepresentation;
- c. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- d. any other liability which cannot be limited or excluded by applicable Law.

21.2 Nothing in this Agreement shall limit or exclude the Service Provider's liability under any indemnities provided pursuant to Section B: Standard Conditions, clause **23.1** (Taxation, National Insurance and Employment Liability); clause **28.6** (Data Protection), clause **34.2** (Human Rights Act indemnity); Section C: Particular Conditions, clause **5.8** (Service Provider's Staff), clause **7.12** (Disclosure and Barring Service Checks), clause **10.8** (VAT indemnity); and **Appendix Seven – TUPE** and no amounts awarded or agreed to be paid under those clauses shall count towards the cap on the Service Provider's liability.

21.3 Subject to Section B: Standard Conditions, clauses **21.1**, **21.2** and **21.6**, neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.

21.4 Subject to Section B: Standard Conditions, clause **21.1** and clause **21.2**, the Service Provider's total aggregate liability to the Service Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall, in no event, exceed £5,000,000 (five million pounds) in each Contract Year.

21.5 Notwithstanding the provisions of Section B: Standard Conditions, clause **21.3** but subject always to Section B: Standard Conditions, clause **21.4**, the Service Provider assumes responsibility for the following losses which may be recoverable by the Service Purchaser:

- a. the Service Purchaser's additional operational and administrative costs and expenses caused by the act or omission of the Service Provider;
- b. the Service Purchaser's wasted expenditure or charges reasonably incurred by the Service Purchaser caused by the act or omission of the Service Provider;

- c. any loss or corruption to or alteration of any Service Purchaser data; and
- d. losses incurred by the Service Purchaser arising out of or in connection with any claim, demand, fine, penalty, action, investigation, or proceedings by any third party (including any subcontractor, Service Provider, regulator, Service User, or customer of the Service Purchaser) against the Service Purchaser caused by the act or omission of the Service Provider.

21.6 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.

22. INSURANCES

22.1 The Service Provider shall obtain and keep in full force and effect throughout the duration of this Agreement the following minimum insurance cover and provide to the Service Purchaser, upon request, written evidence that cover is in place. The Service Provider shall also ensure that any subcontractors who are providing any or all of the Service on their behalf take out and maintain equivalent insurance:

- a. Employers' Liability Insurance in a minimum amount of £5 million for each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory requirements.
- b. Public Liability Insurance in a minimum amount of £5 million for each and every claim, act or occurrence or series of claims, acts, or occurrences with cover for Covid related claims.
- c. Where the Service provided includes nursing care, Professional Liability Insurance in a minimum amount of £5 million for each and every claim, act or occurrence or series of claims, acts or occurrences.

22.2 The Service Provider 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 Service Provider, arising out of the Service Provider's performance of its obligations under the 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 Service Provider. Such insurance shall be maintained for the duration of the term of this Agreement and for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement or following the closure of the home.

22.3 The Service Provider shall give the Service Purchaser, 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.

22.4 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of this Agreement the Service Purchaser may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

22.5 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Agreement.

23. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

23.1 The Parties acknowledge and agree that the Agreement constitutes an Agreement for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Service Purchaser and keep the Service Purchaser indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Service Purchaser is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff including but not limited to agency and volunteer staff as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the term of this Agreement or arising from termination or expiry of the Agreement.

24. WARRANTIES AND REPRESENTATIONS

24.1 The Service Provider warrants and represents that:-

- a. it is registered with the CQC as a provider of **Residential Home(s)/Nursing Home(s)**
- b. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Agreement;
- c. this Agreement is executed by a duly authorised representative of the Service Provider;
- d. in entering this Agreement, it has not committed any Fraud;
- e. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Agreement;
- f. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Agreement;
- g. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator, or similar officer in relation to any of the Service Provider's assets or revenue; and
- h. the Services shall be provided and carried out by an appropriate number of experienced, qualified, and trained Staff with all due skill, care, and diligence.

25. ACCESS

25.1 The Service Provider must not restrict any form of reasonable access, by the Service Purchaser's Authorised Individuals, to any Service User under this Agreement or to any records or documents pertaining to the Service User, or to any buildings belonging to or controlled by the Service Provider.

- 25.2 Whenever possible, the Service Provider shall be given 5 working days' notice of a visit by a representative from the Service Purchaser.
- 25.3 The Service Purchaser reserves the right to visit the Service provision and inspect any processing provided under this Agreement to ensure compliance with the Service Provider's own policies and procedures and to ensure the consistent performance of the Service.
- 25.4 In visiting or inspecting the provision of the Service, the Service Purchaser shall have due regard for the nature of the Service being provided particularly where this involves sensitive Services for vulnerable Service User groups.

26. WAIVER

- 26.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.
- 26.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Section B: Standard Conditions, clause 6 (Notices and Formal Communications).
- 26.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

STATUTORY OBLIGATIONS AND REGULATIONS

27. LEGISLATIVE REQUIREMENTS

- 27.1 The Service Provider shall comply with all relevant current and future legislation required in the provision of this Service. The Service Provider shall be given reasonable time, unless directed by the legislation, to comply with any new legislation.

28. DATA PROTECTION

- 28.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Service Purchaser and the Service Providers are both Controllers.
- 28.2 **Shared Personal Data.** This paragraph sets out the framework for the sharing of Personal Data between the Parties as Controllers. Each Party acknowledges that one Party (referred to in this paragraph as the **Data Discloser**) will regularly disclose to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 28.3 **Effect of non-compliance with Data Protection Legislation.** Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of

the Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate this Agreement with immediate effect.

28.4 **Particular obligations relating to data sharing.** Each Party shall:

- a. ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- b. give full information as required under article 13 and article 14 of the UK GDPR to any Data Subject whose Personal Data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors, and assignees;
- c. process the Shared Personal Data only for the Agreed Purposes;
- d. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- e. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
- f. ensure that it has in place Appropriate Technical and Organisational Measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and shall provide written notice to the other if it becomes aware of a Personal Data Breach involving Shared Personal Data.
- g. not transfer any Personal Data received from the Data Discloser outside the UK unless the transferor ensures that:
 - (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or
 - (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or
 - (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; or
 - (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

28.5 **Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:

- a. consult with the other Party about any notices given to Data Subjects in relation to the Shared Personal Data;
- b. promptly inform the other Party about the receipt of any Data Subject rights request;
- c. provide the other Party with reasonable assistance in complying with any Data Subject rights request;

- d. not disclose, release, amend, delete, or block any Shared Personal Data in response to a Data Subject rights request without first consulting the other Party wherever possible;
- e. assist the other Party, at the cost of the other Party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, Data Protection Impact Assessments and consultations with the Information Commissioner or other regulators;
- f. notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- g. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by Law to store the Shared Personal Data;
- h. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
- i. maintain complete and accurate records and information to demonstrate its compliance with this clause (Section B: Standard Conditions: clause **28.5(i)**) and allow for audits by the other Party or the other Party's designated auditor; and
- j. provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a Personal Data Breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

28.6 **Indemnity.** Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying Party, its employees or agents, provided that the indemnified Party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

29. CONFIDENTIAL INFORMATION

29.1 Except to the extent set out in this clause (Section B: Standard Conditions, clause **29.1**) or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

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

29.2 Section B: Standard Conditions, clause **29.1** shall not apply to the extent that:

- a. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Section B: Standard Conditions, clause **30** (Freedom of Information);
- b. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- c. such information was obtained from a third party without obligation of confidentiality;
- d. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- e. it is independently developed without access to the other Party's Confidential Information.

29.3 The Service Provider may only disclose the Service Purchaser's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality and sign a confidential undertaking. The Service Purchaser reserves the right to request the Service Provider to supply copies of any signed confidential undertakings.

29.4 The Service Provider shall not, and shall procure that its Staff do not, use any of the Service Purchaser's Confidential Information received otherwise than for the purposes of this Agreement.

29.5 Nothing in this Agreement shall prevent the Service Purchaser from disclosing the Service Provider's Confidential Information for the purpose of the examination and certification of the Service Purchaser's accounts.

29.6 The Service Purchaser shall use all reasonable endeavours to ensure that any third party to whom the Service Provider's Confidential Information is disclosed pursuant to Section B: Standard Conditions, clause **29.5** is made aware of the Service Purchaser's obligations of confidentiality.

29.7 Nothing in this Section B: Standard Conditions, clause **29** shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

30. FREEDOM OF INFORMATION

30.1 The Service Provider acknowledges that the Service Purchaser is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Service Purchaser to enable the Service Purchaser to comply with its Information disclosure obligations.

30.2 The Service Provider shall:

- a. transfer to the Service Purchaser all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- b. provide the Service Purchaser with a copy of all Information in its possession, or power in the form that the Service Purchaser requires within five (5) Working Days (or such other period as the Service Purchaser may specify) of the Service Purchaser's request; and

- c. provide all necessary assistance as reasonably requested by the Service Purchaser to enable the Service Purchaser to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

30.3 The Service Purchaser shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

30.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Service Purchaser.

30.5 The Service Provider acknowledges that the Service Purchaser may, acting in accordance with the Freedom of Information Code of Practice (issued under section 45 of the FOIA, dated 4 July 2018) (the “**Code**”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Services:

- a. in certain circumstances without consulting the Service Provider; or
- b. following consultation with the Service Provider and having taken their views into account;
- c. provided always that where Section B: Standard Conditions, clause **30.5(a)** applies the Service Purchaser shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider’s attention after any such disclosure.

30.6 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Service Purchaser to inspect such records as requested from time to time.

31. CONFLICTS OF INTEREST

31.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Service Purchaser), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Service Purchaser under the provisions of this Agreement.

31.2 The Service Provider shall promptly notify the Service Purchaser (and provide full particulars to the Service Purchaser) if any conflict referred to in Section B: Standard Conditions, clause **31.1** above arises or is reasonably foreseeable.

31.3 The Service Purchaser reserves the right to terminate this Agreement and the Your Care and Support Plans/Health Service Agreements (if applicable) immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Service Purchaser, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Service Purchaser under the provisions of this Agreement and the Your Care and Support Plans/Health Service Agreements (if

applicable) which have not been adequately remedied. The actions of the Service Purchaser pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Service Purchaser.

32. PREVENTION OF FRAUD AND BRIBERY

32.1 The Service Provider represents and warrants that, as at the Commencement Date, neither it, nor to the best of its knowledge, any of the Service Provider Staff have at any time prior to the Commencement Date:

- a. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- b. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.

32.2 The Service Provider shall not during the Contract Term of this Agreement:

- a. commit a Prohibited Act; and/or
- b. do or suffer anything to be done which would cause the Service Purchaser to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

32.3 The Service Provider shall during the Contract Term of this Agreement:

- a. establish, maintain, and enforce, and require that its subcontractors establish, maintain, and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- b. keep appropriate records of its compliance with its obligations under Section B: Standard Conditions, clause **32.3(a)** and make such records available to the Service Purchaser on request.

32.4 The Service Provider shall, as soon as reasonably practicable, notify the Service Purchaser in writing if it becomes aware of any breach of Section B: Standard Conditions, clause **32.2(a)** and/or Section B: Standard Conditions, clause **32.2(b)**, or has reason to believe that it has:

- a. been subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/ or
- b. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- c. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly connected with this Agreement has committed, or attempted to commit, a Prohibited Act.

32.5 If the Service Provider makes a notification to the Service Purchaser pursuant to Section B: Standard Conditions, clause **32.4**, the Service Provider shall respond promptly to the Service Purchaser's

reasonable enquiries and cooperate with any investigation carried out by the Service Purchaser (acting reasonably) in respect of such notification.

32.6 If the Service Provider is in breach of Section B: Standard Conditions, clauses **32.1** and/or **32.2** the Service Purchaser may by notice:

- a. require the Service Provider to remove from performance of this Agreement any member of Staff or subcontractor whose acts or omissions have caused the breach; or
- b. immediately terminate this Agreement.

32.7 Any notice served by the Service Purchaser under Section B: Standard Conditions, clause **32.6** shall specify the nature of the Prohibited Act, the identity of the person who the Service Purchaser reasonably believes has committed the Prohibited Act and the action that the Service Purchaser requires the Service Provider to take as a result (including, where relevant, the date on which this Agreement shall terminate).

33. DISCRIMINATION

33.1 The Service Provider shall operate an equal opportunities policy for as long as this Agreement is in force and provide the Service Purchaser with a copy of the policy and updates as requested.

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

33.3 The Service Provider shall take all reasonable steps to secure observance of Section B: Standard Conditions, clause **33.2** above by all its Staff employed in the performance of this Agreement.

33.4 The Service Provider shall ensure that the equal opportunities policy complies with all statutory obligations as regards discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion, or sexual orientation. This will relate to decisions made by the Service Provider in the recruitment, training or promotion of Staff employed or to be employed in the provision of the Services and the carrying out of obligations under this Agreement.

33.5 In providing the Services, the Service Provider shall observe the Equality and Human Rights Commission's Statutory Code of Practice for Employment (the "**Code**"), any updates to the Code, or any code which may replace it. The Service Provider shall provide the Service Purchaser with such information as may be reasonably required in order to assess the Service Provider's compliance with the Code.

33.6 If any Court or Tribunal, or the Equality and Human Rights Commission, or anybody which may replace the Commission, finds that the Service Provider has unlawfully discriminated against any person, in the provision of the Services, then the Service Provider shall take all necessary action to prevent the recurrence of unlawful discrimination and shall notify the Service Purchaser in writing of the finding and the action taken.

- 33.7 The Service Provider shall, in providing the Service, give appropriate consideration to each Service User's race, nationality, cultural or ethnic background, marital status, age, gender, religion, sexual orientation and disabilities.
- 33.8 The Service Purchaser reserve the right to test the Service Provider's equality performance through the life of this Agreement. The Service Provider shall cooperate with the Service Purchaser regarding the provision of date and/or access for site visits as reasonably required by the Service Purchaser.
- 33.9 The Service Provider will understand and be committed to promoting a culture for both Service Users and Staff which reflects and demonstrates that diversity, equality, and individuality is embedded in the beliefs and values of the service adhering to the Equality Act 2010.
- 33.10 The Service Provider will adopt a strategic approach in delivering education to Staff so that they understand the:-
- a. organisation's aims and objectives.
 - b. relevant policy provisions.
 - c. difference between acceptable and unacceptable behaviour.
 - d. how personal attitudes and values can affect behaviour.
 - e. role they play in making the management of diversity a reality.
 - f. meaning of cultural diversity.
 - g. meaning and impact of discrimination in the workplace.
- 33.11 The Service Provider must comply with the Accessible Information Standard <https://www.england.nhs.uk/ourwork/accessibleinfo>.

34. HUMAN RIGHTS ACT 1998

- 34.1 The Service Provider shall (and shall use its reasonable endeavours to procure that its Staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement.
- 34.2 The Service Provider will indemnify the Service Purchaser against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Service Purchaser for breach of statutory duty under the Act attributable to the Service Provider.

35. HEALTH & SAFETY

- 35.1 The Service Purchaser shall promptly notify the Service Provider of any health and safety hazards which may exist, and which may affect either the Service Provider in the performance of its obligations under the Agreement or the Your Care and Support Plan/Health Service Agreements (if applicable).
- 35.2 For as long as this Agreement is in force the Service Provider shall have in place a health and safety policy which complies with all statutory requirements.

- 35.3 The Service Provider shall comply with the requirements of the Health and Safety at Work Act 1974 as far as they apply to the provision of the Service.
- 35.4 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Service Purchaser on request.
- 35.5 The Service Provider shall nominate a person to be responsible for health and safety matters as required under the Health and Safety at Work etc Act 1974 and immediately prior to the start of the Agreement shall inform, in writing, the Service Purchaser of the names of the responsible person or persons who will be undertaking the duties of safety officer.
- 35.6 The Service Provider shall notify the Service Purchaser immediately in the event of any accident or incident occurring in the performance of the Services where such accident or incident causes a death, any personal injury or damage to property which could give rise to personal injury.

36. ENVIRONMENTAL REQUIREMENTS

- 36.1 The Service Provider shall perform its obligations under this Agreement in such manner as to conserve energy, water, wood, paper and other resources, recycle, reduce and dispose of waste appropriately and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, and, where applicable, promote sustainability to Service Users.

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

- 37.1 Unless otherwise stated in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 37.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

38. STATUTORY DUTIES & LOCAL AUTHORITY REQUIREMENTS

- 38.1 In order that the Service Purchaser may comply with its statutory duty, in particular with regard to Best Value under Part 1 of the Local Government Act 1999, the Service Provider shall make available such facilities and assistance as may be reasonably requested, provided that the Service Purchaser has given reasonable notice, and this does not present an unreasonable cost to the Service Provider.
- 38.2 The Service Provider shall allow the Service Purchaser's Authorised Individual(s) or authorised agents access to employees and all information, reports, financial accounts, documents, records, and data which are relevant to this Agreement, or the Service provided, including taking copies where necessary.

39. MODERN SLAVERY

- 39.1 The Service Provider shall comply with all applicable laws, statutes, regulations, and codes relating to modern slavery, including but not limited to the Modern Slavery Act 2015.
- 39.2 The Service Provider warrants that it does not, and will not, engage in any form of modern slavery, including forced labour, human trafficking, and child labour.
- 39.3 The Service Provider agrees to implement due diligence procedures for its own suppliers, subcontractors, and other participants in its supply chain to ensure that there is no modern slavery in its supply chains.
- 39.4 The Service Provider shall not require any its employees or the employees of any subcontractors to lodge deposits or identity papers with themselves and employees shall be free to leave their employer after reasonable notice.
- 39.5 The Service Provider shall have and maintain throughout the Agreement term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub- contractors anti-slavery and human trafficking provisions.
- 39.6 The Service Provider shall promptly report any instances of modern slavery in its supply chains to the Service Purchaser. The Service Provider shall also take appropriate steps to address and remediate any instances of modern slavery.
- 39.7 The Service Provider shall promptly report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its subcontractors to the Service Purchaser and [Modern Slavery Helpline](#) and relevant national or local law enforcement agencies.
- 39.8 The Service Provider shall ensure that all Staff receive appropriate training on the Modern Slavery Act 2015 and related Laws.
- 39.9 The Service Purchaser reserves the right to audit the Service Provider 's compliance with this clause (Section B: Standard Conditions, clause **39**)**39**, and to inspect the Service Provider 's premises and records to ensure compliance.
- 39.10 Any breach of this clause (Section B: Standard Conditions, clause **39**) by the Service Provider shall be deemed a material breach of the Agreement, and the Service Purchaser shall have the right to terminate the Agreement with immediate effect.

40. WHISTLEBLOWING POLICY

- 40.1 The Service Provider will need to develop a whistleblowing policy, in line with the Service Purchaser's [Whistleblowing Procedure](#), review this on an annual basis and make the policy available to the Service Purchaser on request.

SECTION C: PARTICULAR CONDITIONS**1. AGREEMENT PERIOD**

- 1.1 The Agreement Period is shown in Section A: Authorised Signatory to the Agreement and Definitions of Terms, clauses **1.1** and **1.2** of the Agreement. The Agreement shall terminate in accordance with Section A: Authorised Signatory to the Agreement and Definitions of Terms: **1.2** of the Agreement, or on earlier termination of this Agreement in accordance with its terms.

PROVISION OF THE SERVICES**2. THE SERVICES**

- 2.1 The Service Purchaser may at any time, on reasonable notice, inspect and examine the manner in which the Service Provider provides the Services.
- 2.2 If the Service Purchaser informs the Service Provider in writing that the Service Purchaser reasonably believes that any part of the Services does not meet the requirements of this Agreement and/or the Your Care and Support Plans/Health Service Agreements (if applicable) or differs in any way from these requirements, and this is other than as a result of a Default on the part of the Service Purchaser, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Agreement and/or the Your Care and Support Plans/Health Service Agreements (if applicable) within such reasonable time as may be specified by the Service Purchaser.
- 2.3 The timely provision of the Services is crucial to this Agreement and/or delivery of the Your Care and Support Plans/Health Service Agreements (if applicable).

3. MANNER OF CARRYING OUT THE SERVICES

- 3.1 The Service Provider shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body/bodies. The Service Provider shall perform its obligations under this Agreement and/or the Your Care and Support Plans/Health Service Agreements (if applicable) in accordance with the Law and Good Industry Practice.
- 3.2 The Service Provider shall notify the Service Purchaser, in writing, of any significant or material change to the Service Provider's business model, licensing, or registration giving thirty (30) days' notice of the planned change. The Service Provider shall give detail of the change, using formal communication means as per Section B: Standard Conditions, clause **6**, with the proposed implementation date and further confirmation once the change has occurred.
- 3.3 The Service Provider shall ensure that there is adequate staffing available at all times and all Staff providing the Services shall do so with all due skill, care, ability, and diligence and shall possess such

qualifications, certifications, skills, and experience as are necessary for the proper management, supervision, and provision of the Services.

- 3.4 The Service Provider shall ensure that Staff are provided with an up-to-date contract of employment, job description and photographic identification badge which should be carried and be visible at all times by the Staff whilst delivering the Services.

4. MANDATORY PARTICIPATION IN QUALITY SUPPORT PROCESSES

- 4.1 If the Service Provider receives a CQC rating of "Inadequate," or "Requires Improvement", the Service Provider will be required, when requested by the Service Purchaser, to engage fully with the Service Purchaser's formal Provider Quality Support Process (PQSP) or Whole Service Safeguarding Process (WSS).

- 4.2 In such circumstances, the Service Provider will be expected to:

- a. attend PQSP/WSS meetings as requested.
- b. develop and implement action plans to address identified issues.
- c. regularly report progress to the PQSP or WSS process.

- 4.3 Non-participation in PQSP/ WSS or failure to fulfil these obligations will result in actions, including issuing a Default Notice (as per Section B – Standard Terms and Conditions, clause 10)

5. SERVICE PROVIDER'S STAFF - STAFFING MATTERS

- 5.1 The Service Provider shall select, employ, and deploy in and about the performance of the Services and in the management thereof only such persons with appropriate qualifications and at a level required by the Services, with the skills and experience commensurate with their duties and who have an understanding of the principles of personalisation and independent living. In addition, the Service Provider must ensure that the organisation operates a rigorous recruitment and selection procedure, and which meets the requirements of legislation, equal opportunities and anti-discriminatory practice, personalisation and ensures the protection of Service Users, carers, and their relatives.

- 5.2 The Service Provider shall employ sufficient Staff, to ensure that the Services are provided at all times in accordance with Good Industry Practice, the Service Specification and the Your Care and Support Plans/Health Service Agreements (if applicable) and shall ensure at all times that such Staff are properly supervised. Without prejudice to the generality of this obligation, it shall be the duty of the Service Provider to ensure that a sufficient reserve of Staff is available to provide the Services during Staff holidays or absence through sickness or any other cause.

- 5.3 The Service Provider shall ensure that its Staff are properly trained and instructed in respect of, but without limitation, the following:-

- a. induction training and ongoing training and guidance relevant to the Services;

- b. the need to recognise situations which involve actual or potential danger to Service Users and how to make such situations safe;
- c. the need to observe acceptable standards of hygiene and infection control;
- d. the need to ensure that information concerning Service Users is treated confidentially and is only disclosed to the extent permitted under this Agreement or by Law; such as the need for Staff to communicate with the Service Purchaser regarding changes in the circumstances of the Service User;
- e. safeguarding issues including but not limited to maintaining professional boundaries, reporting disclosures, dealing with suspicions, allegations and evidence of abuse and interagency procedures;
- f. in line with the [Local Government Association - Reducing Restrictive Practice](#), ensure that training services that include restrictive practices are certified (by UKAS accredited body) as complying with the [Restraint Reduction Network Training Standards](#) and the appointed training provider is working towards certification (UKAS accredited).

5.4 The Service Provider shall ensure that Staff carry out their duties and act in a courteous, considerate, orderly, and quiet manner and in particular shall ensure that whilst engaged in delivering the Services, Staff shall:-

- a. refrain from smoking;
- b. refrain from consuming alcohol or using illegal drugs or work whilst under the influence of alcohol or illegal drugs;
- c. not solicit or accept gifts or gratuities from any Service User;
- d. not take advantage of their position whilst delivering the Services in any way whatsoever by, for example, selling or offering for sale any products or Services of the Service Provider which fall outside the scope of the Services;
- e. refrain from using a mobile phone apart from in connection with the provisions of the Services;
- f. otherwise refrain from acting in a manner which is likely to cause offence to the Service User.

5.5 The Service Provider will ensure that Staff are aware of discrimination issues, have good communication and listening skills and are sensitive and flexible when responding to issues relating to needs of Service Users.

5.6 The Service Provider's Staff shall treat all Service Users with respect and dignity and are responsive and non-patronising, without limitation, to the needs, feelings and wishes of Service Users, irrespective of their race, disability age, gender, sexual orientation, and religion.

5.7 The Service Purchaser may, by written notice to the Service Provider, instruct the Service Provider to remove from the provision of the Services:-

- a. any member of the Staff; or
- b. any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Service Purchaser, be undesirable as a result, without limitation, of that member of Staff's conduct, behaviour or manner.

5.8 The Service Purchaser shall not be responsible either to the Service Provider or any member of Staff in respect of any claim, liability, loss or damage arising from or occasioned by the removal of any member of Staff pursuant to Section C: Particular Conditions, clause 5.7 above and the Service Provider shall indemnify and keep the Service Purchaser indemnified against any claim, liability, loss or damage made by any member of Staff.

5.9 The Service Provider shall adhere to the [Code of Practice for the International Recruitment of Health and Social Care Personnel in England](#).

6. SPONSORSHIP LICENCE RESPONSIBILITIES

6.1 The Service Provider (Licence Holder) shall comply with all obligations under the UK Visas and Immigration (UKVI) sponsorship regime, including, but not limited to, adhering to the guidance outlined on the official [UKVI webpage](#).

7. DISCLOSURE AND BARRING SERVICE CHECKS

7.1 The Service Provider shall comply with the Staff Vetting Procedures and in particular shall ensure that appropriate checks are undertaken on all Staff engaged to provide or supervise the provision of the Services where they will come into contact with Service Users as more particularly described in Section C: Particular Conditions, clauses 7.2 to 7.12 below.

7.2 The Service Provider acknowledges and accepts that the Services being delivered under this Agreement will bring Staff into contact with Service Users and accordingly requires that Staff the Service Provider employs in delivering the Services are satisfactorily cleared through the Disclosure and Barring Service ("DBS") and copies shall be supplied to the Service Purchaser when requested.

7.3 The Service Provider shall ensure that, save as provided in Section C: Particular Conditions, clause 7.5, before any Staff perform the Services:

- a. each of the Staff is questioned as to whether they have any convictions, cautions, reprimand, bind-overs, or warnings or are subject to any pending criminal proceedings for which they have been formally charged which may be relevant to their employment with the Service Provider. For international recruits, the Service Provider must obtain overseas police checks for any country where the individual resided for six months or more within the past five years, along with enhanced DBS checks for any time spent in the UK; and
- b. the results are obtained of a valid enhanced disclosure check against the adults' barred list; and
- c. the Service Purchaser is informed that the aforementioned checks have been undertaken and the Service Provider shall obtain the consent of the Staff to the examination by the Service Purchaser of the records obtained through the aforementioned disclosure checks.

- 7.4 Where the aforementioned checks disclose a conviction, caution or other information the Service Provider shall carry out a risk assessment and follow CQC guidance ([Regulation 19 \(Fit and proper persons\)](#)). Where the outcome of the check suggests that the member of Staff should not be engaged to provide or supervise the provision of the Services, the Service Purchaser shall, acting reasonably, be entitled to require the Service Provider to remove from the Services the member of Staff. Upon being advised of this requirement the Service Provider shall immediately remove the member of Staff and shall not re-instate that person without the prior written consent of the Service Purchaser.
- 7.5 Until the DBS clearance of the Staff is confirmed then the Staff must only attend, when partnered at all times, by a member of the Staff who has DBS clearance.
- 7.6 The Service Provider agrees and undertakes that it shall repeat the process set out in Section C: Particular Conditions, clause **7.2** no less frequently than once every three years in respect of all of its Staff engaged in the performance of the Services.
- 7.7 The Service Provider shall ensure an appropriate Safeguarding Policy is in place at all times whilst it is delivering the Services, such policy to be in line with the [DBS Code of Practice](#).
- 7.8 The Service Purchaser shall be entitled to check against its records the names of any Staff engaged by the Service Provider to provide or supervise the provision of the Service and shall be entitled to exercise the same rights as set out in Section C: Particular Conditions, clause **7.4**. In checking such records, the Service Purchaser shall be entitled to request from the Service Provider such information as it shall reasonably require enabling it to undertake the aforementioned check.
- 7.9 The Service Provider shall pay any charges which may be levied against the Service Purchaser by the DBS and any costs of the Service Purchaser where the Service Purchaser is processing any DBS applications on behalf of the Service Provider.
- 7.10 The Service Provider shall ensure that it has internal systems and processes in place such that the Service Purchaser is notified immediately of any member of Staff who, subsequent to the carrying out of the Staff Vetting Procedures is subject to any convictions, cautions, pending criminal proceedings or any other information which may be relevant to their employment with the Service Provider. In such circumstance the Service Purchaser may request the Service Provider to remove the member of Staff from the provision of the Services and upon such request the Service Provider shall immediately remove the member of Staff and shall not reinstate them without the prior written consent of the Service Purchaser.
- 7.11 The Service Provider shall comply with any additional requirements of the Service Purchaser which, without limitation, arise from the introduction of further legislation, codes of practice, safeguarding policies relating to the protection of children and/or vulnerable adults.
- 7.12 The Service Purchaser shall in no circumstances be liable either to the Service Provider and or any member of its Staff in respect of any liability, loss or damage occasioned by any action whatsoever taken in accordance with Section C: Particular Conditions, clauses **7.4**, **7.8** or **7.10** and the Provider

shall fully and promptly indemnify and keep the Service Purchaser indemnified against any claim made by such member of Staff.

8. SAFEGUARDING VULNERABLE ADULTS

8.1 The Service Provider must ensure that professional boundaries are maintained (including the nature and limits of relationships between Staff and Service Users) so that Service Users are safeguarded from any form of abuse or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhuman or degrading treatment through deliberate intent, negligent acts or omissions or ignorance by its Staff members in accordance with the Service Provider's written policies and procedures (see [Multi-agency safeguarding adult procedures and guidance](#) and [Devon safeguarding adult partnership](#))

8.2 The Service Provider shall:-

- a. act in accordance with the Service Purchaser's multi-agency procedures and guidance for the protection of adults at risk (see [Multi-agency safeguarding adult procedures and guidance](#)), the Mental Capacity Act 2005, the Deprivation of Liberty Safeguards and the Public Disclosure Act 1998 to ensure appropriate action is taken in response to the suspicion or evidence of abuse or neglect (including whistleblowing) to ensure the safety and protection of Service Users.
- b. ensure that all Staff are aware of the Service Purchaser's multi agency procedures and guidance for the protection of adults at risk (see [Multi-agency safeguarding adult procedures and guidance](#)), the Mental Capacity Act 2005, and the Deprivation of Liberty Safeguards.
- c. ensure that all Staff undertake safeguarding adults basic awareness training as part of their induction and ongoing annual training, appropriate to their level of responsibility that is comparable with the Service Purchaser's multi agency procedures and guidance for the protection of adults at risk (see [Multi-agency safeguarding adult procedures and guidance](#)), the Mental Capacity Act 2005, the Deprivation of Liberty Safeguards and undertake safeguarding training which meets the competencies outlined in the ADASS National Competence Framework for Safeguarding Adults. This training should include active encouragement to Staff in respect of whistleblowing if they become aware of suspected abuse.
- d. have an internal policy for safeguarding adults that is comparable with the Service Purchasers multi agency procedures and guidance for the protection of adults at risk.
- e. report all safeguarding concerns to the Service Purchaser ([Devon has a duty to keep vulnerable adults safe and away from harm](#)).
- f. allow the Service Purchaser to regularly audit the Service Provider's safeguarding practices to ensure ongoing compliance and effectiveness.
- g. ensure Service Provider managers and Staff co-operate fully with adult protection assessments and investigations, share full reports on request and comply with any recommendations in post abuse action plans.

- 8.3 The Service Provider must ensure that it complies and that its Staff fully comply with the requirements of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards in relation to Service Users who do not have capacity to make informed choice, or where their capacity or their ability to make informed choice is unknown or subject to doubt. The Service Provider must ensure that its policies fully reflect the requirements of the abovementioned Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards and that its Staff are fully aware of these policies and have received training in order for them to be able to comply with them.
- 8.4 The Service Provider must ensure that all allegations, suspicions, and incidents of abuse are reported immediately to the [Central Safeguarding Hub](#) of the Service Purchaser. The Service Provider must maintain detailed records of all safeguarding concerns and actions taken. Where a Service User is in a hospital, the Service Provider shall report any safeguarding concerns relating to the Service User's stay in hospital in the usual way and shall work with the relevant health authority to encourage safe discharge from health settings.
- 8.5 The Service Provider must ensure that adequate disciplinary procedures are in place at all times to protect Service Users from and/or against any form of improper conduct by the Service Provider's Staff including (without limitation) verbal/emotional and/or physical abuse, theft of property, personal possessions, and/or cash. The Service Provider shall promptly take appropriate disciplinary action against any member of Staff who is engaged or is alleged to be engaged in any of the improper conduct referred to above. The Service Provider must promptly inform the Service Purchaser's authorised representative of the fact that disciplinary action has been initiated, its nature and the outcome. If a plausible allegation of improper conduct is made, the Service Provider shall immediately suspend the relevant member of Staff from providing the Service pending investigation and the completion of appropriate disciplinary action. The Service Provider must also report this to the [Nursing and Midwifery Council](#) (if appropriate) and the [Disclosure and Barring Service](#).
- 8.6 Where the Service Purchaser has any concerns regarding the outcome of any disciplinary procedure (and without prejudice to the Service Purchaser's right to request the suspension of that member of Staff from providing the Service in accordance with Section C: Particular Conditions, clause **8.5** above) it may require the Service Provider to provide specific additional training and support to the member of the Service Provider's Staff concerned. The Service Purchaser may also request in writing, that the Service Provider monitors that member of Staff's performance and submits a report to the Service Purchaser. The Service Provider will provide, to the extent permitted by Law, this Information at intervals as directed by the Service Purchaser.
- 8.7 The Service Provider shall to the extent practicable include provisions in the contracts of employment of its Staff pursuant to which all relevant Staff consent to the sharing of the Information/data described in Section C: Particular Conditions, clauses **8.5** and **8.6** above with the Service Purchaser in the circumstances that are outlined in Section C: Particular Conditions, clauses **8.5** and **8.6** above.
- 8.8 The Service Provider is reminded of its legal obligation to refer relevant Information to the DBS, where there is a concern relating to the harm or the risk of harm to children or vulnerable adults or where

there is a concern about the behaviour or conduct of a Service User. The Service Provider agrees to comply with this obligation in a timely manner and in accordance with the guidance issued by DBS and to share this information with any other relevant governing bodies.

- 8.9 The Service Provider must have a designated person of sufficient seniority for safeguarding adults and such designated person's responsibility is essentially to make sure that the Service Provider's safeguarding policy is robust and implemented.

9. AGENCY STAFF

- 9.1 For the avoidance of doubt nothing in this Agreement shall prevent the Service Provider from the hiring of Agency Staff in cases of emergency or to cover absence. All Agency Staff shall be subject to the same Staff Vetting Procedures and Staffing Matters as set out in Section C: Particular Conditions, clauses 5 and 7 as Staff employed directly by the Service Provider.

- 9.2 Other than in exceptional circumstances (such as providing basic information in an acute emergency), it is expected that the Service Provider will, at the Service Provider's cost, only use professional interpreters and translators who are appropriately registered with an agency or professional body, qualified, insured, and DBS checked.

- 9.3 For avoidance of doubt, the Service Purchaser shall not be liable for providing or funding agency staff.

10. PRICE AND ENTERING INTO YOUR CARE AND SUPPORT PLANS

- 10.1 The Parties agree that:
- a. the terms and conditions of this Agreement shall apply to any Your Care and Support Plans that are entered into during the term of this Agreement; and
 - b. subject to Section C: Particular Conditions, clause 10.2, any Historic YCSPs shall continue in place unaffected by the terms and conditions of this Agreement.
 - c. the Price at **Appendix One – Residential and Nursing Homes Placement Fees**, shall apply to Service Users over the age of 65 only.
 - d. for Service Users aged 64 years and under, Non Banded Rates will apply.
 - e. Health Service Agreements are subject to pricing and terms described in **Section D: Service Specification**
- 10.2 Notwithstanding Section C: Particular Conditions, clause 10.1b), any Review of an Historic YCSP shall result in the termination of that Historic YCSP and the Parties entering into a new Your Care and Support Plan under this Agreement.
- 10.3 The Price shall be the amount payable to the Service Provider for the Service specified, as recorded on the Your Care and Support Plan, and shall include all costs associated with the provision of the Service.

- 10.4 The Price shall be determined by the level of need of the Service User (see **Appendix One – Residential and Nursing Homes Placement Fees** and **Appendix Two – Service Descriptors**), as assessed by the Service Purchaser prior to the commencement of the Service, and in the case for all placements made before the Commencement Date as per Section C: Particular Conditions, clause **10.2**.
- 10.5 The proposed residential and nursing home rates in **Appendix One – Residential and Nursing Homes Placement** are representative of approximately 92% of all Service Users over the age of 65 care needs that are in scope of this model. Some Service Users may have needs higher than those described. Where Service Users needs exceed those described in **Appendix Two – Service Descriptors**, Section D: Service Specification, clause **17** specifies to how these placements will be individually brokered.
- 10.6 The Price will be net of VAT. If VAT is payable then the Service Purchaser shall pay this in addition to the Price, provided that the Service Provider supplies the Service Purchaser with an appropriate VAT invoice and that (unless otherwise agreed with HM Revenue and Customs) such an invoice is supplied no later than thirty (30) Days after the tax point for the provision of the Service. A Remittance slip will be sent electronically to the Service Provider.
- 10.7 The Service Provider shall ensure that each invoice contains all appropriate references, and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Service Purchaser to substantiate the invoice. The Service Purchaser reserves the right not to pay an invoice which does not contain the information required under this clause (Section C: Particular Conditions, clause **10.7**)**10.6** or if it is not otherwise satisfied as to the accuracy of the invoice.
- 10.8 The Service Provider shall indemnify the Service Purchaser on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Service Purchaser at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under this Agreement and/or the Your Care and Support Plan(s).
- 10.9 Each year the Service Purchaser shall consider what changes, if any, need to be made to the Price for general inflation purposes. The Service Provider will be notified of any changes and the date from which this will be applied. At such date, all Your Care and Support Plans shall automatically be updated to reference the new Price (for the avoidance of doubt, the Service Purchaser will not issue refreshed Your Care and Support Plans).
- 10.10 If it is considered that the care needs of the Service User have changed, then any party to the Your Care and Support Plan may reasonably request a Review which will consider what changes, if any, need to be made. If the outcome of the Review is that the Your Care and Support Plan is to be amended, then the amendment will be back dated to the date at which the Review was requested.
- 10.11 The Service User may choose a home whose fees are in excess of their agreed Price provided that the balance of the fees can be met from their own resources (First Party Top-Ups) or third party

resources (Third Party Top-Ups). The First Party Top-Ups or Third Party Top-Ups (as applicable) shall be recorded on the Your Care and Support Plan. Should payment of the First Party Top-Ups or Third Party Top-Ups cease for whatever reason the Service Purchaser is under no obligation to maintain the Service User in this accommodation. In such cases the Service Provider will be offered the opportunity to re-negotiate the Your Care and Support Plan.

- 10.12 The Price shall be the full and only consideration which the Service Provider is entitled to receive for the care of the Service User and the Service Provider shall not request or accept any other payment from the Service User or any person or body on behalf of the Service User without the written agreement of the Service Purchaser.

11. PAYMENT ARRANGEMENTS AND VAT

- 11.1 Payments will be based on the Service Purchaser's residency fortnightly payment schedule.
- 11.2 The Service Purchaser will make payment by bank transfer into the Service Provider's nominated bank account no later than five (5) Working Days after the end of each fortnightly residency period. The Service Purchaser will send a remittance slip electronically to the Service Provider.
- 11.3 If the Service Purchaser fails to pay any undisputed charges properly invoiced under this Agreement, the Service Provider shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 11.4 Payments in relation to placements under this Agreement will be made to the Service Provider on a gross basis. It will be the responsibility of the Service Purchaser to collect the First Party Top-Up and any other Third Party Top-ups if applicable.
- 11.5 The Service Provider shall not suspend the provision of the Services unless the Service Provider is entitled to terminate the Your Care and Support Plan under Section B: Standard Conditions, clause **10** (Termination on Default) for failure to pay undisputed sums of money.
- 11.6 The Service Provider shall work with the Service Purchaser to seek invoicing efficiencies and to consolidate invoices where appropriate.

12. RECOVERY OF SUMS DUE

- 12.1 Wherever under this Agreement and/or the Your Care and Support Plan(s) any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Service Purchaser in respect of any breach of this Agreement and/or the Your Care and Support Plan(s), the Service Purchaser may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under this Agreement and/or the Your Care and Support Plan(s) or under any other agreement or contract with the Service Purchaser.

- 12.2 The Service Provider shall promptly repay to the Service Purchaser any money incorrectly paid to it either as a result of an administrative error or otherwise. For the avoidance of doubt, this includes (without limitation) situations where the Service Purchaser has made an overpayment.
- 12.3 The Service Provider shall make any payments due to the Service Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Service Purchaser to the Service Provider.
- 12.4 All payments due to the Service Purchaser pursuant to Section C: Particular Conditions, clause 12.2 shall be made within 28 days unless otherwise agreed between the Parties, in cleared funds, to such bank or building society account as the Service Purchaser may from time to time direct. If the Service Provider fails to repay any money incorrectly paid to it and such payments due remain unpaid after 28 days (or such other period, if mutually agreed by the Parties), the Service Purchaser shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

13. EXTRAS

- 13.1 The Service Provider may charge the Service User for any Extras provided that these have been agreed with the Service User and are recorded in the Your Care and Support Plan.
- 13.2 The Service Provider shall not force any Extras upon Service Users.
- 13.3 Service Users shall be under no obligation to accept any Extras offered by the Service Provider.
- 13.4 The Service Provider shall ensure that all Extras agreed with the Service User are notified in writing to the Service User, or their legal representative where the Service User lacks Mental Capacity, at the outset of the placement and recorded in the Your Care and Support Plan.
- 13.5 The Service User, or their legal representative, shall be personally liable for any charge made for Extras and the Service Provider shall be responsible for recovering any charges direct from the Service User. The Service Purchaser shall not be liable for payment of these charges.
- 13.6 The provision of continence aids to the Service User shall never be charged as an Extra.

14. BUILDINGS

- 14.1 Buildings used for the provision of the Service must meet all legal requirements, be clean and in good state of repair. They must have access arrangements and equipment appropriate to the needs of Service Users.
- 14.2 The decoration and furnishing of buildings must be suitable for Service Users and be non- stigmatising, for example, but not limited to, in the use of signs and notices.

15. TRANSPORT

15.1 Where the Service Provider directly provides transport for Service Users, drivers and vehicles must meet all legal requirements and be adequately insured for the purpose. The Service Provider must be familiar with Devon County Council's current policies and procedures for passenger transport, which can be obtained from the Transport Co-ordination Service. The driver of the vehicle must also hold the appropriate driving licence required by Law and, where required, be accompanied by travelling escorts (see **Appendix Three – Hire and Reward and Driver's Licence Guide**).

16. OTHER INSURANCE

16.1 Where the Service User is resident the Service Provider shall have contents insurance to cover the personal belongings of the Service User. The Service Provider shall inform the Service User that it is the responsibility of the Service User to arrange personal insurance cover for items of significant value.

16.2 The Service Provider shall have building and contents insurance to cover items broken or stolen by Staff, residents, or visitors.

17. DOCUMENTATION

17.1 The Service Provider shall make available to the Service Purchaser, on demand, a copy of the following policies, procedures, or other documentation:

- a. statement of purpose, business plan and latest copy of any relevant inspection reports.
- b. accounts (audited where required by the Companies Act) and other relevant financial information (where this is reasonable);
- c. Data Protection policy, which has been read and signed by all Staff and workers who handle Personal Data on behalf of the Service Purchaser.
- d. evidence of adequate insurance cover (as set out in Section B: Standard Conditions, clauses **22**).
- e. health and safety, risk Assessment, equal opportunities, and Quality Standards policies.
- f. policy and procedure for Staff recruitment, induction, training, and development.
- g. complaint procedure, summary of complaints received and dealt with, and copies of records relating to complaints made in relation to the Service and the Service Provider's response.
- h. rotas and records of time worked by Staff in the provision of the Service.
- i. business continuity plans for minimising disruption to the Service due to emergencies or unforeseen circumstances.
- j. any other documentation, relating to the delivery of the Service, as may reasonably be requested.

18. EFFECT OF STATUTORY PROCEEDINGS

18.1 Where any of the circumstances set out in Section C: Particular Conditions, clause **18.2** have occurred, the Service Purchaser reserves the right to terminate this Agreement and/or any Your Care

and Support Plans/Health Service Agreements (if applicable) by giving written notice to the Service Provider specifying the period of notice (which may be immediate).

18.2 The circumstances referred to in Section C: Particular Conditions, clause **18.1** are as follows, any person registered in respect of the Home is:

- a. convicted of an offence under the Health and Social Care Act 2008 or any Regulations made thereunder (“the Regulations”) or any other legislation dealing with residential or nursing care, or any offence involving dishonesty or violence in respect of a resident or Service User;
- b. the subject of a successful application under Section 30 of the Health and Social Care Act 2008;
- c. served with a notice under Health and Social Care Act 2008 or the Regulations, where the Regulatory Body has not certified in writing that the requirements of the notice have been met;
- d. the subject of a decision of the Regulatory Body to cancel registration under the Health and Social Care Act 2008, where the decision has taken effect.

19. CAPACITY TRACKER/DATA COLLECTION DEPARTMENT OF HEALTH AND SOCIAL CARE

19.1 The Service Provider shall at all times during the Term of this Agreement, unless otherwise directed by the Service Purchaser or the NHS Devon ICB, adhere to statutory guidance from the Department of Health and Social Care to register for; and maintain registration of an account on the Capacity Tracker (see [Formal notice of a mandate for all adult social care providers - GOV.UK](#)).

19.2 The Service Provider will:

- a. where possible, ensure there are, two registered users able to use Capacity Tracker.
- b. make monthly submissions to Capacity Tracker at such frequencies as are required by DHSC (or any other regulatory body) and/or the Service Purchaser.
- c. ensure providers details and contact details are regularly updated/refreshed on Capacity Tracker.
- d. attend training sessions and; or receive Capacity Tracker communications, to ensure they remain updated/informed of changes and;
- e. regularly update vacancy information, to advise what vacancies can be safely admitted each day.

20. MEDICATION POLICY AND MEDICATION MANAGEMENT

20.1 The Service Provider will have clear policies and procedures which demonstrate recognised best practice in the management of medication.

20.2 It is a requirement that the Service Provider will have in place a medication policy that is in accordance with the most up to date NICE guidelines [Managing Medicines in Care Homes](#) and the policy is to adhere to CQC guidance [Medicines information for adult social care services - Care Quality Commission](#). The Service Provider will make this available on request from the Service Purchaser within five (5) working days.

20.3 The Service Provider must ensure that Service Users are protected and supported by the Service Provider’s policies and procedures for the management and administration of medication.

- 20.4 If the Home provides nursing, responsibility for medicines administration may be delegated to Staff who have been appropriately trained and assessed as competent to undertake this role. Registered nurses will remain accountable for medicines administration in the home and must provide supervision to care Staff undertaking the task.
- 20.5 If the Home does not provide nursing, appropriately trained and competent care Staff are responsible for medicines administration, following both NICE and CQC guidance.
- 20.6 The Service Provider will regularly assess and be able to provide documentary evidence of the competency of Staff in the management of medication to ensure that practices are compliant with the standards outlined in the Service Provider's policies and procedures and relevant national guidance, e.g. NICE and CQC.
- 20.7 The Service Provider will seek information and advice from a pharmacist or, where appropriate, other relevant medical professional, in relation to administering, monitoring, and reviewing medication.
- 20.8 The Service Provider will support Service Users to take medicines independently within a risk management framework and will provide suitable lockable facilities for this purpose.
- 20.9 Where a Service User is unable or chooses not to manage their own medication this will be recorded and the required medication will be administered by suitably trained and competent Staff, following completion of a risk assessment.
- 20.10 Records should include details of any Mental Capacity assessments and Best Interest decisions made on behalf of any Service User assessed as lacking capacity to consent to the administration of medication.
- 20.11 Any arrangements for covert medication must be made in accordance with Mental Capacity Act guidance and with the involvement of a relevant professional and the Service User's representative(s), this should be clearly documented and kept under continual review.
- 20.12 Service Users' medication will be reviewed with their general practitioner or relevant health professional six (6) monthly or more frequently as required.
- 20.13 The Service Provider will identify and contact the relevant party if this review has not happened according to this schedule, or if a change in the Service User's needs might warrant a more immediate review of their medication.
- 20.14 The Service Provider will ensure that Medication Administration Records (MAR charts) are audited each month to evidence the correct procedures have been followed, provide an audit trail of stock control and storage of medicines including pharmacy supplied monitored dosage systems.
- 20.15 Additional audits will include monitoring the administration, recording, and disposal of medicines. Audits should be robust and comprehensive and identify that measures are in place to ensure safe practice. Where a medication error is made or suspected, the Service Provider must contact an appropriate health professional immediately to discuss the risk to the Service User and to review this

[guidance](#), regarding if the error needs to be communicated to the Devon Safeguarding Adults Partnership.

20.16 The Service Provider will notify the Service User and/or their representative of any errors in relation to the administration of their medication.

21. USE OF CCTV

21.1 Under the UK GDPR, the Service User and/or their representative must be fully informed about the purpose of the surveillance and agree to it.

21.2 The use of CCTV must be justified as necessary for the safety and security of residents. It should not be used for general monitoring without a clear, specific purpose.

21.3 The implementation of CCTV must respect the privacy and human rights of the Service Users. This includes ensuring that surveillance does not intrude on private areas such as bathrooms or personal living spaces.

21.4 Service Providers must ensure that any data collected through CCTV is securely stored and only accessible to authorised personnel. The data should be used solely for the purposes for which it was collected and should be deleted when no longer needed.

21.5 Service Users and their families should be informed about the presence of CCTV and the reasons for its use. Clear signage should be displayed to indicate areas under surveillance. Where a Service User is assessed as lacking Mental Capacity to consent to the use of CCTV, any decision to do so must be made in their Best Interests and in accordance with section 4 of the Mental Capacity Act (2005) and consideration should be given to the Deprivation of Liberty Safeguards.

21.6 Service Providers should have a clear policy on the use of CCTV, which should be regularly reviewed and updated to ensure compliance with legal requirements (see [CQC Guidance on Using Surveillance in your Care Service](#); [GDPR Data Protection and Your Business](#); [Information Commissioner's Office Video surveillance](#)).

21.7 The Service Provider must conduct a thorough risk assessment before the installation of CCTV, evaluating the impact on the Service Users' privacy and ensuring the necessity of its use. The Service Provider should also consult with Service Users, their families, and Staff to gather feedback on the intended use of CCTV.

21.8 The Service Provider must provide regular training to Staff on the appropriate use of CCTV, ensuring that they understand Data Protection requirements, the importance of obtaining consent, and the privacy rights of Service Users.

21.9 Any incidents captured by CCTV must be reported and documented according to the Service Provider's incident reporting procedures. The Service Provider must maintain a log of instances where CCTV footage is accessed or used for investigative purposes, ensuring transparency and accountability.

21.10 CCTV footage must be retained for a specific period, as detailed in the Service Provider's retention policy, and must be securely deleted once it is no longer required. Retention periods should comply with UK GDPR requirements and reflect the purposes for which the data was originally collected.

22. RIGHT OF ACCESS FOR STATUTORY DUTIES

22.1 Service Purchaser's staff undertaking statutory duties, including those related to Deprivation of Liberty Safeguards (DoLS), shall have the right to access Service Users' records. In accordance with paragraph 4.77 of the DoLS Code, all assessors are permitted, within two (2) days' notice, to examine and take copies of:

- a. any health record;
- b. any record of, or held by, a local authority that was compiled in accordance with a social services function; and
- c. any record held by the Service Provider which they consider may be relevant to their assessment.

23. CALDICOTT PRINCIPLES

23.1 The Service Provider shall appoint a "Caldicott Guardian" who is a senior person responsible for protecting the confidentiality of Service Users' information and enabling appropriate information sharing; unless the Service Provider is covered by a care home collaborative's designated guardian.

23.2 The Caldicott Guardian shall:

- a. ensure that personal data is processed in compliance with the [Caldicott Principles](#) and relevant Data Protection Legislation, including UK GDPR.
- b. oversee the development and implementation of policies and procedures related to the handling of personal information.
- c. provide advice and guidance on confidentiality and Data Protection issues.

22.1 The Service Provider shall ensure that the Caldicott Guardian receives appropriate training and resources to fulfil their role effectively..

SECTION D: SERVICE SPECIFICATION

To be inserted here

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SECTION E: ADDITIONAL CLAUSES

1. MONITORING OF CONTRACT PERFORMANCE

- 1.1 The Service Provider shall comply with contract management requirements as set out in **Appendix Five – Table of Key Performance Indicators (KPIs) for Care Home** and **Appendix Six – Table of Quality Indicators for Care Homes**, in line with the Service Specification and any additional monitoring arrangements set out in the Your Care and Support Plan including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Agreement. This data and information must be complete, accurate and submitted in a timely manner.
- 1.2 The Service Provider shall be responsible for supplying the Service Purchaser with the data required under and frequencies specified in **Appendix Five – Table of Key Performance Indicators (KPIs) for Care Home** and **Appendix Six – Table of Quality Indicators for Care Homes** in the format specified by the Service Purchaser. During the first year the Service Purchaser will implement a pilot and review of the KPIs in order to ensure the KPIs are suitable. Therefore, on or before 1 April 2026, the Service Purchaser shall be entitled to update and replace, via written notice, **Appendix Five – Table of Key Performance Indicators (KPIs) for Care Home** and **Appendix Six – Table of Quality Indicators for Care Homes**.
- 1.3 The Service Purchaser reserves the right to amend data requirements as necessary, especially in response to regulatory changes.
- 1.4 The Service Provider shall meet at such frequencies as required by the Service Purchaser to discuss any issues arising from the performance and delivery of the Services.
- 1.5 In the event of continued underperformance, the escalation process shall include the Service Purchaser's Provider Quality Support Process as per, Section C: Particular Conditions, clause 4 and appropriate contractual remedies as determined by the Service Purchaser. The Service Provider is required to actively engage in the escalation process and adhere to all agreed-upon actions and timelines as applicable. Failure to engage or comply with required actions may result in further enforcement measures, including but not limited to Default Notices or contract termination, as outlined in this Agreement.
- 1.6 The Parties shall ensure that they have at their disposal at the above-mentioned review meeting all information and staff necessary for a meaningful discussion of the issues to be discussed and that they are represented at such meeting(s) by staff who have the authority to make decisions on their behalf. Where performance issues are identified, an action plan with timelines should be agreed upon to ensure accountability.
- 1.7 The proceedings of these meeting(s) shall be recorded in an appropriate format by the Service Purchaser and forwarded to the Service Provider for acceptance as soon as possible thereafter. Once the record, including any agreed changes thereto have been agreed and signed by the Parties such record shall be deemed to be an authoritative record of the matters discussed and agreed. The Service

Provider must implement agreed actions and report progress within set timelines to maintain transparency and ensure follow-up.

- 1.8 In addition to the routine monitoring requirements set out in this Agreement, the Service Purchaser reserves the right to undertake a detailed review of the Service Provider's performance at any time by exception, should concerns or circumstances warrant it. This review will not form part of regular data collection or ongoing monitoring processes, which may not always provide a meaningful assessment of performance. The decision to conduct such a review will be based on identified risks or concerns over compliance, quality of service, or any other relevant factors.

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Appendices

Appendix One – Residential and Nursing Homes Placement Fees

- 1.1 The table below sets out the proposed rate per resident per week for the financial year 2025/26 (These rates will only apply to Service Users aged 65 years and over).
- 1.2 These fees correspond with the Service Descriptors as set out in **Appendix Two – Service Descriptors**

	1. Residential	2. Residential	3. Residential	4. Residential	5. Residential
Level of need	Low needs	Medium needs	High needs	Nursing standard	Advanced nursing
Social Care	£	£	£	£	£
Nursing				£	£

Bespoke Pricing (Valuing Care Template)

- 1.3 Table to be inserted here



Appendix Two – Service Descriptors

- 1.1 This pricing mechanism will apply to Service Users aged 65 years and over.
- 1.2 This will also apply to Service Users who have needs which can be met in a care home setting which is predominately used for people 65 and over.

Service Descriptors to be inserted here

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Appendix Three – Hire and Reward and Driver’s Licence Guide

HIRE AND REWARD

‘Hire and reward’ is the legal term for payment for providing transport. It is any payment, in cash or kind, which gives a person the right to be carried on a vehicle, regardless of whether that right is exercised. The payment may be made by the passenger or on the passenger’s behalf. Fares, subscriptions, donations, grants, payments for another services and money drawn from club funds would all be treated as ‘hire and reward.’ This applies even when no profit is made or when transport is only part of a package. Operators need to be very careful before assuming that their operation is not for ‘hire or reward.’

WHAT IS AN OPERATOR’S LICENCE, AND DO WE NEED ONE?

An operator’s licence allows a person or an organisation to operate passenger carrying vehicles in return for any kind of ‘hire or reward.’ You are likely to require an operator’s licence of some type because “hire or reward” will exist in the majority, if not all, transport operations. **Public Service Vehicle (PSV) Operator Licence (O licence)** - Private or commercial companies that operate transport will need to apply for a PSV operator’s licence, also known as an O licence. Where only one or two minibuses are run, a restricted operator’s licence may be sufficient. These are issued by the [Traffic Commissioner](#) through their Central Office in Leeds and the contact number is 0300 123 9000.

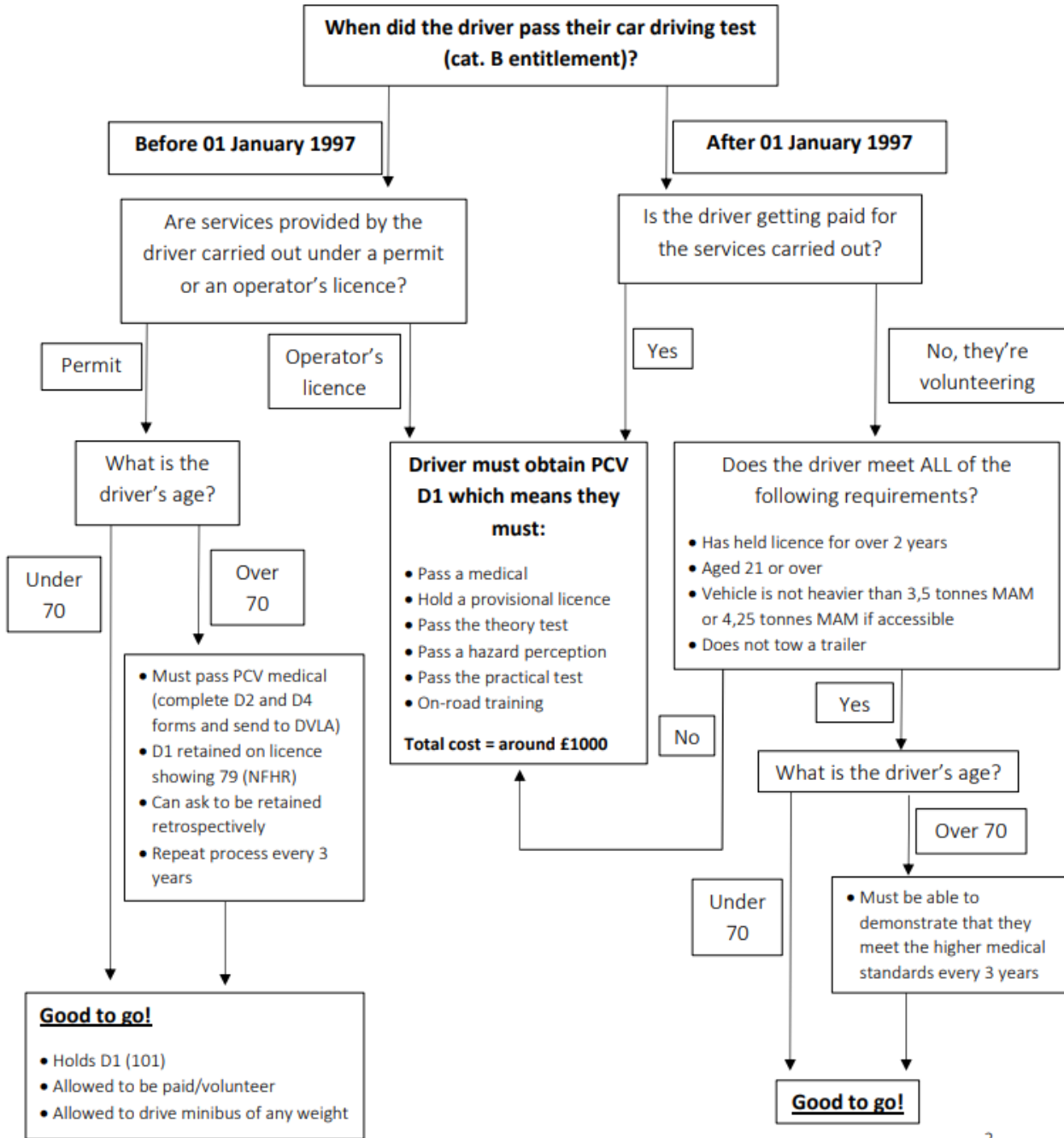
If a Residential Provider is running a vehicle **registered with more than eight passenger seats** (plus driver), they will need a PSV/O licence. If a Residential Provider is running a vehicle **registered with eight passenger seats or less**, they should approach their local Licensing Authority (District/Borough/City Council) for a decision on whether they are required to hold a Private Hire Vehicle Licence <https://www.gov.uk/taxi-driver-licence>.

If a Residential Provider has employees (or the business owner) using their own cars to provide journeys for clients/residents, and those employees are receiving payments above a certain amount, they will have to report this to HMRC and deduct and pay tax. Mileage Allowance Payments (MAPs) are what is paid to employees for using their own vehicle for business journeys. A certain amount of MAPS can be paid each year without having to report them to HMRC. This is called an “approved amount.”

To calculate the “approved amount,” the employee’s business travel for the year must be multiplied by the rate per mile for their vehicle. Please see approved rates [Travel — mileage and fuel rates and allowances - GOV.UK](#). If an employee is paid more than the approved rate per mile, either by their employer or by charging or receiving a contribution from clients/residents, they will be making a profit and deemed to be in a “hire and reward” situation and must therefore hold the appropriate licence. This is a total figure, not rate per mile per person carried. If an employee is providing journeys to clients/residents, their licences, insurance, and MOTs must also be checked to ensure they are driving legally. This should be checked every six months as a minimum. The checks must be completed by a suitable person and must be recorded. Service Users placed in care homes by the Service Purchaser are entitled to reclaim costs for journeys to secondary care. Please refer to [NHS Low Income Scheme | NHSBSA](#) and [Healthcare Travel Costs Scheme \(HTCS\) - NHS \(www.nhs.uk\)](#)

DRIVER LICENSING GUIDE LICENCES BEFORE AND AFTER JANUARY 1997

A number of factors influence what licence is required to drive a minibus. These include when the licence was obtained and whether the driver is being paid. To help you navigate this, we have set the information out in a quick look flowchart, as well as more detailed information below.



LICENCES BEFORE JANUARY 1997

Drivers who passed their driving test before 01 January 1997 will normally have a D1 with a 101 code – minibus, not for ‘hire and reward’ – entitlement on their licence. This will remain on the licence until it expires when the driver reaches 70 years old or unless removed by DVLA, usually for medical reasons. Even though the licence

code stands for 'not for hire and reward,' these licence holders can drive a minibus operated under a section 19 or 22 permit without additional conditions. Drivers who hold a category D1 101 on their driving licence can volunteer or be paid to drive a minibus of any weight but only if driving on permit.

LICENCES AFTER JANUARY 1997

Drivers who passed their driving test after 01 January 1997 do not have a D1 101 entitlement on their licence and they will only have a B entitlement. In this case, a driver can still drive a minibus on behalf of a non-commercial body for social purposes as long as ALL of the following conditions are met:

- The driver has held a full B licence for an aggregate of at least 2 years;
- The driver is aged 21 or over, but under 70 (unless the driver has passed a PCV medical and has gained the restriction code 120 or 79 (NFHR));
- The driver receives no payment or other consideration for driving the vehicle other than out-of-pocket expenses;
- The vehicle has no trailer attached;
- The vehicle weighs no more than 3,500kg (MAM - Maximum Authorised Mass) when not carrying specialised equipment, or 4,250kg when carrying specialised equipment.
- 'Specialised equipment' means equipment intended for the carriage of disabled passengers, like lifts.

Where any of the above conditions cannot be met, the driver will need to pass a second driving test in a minibus, which will gain them a full PCV D1 entitlement.

VEHICLE WEIGHT RESTRICTION

The additional 750kg attributed to 'specialised equipment' is the maximum allowance permitted to directly offset the additional weight of equipment that is intended for the carriage of disabled passengers. Therefore, any allowance claimed over the 3500kg limit must be attributed to this equipment. Operators and drivers must ensure that any specialised equipment stays on the minibus for this concession to apply.

Both operators and drivers need to take care with the Maximum Authorised Mass of any vehicle they are operating or driving. The Maximum Authorised Mass is the maximum carrying capacity of the vehicle, this is, the weight of the vehicle when it is full of diesel along with all the passengers and driver. It is possible to overload a vehicle where heavy wheelchairs are carried or where the payload is small.

CHECKING A DRIVING LICENCE

It is important that drivers' licences, including endorsements, are checked by a knowledgeable person at least every six months to ensure that they still comply with the legal, insurance and organisational requirements. Drivers are required to inform the operator if anything changes regarding their driving entitlement, such as medical conditions, penalty points or disqualifications. This is defined as 'personal information' by the Data

Protection Act 1998, which means that it is a criminal offence to obtain this information without the individual's permission.

Paper driving licences were abolished and have no legal status since 8 June 2015. Organisations should not rely on them to demonstrate a driver's legal entitlement to drive. Exception: paper driving licences issued before 31 March 2000 are still valid, however, if a driver needs to update their personal information, they will be issued a photo card only. For more information on when to exchange your paper driving licence for a photo card licence, see <https://www.gov.uk/exchange-paper-driving-licence>

Drivers can use the online service provided by the DVLA to check their own details at <https://www.gov.uk/view-driving-licence>. They can also use this link to obtain a 'check code' that they can give to their employer/organisation they are working/volunteering for, which gives the operator permission to check the driver's driving entitlements. This 'check code' is valid for 21 days and can only be used once.

Once the driver has provided the operator with the 'check code', they can use the online service provided by the DVLA to see the driver's records at <https://www.gov.uk/check-driving-information>. For more information on checking someone's driving licence and qualifications in Great Britain, see <https://www.gov.uk/employing-people-to-drive>.

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Appendix Four – Key Performance Indicators (KPIs) and Quality Indicators

These metrics will apply to all Service Users aged 18 years and over.

1. PROVISION OF KEY PERFORMANCE INDICATORS

- 1.1 The Service Provider shall collect and submit Key Performance Indicator (KPI) data as defined in this Agreement.
- 1.2 The data must be:
 - a. Accurate: Reflecting the actual performance of the Services provided.
 - b. Complete: Covering all required indicators as set out in the KPI schedule or appendices.
 - c. Timely: Submitted in accordance with the format and timescales specified by the Service Purchaser, as communicated in writing.

2. REPORTING REQUIREMENTS

- 2.1 KPI data must be provided using the templates and systems designated by the Service Purchaser.
- 2.2 The Service Provider must submit KPI data at the intervals outlined in the Agreement, or as otherwise reasonably required.
- 2.3 Failure to submit data within the required timescales or in the prescribed format may be treated as a breach of the Agreement, subject to the provisions outlined in Section B: Standard Conditions, clause 10.

3. USE OF KPI DATA

- 3.1 KPI data will be reviewed by the Service Purchaser to monitor service performance, identify trends, and inform targeted support for improvement where necessary.
- 3.2 The Service Purchaser may aggregate and anonymise KPI data to evaluate overall market trends and benchmark performance across providers.
- 3.3 Non-compliance with KPI requirements or persistent underperformance in KPIs may trigger additional monitoring, support measures, or enforcement actions under Section B: Standard Conditions, clause 10.

4. EXPECTATIONS OF IMPROVEMENT

- 4.1 The Service Provider must actively engage with the Service Purchaser to address any performance concerns highlighted through KPI reviews.
- 4.2 An improvement plan may be required where performance fails to meet acceptable standards.

APPENDICES

4.3 Sustained failure to meet KPIs or provide data may result in formal contractual remedies, including but not limited to Default Notices, suspension of services, or contract termination as detailed in Section B: Standard Conditions, clause 10.

5. SUPPORT FROM THE SERVICE PURCHASER

5.1 Where KPI data identifies areas for development, the Service Purchaser will endeavour to provide reasonable support, including access to training, tools, and best practice guidance.

5.2 The Service Provider must fully engage in any collaborative improvement initiatives.

6. CONFIDENTIALITY AND DATA PROTECTION

6.1 All KPI data submitted will be handled in compliance with Data Protection Legislation and confidentiality obligations outlined in this Agreement.

7. KEY PERFORMANCE INDICATOR - COLLECTION TEMPLATE

7.1 The template proforma below has been designed to be user friendly, using Micro Soft forms to capture the information:

Introduction Section:	
	<p>Thank you for completing this form. Please answer all questions based on the most recent reporting period. If you have any questions, contact [Insert Contact Information].</p> <ol style="list-style-type: none"> Provider Information (Short Answer) Provider Name (Short Answer) Care Home Name/Location (Short Answer) CQC Location (Short Answer) <p>Reporting Period (Dropdown or Date Picker) Q1 (Apr–Jun) Q2 (Jul–Sep) Q3 (Oct–Dec) Q4 (Jan–Mar)</p>
KPI Questions:	
KPI 1: Care Plans Reviewed and Updated (Frequency: Quarterly)	<ol style="list-style-type: none"> Total number of care plans your service manages: (Short Answer) Number of care plans reviewed and updated in the reporting period: (Short Answer)
KPI 2: Induction Training Completion (Frequency: Quarterly)	<ol style="list-style-type: none"> Total number of new staff hired during the reporting period: (Short Answer) Number of new staff completing or currently undertaking their induction within 12 weeks: (Short Answer)
KPI 3: Mandatory Staff Training (Frequency: Quarterly)	<ol style="list-style-type: none"> Total number of staff employed at your service: (Short Answer) Number of staff up to date with mandatory training: (Short Answer) As per skills for care guidance: <u>Statutory and mandatory training guide August 2024</u>
KPI 4: Complaints Resolution (Frequency: Quarterly)	<ol style="list-style-type: none"> Total number of complaints received during the reporting period: (Short Answer)

	11.	Number of complaints resolved within 28 days: (Short Answer)
KPI 5: Business Continuity Planning (Frequency: Yearly)	12.	Has your Business Continuity Plan (BCP) been reviewed, updated, and tested in the past 12 months? (Yes/No) If no, please provide a brief explanation: (Optional Long Answer)
	13.	Total number of managers in your service: (Short Answer)
KPI 6: Leadership (Frequency: Yearly)	14.	Number of managers enrolled in or who have completed Level 5 or above leadership training: (Short Answer)
		This information will be taken from the Capacity tracker
Feedback Section (Optional)	15.	Do you have any comments or concerns about meeting these KPIs? (Long Answer)
Submit Section		Thank you for submitting your KPI data. We appreciate your cooperation. We will review this information and contact you if further clarification or support is needed.

8. QUALITY INDICATOR - COLLECTION TEMPLATE

8.1 The template proforma below has been designed to be user friendly, using Micro Soft forms to capture the information:

Introduction Section:		
		Thank you for completing this Quality Indicators (QIs) reporting form. The data you provide will support monitoring, benchmarking, and improving care standards. Please answer all questions based on the most recent reporting period. Contact [Insert Contact Information] if you need assistance.
	1.	Provider Information (Short Answer)
	2.	Provider Name (Short Answer) Care Home Name/Location (Short Answer)
	3.	CQC Location (Short Answer)
		Reporting Period (Dropdown or Date Picker) Q1 (Apr–Jun) Q2 (Jul–Sep) Q3 (Oct–Dec) Q4 (Jan–Mar)
Quality Indicators Reporting:		
QI 1: Resident Satisfaction Rate (Frequency: Quarterly)	4.	Total number of resident satisfaction surveys completed this quarter: (Short Answer)
	5.	Number of residents reporting satisfaction with the care and services provided: (Short Answer)
QI 2: Regularity of Comprehensive Quality Assurance Audits (Frequency: Quarterly)	6.	Did your care home complete all scheduled quality assurance audits this quarter? (Yes/No) If no, please explain: (Optional Long Answer)
	7.	Total number of care placements at the beginning of the quarter: (Short Answer)
QI 3: Rate of notice issued to finish to end a placement. (Frequency: Quarterly)	8.	Number of placements terminated by the provider during the quarter: (Short Answer)
	9.	Reason for Notice issues

QI 4: Rate of Complaints (Frequency: Quarterly)	10.	Total number of residents in your care home this quarter: (Short Answer)
	11.	Number of complaints received this quarter: (Short Answer)
QI 5: Rate of Notifiable Incidents (Frequency: Quarterly)	12.	Total number of notifiable incidents reported this quarter: (Short Answer)
	13.	If notifiable incidents occurred, were they reported to the appropriate regulatory body? (Yes/No) If no, please explain: (Optional Long Answer))
QI 6: Agency Use Rate		This information will be taken from the Capacity tracker
QI 7: Staff turnover rates		This information will be taken from the Capacity tracker
QI 8: Staff Sickness Rate (Frequency: Quarterly)	14.	Total number of staff employed this quarter: (Short Answer)
	15.	Number of staff absent due to sickness this quarter: (Short Answer)
QI 9: Acceptance Rates of Service Descriptors		This will be taken from DCC information
QI 10: Medication Error Rate	16.	Number of residents with at least one error (Short Answer)
	17.	Total number of residents (Short Answer)
QI 11: Safeguarding Alert Rate	18.	Enter the number of safeguarding alerts raised this quarter.
Feedback Section (Optional)	19.	Do you have any comments, concerns, or suggestions regarding these indicators or the reporting process? (Long Answer)
Submit Section		Thank you for submitting your QI data. We appreciate your cooperation. We will review this information and contact you if further clarification or support is needed.

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Appendix Five – Table of Key Performance Indicators (KPIs) for Care Home

KPI Number	KPI Description	Target	Theme	Frequency asked	Date Source for Provider	Data Source for LA
KPI 1	Percentage of care plans reviewed and updated, (recent month)	95%	Quality of Care	Quarterly	Care quality audit reports, review compliance data	Provider return
			<i>Primary Goal is to provide good care that meets the physical, emotional, and social needs of the residents. Part of the contract , part of regulation , reduces risk of adverse events</i>			
KP2	Percentage of care staff having completed or currently undertaking their induction with the first 12 weeks of starting.	100%	Staffing and Workforce	Quarterly	Staff training records, HR systems	Provider return
			<i>Adequate staffing levels and skilled personnel are critical for delivering personalised and timely care. Investing in staff development and well-being leads to higher job satisfaction, reducing turnover and associated recruitment costs. Stable staffing promotes consistency in care, building stronger relationships between staff and residents.</i>			
KPI 3	Percentage of staff up to date with mandatory training	100%	Staffing and Workforce	Quarterly	Training records, staff HR files	Provider Return
			<i>Adequate staffing levels and skilled personnel are critical for delivering personalised and timely care. Investing in staff development and well-being leads to higher job satisfaction, reducing turnover and associated recruitment costs. Stable staffing promotes consistency in care, building stronger relationships between staff and residents.</i>			
KPI 4	Percentage of complaints investigated and resolved to within 28 days	95%	Leadership Leadership pays a pivotal role in achieving excellence and delivering good care	Yearly	Complaint management system, internal reporting	Provider return
KPI 5	Percentage of business continuity plans that have been reviewed, updated, and tested within the last 12 months.	100%	Leadership Leadership pays a pivotal role in achieving excellence and delivering good care	Yearly	Provider BCP documentation and test records	Provider return
KPI 6	Percentage of managers enrolled in or completed a leadership or management training programme at level 5 or above at the end of the quarterly reporting period	100% of managers to be enrolled or completed	Leadership Leadership pays a pivotal role in achieving excellence and delivering good care	Quarterly	Training records, staff professional development logs	Provider return
KPI 7	Completion of Mandatory monthly Reporting on Capacity Tracker	100%	Leadership Leadership pays a pivotal role in achieving excellence and delivering good care	Quarterly		CT Data

Appendix Six – Table of Quality Indicators for Care Homes

Indicator Number	Quality Indicator Description	Target	Theme	Frequency requested	Data Source for the Provider	Data Source for LA
QI 1	Resident Satisfaction Rate	90% or higher satisfaction rate	<p>Quality of Care</p> <p><i>Primary Goal is to provide good care that meets the physical, emotional, and social needs of the residents. Part of the contract, part of regulation, reduces risk of adverse events</i></p>	Quarterly	Resident satisfaction surveys	Provider return
QI 2	Regularity of Comprehensive Quality Assurance Audits	100% of scheduled audits completed quarterly	<p>Leadership</p> <p><i>Leadership plays a pivotal role in achieving excellence and delivering good care</i></p>	Quarterly	Audit schedules, completed audit reports	Provider return
QI 3	Rate of Handbacks	Less than 5% per quarter	<p>Quality of Care</p> <p><i>Primary Goal is to provide good care that meets the physical, emotional, and social needs of the residents. Part of the contract, part of regulation, reduces risk of adverse events</i></p>	Quarterly	Placement records, termination notices	Internal
QI 4	Rate of Complaints	Fewer than 2 complaints per 10 residents per quarter	<p>Quality of Care</p> <p><i>Primary Goal is to provide good care that meets the physical, emotional, and social needs of the residents. Part of the contract, part of regulation, reduces risk of adverse events</i></p>	Quarterly	Complaints log, resident feedback	Provider return
QI 5	Rate of Notifiable Incidents	Aim for zero; Monitor and Analyse Trends	<p>Safety</p> <p><i>Safety within a care home is important, as it directly impacts the health and well-being of both residents and staff. Reportable incidents—such as falls, medication errors, safeguarding concerns, or any unexpected events that could cause harm—require immediate attention and action.</i></p>	Quarterly	Incident reports submitted to regulators	Provider return
QI 6	Agency Staff Usage Rate (Percentage of care hours provided by agency staff)	Less than 10%	<p>Staffing and Workforce</p> <p><i>Adequate staffing levels and skilled personnel are critical for delivering personalised and timely care. Investing in staff development and well-being leads to higher job satisfaction, reducing turnover and associated recruitment costs. Stable staffing promotes consistency in care, building stronger relationships between staff and residents.</i></p>	Quarterly	HR systems, staff rotas	Capacity Tracker
QI 7	Staff Turnover Rate (Percentage of leavers to total staff at end of period)	Less than 29% turnover rate per year	<p>Staffing and Workforce</p> <p><i>Adequate staffing levels and skilled personnel are critical for delivering personalised and timely care. Investing in staff development and well-being leads to higher job satisfaction, reducing turnover and associated recruitment costs. Stable staffing promotes consistency in care, building stronger relationships between staff and residents.</i></p>	Quarterly	HR records, exit interviews	Capacity Tracker
QI 8			Staffing and Workforce	Quarterly	HR systems, attendance records	Provider Return

	Staff Sickness Rate (Percentage of total staff absent due to sickness over the last 3 months)	Below 5% quarterly sickness absence rate	<p><i>Adequate staffing levels and skilled personnel are critical for delivering personalised and timely care.</i></p> <p><i>Investing in staff development and well-being leads to higher job satisfaction, reducing turnover and associated recruitment costs.</i></p> <p><i>Stable staffing promotes consistency in care, building stronger relationships between staff and residents.</i></p>			
QI 9	Acceptance Rates of Service Descriptors	95% or higher acceptance of service descriptors for referrals	<p>Leadership</p> <p>Leadership plays a pivotal role in achieving excellence and delivering good care</p>	Quarterly	Referral records, service descriptor logs	Internal
Q10	Medication Error Rate	Aim for Zero Errors; Monitor Trends	<p>Safety</p> <p><i>Safety within a care home is important, as it directly impacts the health and well-being of both residents and staff. Reportable incidents—such as falls, medication errors, safeguarding concerns, or any unexpected events that could cause harm—require immediate attention and action.</i></p>	Quarterly	Medication administration records, incident reports	Provider Return
Q11	Safeguarding Alert Rate	A rate below 1 per 20 residents concerns	<p>Safety</p>	Quarterly	Internal safeguarding logs, incident reports	Provider Return

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Appendix Seven – TUPE

1. INTERPRETATION

1.1 The definitions in this paragraph apply in this Agreement:

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- a. the identity and age of the employee;
- b. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- c. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- d. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor;
- e. information about any collective agreement that will have effect after the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Service Purchaser or a Replacement Provider by virtue of the application of TUPE.

Relevant Transfer: a relevant transfer of the Services for the purposes of TUPE.

Replacement Provider: any third party supplier of Replacement Services appointed by the Service Purchaser from time to time.

Replacement Services: any services that are fundamentally the same as any of the Services and which the Service Purchaser receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Service Purchaser internally or by any Replacement Provider.

Service Provider's Final Staff List: the list of all the Service Provider's and subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all the Service Provider's and subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Service Provider or subcontractor to the Service Purchaser or any Replacement Provider.

Staffing Information: in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Service Purchaser may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), as amended.

2. EMPLOYMENT EXIT PROVISIONS

- 2.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part ("**Subsequent Transfer**"). If a Subsequent Transfer is a Relevant Transfer then the Service Purchaser or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 2.2 The Service Provider shall and shall procure that any subcontractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Service Purchaser and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider

or any subcontractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Service Purchaser, including information as to the application of TUPE to the employees. The Service Provider shall notify the Service Purchaser of any material changes to this information as and when they occur.

- 2.3 At least 28 days prior to the Service Transfer Date, the Service Provider shall and shall procure that any subcontractor shall prepare and provide to the Service Purchaser and/or, at the direction of the Service Purchaser, to the Replacement Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and subcontractor's personnel named are Relevant Employees.
- 2.4 The Service Purchaser shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List, and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 2.5 The Service Provider warrants to the Service Purchaser and the Replacement Provider that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information ("TUPE Information") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.
- 2.6 The Service Provider shall and shall procure that any subcontractor shall ensure at all times that it has the right to provide the TUPE Information under the DPA.
- 2.7 The Service Purchaser regards compliance with this paragraph 2 as fundamental to the Agreement.
- 2.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) months prior to termination of this Agreement shall not (as far as reasonably practicable) take place without the Service Purchaser's prior written consent unless such changes are required by law. The Service Provider shall and shall procure that any subcontractor shall supply to the Service Purchaser full particulars of such proposed changes and the Service Purchaser shall be afforded reasonable time to consider them.
- 2.9 In the six (6) months prior to termination of this Agreement, the Service Provider shall not and shall procure that any subcontractor shall not materially increase or decrease the total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Service Purchaser's prior written consent (such consent not to be unreasonably withheld).
- 2.10 The Service Provider shall indemnify and keep indemnified in full the Service Purchaser and any Replacement Provider against all Employment Liabilities relating to:
- (i) any person who is or has been employed or engaged by the Service Provider or any subcontractor in connection with the provision of any of the Services;

(ii) or any trade union or staff association or employee representative,

arising from or connected with any failure by the Service Provider and/or any subcontractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

- 2.11 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 2.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from clause 2.22.2 to clause **2.112.11**, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Service Provider or the Service Purchaser in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.13 Despite clause **2.12** it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

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