

BATH AND NORTH EAST SOMERSET COUNCIL

FLEXIBLE FRAMEWORK FOR THE PROVISION OF CARE FOR ADULTS IN CARE HOMES

INDIVIDUAL SERVICE AGREEMENT

between

BATH AND NORTH EAST SOMERSET COUNCIL

and

[THE PROVIDER]

Contents

1 GENERAL.....5

2 DEFINITIONS AND INTERPRETATION.....6

3 INTERPRETATIONS11

4 DURATION OF THIS INDIVIDUAL SERVICE AGREEMENT12

5 THE SERVICES.....12

6 AGENTS OF THE COUNCIL13

7 AUTHORISED OFFICERS.....13

8 REGISTERED STATUS14

9 MAKING PLACEMENTS.....14

10 TEMPORARY PLACEMENTS15

11 TRIAL PERIODS.....15

12 CHANGE OF OWNERSHIP/NOTICE OF CLOSURE16

13 NOTICE OF CHANGE OF MANAGER16

14 HEALTH AND SAFETY17

15 NON-DISCRIMINATION17

16 SERVICE USER’S RIGHTS19

17 STAFF.....19

18 SAFEGUARDING20

20 MONITORING ARRANGEMENTS24

21 CONTRACT REVIEWS AND CONTRACT MEETINGS25

22 ENTRY AND INSPECTION25

23 VARIATIONS26

24 ASSESSMENTS.....26

25 NOTIFIABLE EVENTS.....28

26 ACTIONS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE AND/OR DEFAULT29

27 SUSPENSION30

28 CHARGES AND PAYMENT.....31

29	TERMINATION OF PLACEMENTS	32
30	CONSEQUENCES OF TERMINATION OF A PLACEMENT	35
31	TERMINATION OF INDIVIDUAL SERVICE AGREEMENT.....	35
32	DUTY TO CO-OPERATE ON TERMINATION	38
33	RECOVERY UPON TERMINATION	38
34	SURVIVAL OF TERMS	39
35	INDEMNITY AND INSURANCE REQUIREMENTS	39
36	LIABILITY.....	40
37	ONGOING COMPLIANCE WITH SELECTION REQUIREMENTS.....	41
38	WARRANTIES AND REPRESENTATIONS	41
39	CONFIDENTIALITY	42
40	FREEDOM OF INFORMATION	44
41	DATA PROTECTION AND CALDICOTT PRINCIPLES.....	45
42	INFORMATION MANAGEMENT AND SECURITY POLICIES	50
43	INTELLECTUAL PROPERTY RIGHTS.....	50
44	CORRUPT GIFTS AND PAYMENTS OF COMMISSION	52
45	SAFEGUARD AGAINST FRAUD	52
46	FORCE MAJEURE	52
47	BUSINESS CONTINUITY	53
48	TEMPORARY DUTY AND BUSINESS FAILURE	54
49	CONFLICTS OF INTEREST	55
50	PUBLICITY	55
51	COMPLAINTS	55
52	TRANSFER AND SUB-CONTRACTING	56
53	DISPUTE RESOLUTION.....	56
54	NOTICES.....	58
55	TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY.....	58
56	TRANSFER OF UNDERTAKINGS (TUPE)	59
57	THIRD PARTIES.....	59

58	NO PARTNERSHIP OR AGENCY	59
59	COUNTERPARTS.....	59
60	SEVERABILITY	59
61	CUMULATIVE REMEDIES	60
62	WAIVER	60
63	RIGHTS AND DUTIES RESERVED	60
64	ENTIRE AGREEMENT	60
65	GOVERNING LAW	61
	SCHEDULE 1 – SERVICES SPECIFICATION	64
	SCHEDULE 2 – PAYMENT MECHANISM	140
	SCHEDULE 3 - TUPE, EXIT AND SERVICE TRANSFER ARRANGEMENTS.....	151
	SCHEDULE 4 - VARIATIONS PROCESS.....	156
	SCHEDULE 5 – SAFEGUARDING REQUIREMENTS	160
	SCHEDULE 6 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS	164

INDIVIDUAL SERVICE AGREEMENT

DATED

BETWEEN:

- (1) **BATH & NORTH EAST SOMERSET COUNCIL** of Lewis House, Manvers Street, Bath, BA1 1JG (the "**Council**"); and
- (2) **[NAME]** [(company number **[NUMBER]**)] whose registered office [and business address] is at **[ADDRESS]** (the "**Provider**").

WHEREAS:

- (A) The Council and the Provider entered into the Framework Agreement allowing the Council to request the Services from the Provider.
- (B) Pursuant to the Framework Agreement, the Council requests the Services to be provided by the Provider, and the Provider agrees to provide such Services to the Council in accordance with this Individual Service Agreement.

IT IS AGREED as follows:

1 GENERAL

- 1.1 The Framework Agreement, this Individual Service Agreement (including Schedules 1 to 6 hereto) and each ISA Form constitute the entire agreement between the Council and the Provider for the supply of the Services and shall supersede any previous contracts between the Council and the Provider for services which are the same as or similar to the Services including (without limitation) services which have been purchased on a 'spot purchase' basis except those where the Parties agree otherwise in writing, and to the exclusion of any other terms, or which may be implied by trade, custom, practice or course of dealing.
- 1.2 This Individual Service Agreement shall be read in conjunction with the Framework Agreement. This Individual Service Agreement shall only take effect if the Framework Agreement has also taken effect as at the Commencement Date of this Individual Service Agreement. For the avoidance of doubt, the subsequent termination or expiry of the Framework Agreement shall not operate to automatically terminate this Individual Service Agreement. This Individual Service Agreement shall remain in force and the Provider shall continue to provide the Services under this Individual Service Agreement unless and until it is

terminated or expires in accordance with the terms set out in this Individual Service Agreement.

1.3 In the event of, and only to the extent of, any conflict between the Framework Agreement, ISA Form, the Clauses, any document referred to in the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

1.3.1 the Framework Agreement;

1.3.2 the ISA Form;

1.3.3 the Clauses;

1.3.4 the Schedules; and

1.3.5 any other document referred to in the Clauses of this Individual Service Agreement.

2 DEFINITIONS AND INTERPRETATION

2.1 In this Individual Service Agreement unless the context otherwise requires the following provisions shall have the meaning given to them below. Any capitalised terms used but not defined in this Individual Service Agreement shall have the meaning given to them in the Framework Agreement.

“Assessment”	means an assessment (including a Re-assessment of Need, risk assessment or any other assessment) carried out by the Council in accordance with Clause 24;
“Audit”	means an audit carried out pursuant to Clause 19;
“Auditor”	means the National Audit Office or an auditor appointed by the Council and/or the Audit Commission as the context requires;
“Authorised Agents”	means the authorised agents of the Council as notified to the Provider in writing from time to time, which at the date of this Individual Service Agreement are Care Home Selection, Virgin Care Services Ltd and Avon & Wiltshire Mental Health Partnership NHS Trust;
“Authorised Person”	means the Council and any person or body with written authority from the Council to enter the Home and inspect the Services;
“Clauses”	means the clauses and all sub-clauses of this Individual Service

	Agreement, and “Clause” shall be construed accordingly;
“Change of Control”	shall have the meaning given to it in Clause 31.4;
“Charges”	means the charges set out in the Payment Mechanism;
“Commencement Date”	means, subject to Clause 1.2, the date that this Individual Service Agreement commences, 16 th December 2019;
“Contract Meetings”	means meetings held between the Council and the Provider in accordance with Clause 21 to discuss the Provider’s performance of this Individual Service Agreement;
“Contract Period”	means the period commencing on the Commencement Date until the later of: (a) the date of expiry of the Initial Term or any Extension Period, or the earlier termination of this Individual Service Agreement (as applicable); and (b) the date of termination or expiry of the final ISA Form in force between the Provider and the Council;
“Contract Review”	means a review by the Council of the Provider’s performance of the Services in accordance with Clause 21;
“Council Breach”	means a Default by the Council of a material nature which substantially deprives the Provider of the benefit of this Individual Service Agreement or which has a material adverse effect on the Provider’s ability to fulfil its obligations under this Individual Service Agreement;
“Council Care and Support Plan”	means the plan prepared by the Council in accordance with Sections 24 and 25 of the Care Act 2014 which sets out the support and care services required to meet the outcome requirements of the relevant Service User;
“DBS”	means the Disclosure and Barring Service;
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party (or the Staff where the relevant Party is the Provider) in connection with or in relation to the subject-matter of this Individual Service Agreement and in respect of which such Party is liable to the other;

“Emergency Placement”	means a Placement made at short notice on an emergency basis in accordance with Clause 5 (Referral Procedure) of the Framework Agreement;
“Expiry Date”	means the date specified in Clause 4.2.2;
“Extension Period”	means the period set out in Clause 4.3;
“Fixed Term”	shall have the meaning given to it in Clause 10.1;
“Framework Agreement”	means the framework agreement entered into between the Provider and the Council on 16 th December 2019;
“Fundamental Standards”	means the standards of care required by the Registration Authority which are known as the “fundamental standards”;
“Home”	means [INSERT DETAILS OF CARE HOME];
“Identified Concerns”	<p>means concerns about the Services, the Home and/or a Service User identified by the Council including through:</p> <ul style="list-style-type: none"> • an Assessment; • Monitoring, including of Key Performance Indicators; • intelligence from the Registration Authority; • Service User review/feedback; • professional feedback; and/or • a safeguarding incident/involvement;
“Initial Term”	means the period between the Commencement Date and the Expiry Date as set out in Clause 4;
“ISA Form”	means the ISA Form in the form set out in Schedule 1 of the Framework Agreement submitted by the Council to the Provider in accordance with Clause 5 (Referral Procedure) of the Framework Agreement which sets out the description of the Services to be supplied in relation to the Service User named in the ISA Form in each case;

“Manager”	means the individual appointed by the Provider as the manager for the relevant Regulated Activity in respect of the Services at the Home who is required to be registered with the Registration Authority pursuant to the Health and Social Care Act 2008;
“Material Breach”	shall have the meaning given to it in Clause 31.6;
“Material Change”	means any change in a Service User’s needs that requires additional resources (for example, equipment, higher staffing ratios, etc) and/or a change in the Placement;
“Monitoring”	means the monitoring of the Services and this Individual Service Agreement carried out by the Council pursuant to Clauses 20 and 21;
“Payment Mechanism”	means the payment mechanism set out in Schedule 2 (Payment Mechanism);
“Payment Period”	shall have the meaning given to it in the Payment Mechanism;
“Placement”	means the placement of a Service User at the Home made in accordance with Clause 9 for the Service User to receive the Services in accordance with the terms of this Individual Service Agreement, and the ISA Form and the Council Care and Support Plan for that Service User. For the avoidance of doubt, a Placement shall include any Temporary Placement and Emergency Placement;
“Placement Cost Breakdown”	means the breakdown of the costs of a Placement for a Service User provided by the Provider in the form set out in the Framework Agreement;
“Price”	means the price which is payable to the Provider, in accordance with the Payment Mechanism, for the full and proper performance by the Provider of its obligations under this Individual Service Agreement;
“Provider’s Group”	means and includes each and any subsidiary or holding company of the Provider and each and any subsidiary of a holding company of the Provider;
“Re-assessment of Need”	means a re-assessment by the Council of a Service User’s care and needs in accordance with Clause 24;
“Registration Authority”	means the Care Quality Commission or any successor body or bodies

	from time to time;
“Regulated Activity”	in relation to vulnerable adults, shall have the meaning set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012);
“Regulated Activity Provider”	shall have the meaning set out in section 6 of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012);
“Relevant Transfer”	means a relevant transfer for the purposes of TUPE;
“Safeguarding Requirements”	means the safeguarding requirements set out in Schedule 5 (Safeguarding Requirements);
“Service User”	means an individual service user who is named in the ISA Form to whom the Services are to be provided pursuant to this Individual Service Agreement;
“Services”	means the services to be provided by the Provider in accordance with this Individual Service Agreement and the Services Specification in relation to a Service User as specified in each ISA Form and Council Care and Support Plan;
“Services Specification”	means the specification of the Services set out in Schedule 1 (Services Specification);
“Social Worker”	means the social worker allocated from time to time by the Council to a Service User which at the commencement of a Placement shall be as stated in the ISA Form. Social Workers may be employed by the Authorised Agents;
“Temporary Placement”	means an arrangement for a Service User to receive the Services at the Home for a Fixed Term in accordance with their ISA Form and Clause 10;
“Trial Period”	shall have the meaning given to it in Clause 11.1; and
“Working Days”	means Monday to Friday, excluding bank holidays, between the hours of 9 a.m. and 5:30 p.m.

3 INTERPRETATIONS

- 3.1 The interpretation and construction of this Individual Service Agreement shall be subject to the following provisions:
- 3.1.1 reference to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall (unless the reference expressly states otherwise) include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
 - 3.1.2 words importing one gender include the other genders; words in the singular include the plural and vice versa, and wording importing individuals shall be treated as importing bodies corporate and vice versa;
 - 3.1.3 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 3.1.4 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
 - 3.1.5 the headings used in this Individual Service Agreement are for ease of reference only and shall not affect the interpretation of this Individual Service Agreement;
 - 3.1.6 any schedule or annexure to a document comprised in this Individual Service Agreement shall have full force and effect as if expressly set out in the document to which it is attached;
 - 3.1.7 references to Paragraphs are to paragraphs of the relevant Schedule;
 - 3.1.8 where a standard, policy or document is referred to in this Individual Service Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Provider shall notify the Council and the parties shall update this Individual Service Agreement with a reference to the replacement hyperlink;
 - 3.1.9 references in this Individual Service Agreement to the "Council" and the "Provider" shall include their respective successors in title and any reference to any government department or other relevant authority is deemed to include its or their successors; and

3.1.10 time shall, during the summer time, be British summer time but otherwise Greenwich Mean Time;

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

4 DURATION OF THIS INDIVIDUAL SERVICE AGREEMENT

4.1 This Individual Service Agreement shall commence on 16th December 2019 (“Commencement Date”)

4.2 The Provider shall provide the Services from the Commencement Date until the soonest of:

4.2.1 The Individual Service Agreement is terminated in accordance with its terms

4.2.2 15th December 2024 (“Expiry Date”)

4.3 The Council may elect to extend the Initial Term by notifying the Provider in writing at least six months prior to expiry of the Initial Term. The Parties may extend the duration of this Individual Service Agreement by a period of two years from the end of the Initial Term (“**Extension Period**”) by agreement in writing.

5 THE SERVICES

5.1 The Provider shall at all times provide the Services during the Contract Period in accordance with the Council’s requirements set out in this Individual Service Agreement, the Services Specification and the required standards in respect of the Key Performance Indicators in consideration of the Price.

5.2 The Provider shall at all times ensure that the Home:

5.2.1 is suitable for the proper performance of the Services;

5.2.2 complies with the requirements of the Health and Social Care Act 2008 Act;

5.2.3 complies with all regulatory requirements including the Fundamental Standards and any notice or order served on the Provider by the Registration Authority;

5.2.4 complies with all applicable Law and Good Industry Practice relating to health and safety including in accordance with Clause 14; and

5.2.5 is kept in good repair and condition and is sufficient to enable the Services to be provided at all times at which they are required and in all respects in accordance with this Agreement.

5.3 If, at any time, the Provider becomes aware that it will not (or is unlikely to) achieve the required standards in respect of the Services Specification and/or Key Performance Indicators it shall promptly notify the Council of the fact and summarise the reasons for it. Provision of information pursuant to this Clause 5.3 shall not release or excuse the Provider from any of its obligations under this Individual Service Agreement.

6 AGENTS OF THE COUNCIL

6.1 The Provider acknowledges and agrees that the Council's obligations under the Framework Agreement and this Individual Service Agreement (and any ISA Form issued under the Framework Agreement) may be performed by the Authorised Agents (including their representatives and practitioners, in particular, Social Workers engaged by them) on behalf of the Council. The Provider shall assist and co-operate with the Authorised Agents as it would if such obligations were performed directly by the Council. In the event that the Provider is unable, despite all reasonable efforts, to verify the identity and authority of an individual purporting to represent an Authorised Agent acting on behalf of the Council, it shall notify the Council's Authorised Officer promptly.

7 AUTHORISED OFFICERS

7.1 The Authorised Officer of the Council and Provider appointed under the Framework Agreement shall act as the Authorised Officer of the respective Party in connection with this Individual Service Agreement unless notified otherwise by either Party. Each Party shall notify the other of any deputy authorised by it to act on behalf of its Authorised Officer in connection with this Individual Service Agreement. Each Party shall notify the other in writing of the name, address and telephone number of its Authorised Officer(s) (if not the same as under the Framework Agreement) and its deputy within 14 days of the appointment. Any change of the Authorised Officer(s) and/or deputies shall be notified to the other Party from time to time as appropriate.

7.2 The Provider shall ensure that the Authorised Officer, or a named competent deputy who is duly authorised to act on his or her behalf, is available to the Council within a reasonable time when any Staff of the Provider is on duty for the provision of the specified Service(s). The Provider shall inform the Council of the identity of any Staff authorised to act for any period as

deputy for the Provider's Authorised Officer before the start of that period.

8 REGISTERED STATUS

- 8.1 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Individual Service Agreement.
- 8.2 The Provider shall ensure that at all times it has and maintains all licences, authorisations, consents or permits required in relation to the performance of its obligations under this Individual Service Agreement to provide the Services and meets the standards pursuant to the Health and Social Care Act 2008 and any regulations made thereunder or any replacement provisions as enforced and required by the Registration Authority.
- 8.3 In the event of the Provider receiving from the Registration Authority any notice or order concerning the Home or the Provider, the Provider shall forward a copy of any such notice or order to the Council within one Working Day of receipt of the same.
- 8.4 At the request of the Council, or a Service User, the Provider shall make available for inspection any report on the Home or the Provider (as the case may be) made by the Registration Authority.
- 8.5 The Provider shall respond to and act on any recommendations or outcomes of any inspections and enforcement notices issued by the Registration Authority. The Provider shall make available to the Council a copy of its CQC Action Plan.
- 8.6 The Provider shall notify the Council within one Working Day where an enforcement notice is issued regarding a Home under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009 received from the Registration Authority.
- 8.7 The Provider shall, if requested, provide to the Council a Statement of Purpose (required under the Health and Social Care Act 2008) in respect of the Home.
- 8.8 If any of the registration criteria of the Home is proposed to be changed for any reason, the Provider shall give the Council a minimum of three months' notice in writing, or such other period as may be agreed with the Council.

9 MAKING PLACEMENTS

- 9.1 The Provider acknowledges and agrees that there is no obligation on the Council to make any Placements and that no undertaking or any form of statement, promise, representation or

obligation shall be deemed to have been made by the Council that any Placements will be awarded or made under the Framework Agreement or this Individual Service Agreement.

9.2 Any Placement shall be made in accordance with Clause 5 (Referral Procedure) of the Framework Agreement and the terms of this Individual Service Agreement shall apply to the Placement from the date set out in Clause 9.4 below.

9.3 In the event of termination or expiry of the Framework Agreement, no new Placements shall be made unless agreed by the Parties in writing otherwise. Termination or expiry of the Framework Agreement shall not affect Placements made prior to the termination or expiry of the Framework Agreement and the Provider shall continue to provide the Services in relation to such Placements in accordance with the terms of this Individual Service Agreement.

9.4 The Parties acknowledge and agree that any Placement of a Service User and the ISA Form for that Service User shall be legally binding on the Provider and the Council from the date that is the earlier of:

- (a) the date on which the Provider returns the ISA Form signed by it to the Council; and
- (b) the date on which the Provider accepts admission of the Service User to the Home,

and the terms of this Individual Service Agreement shall apply from such date in respect of that Service User's Placement and their ISA Form.

10 TEMPORARY PLACEMENTS

10.1 The Parties agree that the Placement of a Service User at the Home may be on a temporary basis for a fixed period of time ("**Fixed Term**"). The duration of the Temporary Placement shall be recorded in the ISA Form. Temporary Placements include, but are not limited to, both planned and emergency respite periods.

10.2 Without prejudice to any other right to terminate a Placement under Clause 29, a Temporary Placement shall terminate automatically at the end of the Fixed Term unless extended by agreement of the Parties.

11 TRIAL PERIODS

11.1 The first 28 days of all Placements, except Temporary Placements, will be treated as a trial period ("**Trial Period**").

11.2 The purpose of a Trial Period is:

- 11.2.1 to establish whether it is possible for the Service User to live in the Home; and/or
- 11.2.2 to enable the Parties and the Service User to determine whether or not the Provider and the Home can meet the Service User's needs.
- 11.3 During the Trial Period, the Provider will monitor and record the progress of the Placement, giving particular attention to the Service User's adjustment to his/her new surroundings, the relationship between the Service User and the Staff and the extent to which the Service User's personal needs have been met.
- 11.4 The Provider and the Council shall review the progress of the Placement before the end of the Trial Period to enable the Council to determine what is required for the relevant Service User.
- 11.5 A Trial Period may be extended in writing by the Council.
- 11.6 All Placements (except Temporary Placements) will automatically continue after the Trial Period unless terminated in accordance with Clause 31.

12 CHANGE OF OWNERSHIP/NOTICE OF CLOSURE

- 12.1 The Provider shall:
 - 12.1.1 give the Council's Authorised Officer a minimum of three months' written notice of a proposed closure of the Home; and
 - 12.1.2 notify the Council of any intention to change the ownership of the Home at least 48 hours prior to contracts being exchanged.
- 12.2 Any such information given to the Council under Clause 12.1 will be treated as Confidential Information. The Provider acknowledges and agrees that the requirements of Clause 12.1 shall apply regardless of the timing, stages and/or process (such as any staff consultation periods) for closure or change of ownership of the Home.
- 12.3 On closure of the Home or change of ownership of the Home (as applicable), any outstanding liabilities up to the effective date of the closure or change of ownership (as applicable) or, if earlier, the termination of this Individual Service Agreement shall be settled between the Provider and the Council.

13 NOTICE OF CHANGE OF MANAGER

- 13.1 Where the Manager is absent from the Home for more than 21 consecutive days, or on indefinite leave whether due to illness or otherwise, or is to be absent for any reason for one day or more per week for a period of three weeks or more, the Council must be promptly

notified in writing along with details of any deputy or deputies and their competence to perform the Manager's role.

- 13.2 Where there is a change in the Manager, the Provider shall notify the Council in writing within seven days of the departure of the Manager and shall provide details of the replacement Manager.

14 HEALTH AND SAFETY

- 14.1 The Provider, its Staff and any Sub-contractors shall, throughout the Contract Period, comply fully with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), and any other acts, regulations and approved codes of practice relating to the health and safety of Staff and others who may be affected by the Provider's provision of the Services.

- 14.2 The Provider shall have a health and safety policy in a form which is approved by the Council and shall adhere to such health and safety policy throughout the Contract Period, subject only to any amendments which are required by the Council from time to time (acting reasonably).

- 14.3 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Individual Service Agreement.

15 NON-DISCRIMINATION

- 15.1 The Provider shall:

15.1.1 ensure that its recruitment, employment and equal opportunities policies comply with all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) and provide the Council with a copy of the policy and updates when reasonably requested;

15.1.2 perform its obligations under this Individual Service Agreement in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Council's equality and diversity policy as provided to the Provider from time to time;
- (c) any other requirements and instructions which the Council reasonably requires in connection with any equality obligations imposed on the Council at any time under applicable equality Law, to include (without limitation) the

supply on request of a report detailing the number of its Staff with “protected characteristics” (as defined in the Equality Act 2010) that are engaged in the performance of the Services from time to time;

- 15.1.3 take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);
 - 15.1.4 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Individual Service Agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;
 - 15.1.5 notify the Council in writing as soon as reasonably possible once it becomes aware of any investigation of, or proceedings brought against the Provider under any equalities Law; and
 - 15.1.6 procure that the Staff and any Sub-contractors shall operate in a manner and co-operate with the Council so as to allow the Council to comply with its statutory public sector equality duty which means any legislation in relation to the promotion of equality on the grounds as specified in Clause 15.1.1.
- 15.2 Where any investigation is undertaken by any Regulatory Body and/or proceedings are instituted in connection with any matter relating to the Provider’s performance of its obligations under this Individual Service Agreement being in contravention of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation including but not exclusively in Clause 15.1.1, the Provider shall, at no cost to the Council:
- 15.2.1 provide any information requested in the timescale allotted;
 - 15.2.2 attend any meetings as required and permit Staff to attend;
 - 15.2.3 promptly allow access to and investigation of any document or data deemed to be relevant;
 - 15.2.4 allow itself and any staff to appear as witness in any ensuing proceedings; and
 - 15.2.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 15.3 Where any investigation is conducted or proceedings are brought under the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, which arise directly or indirectly out of any act or omission of the Staff or any Sub-contractors, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the

Council may have been ordered or required to pay a third party.

- 15.4 In the event that the Provider enters into any Sub-contract in connection with this Individual Service Agreement, it shall impose obligations on its Sub-contractors in terms substantially similar to those imposed on it pursuant to this Clause 15.

16 SERVICE USER'S RIGHTS

- 16.1 The Provider shall at all times in its performance of the Services and its treatment of the Service User, have regard to, and abide by, the principles of the HRA and comply with Clause 15.

- 16.2 The Provider shall have clear policies and procedures in relation to Service Users' rights that comply with:

16.2.1 the Care Act 2014; and

16.2.2 the Mental Capacity Act 2005.

- 16.3 The Provider shall make these policies and procedures clear to its Staff via induction, training and development, Staff meetings and supervision.

- 16.4 The Provider shall ensure that information is designed with the participation of the Service User in mind and (as required) is produced in a variety of ways to ensure that the needs of any Service User with specific needs is met including, where appropriate, the use of Braille, audio tapes, different languages, pictures and symbols.

17 STAFF

- 17.1 The Provider shall employ sufficient persons to ensure that the Service(s) are provided in accordance with this Individual Service Agreement and all ISA Forms (together with the relevant Council Care and Support Plans) in force.

- 17.2 The Provider shall observe and comply with all staffing, training and recruitment requirements as set out in Clause 18, the Safeguarding Requirements and the Services Specification.

- 17.3 Staff employed in connection with this Individual Service Agreement shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties, and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Service(s) and in particular:

17.3.1 the task or tasks such person has to perform;

- 17.3.2 all relevant provisions of the Framework Agreement, this Individual Service Agreement and all ISA Forms (together with the relevant Council Care and Support Plans) in force;
 - 17.3.3 all relevant policies, rules, procedures and standards of the Provider and the Council; and
 - 17.3.4 all legislative requirements.
- 17.4 The Provider shall take all reasonable steps to avoid changes in key personnel involved in the provision of the Service(s).
- 17.5 The Provider is responsible for the employment, including employment conditions, of its employees and shall at all times be responsible for the payment of all salaries and wages, income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any persons employed by the Provider.
- 17.6 Throughout this contract the term Staff should be read as including agency Staff who are engaged by the Provider to undertake the Service(s). Insofar as the Provider uses agency Staff they shall:
- 17.6.1 obtain such Staff through a reputable agency for the provision of care home staff;
 - 17.6.2 ensure that Clause 18, the Safeguarding Requirements and the Services Specification is complied with in relation to all agency staff;
 - 17.6.3 ensure that such agency Staff have been sufficiently trained to undertake their role;
 - 17.6.4 ensure that appropriate monitoring and supervisory arrangements are in place; and
 - 17.6.5 ensure where possible that there is consistency in agency staff employed.
- 17.7 The Provider shall complete the Adult Social Care Workforce Data Set (ASCWDS) as applicable to their workforce on at least an annual basis.

18 SAFEGUARDING

- 18.1 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Individual Service Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012.
- 18.2 The Provider shall comply with all statutory / national guidance related to safeguarding adults,

including but not limited to:

18.2.1 Care Quality Commission Regulation 11 of the Health and Social Care Act 2008 (Regulated Activities) 2010;

18.2.2 Care Act 2014;

18.2.3 Equality Act 2010;

18.2.4 Human Rights Act 1998;

18.2.5 Mental Capacity Act 2005; and

18.2.6 Safeguarding Vulnerable Groups 2006 (as amended by the Protection of Freedoms Act 2012).

18.3 The Provider shall designate a lead member of staff with responsibility for safeguarding adults in respect of the Services as set out in the Safeguarding Requirements.

18.4 The Provider shall ensure that it has established its own safeguarding policies in accordance with the Law, the Safeguarding Requirements and local multi-agency policies and shall meet the requirements of the Council in terms of safeguarding audits and monitoring. Where remedial actions are identified by the Council's Authorised Officer, the Provider shall develop and agree an action plan to deliver these.

Mental Capacity Act 2005

18.5 The Provider shall comply with the Mental Capacity Act 2005 and shall:

18.5.1 advise the Council promptly if at any point that it appears that a Service User may require an Independent Mental Capacity Advocate or a Deprivation of Liberty Safeguards authorisation;

18.5.2 provide all reasonable assistance and co-operation to the Independent Mental Capacity Advocate, best interest assessor and mental health assessor appointed in respect of any Service User; and

18.5.3 notify the Council immediately if a Service User may be deprived of their liberty.

Recruitment and retention of Staff

18.6 The Provider shall:

- 18.6.1 ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the DBS adults' barred list;
 - 18.6.2 monitor the suitability of the level, and validity, of the checks under this Clause 18.6 for each member of Staff; and
 - 18.6.3 ensure compliance with the Safeguarding Requirements in relation to the recruitment and retention of its Staff.
- 18.7 The Provider warrants that at all times for the purposes of this Individual Service Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012 and any regulations made thereunder, as amended from time to time.

19 RECORDS AND ACCESS

Financial Accounts

- 19.1 The Provider shall maintain professionally audited accounts or (as applicable) small company accounts and other appropriate financial records throughout the Contract Period in order to document all income and expenditure which is generated by the operation of the Services.

Record Keeping

- 19.2 The Provider shall retain and maintain at its own expense in accordance with good accountancy practice full and accurate records (including superseded records) of this Individual Service Agreement including the following in chronological order and in a form that is capable of audit:
- 19.2.1 the Services provided in respect of Service Users;
 - 19.2.2 all information, records and documentation necessary to effectively monitor the performance of the Provider in relation to this Individual Service Agreement;
 - 19.2.3 all expenditure reimbursed by the Council;
 - 19.2.4 all payments made by the Council;
 - 19.2.5 any complaints received by the Provider in respect of the Services together with details of how such complaints were resolved;
 - 19.2.6 the number of Staff engaged by it from time to time in the performance of the Services on zero hours contracts; and

19.2.7 any data or other information required by Law.

- 19.3 The Provider shall, during the Contract Period and for at least six years from the date of termination or expiry (whichever is the earlier) of this Individual Service Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all records (whether in electronic format or otherwise) referred to in Clause 19.2.
- 19.4 The Provider will maintain formal procedures/systems for keeping accurate records that fully comply with all applicable Law.
- 19.5 The Provider shall throughout the Contract Period, at the Provider's own cost, provide the Council with all assistance reasonably requested by the Council to assist it in complying with its policies on information management and security where such compliance is in respect of records created by the Provider pursuant to this Individual Service Agreement.

Access to Records

- 19.6 The Provider shall throughout the Contract Period:
- 19.6.1 permit the Council and the Auditors (upon request in writing by the Council) to have unrestricted access to its Staff, premises (including the Home), equipment, accounts, records (including, but not limited to, the records described in this Clause 19), written policies and procedures in relation to this Individual Service Agreement; and
 - 19.6.2 provide copies of the records and documents which are referred to in Clause 19.6.1, to the Council (free of charge) within five Working Days of receiving a specific written request from the Council stating which records and documents the Council either require access to or copies of.
- 19.7 The Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- 19.7.1 all information requested by the Auditor within the scope of the Audit;
 - 19.7.2 reasonable access to premises (including the Home) controlled by the Provider and to equipment used in the provision of the Services; and
 - 19.7.3 access to the Staff.
- 19.8 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.

- 19.9 The Provider shall, at the reasonable request of the Council, promptly transfer or deliver a copy of the Service User records held by the Provider for a Service User for which the relevant Council is responsible to a third party provider of healthcare or social care services designated by the Council.
- 19.10 The Provider shall allow an authorised representative of the Local Healthwatch to enter and view premises from which the Provider provides Services including the Homes and observe the activities on those premises in accordance with any regulations, directions or guidance made under section 225 of the Local Government and Public Involvement Health Act 2007.
- 19.11 Subject to compliance with the Law and Good Industry Practice, the Provider shall implement and/or respond to all relevant recommendations:
- 19.11.1 made in any report by a relevant Regulatory Body;
 - 19.11.2 agreed with the Auditors or its appointed auditors following any audit;
 - 19.11.3 of any appropriate clinical audit; and
 - 19.11.4 that are otherwise agreed by the Provider and the Council to be implemented.
- 19.12 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 19, unless the Audit reveals a Material Breach by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

20 MONITORING ARRANGEMENTS

- 20.1 The Provider acknowledges and agrees that the performance of the Services shall be monitored by the Council in accordance with the Contract, Risk Management and Quality Monitoring of Care Homes Policy, the terms of this Individual Service Agreement, the Services Specification, the Key Performance Indicators and the respective ISA Forms for Service Users placed at the Home. The Provider shall co-operate with the Council and provide such assistance to facilitate such Monitoring by the Council.
- 20.2 Monitoring of this Individual Service Agreement and the Provider's performance of the Services shall be carried out by the Council's Authorised Officer.
- 20.3 The Provider shall at its own cost comply with the monitoring, reporting and Contract Review and Contract Meeting provisions set out in the Services Specification and the requirements in relation to Contract Reviews and the Contract Meetings set out in Clause 21.
- 20.4 The Council's Authorised Officer or their representative shall have the right with or without notice at any time and with as little interruption as reasonably possible to inspect the

Provider's performance of the Services to include (without limitation) any and all documentation in the possession, custody or control of the Provider which is relevant to this Individual Service Agreement (including, without limitation, documentation relating to the Service User). For the avoidance of doubt, this right will include the power to interview Service Users and members of Staff, take copies of any and all documentation as aforesaid save to the extent any information which is held by the Provider under a confidentiality undertaking to a third party.

20.5 Where practicable, both the Council and the Provider will use anonymised data for the purposes of monitoring. Where it is not practicable to use anonymised data, both Parties will ensure appropriate security measures are used to protect the data and will process the data in accordance with Clause 41.

20.6 The Manager or their representative shall attend the quarterly Care Homes Forum facilitated by the Council, and other meetings with the Council and the Registration Authority as notified to the Provider. The Manager or their representative shall give prior notice to the Council as to who will be in attendance and shall give reasonable notice should they be unable to attend.

21 CONTRACT REVIEWS AND CONTRACT MEETINGS

21.1 Contract Reviews and Contract Meetings shall be carried out by the Council on reasonable notice, to monitor the performance of the Service against the Services Specification and in accordance with the Contract, Risk Management and Quality Monitoring of Care Homes Policy.

21.2 The Manager shall attend Contract Reviews and Contract Meetings. Any additional persons, including members of Staff, may attend the Contract Meetings if their attendance is agreed by the Council's Authorised Officer and the Provider's Authorised Officer in advance of the relevant Contract Review and Contract Meeting.

21.3 The Provider shall demonstrate its compliance with all conditions of the Framework Agreement (as relevant to the provision of the Services under this Individual Service Agreement) and this Individual Service Agreement to the satisfaction of the Council.

21.4 Where required by the Council, the Provider shall develop and agree an action plan detailing the remedial actions to be taken, with timescales for completion of actions.

22 ENTRY AND INSPECTION

22.1 The Provider must comply with all reasonable written requests made by any relevant Regulatory Body (or its authorised representatives), the Auditors, or its appointed auditors, or any Authorised Person for entry to the Home for the purposes of auditing, viewing, observing

or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services.

22.2 Subject to Law, an Authorised Person may enter the Home without notice for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services.

23 VARIATIONS

23.1 No variations shall be made to this Individual Service Agreement unless made in writing in accordance with the variation procedure set out in Schedule 4 (Variations Process).

23.2 In the event that either Party notifies the other of any Material Change in a Service User's needs they shall follow the procedure in Clause 24.

24 ASSESSMENTS

24.1 Assessments and any consequent changes to their Placement shall be made in accordance with this Clause 24.

24.2 The Provider shall comply with the requirements in relation to Assessments set out in the Services Specification.

24.3 The Provider shall co-operate fully with to the Council in facilitating any Assessment by:

24.3.1 allowing the Council's agents or representatives access to the Home and the relevant Service User at all reasonable times; and

24.3.2 ensuring that the Council, its agents and representatives have access to up-to-date and complete care notes in respect of the relevant individual prior to the relevant Assessment.

Re-assessment of Need

24.4 A Re-assessment of Need of a Service User shall be carried out on at least an annual basis and at such other times as the Council requires from time to time. The Provider may also request a Re-assessment of Need in accordance with Clause 24.7.

24.5 In re-assessing a Service User's needs and determining the outcome, the Parties shall take all reasonable steps possible to meet a Service User's needs rather than terminate the Placement of a Service User.

24.6 In the event that the Provider is of the view that there is or may be a Material Change, the Provider shall re-assess its ability to provide the Services in respect of the relevant Service

User.

- 24.7 Where the Provider, having re-assessed its ability to provide the Service in respect of a Service User (whether such re-assessment follows the making of an Emergency Placement, or during a Trial Period, or at any other time during the life of any Placement), determines that there is a Material Change, it shall request a Re-assessment of Need from the Council. The Council shall carry out the Re-assessment of Need within 28 days (or such other period agreed by the Parties) of receiving such a request from the Provider.
- 24.8 Wherever the Council carries out a Re-assessment of Need, it shall discuss the outcome of the Re-assessment of Need with the Provider within 10 Working Days and:
- 24.8.1 decide whether the Placement should continue as originally agreed;
 - 24.8.2 establish if there is a Material Change and prepare a new Council Care and Support Plan within a reasonable time for the relevant Service User where there is Material Change;
 - 24.8.3 establish whether any additional services are required;
 - 24.8.4 establish whether the Provider is able to meet the relevant Service User's changed needs and, if so, whether a revised Placement Cost Breakdown is required for that Service User's Placement. Where a revised Placement Cost Breakdown is required, Clause 24.9 shall apply; or
 - 24.8.5 decide whether to terminate the Placement in accordance with Clause 29 and secure an alternative service.
- 24.9 Where the Provider has confirmed that it is able to meet a Service User's changed needs following a Re-assessment of Need but at a different cost than previously agreed for that Service User, the Provider shall provide its revised Placement Cost Breakdown to the Council and the Council shall confirm to the Provider whether or not the revised Placement Cost Breakdown is agreed. If the Council agrees to the revised Placement Cost Breakdown, the Parties shall sign a revised ISA Form reflecting the revised Price and the relevant Service User's Placement shall continue at the Home in accordance with the revised ISA Form and the revised Council Care and Support Plan for that Service User.
- 24.10 The Provider shall continue to provide the Services in respect of the relevant Service User, and any additional support and resources deemed necessary and agreed between the Provider and the Council as recorded in the ISA Form until the Re-assessment of Need has been completed by the Council.

- 24.11 Where a Provider is unable to meet the re-assessed needs of a Service User despite its efforts in accordance with Clause 24.5, the Provider may terminate the Placement in accordance with Clause 29.5.
- 24.12 Where a Placement is to be terminated pursuant to this Clause 24, the provisions of Clause 30.1 shall apply.
- 24.13 Following the completion of a Re-assessment of Need, the Council shall notify (or procure notification to) the Provider, the Service User and/or family member/representative (as appropriate) of the outcome as to whether the Service User can remain in the Placement or whether the Service User's Placement will be terminated.

25 NOTIFIABLE EVENTS

- 25.1 The Provider shall provide the Council with written notice of any serious events that take place in relation to a Service User no later than 24 hours of it first becoming aware of its occurrence. For the purposes of this Clause 25.1, a serious event shall include but not be limited to:
- 25.1.1 the death of the Service User;
 - 25.1.2 the serious illness of the Service User;
 - 25.1.3 an serious accident involving the Service User;
 - 25.1.4 a serious complaint regarding a member of Staff;
 - 25.1.5 any incident which involves the loss or theft of Service Users' money or property from the Home;
 - 25.1.6 any incident from which it becomes apparent that a financial relationship between a member of Staff and the Service User exists;
 - 25.1.7 any incident involving the Service User or a member of Staff where the police are involved;
 - 25.1.8 any incident involving the Service User or a member of Staff where there has been a referral to the DBS;
 - 25.1.9 if protection enquiry involving Service User has taken place or is scheduled to take place;

25.1.10 a Service User going missing, discharging themselves or leaving the Home unplanned;

25.1.11 a criminal conviction against the Provider; or

25.1.12 a criminal conviction against any of the Provider's Staff, who are engaged in the provision of the Service(s) under this Agreement, in respect of offences involving dishonesty, violence or misuse of drugs.

26 ACTIONS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE AND/OR DEFAULT

26.1 Where the Council believes:

26.1.1 there are Identified Concerns; or

26.1.2 the Provider has committed a Default or a Material Breach,

the Council shall have the right to investigate the Identified Concern, Default or Material Breach (as the case may be) and the Provider shall co-operate and assist the Council with such investigation.

26.2 Without prejudice to any other rights and remedies available to the Council including under Clause 26.3, where required by the Council, the Provider shall develop and agree an action plan detailing the remedial actions to be taken, with timescales for completion of actions and shall implement such action plan at its own cost and expense. The Provider agrees that any Identified Concern, Default and/or Material Breach shall be addressed through the Contract, Risk Management and Quality Monitoring of Care Homes Policy and as set out in this Individual Service Agreement.

26.3 The Council may, in its sole discretion:

26.3.1 apply a suspension in accordance with Clause 27;

26.3.2 initiate a safeguarding investigation; and/or

26.3.3 take further action in accordance with Clause 31.5.

26.4 In the event that the Council is of the reasonable opinion that there has been a Material Breach, or the Provider has failed to meet the Key Performance Indicators, then the Council may, without prejudice to its rights under Clause 26.3, do any of the following:

26.4.1 in accordance with Clause 28.8, make such deduction from the Price to be paid to

the Provider as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of the Services or such part of the Services which the Provider has failed to provide or which it has performed inadequately;

26.4.2 without terminating this Individual Service Agreement, itself provide or procure the provision of part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will be able to perform such part of the Services in accordance with this Individual Service Agreement;

26.4.3 without terminating the whole of this Individual Service Agreement, terminate this Individual Service Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or

26.4.4 terminate, in accordance with Clause 31, the whole of this Individual Service Agreement and remove the Service User(s) from the Home.

26.5 The Council may charge to the Provider any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Council or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Provider for such part of the relevant Services.

27 SUSPENSION

27.1 Without prejudice to any other rights that it may have (including, where applicable, any termination rights under this Individual Service Agreement), the Council may suspend or restrict Placements by notice in writing to the Provider for the period set out in the notice or such other period notified to the Provider by the Council in writing from time to time:

27.1.1 any of the circumstances entitling the Council to terminate this Framework Agreement occurs under Clauses 31.2 or 31.5; and/or

27.1.2 in accordance with the Contract, Risk Management and Quality Monitoring of Care Homes Policy,

27.2 Suspension under this Clause 27 may include no further Placements being made at the Home, the Provider being excluded from consideration for any further services or awards

under the Framework Agreement and/or any other rights or consequences set out in the Contract, Risk Management and Quality Monitoring of Care Homes Policy.

28 CHARGES AND PAYMENT

- 28.1 In consideration of the Provider's performance of its obligations under this Individual Service Agreement, the Council shall pay the Price to the Provider in accordance with the Payment Mechanism. The Provider acknowledges and agrees that payment for Services under this Individual Service Agreement shall be subject to the Provider returning the relevant signed ISA Form to the Council.
- 28.2 Save as set out in the Payment Mechanism or as agreed by the Council in writing, no additional charges shall be levied by the Provider on the Council (or any Service User) in respect of Services.
- 28.3 On termination or expiry of this Individual Service Agreement, the Price payable shall be pro-rated up to the effective date of termination or expiry (as applicable).
- 28.4 The Provider shall invoice the Council no later than 20 Working Days after the end of each Payment Period for the Price due in respect of Services provided in that Payment Period. The invoice shall include the following information:
- 28.4.1 the period to which the invoice relates;
 - 28.4.2 the aspects of the Services for which payment is claimed, including a breakdown of the Price to show the Service User to whom it relates; and
 - 28.4.3 any VAT payable in accordance with Clause 28.5.
- 28.5 Unless otherwise specified, all amounts stated to be payable by either Party under this Agreement shall be exclusive of any VAT properly chargeable on any amount. Each Party shall pay to the other any VAT properly chargeable on any supply made to it under this Agreement provided that it shall first have received from the other Party a valid tax invoice in respect of that supply.
- 28.6 Where the Council exercises its right to reduce or withhold payment in respect of any Services under Clause 26.4, or to charge the Provider under Clause 26.5, before reducing or withholding payment or setting-off such charge (in accordance with Clause 28.8), the Council shall provide details in writing of the relevant Material Breach, Default or failure and the value of the Services concerned.

28.7 Where the Provider enters into a Sub-contract, the Provider shall include in that Sub-contract, provisions having the same effect as this Clause 28 and the terms of the Payment Mechanism.

Recovery of Sums Due

28.8 Wherever under this Individual Service Agreement any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any Default or Material Breach of this Individual Service Agreement including under Clause 26), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Individual Service Agreement.

28.9 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

28.10 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.

28.11 All payments due shall be made within a reasonable time unless otherwise specified in this Individual Service Agreement, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

29 TERMINATION OF PLACEMENTS

Good Faith

29.1 The Parties shall act in good faith to ensure that in the event of the termination of a Placement there is smooth transition between the Services provided for the Service User(s) by the Provider and any services provided by a New Provider and/or the Council (as the case may be).

Termination of Placement by Notice

29.2 The Council may terminate a Placement by giving at least 48 hours' notice in writing if:

29.2.1 in the reasonable opinion of the Council the Placement is no longer suitable for the relevant Service User's needs, safety or welfare;

- 29.2.2 the relevant Service User has been absent from the Home for at least one week. The Council may terminate the Placement on a shorter period of absence with the agreement of the Provider (such agreement not to be unreasonably withheld or delayed);
 - 29.2.3 the Local Safeguarding Adults Board recommends that the Placement be terminated;
 - 29.2.4 in the reasonable opinion of the Council there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of this Individual Service Agreement;
 - 29.2.5 a risk assessment carried out by either Party has concluded that significant risk to the relevant Service User cannot be adequately managed by the Provider;
 - 29.2.6 in its reasonable opinion the continuation of the Placement would put the relevant Service User or any other person at risk of harm; or
 - 29.2.7 the Council has been notified of a change to the registration of the Home pursuant to Clause 8 or the Council becomes aware of a change or proposed change to the registration of the Home.
- 29.3 Without prejudice to Clause 29.2, a Placement may be terminated by the Council by giving to the Provider not less than:
- 29.3.1 28 days' notice in writing, save that:
 - (a) in respect of Temporary Placements; or
 - (b) during a Trial Period (where applicable),the Council shall have the right to terminate by giving the Provider not less than seven days' notice in writing during the relevant Trial Period; or
 - 29.3.2 14 days' notice in writing where a change to the funding arrangements for a Service User results in that Service User funding their own care (and the relevant terms in the Payment Mechanism shall apply as set out under "Change in Service User's Financial Status").

Termination of Placement on Default

29.4 The Council may terminate a Placement by giving written notice to the Provider with immediate effect or with effect from such other date specified in such notice if the Provider has committed a Default in relation to a Service User's requirements as set out in the Service User's ISA Form and/or Council Care and Support Plan and if:

29.4.1 the Provider has not remedied the Default to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied;

29.4.2 the Default is not, in the opinion of the Council, capable of remedy; or

29.4.3 the Default is a Material Breach.

Provider Termination of Placements

29.5 The Provider shall only be entitled to terminate a Placement (whether or not the Placement is an Emergency Placement, Temporary Placement or during a Trial Period (as applicable) or otherwise) if the Provider and Council both agree that the Provider cannot reasonably meet the Service User's needs because the complexity of the Service User's requirements are outside of the Services Specification. The Provider shall provide a minimum of 28 days' written notice where it is terminating a Placement under this Clause 29.5. If the Council, using reasonable endeavours, is unable to identify another provider for the Service User before the expiry of the notice, the notice may be extended by agreement of the Parties, until another provider has been commissioned by the Council and the provisions of Clause 30.1 shall apply.

Automatic Termination of Placements without Notice

29.6 A Placement shall terminate automatically with immediate effect without notice:

29.6.1 if the Court or other competent authority decides that the Service User should be placed in a secure hospital, or other place of lawful detention for more than 72 hours. This may include a condition of a court order or legal case conference, which requires residence outside a particular geographic area;

29.6.2 if the relevant Service User dies; or

29.6.3 if the relevant Service User gives notice to the Provider and/or the Council that they no longer wish to receive Services from the Provider. The Provider and the Council

shall use their reasonable endeavours to encourage the Service User to give at least seven days' notice of such cancellation.

30 CONSEQUENCES OF TERMINATION OF A PLACEMENT

- 30.1 Notwithstanding the service of any notice to terminate a Service User's Placement, the Provider shall continue to provide the Services in respect of the relevant Service User, and any additional support and resources deemed necessary and agreed between the Provider and the Council, until that Service User leaves the Home.
- 30.2 On termination of a Placement, the Price payable shall be pro-rated up to the effective date of termination.
- 30.3 The termination of a Placement shall not prejudice the rights of either Party or any Service User that have arisen on or before the effective date of termination of that Placement.

31 TERMINATION OF INDIVIDUAL SERVICE AGREEMENT

Good Faith

- 31.1 The Parties shall act in good faith to ensure that in the event of the termination of this Individual Service Agreement there is smooth transition between the Services provided for the Service User(s) by the Provider and any services provided by a New Provider and/or the Council (as the case may be).

Termination by Notice

- 31.2 Either Party may terminate this Individual Service Agreement at any time by giving the other Party at least six months' written notice.
- 31.3 The Council may terminate this Individual Service Agreement by serving written notice on the Provider with immediate effect or with effect from such other date specified in such notice if:
- 31.3.1 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
 - 31.3.2 the Provider suffers an Insolvency Event;
 - 31.3.3 the Council has been notified of a change of ownership of the Home pursuant to Clause 12.1.2 or the Council becomes aware of a change or proposed change of ownership of the Home;

31.3.4 the Provider fails to be registered or maintain registration with the Registration Authority; or

31.3.5 the Council has been notified of a change to the registration of the Home pursuant to Clause 8 or the Council becomes aware of a change or proposed change to the registration of the Home.

Termination on Change of Control

31.4 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Council may terminate this Individual Service Agreement by giving notice in writing to the Provider with immediate effect within six months of:

31.4.1 being notified that a Change of Control has occurred; or

31.4.2 where no notification has been made, the date that the Council becomes aware of the Change of Control,

but the Council shall not be permitted to terminate where the Council gave its written approval prior to the Change of Control.

Termination by the Council on Default

31.5 The Council may terminate this Individual Service Agreement by giving written notice to the Provider with immediate effect or with effect from such other date specified in such notice if the Provider commits a Default and if:

31.5.1 the Provider has not remedied the Default to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or

31.5.2 the Default is not, in the opinion of the Council, capable of remedy; or

31.5.3 the Default is a Material Breach.

31.6 A "**Material Breach**" under this Individual Service Agreement shall mean a Default by the Provider as follows:

31.6.1 a Default of a serious nature and which has, or is likely to have a significant impact on the delivery of the Services to the Service Users;

- 31.6.2 the Provider repeatedly commits a Default (whether of the same or similar nature or otherwise) so as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Individual Service Agreement;
- 31.6.3 the Provider is in breach of Clause 8 (Registered Status), Clause 14 (Health and Safety), Clause 15 (Non-Discrimination), Clause 16 (Service User's Rights), Clause 17 (Staff), Clause 18 (Safeguarding), Clause 25 (Notifiable Events), Clause 30.1 (Consequences on Termination of a Placement), Clause 38 (Warranties and Representations), Clause 39 (Confidentiality), Clause 40 (Freedom of Information), Clause 41 (Data Protection and Caldicott Principles), Clause 44 (Corrupt Gifts and Payments of Commission), Clause 45 (Safeguard against Fraud) or Clause 52 (Transfer and Sub-Contracting);
- 31.6.4 the Provider has offered any improper inducement or exerted unreasonable pressure upon potential Service Users, or others with an interest, to attempt to encourage the potential Service Users to use the Provider or has taken unreasonable financial advantage of its relationship with a Service User;
- 31.6.5 if the Provider is aware that a member of Staff or someone living in the premises within which the Service is delivered has been identified as posing a risk, or potential risk, to a Service User and the Provider has failed to notify the Council;
- 31.6.6 if the Provider is aware that a member of Staff has had allegations made against them of a serious nature, resulting in a safeguarding case review or safeguarding investigation being carried out by their designated safeguarding officer, and the Provider has failed to notify the Council; or
- 31.6.7 if the Provider has refused to implement (or fails to implement) any change to this Individual Service Agreement which is necessary to implement a change to the Service User's Council Care and Support Plan.

Termination by the Provider on Default

- 31.7 The Provider may terminate this Individual Service Agreement by serving written notice on the Council with immediate effect or from such other date specified in such notice if the Council commits a Council Breach and if:
- 31.7.1 the Council has not remedied the Council Breach within 10 Working Days, or such other period as may be specified by the Provider, after issue of a written notice specifying the Council Breach and requesting it to be remedied; or

31.7.2 the Council Breach is not, in the reasonable opinion of the Provider, capable of remedy.

32 DUTY TO CO-OPERATE ON TERMINATION

32.1 On the termination of this Individual Service Agreement for any reason and for a period of six months thereafter the Provider shall assist and co-operate fully to ensure an orderly transition of the provision of the Services from the Provider to a New Provider or (as appropriate) the Council.

32.2 The assistance and co-operation referred to in Clause 32.1 shall be provided free of charge and the Provider shall:

32.2.1 liaise with the Council and/or the New Provider so as to provide reasonable assistance and advice concerning the Services and their transfer to the Council or (as appropriate) the New Provider;

32.2.2 provide to the Council and/or a New Provider all information concerning the provision of the Services which may be reasonably requested by the Council and which may be necessary for the efficient transfer of responsibility for its obligations under this Individual Service Agreement; and

32.2.3 use all reasonable endeavours to assign or otherwise transfer the benefit of any Sub-contract or other contract related to the performance of the Service if so required by the Council and so permitted by relevant third parties to the relevant Sub-contract or other contract.

32.3 The Provider shall not act at any time during the Contract Period or thereafter in a way which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult the transition of the provision of the Services to the Council or (as appropriate) the New Provider.

33 RECOVERY UPON TERMINATION

33.1 Upon termination of this Individual Service Agreement for any reason, the Provider shall immediately return to the Council all Confidential Information, Commissioner Data and Personal Data in its possession or in the possession or under the control of any permitted Sub-contractors, which was obtained or produced in the course of providing the Services;

33.2 If the Provider fails to comply with Clause 33.1 Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Sub-contractors where any

such items may be held.

34 SURVIVAL OF TERMS

34.1 Save as otherwise expressly provided in this Individual Service Agreement:

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

34.1.2 termination of this Individual Service Agreement shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses 19 (Records and Access), 28 (Charges and Payment), 32 (Duty to Co-Operate on Termination), 33 (Recovery upon Termination), 34 (Survival of Terms), 35 (Indemnity and Insurance Requirements), 36 (Liability), 39 (Confidentiality), 40 (Freedom of Information), 41 (Data Protection and Caldicott Principles), 42 (Information Management and Security Policies), 43 (Intellectual Property Rights), 44 (Corrupt Gifts and Payments of Commission), 45 (Safeguard against Fraud), 54 (Notices), 56 (Transfer of Undertakings (TUPE)) together with Schedule 3, 57 (Third Parties), 60 (Severability), 61 (Cumulative Remedies), 62 (Waiver), 63 (Rights and Duties Reserved), 64 (Entire Agreement) and 63 (Governing Law).

35 INDEMNITY AND INSURANCE REQUIREMENTS

35.1 The Provider shall at its own expense implement and maintain (and ensure that any Sub-contractors involved in the Services implement and maintain) insurance with a reputable insurer to cover each of the types of liability which are set out below, with each policy to provide cover comprising the minimum sum per claim which is specified opposite thereto, in relation to any legal liability for which the Provider may become responsible pursuant to the performance (or defective performance) of its obligations under this Individual Service Agreement:

35.1.1 public liability: £10,000,000 (ten million pounds);

35.1.2 employer's liability: £10,000,000 (ten million pounds);

35.1.3 professional indemnity: £5,000,000 (five million pounds).

35.2 The Provider shall also implement and maintain (and ensure that any Sub-contractors involved in the Services implement and maintain) with a reputable insurance company such

other policy or policies of insurance as are necessary for providers of services that are the same as or similar to the Services to comply with the Law.

- 35.3 The Provider's shall maintain professional indemnity insurance as required in Clause 35.1.3 for a minimum of six years following expiration or earlier termination of this Individual Service Agreement.
- 35.4 Within five Working Days of being requested to do so, the Provider shall provide the Council with a true and legible copy of each of the insurance policies which have been effected by it pursuant to the requirements of this Individual Service Agreement together with a true copy of the Provider's receipt(s) for the current premium payments. The Council may accept other appropriate documentation provided that it confirms that the Provider's insurance arrangements comply with the requirements of Clause 35.
- 35.5 The onus is on the Provider to ensure that its insurance policies are adequate at all times to cover eventualities pertaining to its business. The Provider shall ensure that the Council is informed immediately should the Provider become aware of a potential claim that would not be covered by the Provider's insurance policies. The Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

36 LIABILITY

- 36.1 Neither of the Parties excludes or limits liability to the other Party for:
- 36.1.1 death or personal injury caused by its negligence; or
- 36.1.2 fraud or fraudulent misrepresentation.
- 36.2 Subject always to Clause 36.1, each Party's total aggregate liability in connection with this Individual Service Agreement in each 12-month period during the Contract Period (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to 10,000,000 (ten million) pounds.
- 36.3 The Provider shall indemnify and keep indemnified the Council and its officers and servants against all losses, claims, proceedings, actions, damages, costs and expenses (including legal costs and expenses) and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider (including its Staff) of its obligations under this Individual Service Agreement including in respect of any breach of its obligations, death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given

by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

- 36.4 The Council shall not be liable for any expense, liability, loss or claim resulting from actions of the Service User unless it can be shown that the Council knowingly provided incorrect information or knowingly withheld relevant information which was directly attributable to such loss or damage.

37 ONGOING COMPLIANCE WITH SELECTION REQUIREMENTS

- 37.1 The Provider shall notify the Council in writing with immediate effect upon the occurrence of any of the following circumstances:

37.1.1 the Provider undergoes a Change of Control;

37.1.2 the Provider is subject to an Insolvency Event;

37.1.3 any change in any consortium structure or sub-contracting arrangements to which the Provider is party for the purposes of the Framework Agreement;

37.1.4 any change in relation to the information included in the SQ Response that may result in the Provider no longer complying with the selection requirements met by the Provider in the SQ Response; and/or

37.1.5 any other reason that the Provider becomes aware of that may affect compliance of the Provider with the selection requirements referred to in Clause 37.1.

38 WARRANTIES AND REPRESENTATIONS

- 38.1 The Provider warrants and represents that:

38.1.1 this Individual Service Agreement is executed by a duly authorised representative of the Provider;

38.1.2 as at the Commencement Date, all information, statements and representations contained in the SQ Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to execution of this Individual Service Agreement and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

38.1.3 it has obtained all registrations, licences, authorisations, or permits required to perform its obligations under this Individual Service Agreement as required by the

Registration Authority and/or the Law;

- 38.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Individual Service Agreement;
- 38.1.5 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 Individual Service Agreement;
- 38.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the 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 Provider's assets or revenue;
- 38.1.7 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence; and
- 38.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Individual Service Agreement.

39 CONFIDENTIALITY

39.1 Each Party:

- 39.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- 39.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Individual Service Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Individual Service Agreement.

39.2 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with this Individual Service Agreement:

- 39.2.1 is given only to such of the Staff and professional advisers engaged to advise it in connection with this Individual Service Agreement as is strictly necessary, and to the

extent necessary, for the performance of this Individual Service Agreement, and shall ensure that such Staff and professional advisers are subject to equivalent confidentiality obligations as under this Clause 39; and

39.2.2 is treated as confidential and not disclosed or used (without the Council's prior written approval) by the Provider, any of its Staff or such professional advisers otherwise than for the purposes this Individual Service Agreement.

39.3 The provisions of Clause 39.2 shall not apply to any Confidential Information received by one Party from the other:

39.3.1 which is or becomes public knowledge (otherwise than by breach of this Clause 39);

39.3.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

39.3.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

39.3.4 is independently developed without access to the Confidential Information; or

39.3.5 which must be disclosed pursuant to a statutory, legal, parliamentary or regulatory obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, pursuant to Clause 40.

39.4 Nothing in this Clause shall prevent the Council disclosing any Confidential Information:

39.4.1 for the purpose of the examination and certification of the Council's accounts;

39.4.2 for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;

39.4.3 to the Auditors to the extent required for an Audit or in accordance with Clause 50.2;

39.4.4 to its employees, officers, agents and professional advisers for the purpose of the Council performing its obligations under, and gaining the full benefit of, this Individual Service Agreement;

39.4.5 to any Contracting Authority or Regulatory Body;

39.4.6 to any person engaged in providing any services to the Council for any purpose relating, or ancillary, to this Individual Service Agreement;

39.4.7 other authorities and organisations which handle or oversee public funds (in the interest of public probity); or

39.4.8 in accordance with Clause 52.4,

provided that, in disclosing Confidential Information, the Council discloses only the Confidential Information which is necessary for the purpose concerned and requires that the information is treated in confidence.

40 FREEDOM OF INFORMATION

40.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with these Information disclosure requirements.

40.2 The Provider shall and shall procure that any Sub-contractors shall:

40.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

40.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

40.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act 2000.

40.3 The Council shall be responsible for determining, at its absolute discretion and notwithstanding any other provision in this Individual Service Agreement, whether the Commercially Sensitive Information and/or any other Information:

40.3.1 is exempt from disclosure in accordance with the FOIA; and/or

40.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

40.4 The Provider acknowledges that the Council may, acting in accordance with the FOIA, disclose Information:

- 40.4.1 without consulting with the Provider; or
- 40.4.2 following consultation with the Provider and having taken its views into account.
- 40.5 The Provider shall ensure that all information produced in the course of, or relating to, this Individual Service Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 40.6 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 40.4.
- 40.7 The Provider shall take no action which is intended, or would reasonably be expected, to harm the reputation of the Council or which would reasonably be expected to lead to unwanted or unfavourable publicity to the Council or bring the Council into disrepute.

41 DATA PROTECTION AND CALDICOTT PRINCIPLES

- 41.1 The Provider and the Council shall each adhere to the Caldicott Principles and in particular shall:
 - 41.1.1 before using Personal Data relating to the Service User, justify according to Principle 1 Health and Social Care Organisations the purpose(s) for using such Personal Data;
 - 41.1.2 use Personal Data relating to the Service User only when absolutely necessary;
 - 41.1.3 use only the minimum amount of Personal Data relating to the Service User that is necessary;
 - 41.1.4 ensure that access to Personal Data relating to the Service User is provided on a strict “need to know” basis;
 - 41.1.5 ensure everyone with access to Personal Data relating to the Service User is made aware of his or her responsibilities; and
 - 41.1.6 ensure everyone with access to Personal Data relating to the Service User understands and complies with all legislation that governs the use and processing of such Personal Information.
- 41.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council and the Provider are Joint Controllers in respect to the data under this Individual Service Agreement.

- 41.3 The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 41.4 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- 41.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 41.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 41.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 41.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 41.5 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Individual Service Agreement:
- 41.5.1 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 41.5.2 ensure that:
 - (a) the Staff do not process Personal Data except in accordance with this Individual Service Agreement (and in particular Schedule 6 (Processing, Personal Data and Data Subjects));
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

- (i) are aware of and comply with the Provider's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Provider;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless permitted by this Individual Service Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (c) not transfer Personal Data outside of the EU unless the following conditions are fulfilled:
- (i) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Provider complies with its obligations under the Data Protection Legislation providing an adequate level of protection to any Personal Data that is transferred; and:
- (d) within the terms of this Individual Service Agreement, delete or return Personal Data (and any copies of it) to the Council on termination of this Individual Service Agreement (as the case may be) unless the Data Processor is required by Law to retain the Personal Data.

41.6 Subject to Clause 41.7, the Provider shall notify the Council immediately if it:

41.6.1 receives a Data Subject Request (or purported Data Subject Request) which requires the input of personal data held by the Council;

41.6.2 receives any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data processed jointly under this Individual Service Agreement;

- 41.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 41.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Individual Service Agreement;
 - 41.6.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 41.6.6 becomes aware of a Data Loss Event. The Provider's obligation to notify under Clause 41.6 shall include the provision of further information to the Council in phases, as details become available.
- 41.7 Taking account the nature of the processing each party shall provide with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 41.6 (and insofar as possible within the timescales reasonable required) including by promptly providing:
- 41.7.1 the other Party with full details and copies of the complaint, communication or request;
 - 41.7.2 such assistance as is reasonably requested by either Party to enable them to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 41.7.3 the other Party, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 41.7.4 assistance as requested by the either Party following any Data Loss Event; and
 - 41.7.5 assistance as requested by the other party with respect to any request from the Information Commissioner's Office, or any consultation by either Party with the Information Commissioner's Office.
- 41.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- 41.8.1 the Council determines that the processing is not occasional;
 - 41.8.2 the Council determines the processing includes special categories of data as

referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

41.8.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

41.9 Where appropriate the Provider shall allow for audits of its Data Processing activity related to this Individual Service Agreement by the Council or the Council's designated auditor.

41.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

41.11 Before allowing any Sub-processor to process any Personal Data related to this Individual Service Agreement, the relevant Data Controller must:

41.11.1 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 41 such that they apply to the Sub-processor; and

41.11.2 provide the other Party with such information regarding the Sub-processor as the other Party may reasonable require.

41.12 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.

41.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Individual Service Agreement).

41.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Provider amend this Individual Service Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

41.15 Where the Parties include two or more Joint Controllers in accordance with GDPR Article 26, those parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 6 (Processing, Personal Data and Data Subjects), covering the Personal Data under joint control.

41.16 Each Party shall be wholly liable for any penalty or claim made against them where such penalty or claim has any basis in either Party having failed to apply the terms of this Individual Service Agreement or where the requirements of the Data Protection Act 2018 have not been complied with.

41.17 The Provider shall have and shall maintain in place throughout the Term and the Contract Period its own policies and procedures to ensure its compliance with this Clause 41 and shall provide copies thereof for the Council on request.

41.18 The Provider shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 41 by the Provider and/or any act or omission of any Sub-contractor.

42 INFORMATION MANAGEMENT AND SECURITY POLICIES

42.1 The Provider shall (and shall procure that its Staff shall) comply with and provide the Services in all respects in accordance with the policies, procedures, measures, controls, mechanisms and systems described in its SQ Response in response to the Information Governance Questions.

42.2 The Provider shall promptly notify the Council in writing if it becomes aware during the performance of this Individual Service Agreement of any inaccuracies in or changes to the policies, procedures, measures, controls, mechanisms and systems described in Clause 42.1.

43 INTELLECTUAL PROPERTY RIGHTS

43.1 General

43.1.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Provider or any Staff:

(a) in the course of performing the Services; or

(b) exclusively for the purpose of performing the Services,

shall vest in the Council upon creation.

43.2 Copyright

43.2.1 Where such Intellectual Property includes software, designs, documentation or other property subject to copyright, the Provider hereby assigns absolutely to the Council, with full title guarantee, the copyright and all other rights of a like nature conferred under the laws of England and Wales, and all other countries of the world in such property, and all modifications, enhancements and amendments made by the Provider (or such employee, agent or Sub-contractor) to such property for the

Council, for the full term during which the copyright and any renewals or extensions shall subsist. The Provider shall procure that its Staff shall waive absolutely and irrevocably their moral rights granted under the Copyright, Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in relation to such property.

43.3 Intellectual Property owned by the Provider

43.3.1 Where, in connection with the provision of the Services by the Provider, the Provider uses any Intellectual Property which does not fall within Clauses 43.1 and 43.2 and which is owned by the Provider or any company within the Provider's Group, the Provider shall grant to the Council, or shall procure that the Council is granted (without charge to the Council) a perpetual, non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property, which licence shall include the right for any person providing services to the Council to use, adapt, maintain and support such Intellectual Property for the benefit of the Council.

43.4 Third Party Licences

43.4.1 The Provider shall obtain the consents of third parties to the use by the Provider of any third party software, documentation and other materials ("**Third Party Products**") (including, without limitation, software and know-how) which is required by the Provider for the provision of the Services.

43.4.2 The Provider shall assume all liability to third parties in respect of its use of any Third Party Products in accordance with Clause 43.4.1 as from the Commencement Date and shall indemnify the Council against all costs, claims, damages or expenses arising from the Provider's failure to adhere to the terms and conditions of agreements between the Council and such third parties in respect of such Third Party Products

43.4.3 The Provider shall use all reasonable endeavours to procure that any licences for Third Party Products (as defined in Clause 43.4.1) reasonably necessary for the provision of the Services are perpetual and contain terms which will allow the Council on termination of this Individual Service Agreement or any Services to use, adapt, maintain and support such Third Party Products or to engage a New Provider to do so.

43.4.4 The Provider acknowledges and confirms that all royalties, licence fees and similar expenses in respect of all Intellectual Property used in connection with this Individual

Service Agreement are included in the Price and shall not be subject to any separate or additional charge to the Council.

44 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 44.1 The Provider shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- 44.2 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of any Council or any other public body or person employed by or on behalf of a Council or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Individual Service Agreement or any other contract with a Council or any other public body or person employed by or on behalf of a Council or any other public body (including its award to the Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.
- 44.3 Neither the Provider nor any of their Staff shall solicit or accept any gratuity, gifts or tip or any other form of money taking or reward, collection or charge for any part of the Services other than those notified to, and agreed by, the relevant Council.

45 SAFEGUARD AGAINST FRAUD

- 45.1 The Provider shall take all reasonable steps in accordance with Good Industry Practice to prevent Fraud by its Staff and/or the Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Council.
- 45.2 The Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 45.3 The Provider shall safeguard the Council's funding of this Individual Service Agreement against Fraud generally and, in particular, Fraud on the part of the Provider or its Staff. The Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

46 FORCE MAJEURE

- 46.1 A Party shall be released from its obligations in the event of national emergency, war, revolution, act of terrorism, riot or civil commotion, biological contamination or warfare, epidemic or other natural disaster, prohibitive Government regulation or any other unforeseeable cause beyond the reasonable control of the affected Party which renders the performance of this Individual Service Agreement impossible, provided that, where the Provider is the affected Party, the Provider has complied with Clauses 47 and 48 (a "**Force**

Majeure Event”). However, if such Force Majeure Event prevents either Party from performing its material obligations under this Individual Service Agreement for a period in excess of 14 days, either Party may terminate this Individual Service Agreement with immediate effect by notice in writing

46.2 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate premises, equipment, materials, consumables, and or staff or similar matters, which a prudent and diligent Provider could have avoided with the application of reasonable foresight, are not to be considered as Force Majeure Events.

46.3 If either Party becomes aware of a Force Majeure Event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 46.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

47 BUSINESS CONTINUITY

47.1 The Provider acknowledges that the Civil Contingencies Act 2004 requires the Council to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. The Provider shall ensure it is able to continue to provide the Services in the event of an emergency and shall therefore:

47.1.1 prepare a robust and viable business continuity plan (the “**Business Continuity Plan**”) in a form approved by the Council that ensures the continuation of the provision of the Services throughout the Contract Period;

47.1.2 review and update the Business Continuity Plan annually, making such changes to the plan as the Council in its reasonable discretion may require;

47.1.3 annually, and more frequently, if requested by notice from the Council, disclose to the Council the contents of its Business Continuity Plan (include any revisions made to it from time to time during the Contract Period);

47.1.4 allow the Council (at its discretion) from time to time during the Contract Period to monitor the Provider’s business continuity arrangements;

47.1.5 notify the Council immediately if an incident occurs which activates the Business Continuity Plan (such notification to be served prior to the issue by the Provider of any notification to the press or other media); and

47.1.6 provide the Council with details of how the Provider managed any incident which resulted in the activation of the Business Continuity Pan and any consequential

amendments made by the Provider to the processes and/or procedures in the Business Continuity Plan thereafter.

47.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Individual Service Agreement.

47.3 In the event of industrial action by Staff, the Provider shall seek approval to its proposals to continue to perform its obligations under this Individual Service Agreement.

48 TEMPORARY DUTY AND BUSINESS FAILURE

48.1 The Provider shall meet the duties of the Care Act 2014 with regards to temporary duty and business failure, under sections 48 to 52.

48.2 In circumstances where the Provider is unable to continue to provide the Service(s) under this Individual Service Agreement as a result of Business Failure, as defined in the Care Act 2014, the Provider shall assist the Council in meeting its Temporary Duty obligations under sections 48 to 52 of the Care Act 2014 and shall:

48.2.1 co-operate fully with and provide all reasonable assistance to the Council in assessing the most efficacious manner of meeting the needs of all Service Users affected by the Provider's Business Failure;

48.2.2 make available all information that the Council, in its absolute discretion, considers reasonable and appropriate to enable the Council to meet the needs of, and minimise disruption to, all Service Users affected by the Provider's Business Failure; and

48.2.3 co-operate fully with and provide all reasonable assistance to any other Provider organisation(s) authorised by and working in partnership with the Council, to assist the Council in meeting its Temporary Duty as a result of the Provider's Business Failure.

48.3 The Provider acknowledges the Council's statutory duties under the Care Act regarding Market Oversight, Sustainability & Provider Failure. Where requested by the Council for these purposes, the Provider shall provide to the Commissioner appropriate information regarding the Provider's organisation and services and shall support local system resilience initiatives run by the Council.

49 CONFLICTS OF INTEREST

- 49.1 The Provider shall use all reasonable endeavours to protect the safety and well-being of the Service User by taking necessary measures to avoid any confusion of roles or situations in which a conflict of interest might arise.
- 49.2 The Provider shall ensure that it has a procedure in accordance with Good Industry Practice and which meets all relevant professional codes of practice relating to conflicts of interest (including, without limitation, receiving and/or offering gifts/presents) and, if necessary, shall make amendments to its practices to ensure that the Provider and its Staff continue to meet such professional codes of practice throughout the Contract Period. The Provider shall ensure that this procedure is observed at all times and that it prevents the occurrence of situations not only where a conflict has arisen, but where one is likely to arise. If required by the Council, a separation of duties shall be implemented by the Provider to prevent such conflicts of interest.
- 49.3 The Provider shall promptly disclose in writing to the Council the full particulars of any such conflicts or potential conflicts of interest which may arise.

50 PUBLICITY

- 50.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise this Individual Service Agreement in any way without the Council's prior written consent.
- 50.2 The Council shall be entitled to publicise this Individual Service Agreement in accordance with any legal obligation upon the Council, including any examination of this Individual Service Agreement by the Auditor or otherwise.
- 50.3 The Provider shall not do anything which may damage the reputation of the Council or bring the Council into disrepute.

51 COMPLAINTS

The Provider shall have a complaints policy and procedure that conforms to the requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care and Support Statutory Guidance – Care Act 2014 and shall comply with its policy and procedure for managing any complaint it receives in relation to the Services and/or Staff. Such procedure shall be made available upon request to the Council's Authorised Officer for review.

52 TRANSFER AND SUB-CONTRACTING

52.1 This Individual Service Agreement is personal to the Provider and the Provider shall not assign, sub-contract or otherwise dispose of this Individual Service Agreement or any part thereof without the prior written consent of the Council. Any such consent shall only be given in respect of a named and approved assignee or sub-contractor (as the case may be) and only on the basis that both the Provider and the assignee or sub-contractor (as the case may be) are jointly and severally fully answerable and responsible for such party's contribution to the Service.

52.2 The Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own. Sub-contracting any part of this Individual Service Agreement shall not relieve the Provider of any of its obligations or duties to the Council.

52.3 The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Individual Service Agreement or any part thereof to:

52.3.1 any other Contracting Authority;

52.3.2 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Council; or

52.3.3 any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Individual Service Agreement unless agreed by the Provider in writing.

52.4 In circumstances where the Council enters into any assignment, or novation, or disposal pursuant to Clause 52.3, the Council shall be entitled to disclose to any transferee of this Individual Service Agreement any Confidential Information of the Provider which relates to the performance of this Individual Service Agreement by the Provider. In such circumstances the Council may authorise the transferee to use such Confidential Information for purposes directly relating to the performance of this Individual Service Agreement (and for no other purposes whatsoever) and the Council shall use reasonable endeavours to ensure that the transferee accepts an obligation of confidence.

53 DISPUTE RESOLUTION

53.1 The Council and the Provider shall seek to work together in the spirit of mutual cooperation in order to meet the best interests of the Service User placed under this Individual Service Agreement. The Council and the Provider shall use their best endeavours to resolve by

agreement any dispute arising between them and shall negotiate in good faith at all times.

- 53.2 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Individual Service Agreement within 10 Working Days of either Party notifying the other of the dispute, such efforts shall involve the convening of a meeting between representatives of both Parties within 10 Working Days, or such other period as agreed between the Parties.
- 53.3 If the dispute remains unresolved after the meeting referred to in Clause 53.2 then a further meeting involving senior representatives of the Parties may be requested within a further 10 Working Days, or such other period as agreed between the Parties.
- 53.4 If the dispute remains unresolved after the meeting referred to in Clause 53.3 then a further meeting involving more senior representatives of the Parties may be requested within a further 20 Working Days, or such other period as agreed between the Parties.
- 53.5 In a meeting taking place pursuant to Clause 53.4, where the dispute relates to a particular Service User the Proprietor/Regional Manager will represent the Provider and the Council's Authorised Officer will represent the Council.
- 53.6 In a meeting taking place pursuant to Clause 53.4, where the dispute relates to the general care standards or a contractual issue the Proprietor/Regional Manager will represent the Provider and the Director of Social Services will represent the Council.
- 53.7 For the avoidance of doubt, the Council may be represented in meetings taking place pursuant to Clause 53.2 and 53.3 by practitioners engaged by the Authorised Agents.
- 53.8 If the dispute is still not resolved after the meeting referred to in Clause 53.4 then the matter shall be referred to independent mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedures, as soon as reasonably practicable. The mediator's reasonable charges incurred by this shall be shared equally between the Parties.
- 53.9 Neither Party shall commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Parties shall cooperate with any person appointed as mediator providing him with such information and other assistance as he shall require.
- 53.10 If the matter cannot be satisfactorily resolved through mediation, it may be referred to an independent arbitrator who is agreed between both Parties, or in default of agreement, nominated by the President of the Institute of Arbitrators. The arbitrator shall be entitled to make such decision or award as he/she thinks just and equitable having regard to the

circumstances then existing. The decision of the arbitrator (including as to costs) shall be final and binding upon both Parties except in the case of manifest error.

- 53.11 During any dispute, including a dispute as to the validity of this Individual Service Agreement, it is mutually agreed that the Provider shall continue its performance of the provisions of this Individual Service Agreement (unless the Council requests in writing that the Provider does not do so).

54 NOTICES

- 54.1 Except as otherwise expressly provided within this Individual Service Agreement, no notice or other communication from one Party to the other shall have any validity under this Individual Service Agreement unless made in writing by or on behalf of the Party sending the communication.

- 54.2 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), by electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 54.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail provided that the sender has not received an automated message that the electronic mail has not been delivered or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.

- 54.3 For the purposes of Clause 54.2, the address of each Party shall be:

54.3.1 For the Council: The address and contact details for the Council's contact for communications with the Provider identified in the Framework Agreement.

54.3.2 For the Provider: The address and contact details for the Provider's contact for communications with the Council identified in the Framework Agreement.

- 54.4 Either Party may change its address and contact details for service by serving a notice in accordance with this Clause 54.

55 TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

The Parties acknowledge and agree that this Individual Service Agreement constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Council and keep the Council 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 Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) 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 Contract Period or arising from termination or expiry of this Individual Service Agreement.

56 TRANSFER OF UNDERTAKINGS (TUPE)

The Parties agree that the provisions of Schedule 3 (TUPE, Exit and Service Transfer Arrangements) hereto shall apply to any Relevant Transfer of Staff under this Individual Service Agreement.

57 THIRD PARTIES

Both Parties agree and declare that nothing in this Individual Service Agreement either expressly or purportedly confers any rights upon any third parties within the meaning of or for the purposes of the Contracts (Rights of Third Parties) Act 1999. A party who is not a party to this Individual Service Agreement shall have no right to enforce any term of this Individual Service Agreement.

58 NO PARTNERSHIP OR AGENCY

58.1 The Provider or anyone employed by the Provider shall not hold him or herself out as being the agent or servant of the Council, or enter into any contract or bind the Council to any undertaking unless agreed in writing by the Council.

58.2 Nothing in this Individual Service Agreement shall create or be deemed to create a legal partnership between the Parties, or any relationship of principal and agent and the Parties are not pursuing a joint venture by entering into this Individual Service Agreement.

59 COUNTERPARTS

The Individual Service Agreement may be executed in more than one copy and such copies shall, taken together, constitute a single agreement.

60 SEVERABILITY

60.1 In the event that any term, condition, provision or Clause of this Individual Service Agreement shall be nullified or made void by any statute, regulation or order or by the decision or order of any court having jurisdiction, the remaining terms and conditions and provisions shall remain in full force and effect.

60.2 If any term, condition, provision or Clause contained in this Individual Service Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Individual Service Agreement.

60.3 The termination or expiry of the Framework Agreement shall not affect the validity, legality or enforceability of any term, condition or provision of this Individual Service Agreement.

61 CUMULATIVE REMEDIES

61.1 Except as otherwise expressly provided by this Individual Service Agreement, all remedies available to either Party for breach of this Individual Service 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.

61.2 The exercise of any right or remedy under the Framework Agreement, or the termination or expiry of the Framework Agreement, shall not affect the remedies available to either Party under this Individual Service Agreement.

62 WAIVER

62.1 The failure of either Party to insist upon strict performance of any provision of this Individual Service 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 Individual Service Agreement.

62.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 54.

62.3 A waiver of any right or remedy arising from a breach of this Individual Service Agreement or from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Individual Service Agreement.

63 RIGHTS AND DUTIES RESERVED

All rights and duties which the Council has as a local Council or which the Council's officers have as local Council officers are reserved.

64 ENTIRE AGREEMENT

64.1 Subject to Clauses 60 to 62, the Framework Agreement, this Individual Service Agreement and each ISA Form constitute the entire agreement and understanding of the Parties in

connection with their subject matter and supersede, cancel or nullify any other or previous agreement between the Parties in relation to such subject matter.

64.2 Each of the Parties acknowledges and agrees that in entering into this Individual Service 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 the Framework Agreement, this Individual Service Agreement and/or each ISA Form. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Framework Agreement and/or this Individual Service Agreement.

64.3 Nothing in Clauses 64.1 or 64.2 shall operate to exclude fraud or fraudulent misrepresentation.

65 GOVERNING LAW

This Individual Service Agreement shall be governed, interpreted and enforced according to the law of England and Wales and subject to Clause 49 the Parties shall submit to the exclusive jurisdiction of the English courts.

THIS CONTRACT is for: Individual Service Agreement

between

BATH AND NORTH EAST SOMERSET COUNCIL, Lewis House, Manvers Street, Bath, BA1 1JG
("the Council") (1)

and

[insert provider name and address] ("the Provider") (2).

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written.

The Common Seal of Bath and North East Somerset Council, was here unto affixed in the presence of

.....

Authorised Signatory

Name:

Position:

Executed as a deed on behalf of **[INSERT PROVIDER]** acting by a Director and its Secretary or two Directors

.....Director/Company Secretary

Name:

.....Director

Name:

Flexible Framework for the Provision of Care for Adults in Care Homes

Specification

Part A – Specification for the Provision of Care for Adults in Care Homes

Part B - Outcome Based Service Specification for People Living with Complex Dementia Needs

Part A

Specification

For the Provision of Care for Adults in Care Homes

Generic specification for services delivered in care homes with and without nursing

CONTENTS

1. Introduction
2. Legal Requirements & Context
3. Partnership Approach
4. B&NES Adult Health & Social Care Partnership
5. Eligible Service User Groups
6. Minimum Service Requirements
7. Outcome Based Services
8. Access to Services
9. Essential Standards of Quality & Safety
10. Notifications

Appendix 1: Equipment in Care Homes Policy

DEFINITIONS AND INTERPRETATIONS

In this Specification, except where the context otherwise requires, the following expressions shall have the meanings hereby ascribed to them:

Advocacy	means the act of speaking on the behalf of or in support of another person;
Advocate	means a person who supports someone who may otherwise find it difficult to communicate or to express their point of view. Advocates can support people to make choices, ask questions and to say what they think;
Best Interest Decision	means if a person has been assessed as lacking capacity, then any action taken, or any decision made for, or on behalf of that person, must be made in their best interests (Mental Capacity Act 2005: Principle 4);
Business Continuity Plan	means a document setting out measures taken by an organisation to minimize disruption and continue to be able to perform obligations under a contract in the event of an emergency or disaster;

Business Failure	means circumstances where a Service Provider is unable to continue to provide services as defined in S.2 to S.5 of the Care and Support (Business Failure) Regulations 2015;
Care Act	means the Care Act 2014 and any subordinate legislation made under this Act from time to time, together with any guidance and /or codes of practice issued by the relevant government department in relation to such legislation;
Care Home	means a Registered Care Home (with or without nursing) where the Placements are to be made;
CHC	means NHS Continuing Health Care;
Clinical Commissioning Group	means an NHS organisation set up by the Health and Social Care Act 2012 to organise the delivery of NHS services in England;
Council Care and Support Plan	means the details of Service(s) required relating to the particular Service User (Schedule 2);
Consent	means: i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by the Law for or in connection with the performance of Service(s); and/or ii) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Agreement or for the provision by the Provider of the Services in accordance with this Agreement;
Contract	means the Agreement between the Council and the Provider to provide the Services;
CQC	means the Care Quality Commission;
DBS	means the Disclosure and Barring Service;
DNAR	Do Not Attempt Resuscitation;
GP	means General Practitioner;
HCAI	Healthcare Associated Infection
NHS	means the National Health Service;
NICE	National Institute for Health and Clinical Excellence" or

	<p>“NICE” means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body);</p>
<p>Provider Care and Support Plan</p>	<p>means the written documentation created by the Care Home which sets out the care, individual preferences, personal choices and aspirations, desired outcomes, risk assessments, required equipment medication and other day to day requirements for each individual Service User, reviewed updated at appropriate periods and governing the support and care provided by staff;</p>
<p>Purchasing Team</p>	<p>means the Virgin Care locality team or Avon & Wiltshire team responsible for care managing the individual for whom a service is being arranged;</p>
<p>Registered Nurse</p>	<p>means any nurse who has completed their training, be it a diploma or degree, in one of four specialisms – Adult, Child, Mental Health or Learning Disability. As a Registered Nurse they should be registered with the Nursing and Midwifery Council.</p>
<p>Resident</p>	<p>means an individual Service User who is admitted into a Care Home;</p>
<p>Risk Assessment</p>	<p>means the process of identifying potential hazards that an organisation / individual may face and analysing the methods of response should exposure occur;</p>
<p>Specification</p>	<p>means this Schedule issued by the Council to the Provider setting out the service values and standards required in the provision of the Service;</p>
<p>Supporter</p>	<p>means family or friends identified by the Service User who may support them in making decisions about the care they receive.</p>

The interpretation and construction of this Schedule shall be subject to the following provisions:

- i. words and phrases set out in the Schedule shall apply to this Specification;
- ii. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- iii. words importing the one gender shall include other genders;
- iv. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted (whether before or after the Commencement Date) from time to time;
- v. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- vi. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- vii. headings are included in the Schedule for ease of reference only and shall not affect the interpretation or construction of the Schedule.

1. INTRODUCTION

This document is Bath & North East Somerset Councils (B&NES) and Bath & North East Somerset Clinical Commissioning Group (CCG) joint specification for registered Care Homes for adults in Bath & North East Somerset. It describes the key features of the Service being commissioned, and must be read in conjunction with the Terms and Conditions.

The Specification sets out the care specification and standards, which apply to Services called off from the Flexible Framework for the Provision of Care for Adults in Care Homes. The Council may from time to time vary this Specification. Any variation shall only be carried out after consultation and shall be recorded in writing.

This Specification may be supplemented by additional requirements where appropriate to specific service types or pathways, which will be specified separately. Where this is the case the requirements detailed in this Specification will continue to apply and shall not be overridden, unless specifically stated.

The views of service users, Supporters and Providers and other stakeholders will be taken into account in any review of the specification during that time, and their views will be welcomed at any time.

The purpose of the Service is to provide accommodation, care, support and stimulation to those people in the client group for whom it is not appropriate, either in the short or longer term, to live in their own homes. The Provider will offer residents

the opportunity to enhance their quality of life by providing a safe, manageable and comfortable home environment.

This document sets out agreed Service User focused outcomes in line with the Fundamental Standards and in the context of other legal requirements and key national best practice guidance.

The Provider acknowledges that the Council's obligations under this agreement may be performed by the Authorised Agents (including their representatives and practitioners, in particular, Social Workers engaged by them) on behalf of the Council. In relation to the day-to-day operation of the Services, the Provider shall in the first instance contact the relevant individuals and teams in accordance with the contact details provided by the Council to the Provider (including the ASIST helpline, as appropriate). In the event that the Provider is unable, despite all reasonable efforts, to verify the identity and authority of an individual purporting to represent an Authorised Agent acting on behalf of the Council, it shall notify the Council's Authorised Officer promptly.

2. LEGAL REQUIREMENTS AND CONTEXT

The Agreement places an obligation on the Provider to comply with all legislation and regulations relevant to the provision of the Services. The Provider shall be registered with the Care Quality Commission (CQC) in accordance with the Health and Social Care Act 2008 and comply with all related requirements. The Service offered to the Commissioners shall not exceed the "Type of Service" and "Specialism/Services" registered with the Registration Authority.

This Specification reflects how the Provider supports the Commissioners in meeting the requirements of the Care Act 2014 for the care and support needs of people in a Care Home so that the Services:

- provide quality and choice
- are sustainable
- innovate to meet the diversity of outcomes for people
- deliver cost-effective outcomes

Subject to the provisions of S.48 of the Care Act 2014 (Temporary Duty upon a Local Authority) the Council is not responsible for the Placement, or the financial support of a Service User until an Assessment has been carried out and the Placement approved within the Council's process.

The Service User focused outcomes in the specification relate to how Service Users' wellbeing can be assured whilst supporting person-centred care and support. Wellbeing is defined as follows in line with Care Act guidance:

- personal dignity (including the way people are treated and helped)
- physical and mental health and emotional wellbeing
- protection from abuse and neglect

- control over day to day life (including making choices about the way care and support is provided)
- participation in work, education, training and recreation
- social and economic wellbeing
- domestic, family and personal relationships
- suitability of living accommodation
- the individual's contribution to society.

Collaboration between the Commissioner and Provider is important. This includes the workforce and people with care and support needs, Supporters and families, facilitating the Commissioner in meeting Care Act requirements.

The Providers' adult safeguarding policies and procedures must reflect the statutory guidance and Bath & North East Somerset Councils Policy with the clear aim to support the reduction or removal of safeguarding risks as well as to secure any support to protect the adult and, where necessary, to help the adult recover and develop resilience. A partnership approach will encourage proportionate responses and improve the involvement of Service Users themselves in the decision-making and involvement in prevention and developing resilience for themselves.

National Performance Indicators that apply relate to the Department of Health Adult Social Care Outcomes Framework (ASCOF) as follows:

Service User views on the Service relating to:-

- how much control they have over their daily life
- how they feel about themselves because of the way they are treated and helped
- how clean and presentable they feel
- the food and drink they want and when they want it
- feeling safe
- how much social contact they have
- spending time together doing the things they value and enjoy.

Active engagement and openness between the Commissioners and Providers is also important for meeting duties relating to potential "Business Failure" (meaning an event such as the appointment of an administrator, the appointment of a receiver or an administrative receiver) or "Service Interruption" to the whole of the regulated activity, meaning an imminent jeopardy and there is no likelihood of returning to a "business as usual" situation in the immediate future, leading to the need for joint action by the Commissioner and the Provider.

The National Social Care Institute of Excellence (SCIE) Think Local Act Personal partnership provides guidance for social care and health.

The National Social Care Institute of Clinical Excellence (NICE) provides guidance for clinical matters specifically for the Nursing and Midwifery Council Guidelines.

Public Health England provides guidance on matters such as infection control, Resuscitation Council UK and Royal Pharmaceutical Society Guidelines.

From time to time, the Commissioners may seek the Provider's agreement to comply with the standards and recommendations issued by any relevant professional or by the National Institute for Health and Social Care Excellence (or any other equivalent body)

The Provider shall ensure that each Service User is made aware of the Care Home policy regarding the safekeeping of valuables or money and the limits of insurance cover that may apply.

Further information can be obtained from the Non-Acute & Social Care Commissioning Team, Trust HQ, Clara Cross Lane, Bath, BA2 5RP.

3. PARTNERSHIP APPROACH

Bath & North East Somerset Council wishes to work in a spirit of partnership with external Providers in delivering a high quality of care to their Service Users. The Council's intention is to maximise the use of available resources by establishing long term, positive and sustainable relationships with Providers.

4. B&NES ADULT HEALTH & SOCIAL CARE PARTNERSHIP

B&NES Council Adult Social Care and The Clinical Commissioning Group (known as NHS BaNES and referred to in this document as The CCG) have formed a partnership to work together towards integrated health and social care services for adults in Bath and North East Somerset.

The partnership's overall objectives and aims relating to Care Homes are:

- To ensure that the Provider supports and facilitates the health and emotional wellbeing of the Residents and that living in a Care Home setting is a positive experience, providing appropriate and sensitive care and support, opportunities for social interaction and appropriate health interventions to ensure all of their needs are met.
- Service Users and their family/Supporters will have access to high quality care services which are person centered, treat people with dignity and respect, keep people safe, offer real choice and control, promote independence and social inclusion and are supported by highly skilled and dedicated Staff.

This will be achieved through the following objectives:

- All Residents are empowered to have choice and control over their daily lives.
- Residents will be supported to live life to the full whilst safeguarded from avoidable harm.
- Personalised care and nursing plans (where required) will be developed to meet Residents' health & social care needs

- The Home will provide and facilitate activities both within and outside of the Home, encouraging links with the local community and enabling Residents to participate fully in their community. Their contribution will be of equal value.
- The Home will support Residents to take part in activities of their choice
- Residents are encouraged to have a say in the things that affect their daily life
- Relatives have a say in the way the Homes are run through relatives' groups
- Residents will live in an environment that is safe. They will have equal access to services without hindrance from discrimination or prejudice; they will feel safe and will be safeguarded from avoidable harm.
- The Home will provide a confidential, secure setting which respects the individual, helping to preserve the Residents' dignity.
- All residents receive care that ensures that they are safe from falls from unsecured windows, entrapment in bedrails and severe scalding.
- The Home will provide flexible care & support that meets people's changing needs and prevents unnecessary admission to hospital.

5. ELIGIBLE SERVICE USER GROUPS

Adults who are resident in Bath and North East Somerset, and who meet the Council's eligibility criteria for social care services include:

- Adults with physical disabilities and/or frailty;
- Adults including older people with dementia;
- Younger People (aged 18-65) with physical disabilities;
- Adults who have a learning difficulty;
- Adults with a mental illness;
- Adults with learning disabilities;
- Adults who misuse alcohol / drugs;

Once eligible needs are identified, Bath & North East Somerset Council and its partners will take steps to meet those needs in a way that supports the individual's aspirations and the outcomes that they want to achieve. This is referred to as personalisation. Throughout the process of a self-directed support assessment, Service Users will be supported by all involved in the care plan and encouraged to think creatively about how their needs can best be met and how to achieve the fullest range of outcomes possible within the resources available to them.

NHS Funded Care

NHS funding for care is considered under the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised). The purpose of the National Framework is to provide for fair and consistent access to NHS funding across England, regardless of location, so that individuals with equal needs should have an equal chance of getting their care funded by the NHS. By law, local authorities cannot directly provide registered nursing care. For individuals in Care Homes with nursing, Registered Nurses are usually employed by the Care Home itself and, in order to fund this nursing care, the NHS makes a payment. This payment is called Funded Nursing Care. Payments will only be made in respect of Residents receiving nursing.

Registered nursing can involve many different aspects of care. It can include direct nursing tasks as well as the planning, supervision and monitoring of nursing and healthcare tasks to meet needs. Residents will receive NHS-funded nursing care if:

- They are resident within a Care Home that is registered to provide nursing care, and
- They do not qualify for NHS continuing healthcare but have been assessed as requiring the services of a Registered Nurse.

6. MINIMUM SERVICE REQUIREMENTS

- The Provider must be registered with the Registration Authority. The requirements of this specification shall be regarded as complimentary to any statutory requirements and to the Essential Standards of Quality and Safety or such standards as may replace them.
- The Provider shall comply with all relevant English Law in the provision of the Service(s) including matters relating to recruitment.
- The Council will retain overall responsibility for evaluating the quality of the Care Homes. The Provider will allow reasonable access and assistance for this purpose. A nominated Commissioning and Contracts Officer, accompanied by other designated Officers, as appropriate, will make regular monitoring visits to the Care Homes.
- What constitutes a reasonable time will depend on the urgency of the situation and what is required to protect the health and welfare of the Residents. Normally Staff will contact the Provider beforehand but this may not always be possible and access will not be conditional on prior notice.
- The Provider will supply information as requested by the Council.
- The Council will endeavour to work with the Provider in an open and honest manner in the interests of Service Users.

- The Provider will send a representative to various forums, seminars and study days which are provided by the Council and the CCG. – Such as the Care Forum.

Inspection of Policies and Procedures

All of the Provider's policies and procedures will be available to the Council on request.

Recording and Inspection of Records

The Provider will have responsibility for day-to-day monitoring of their Service(s) and must maintain sufficient records for this purpose. This will include a) records regarding the general management of the Home and b) records specific to Service Users placed under this Agreement c) financial records relating to Service Users placed under this Agreement. These records must be made available on request for inspection by a nominated representative of the Council.

Review of Individual Placements

Service Users will be reviewed by the relevant operational team. This will usually be the Purchasing Team which carried out the Assessment which led to the Placement. This team will retain overall responsibility for evaluating the Service provided to the individual Service User and will work alongside officers within the Non-Acute & Social Care Commissioning Team to evaluate the overall quality and performance of the Service(s) as part of on-going quality assurance, review and monitoring processes.

Notifiable Events

Some events are required to be notified to the Council within set timescales. A complete list may be found on page 45

7. OUTCOME BASED SERVICES

The aim of an outcome based approach is to shift the focus from tasks and processes to the impacts of these on Service Users. Success by achievement of individual outcomes will be evidenced primarily but not exclusively by the satisfaction levels of Service Users and their Supporters and their experiences in the service and the impact on their wellbeing.

Achievement of the individual outcomes identified in the service user's care/support plan shall ensure that Service Users:-

- are valued – involved, more in control, listened to, told what is happening, given choices, at the centre of what is happening to them
- retain their strengths and independence – ensuring that an individual's quality of life is maintained by keeping active and alert, maintaining mobility/physical health, maintaining hygiene, maintaining social contact and keeping safe and secure
- are supported through change e.g. post-operatively, at the end of their lives and in situations where poor care or self-care has resulted in a reduction in their independence

- are safe – services are well managed and provided by Staff who work competently with service users because they are appropriately trained and supervised to take person centred approaches.

8. ACCESS TO SERVICES

An Assessment of people who 'appear to be in need of' social services will be arranged by the relevant Purchasing Team. Following Assessment, Service Users will be provided with information about the range of Care Homes available. The choice of Care Home is made by the Service User and where appropriate in consultation with his/her family or representative, Service Users have the right to choose any Home they like in England or Wales, as long as the Council agree it meets each of these four points:

1. The Home is suitable in relation to the individuals assessed needs
2. There is a place available
3. The Home owner agrees to our usual contract conditions for such a Placement.
4. The Home does not cost more than we usually pay for the type of care that you need.

- The relevant Purchasing Team of the Council will carry out an Assessment of need for each Service User which will be recorded in writing, identifying the needs and wishes of the Service User and those close to them, including any medical, dental, physical health, emotional wellbeing and nursing care needs. A Council Care and Support Plan for each Service User will be drawn up between the Service User, in consultation with their family, Supporter or other representative, and the Purchasing Team. The Provider will be consulted regarding those aspects of the Council Care and Support Plan which concern the Care Home in order to ensure that the Care Home can satisfy itself that it is able to meet the needs identified therein. Council Care and Support Plans will identify the nature of the specific provision needed, including the amount, frequency and duration of care needed, including equipment needs.
- The Provider shall be given a copy of the Council's written Assessment and the Council's Care and Support Plan (the format of which may change) prior to admitting the individual into the Care Home, except in the case of genuine emergency where the Provider may at its discretion accept admission without such documentation, having satisfied itself that it can meet the individual needs of the Service User.
- Where the Provider disagrees with the content of the Council's Care and Support Plan as supplied, it must contact the Purchasing Team Manager and mutually agree the Council Care and Support Plan prior to placement.
- The Council Care and Support Plan is a part of the individual arrangement and will form the basis for the Provider Care and Support Plan. However it is recognised that needs change, often quickly, and following Placement the Provider is responsible for monitoring and amendment of the Provider Care and Support Plan and other records as necessary to provide appropriate care for the Service User at all times.

- The Council Care and Support Plan will specify when the Service(s) should be reviewed by the Council, but it will not be less frequently than every year. The Provider will cooperate fully with and contribute to these reviews.
- The Council Care and Support Plan will be amended appropriately following any review. Any amendments this shall be reflected in the Provider Care and Support Plan.
- If the Provider feels a relative/visitor is disrupting a Service Users care and or is putting a Service User at risk the appropriate Purchasing Team Manager will be contacted to help try and resolve the issue.

9. ESSENTIAL STANDARDS OF QUALITY & SAFETY

The following quality standards have been developed as a minimum standard, describing how the Providers will apply these standards in practice. The quality standards will be used as the basis for monitoring the service provided.

STANDARD 1: Provider Service Information

Service Users have the information they need to exercise informed choice about where to live and have the opportunity to visit and assess the quality, facilities and suitability of the Home prior to admission.

- a) The Provider facilitates an introductory visit to each Service User, their family and friends
- b) The Provider will make available a brochure/ Website to prospective Service Users detailing the services they can expect from the Home, regardless of whether they are self-funding, or funded by the Commissioning Organisation. The brochure will be available in variety of accessible formats to ensure that all potential Service Users are able to understand them. The service will directly provide or organise the necessary support to Service Users to ensure this standard is met, for example, by utilising British Sign Language / Community Language interpreters.
- c) The Provider's written statement of Service Users Guide will clearly declare the client group/s that it caters for, and will therefore state how it intends to meet those specific needs in terms of aids and adaptation. The statement will include what Service Users can expect by way of quality and how the Provider can show they are achieving this.
- d) People living in the Home will have private single accommodation (unless shared accommodation is requested by choice) which they call their own to use as and when they wish. Service Users are offered a choice about the nature of the room e.g. furnishings and the ability to lock their room and lock up personal belongings.

STANDARD 2: Pre-Admission Assessment/Needs Assessment

Service Users are only admitted on the basis that the Home has carried out a comprehensive Pre-Admission Assessment in order to demonstrate that they can meet their assessed and ongoing needs.

- a) New Service Users, including those receiving short periods of respite, will be admitted only on the basis of a full and holistic Assessment undertaken by a competent person to satisfy themselves that the service can meet the needs and wellbeing outcomes relating to the level of care they require. Such Assessments will involve the prospective Service User, his/her representatives (if any) and relevant professionals. A Trusted Assessor model could be suitably utilised.
- b) Upon admission, a further person centred detailed Assessment will be undertaken by the Provider to determine the Service User's self-care and functional abilities, physical, emotional, social, mental health and spiritual needs.
- c) The Provider is expected to comply with the provisions regarding equipment as set out in the B&NES Care Home Equipment Policy (Appendix 1). Equipment should be provided by the Care Home if it is the type of equipment commonly required by Service Users in the categories for which the Care Home is registered.
- d) Assessments of newly admitted Service Users shall be completed within 48 hours of notification to the Provider of a possible Placement.
- e) Bath & North East Somerset Council intend that 90% of admissions requested at weekends into Care Homes are accepted recognising the safety of the Care Homes and at the discretion of the Manager.

STANDARD 3: Care/Support Planning/Person Centred Care and record Keeping.

Service Users' ongoing health and social care needs are set out in individual person centred care/support plans. Service Users' rights and best interests are safeguarded by the Provider's record keeping policies and procedures.

- a) The Provider will draw up an initial Provider Care and Support Plan within the first 48 hours of admission. A full person centred Provider Care and Support Plan will be drawn up by the Provider not more than four weeks after admission but will evolve and develop during the Service User's stay. The plan will be developed in line with the Providers own policies and procedures but will meet the following requirements:
 - The plan will be drawn up with the Service User and their support network

- The Service Users are encouraged to determine their own needs

Attention will be given by the Provider to ensure the plan is person centred on the needs of the Service User, reflecting their background, qualities, abilities, interests and preferences (i.e. dietary needs).

The plan will also include risk Assessments, risk management plans and mental capacity Assessments as required. Person centred care/support plans produced for all identified and potential needs (ie, where there is a potential for the Service User's needs to change as a result of their condition changing or deteriorating).

- b) The Provider shall keep a register of all Service Users within the Home including room numbers, funding authority, next of kin and General Practitioner details. Such information must be kept up to date and be accessible upon request by the Commissioner in the event that this is required.
- c) Care documentation will follow the process of Assessment, planning, implementation and evaluation and provide clear, concise and directive information that reflects the care required to meet the Service User's individual needs. The Provider Care and Support Plans shall include goals for independence and maintaining Service Users' abilities. The Provider Care and Support Plans and risk Assessments will be reviewed as a minimum on a monthly basis or as and when the Service User's needs change.
- d) Service Users will have an Assessment of their mouth care needs on admission (NICE Guidelines 48)
- e) All documentation will be concise and accurate and nursing documentation will meet Nursing Midwifery Council Guidelines for Record and Record Keeping.
- f) All records, including care records, daily records and charts must be made contemporaneously and chronologically and be legible to the reader.
- g) All documentation will be evidence based and reflect underpinning evidence based nursing knowledge, legal requirements and relevant and current clinical guidelines both nationally and locally.
- h) Service Users shall (in addition to and notwithstanding provisions elsewhere in this specification) be consulted about routines within the establishment and be entitled to participate in discussions about any proposed changes.
- i) Service Users shall be enabled to make informed choices about their future care and personal plans and be fully involved in, and informed about, the individual Assessment(s) of their care and personal plans, unless they state otherwise.
- j) Service Users and/or their representatives, including Advocacy support, must be involved in the production of Care and Support Plans and invited to attend care review meetings. Care and Support Plans will explicitly identify whether the Service User has given Consent for the plan or whether they lack the capacity to

do so. If this is the case, documented evidence will demonstrate how a Best Interest Decision was made.

- k) Access to interpreters must also be available to those who would benefit from this facility, including profoundly deaf people and this should be considered at times of Assessment and review. Where appropriate, the cost of providing an interpreter will be met by the Council.
- l) Service Users will have access to their records and information held about them by the Provider.
- m) All individual records will be stored in a secure place. Records will be up to date, adhere to professional record keeping standards and be constructed, maintained and used in accordance with the Data Protection Act 2018, General Data Protection Regulation (Regulation (EU) 2016/679) - and other statutory requirements.
- n) The Provider will undertake monthly audits of care/support planning and record keeping in order demonstrating the accuracy, quality and consistency of information, measure the outcomes of care and ensure that risks to Service Users are minimised.
- o) The Service User shall be enabled to choose their own registered GP within 48 hours of admission.(subject to acceptance by the GP, there are arrangements in place under the NHS Care Home LES (Local Enhanced Service) which encourages the use of a specific GP for specific Nursing Homes; these arrangements may be encouraged by the Home but is not intended to limit choice for Services Users) and to consult them in private and give prior Consent to their treatment. In addition they shall be enabled, so far as it is possible for them to do so, to manage their own financial, legal and personal affairs.
- p) Service Users shall be enabled, so far as it is lawful and possible for them to do so, to exercise civil rights and duties, in particular to vote at elections and receive political literature. They shall also have reasonable access on request to a land line telephone (chargeable to reasonable charges or not) by which they can have private telephone conversations not overheard by other people.

STANDARD 4: Meeting Needs and Outcomes/Continual Evaluation/Review.

Service Users and their representatives know that the Home they enter will endeavour to meet and continue to meet their needs and agreed outcomes.

- a) Assessment and the Council Care and Support Plan information from the Council will form the basis of Provider Care and Support Plans which will be created on entry to the Home and kept up to date in the light of the Service User's changing needs. All Staff who provide care for the Service User will be aware of the content of the current Provider's Care and Support Plan and know where to find and add to records.

- b) Records will be clear and readable, distinguish fact from opinion, be signed or authorised by the person making the record in a manner that identifies that person reliably. Records will be kept confidential and only shared on the basis of Consent of the client. Records will be kept securely out of the reach of people who are not entitled to see them.
- c) Documentation and measurable outcomes will be maintained to clearly evidence the continual evaluation and review of Service Users' needs.
- d) Records will document the identification and evaluation of risk and will be sufficiently clear and accessible to inform all Staff including agency Staff accurately about the care that is required for the individual
- e) The Provider will ensure that Staff individually and collectively have the skills, experience and qualifications to deliver the services and care which the Home reports it will provide.
- f) Specialised and appropriate services, including specialised equipment will be offered and provided where relevant.
- g) Services such as chiropody, opticians, dental services, talking therapies, mental health services and substance misuse services are accessed for the Service Users.

STANDARD 5: Provision of and Access to Health and Social care
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Service Users receive appropriate evidence based health and social care and have access to community services and specialist input to meet their assessed needs and maximise their health, independence and wellbeing.

- a) Service Users' health, independence and wellbeing will be promoted, monitored and maintained and access will be provided in a timely manner to relevant primary care and specialist health and social care services to meet assessed individual need.
- b) Service Users' physical, psychological and mental health will be proactively monitored and early preventative and restorative care provided or arranged in order to improve health, promote independence and wellbeing and maintain their quality of life including:-
 - Tissue viability and the management of wounds
 - Continence management including the management of urinary catheters and stoma care
 - The management of malignant and long term chronic diseases, including, Ischaemic Heart Disease, Stroke/TIA's, Diabetes, Chronic Airways Disease and Asthma, Parkinson's Disease, Multiple Sclerosis and Huntingdon's Disease
 - Health promotion, screening and preventative care
 - Infection prevention and control

- Maintenance of mobility, functional ability and falls prevention
 - Pain management
 - End of life care
 - Nutritional screening and support including the management of Service Users who suffer with dysphagia or require PEG feeding
 - Oral health care including preventative care where the individual needs carer support and access to appropriate dental services.
- c) Service Users and/or their representatives are involved in decision making around care and health intervention.
- d) Community nursing and other specialist care such as Infection Prevention and Control Specialist Nurse, occupational therapy services, falls prevention, continence advice, tissue viability, dietetic services, pharmacist, diabetic liaison, community dental services, optometrist, physiotherapy, epilepsy nurse, in-reach mental health and learning disability services, speech and language and specialist palliative care will be available to Service Users based upon individual needs led Assessment and will be accessed in a timely and co-ordinated manner.
- e) Service Users shall have access to specialist health and social care aids and equipment according to assessed need and Staff will be trained and assessed as competent in the safe usage of this equipment.
- f) The Service User shall be enabled to access local general dental services, emergency or out-of-hours dental treatment and community dental services.
- g) **Contenance:** Standards of care will be in line with the guidance set out in chapter 7 of the document linked from this page
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4005851

Service Users will be afforded support to maintain and improve their capacity to remain continent of urine and faeces whenever possible. Service Users will be helped to maintain their comfort and dignity to the maximum extent. Where continence problems arise, the Provider will make a referral to the local Continence Team. Every effort will be made to give ease of access to toilet facilities. Nursing Homes will have Staff trained to identify/assess incontinent patients. Residential Homes are not required to be able to assess for management but will be able to recognise problems needing further Assessment and treatment and make appropriate and timely referral using pathways agreed locally. Service User records will show i) presence and severity of symptoms, ii) whether an Assessment has been carried out, iii) whether a management plan has been prepared, iv) basic treatment and management provided, v) treatment outcome.

The NHS will provide all assessed continence products to the Service User according to assessed need following a continence promotion assessment, at no additional charge.

- h) **Tissue Viability:** The Provider shall have up to date policies and procedures to support evidence based tissue viability and wound management practice.

Care Homes without nursing will liaise with the relevant health professional if they have any concerns in relation to skin injuries and pressure areas/pressure area care and will follow the guidance provided. This may include advice in relation to (but not exclusively) hygiene, repositioning regimes or appropriate equipment to be used. Such guidance will be clearly document in a plan of care.

All Staff must be aware, through training where needed, of the principles of prevention and of their duty to report tissue viability issues arising with individual Service Users.

Tissue viability interventions and wound management shall be carried out by competent Registered Nurses (either employed by the Provider or through community nursing services) with up to date knowledge and skills in the prevention, assessment and management of pressure ulcers and management of wounds including:-

- The anatomy and physiology of the skin, aetiology of wounds and the principles of wound healing
- The underlying intrinsic and extrinsic factors that may contribute to the development of a pressure ulcer or wound such as malnutrition, systemic disease, poor mobility or medication
- The classification of wounds
- Prevention of pressure ulcers (European Pressure Ulcer Advisory Panel EPUAP 2009)
- NICE guidance for 'The Prevention and Treatment of Pressure Ulcers' (2005).
- The appropriate selection and safe use and maintenance of pressure relieving devices and mattresses
- Appropriate assessment of seating by trained assessors (physiotherapists or occupational therapist) to prevent pressure ulcers and ensure the entire chair or cushion allows for correct distribution of weight, postural alignment, and support for the persons feet
- The significance of nutritional care and wound healing
- Potential wound complications
- Management of minor wounds, abrasions and skin tears
- Management of chronic wounds
- Assessment and management of pain for both chronic wounds and acute pain experienced during treatment/dressing changes
- Management of infected wounds
- Management of complex wounds, referral how and when to seek specialist advice
- Skin care, burns and management of skin conditions
- Classification of dressings and treatments and the factors that contribute to the selection of an appropriate dressing or treatment.

Wound care documentation will be descriptive and directive incorporating a holistic assessment of the Service Users' individual health needs, links into Risk Assessment, predisposing factors, include a rationale for the selection or change of a treatment or dressing and document clinical outcomes. Documentation will include planned preventative strategies and plans for reassessment.

Wound assessments and care/support plans will include:-

- The location and measurement (grade and dimensions) of the wound demonstrated by a wound map and photograph (with the Service User's Consent or documentation around BIA/LPA)
- A record of any underlying or undermining intrinsic and extrinsic factors that may have contributed to the wound for example general health status, malnutrition, systemic disease, poor mobility or medication
- A description of the colour or appearance of the wound bed and status of the surrounding skin, including any undermining/ tracking sinus or fistula
- A record of any exudate, pain or malodour
- A rationale to support the selection of a treatment or dressing which may be determined by the type and position of the wound, the amount of exudate, pain, odour, any known allergies, the service user's compliance/concordance with the dressing and the frequency of dressing changes. The wound should be evaluated and reviewed at each dressing change and documented accordingly.

Wound care documentation will clearly document clinical outcomes and provide a chronological history of the progress or deterioration of the wound demonstrating regular evaluation and review and any specialist input or referral.

An appropriate and evidence based risk management tool shall be used to assess risk and where necessary an action plan put in place.

Staff will be trained to identify individuals most likely to develop pressure ulcers and will be competent to recognise pre-disposing risk factors as a part of both the pre-admission Assessment and on-going Assessment process. Staff working in Care Homes without nursing must also be trained to identify individuals most likely to develop pressure ulcers and identify when an appropriate health professional is sought for advice and guidance.

- a) Service Users will have regular health checks including specialist and medical reviews of their health and medication and proactive screening and management of chronic disease processes.
- b) The Provider will facilitate where appropriate access to assistive technologies/ telehealth equipment in order to improve the functional ability of people with long term conditions and support them to manage their condition and promote independence.

- c) Service Users shall be supported to access transport to appointments and accompanied by a member of Staff if they wish or where there is no other preferred option for Service Users.
- d) Registered Nurses will have the skills to recognise when a Service User is clinically deteriorating and seek timely, active treatment, where appropriate.
- e) Registered Nurses will be competent in the recognition of medical emergencies, to provide first aid and basic life support in the event of:-
 - Cardiac or respiratory arrest
 - Choking
 - Severe anaphylaxis
 - Acute heart failure
 - Myocardial infarction
 - Stroke/TIA
 - Fits/seizures
 - Diabetic hypoglycaemia and hyperglycaemia
 - Head injury
 - Traumatic wounds and burns
 - Fractures
 - Haemorrhage
 - Falls.

STANDARD 6: Meeting Communication Needs

Communication with Service Users is conducted in a way that maximises their independence, choice, control, inclusion and enjoyment of rights.

- a) Communication both verbal and written will be conducted in a way that is understandable to the Service User and in a way in which they can make themselves understood. Service Users say that the way they are communicated with makes them feel better about themselves.
- b) The communication needs of each individual will be identified and include recognition of visual, hearing and cognitive difficulties. The Provider will ensure they find sources of information and advice and understand how to deal with any dilemma relating to communication.
- c) Communicating in inclusive ways will be dependent upon:-
 - An Individualised care/support plan using accurate information on how to get communication right for each Service User. This may be in the form of a communication passport.
 - Staff awareness and knowledge of a range of resources that support inclusive communication approaches, e.g. Total Communication, Intensive Interaction amongst others.

- Having and using a range of resources that support inclusive communication
 - Enabling the use of digital media eg. SKYPE or other similar communication method.
 - Support from management and senior Staff
 - Use of relevant external support when required, e.g. Speech and Language Therapy
 - Understanding primary language if English is not the individual's first language.
- d) The Provider and Staff will communicate and provide written information in a format that each Service User and/or their representative can understand.
- e) Service Users will be supported to interact with others and express themselves.
- f) The Provider shall adapt and facilitate activities, meetings, menus, and feedback and complaints procedures in order to include Service Users.
- g) Referrals will be made to Advocacy services where this is necessary.

STANDARD 7: Personal hygiene, comfort, dignity and respect.
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Service Users receive the assistance they need to maintain a high standard of personal hygiene, comfort and dignity, in a manner that complies as far as possible with their wishes and personal privacy. Respect towards Service Users means they are supported and treated in a way that makes them feel better about themselves.

- a) The Provider will promote a culture that reflects and demonstrates that Service User privacy, dignity and respect is embedded in the beliefs and values of the service. Service Users will say they exercise choice and control and feel better about themselves because of the way they are treated.
- b) Staff will introduce themselves to Service Users on first contact. Staff will knock on personal room doors before entering. Consent will be obtained from Service Users for each and every action that affects them.
- c) Each Service User will be offered assistance in relation to their needs with regard to washing, bathing, shaving, dressing, personal grooming, toileting, mouth care needs and preferences, diet, eating and drinking and mobility, and where appropriate, nursing care to ensure they receive a level of care where they remain healthy and active to the maximum possible degree.
- d) Services Users must be enabled, as far as is reasonably practicable and with their Consent, to maintain a standard of personal appearance in keeping with their personal expectations and personal dignity regardless of any mental impairment which may render them less aware of these matters.
- e) Service Users must be asked for their preferences as to the gender of persons carrying out intimate personal care tasks on admission which must be recorded on

the Provider Care and Support Plan and may change their mind at any time. Their wishes should be respected wherever possible. If in exceptional circumstances it is not possible to accede to the Service User's expressed preferences this must be recorded on the individual Service User's record.

- f) Care and support will aim to exercise choice and control and promote the Service User's self-confidence, self-esteem, sense of belonging and wellbeing, and maximise their individual abilities.
- g) Service Users shall be given reasonable assistance as part of their Provider Care and Support Plan and whether or not specified by the Council's Care and Support Plan, to access their own television, radio or other audio visual equipment, books, and means of communication, such as writing letters, to a reasonable extent and in line with their wishes and preferences. Staff will assist with minor aspects of use and maintenance, such as changing batteries, adjusting aerials, adjusting volume, assisting with earphones, ensuring remote controls are within reach or changing channels, to a reasonable extent.
- h) Care must be taken to ensure dignity and privacy at all times when the Service User is engaged in receiving personal care, regardless of whether the person may have a mental condition which appears to render them unconcerned with their personal dignity. Homes should consider using "Care in Progress" signs on doors. Particular care is required in shared rooms or public areas in order to avoid embarrassment to other Service Users and visitors. Conversations regarding intimate personal care matters must be conducted with discretion avoiding being overheard by other people.
- i) Service Users will be treated as individuals, receiving a personalised service encouraging choice and control. They will be listened to and supported to express their needs and wishes.
- j) Staff will not make judgemental statements about the lifestyle or standards of any Service User, either in verbal or written communication.
- k) Service Users will be facilitated to make and receive personal phone calls in private. This will include provision for those who are unable to use a phone independently.

STANDARD 8: Medication Management.

Service Users are protected and supported by the Provider's policies and procedures for the management and administration of medication.

- a) The Provider will have clear policies and procedures which demonstrate recognised best practice.
- b) The policies will make it clear who is accountable and responsible for using medicines safely and effectively in the Care Home. The policies will be evidence based and include the principles of:-

- Sharing information about a Service User's medicines including when they transfer to another care setting
- Accurate and up to date recording keeping and MAR charts
- Identifying, reporting and reviewing medicines-related problems
- Keeping Service Users safe (safeguarding)
- Accurately listing a Service User's medicines (medicines reconciliation)
- Medication review
- Safe handling of medicines and controlled drugs including ordering, storage and disposal
- Self-administration
- Care Home Staff administration of medicines including 'when required' medication
- Staff training and competence requirements
- Covert administration
- Homely Remedies/Minor Aliments
- Palliative care
- Verbal orders
- Administration via a feeding tube
- Correct use of infusions and injection devices in Care Homes with nursing
- Monitored Dosage Systems and Compliance Aids.

- c) In Care Homes with nursing, responsibility for medicines administration may be delegated to care Staff who will be appropriately trained and assessed as competent. Registered Nurses will remain accountable for medicines administration in the Home and must provide supervision to care Staff undertaking the task.
- d) All Registered Nurses and other relevant Staff will complete a medicines management assessment as part of the induction process and provide evidence of ongoing continuing professional development in medicines management.
- e) The Provider will regularly assess and provide documentary evidence of the competency of all Registered Nurses and other relevant Staff in the management of medication to ensure that practices are compliant with the standards outlined in the policies and procedures.
- f) Information and advice will be sought from the pharmacist, where appropriate, in relation to administering, monitoring and reviewing medication.
- g) The Provider will ensure that they have an up to date list of past and present medications for each Service User immediately the service begins.
- h) The Provider will support Service Users to take medicines independently or administer medicines when they are unable to do so.

- i) Records must include details of any capacity assessments and Best Interest Decisions made on behalf of any Service User lacking capacity to Consent to medication.
- j) Any arrangements for covert medication must be made in accordance with Mental Capacity Act guidance and clearly documented.
- k) Self-administration will be undertaken within a risk management framework and suitable lockable facilities provided.
- l) Service Users' medication will be reviewed with their General Practitioner six monthly or more frequently as required.
- m) Medication Administration Records (MAR charts) will be audited monthly to provide an audit trail of stock control and storage of medicines including monitored dosage systems and evidence that correct procedures have been followed.
- n) Additional audits will include monitoring the administration, recording and disposal of medicines. Audits must be robust and comprehensive and identify that measures are in place to ensure safe practice such as:-
 - The use of photographs to identify that medicines are being administered to the right person
 - Specimens of Staff signatures to identify care Staff or the Registered Nurse responsible for the administration of medication
 - The correct and accurate completion of MAR charts
 - Satisfactory procedures for transcribing medication onto MAR charts and recording dosage changes onto MAR charts which include obtaining countersignatures from another registrant or competent health professional.
- o) The Provider will monitor the effect of each Service User's medication and take action if their condition changes including side effects and adverse reactions. In addition to this requirement, the Provider will ensure Service Users taking anti-psychotic medication are reviewed to assess for benefit within four weeks of antipsychotic initiation.
- p) The Provider shall have arrangements in place to record and report drug related incidents including findings of their service review and lessons learnt in order to reduce the risk of repetition.
- q) Service Users will be notified of any errors in relation to the administration of their medication or their representative.
- r) Records shall be maintained to reflect the safe disposal of medication.

STANDARD 9: Autonomy, Choice, Independence and Fulfilment

Service Users are assisted to express informed choice and control over their daily lives and supported in maintaining their personal identity, individuality and independence.

- a) Service Users shall be encouraged and promoted to make independent choices as individuals in order to determine their needs, beliefs, culture, preferences and values.
- b) Service Users shall make their own decisions and be given all practicable help before anyone treats them as not being able to make their own decisions.
- c) A Service User's ability to make their own decisions will be assumed unless demonstrated otherwise in accordance with the requirements of the Mental Capacity Act (2005) Service Users shall have the right to think and act without having to refer to others, including the right to say no to help.
- d) The Provider will ensure that all Staff understand how the Service User's right to autonomy, choice, independence and fulfilment is maintained within the context of the Mental Capacity Act (2005) and Deprivation of Liberty Safeguards.
- e) Service Users will identify the circle of people to be involved in their life (e.g. partners, relatives, and friends) and state how they would like them involved. This circle of people will be provided with adequate and timely information so they can be involved in accordance with the Service Users' wishes.
- f) Service Users and/or their relatives and friends shall be informed of how to contact external agencies (e.g. Advocates), who will act in their interests.

STANDARD 10: Rights

Service Users' legal rights are respected, protected and upheld.

- a) Service Users are individuals, irrespective of their living situation. They retain all their legal rights and entitlements as individuals when they enter a Home and shall be helped to exercise those rights. This includes participation in government elections and other civil processes.
- b) Service Users shall be assisted to exercise their right to be a full citizen in whichever way they choose.
- c) Service Users' rights will be written into the Provider's statement of values, aims and objectives.
- d) Service Users will have formal mechanisms to be consulted about the running of the Home.

- e) Service Users will have the right to take risks. Risk taking is a normal part of everyday life, so Service Users shall be involved in agreeing any controls or interventions that may be put in place. Risks shall be fully assessed and reasons for actions clearly documented.
- f) Where there is doubt about a Service User's capacity to make a certain decision a referral shall be made to Independent Mental Capacity Advocates where appropriate. Information about MCA Advocates is available from the B&NES website www.bathnes.gov.uk
- g) The principles of the Mental Capacity Act 2005 and the Deprivation of Liberty Standards will be upheld by Staff working with Service Users who lack capacity.

STANDARD 11: Diversity, equality and individuality – Expression of Beliefs

Service Users live in an environment that is committed to promoting a culture which respects diversity, equality and individuality and their experiences reflect this commitment.

- a) The 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.
- b) A strategic approach will be adopted by the Provider in delivering education to Staff so that they understand the:-
 - Organisation's aims and objectives
 - Relevant policy provisions
 - Difference between acceptable and unacceptable behaviour
 - How personal attitudes and values can affect behaviour
 - Role they play in making the management of diversity a reality
 - Meaning of cultural diversity
 - Meaning and impact of discrimination in the workplace

STANDARD 12: Dementia/ Mental Health

Service Users whose emotional or mental wellbeing are affected by memory or cognitive impairment or similar condition are assured that the care and support they receive promotes their quality of life.

- a) People with cognitive impairment or mental health problems frequently experience emotional and perceptual changes resulting in depression, anxiety and disorientation, which may also affect their normal pattern of behaviour and functional ability. People with a diagnosis of dementia, experience a progressive decline in multiple areas of functioning including memory, reasoning, communication skills and the skills needed to carry out daily activities. Some people may develop behavioural and psychological symptoms

such as depression, psychosis, aggression, withdrawal and 'walking with purpose', which may complicate care and can occur at any stage of the illness.

- b) The Provider shall ensure Staff are aware of difficulties experienced by Service Users relating to emotional and perceptual changes, depression, anxiety and disorientation, which may also affect their normal pattern of behaviour and functional ability.
- c) Symptoms of aggression, confusion and disorientation may be the result of dementia or mental disorder or a delirium/toxic confusion state due to infection, dehydration, constipation or the side effects of medication. Providers shall monitor these aspects to assist with differentiating between symptoms and Service Users shall be referred to a General Practitioner for a specialist mental health assessment, diagnosis and treatment as necessary.
- d) Care and supporting planning shall take account of the impact of these symptoms and direct Staff how to meet Service User outcomes and needs.
- e) Staff shall monitor for changes by Service Users and look for behavioural cues that may indicate a change being required in the way care and support is provided or a deterioration that may require a referral to the General Practitioner or mental health service.
- f) The Provider shall ensure Staff work as part of any multi-agency team to support the Service Users to include effective liaison with Community Intervention Treatment team, health services and the service users' General Practitioner.
- g) Providers shall recognise when their service may need additional support or a more specialised service to meet the needs of Service Users and refer this to the Purchasing Team for a review to be instigated in a timely manner.
- h) The Provider shall differentiate between symptoms of aggression, confusion and disorientation which may be the result of a delirium/toxic confusional state due to infection, dehydration, constipation or the side effects of medication. This will rely on Registered Nurses where relevant or other medical advice being sought.
- i) The Provider will ensure that Staff have the necessary training, skills and knowledge of Service Users' individual needs and behaviour in order to deliver effective person-centred care. Dementia Awareness training, as a minimum, is included as part of Staff induction.

STANDARD 13: Managing Challenging Behaviour

Service Users who present behaviour that challenges services are supported in a way that helps them to communicate and to safely deal with situations they find difficult.

- a) The Provider shall ensure the application of good practice that focuses on person- centred and positive support to Service Users whose behaviour challenges, services and ensure Staff are suitably trained and competent in those practices.
- b) Behaviour support shall be planned in a way that reduces the likelihood of challenging behaviour happening, identifies early warning signs and shows how to support Service Users in a way that suits them.
- c) The Provider Care and Support Plan shall consider all aspects of the Service User's life to include how meeting their support and care outcomes and their physical, mental, social and emotional wellbeing has an impact on their behaviour.
- d) Interventions used shall be the least restrictive possible and any physical restraint and medical intervention shall be a last resort.
- e) Guidance to Staff will show how to react in a situation where the Service User is likely to behave in a way that challenges.
- f) The Provider Care and Support Plan shall involve, as relevant, the Community Learning Disability Team, Community Mental Health Team for Older People. The Provider will ensure there is evidence of on-going multi-disciplinary working and effective liaison with specialist services.
- g) The Provider Care and Support Plan shall include procedures to be followed after an incident of challenging behaviour to include a description of how the Service User is likely to look and behave as they recover.
- h) The Provider Care and Support Plans shall be reviewed and updated on a regular basis and at other times when there is a change that may impact on them or an incident of challenging behaviour.

STANDARD 14: Social Contact , Activities and Community Contact

Service Users say the way they spend their time matches their preferences, and mee social, cultural, religious and recreational participation.

- a) Service Users will be supported to access opportunities to maintain their mental health and wellbeing using the model of the 5 ways to wellbeing. They will have the opportunity to spend time in a way that is meaningful and stimulating for them to include leisure and recreational activities in and outside the Home, which suit their needs, preferences, aspirations, lifestyle, choices and capacities. This means those activities provided by the Provider and those arranged independently by the Service User. Service Users will be assisted to maintain confidence, positive self-esteem and protected from loneliness and isolation in a way that promotes their individuality and identity.
- b) Individuals will be encouraged to exercise their lifestyle, culture and beliefs through planned opportunities and in a spontaneous way.

- c) Staff providing group or individual activities will be appropriately trained and skilled to deliver effective and meaningful activities that are both tailored and suited to meet individual needs.
- d) Consideration will be given to Service Users with dementia and other cognitive impairments, those with sensory impairment, and those with physical disabilities or learning disabilities.
- e) The Provider will be committed to accessing available support and resources from recognised organisations with specialist knowledge and expertise.
- f) Comprehensive life histories will be undertaken in partnership with the Service User and/or their representative and a plan of care developed so that past and present life experiences, along with priorities for the future, can be agreed and met.
- g) Service Users will be able to have visitors at any reasonable time and links with the circle of family, friends and local community will be in accordance with individual preference.
- h) Up to date information about activities will be circulated to all Service Users in formats that meet the needs of individuals.
- i) Service Users' participation in activities will be recorded and evaluated regularly to ensure that outcomes and Service User needs continue to be met.

STANDARD 15: NUTRITIONAL CARE

Service Users have enjoyable meal time experiences that meet the individual's needs that mean they eat what they like when they want it.

- a) Meal times should be enjoyable experiences and promoted as a social activity. Dining rooms and other eating areas shall be pleasant, environments conducive to eating that are welcoming, clean, tidy and free from malodours.
- b) During induction training all care and catering Staff will be trained in the importance of good nutrition and hydration, how to recognise the signs of poor nutrition and hydration and how to promote adequate nutrition and hydration.
- c) All Staff will be aware of the nutritional care requirements of adults in general and specifically the requirements of all Service Users.
- d) All care and catering Staff will be trained in the special dietary requirements of older people, especially those with diabetes, dementia, chronic illness or with swallowing difficulties and specifically in the special dietary requirements of their Service Users.

- e) The Provider will provide all of the following to enable the Service Users to enjoy mealtimes: personal aids, special diets, food and fluid consistencies, special equipment, food and beverage likes and dislikes, how choices are made, where Service Users wish to eat each meal, at what time, with whom, good physical positioning, whether assistance is required to eat and any special occasions to be celebrated.
- f) Nutritional care requirements will be recorded within 48 hours of admission and then regularly updated and reviewed as more person centred information is gathered, tastes and / or medical needs change.
- g) All Service Users will be nutritionally screened using the Malnutrition Universal Screening Tool (MUST) or appropriate alternative questions asked within 6 hours of admission and then on a monthly basis as a minimum (excluding those identified from a Multi-Disciplinary Approach as requiring End of Life care).
- h) The Provider will have a clear action plan to follow if Service Users are found to be a medium or high risk of malnutrition and all care and catering Staff will be made aware of the actions to take.
- i) Action plans will include policies on food fortification, total fluid and food monitoring, more regular weighing and referrals to other professionals as appropriate. This may include a General Practitioner, Speech and Language Therapist, State Registered Dietician and / or Occupational Therapist.
- j) Providers will ensure that equipment and scales used are suitably and regularly calibrated and maintained in order to provide reliable and accurate measurement of Service Users' weight.
- k) Prescribed dietary supplements and thickeners will be used in accordance with the medication policy.
- l) If a diet is to be texture modified then catering and care Staff will be aware of the relevant descriptor required by the Speech and Language therapist.
- m) Menus and meals will reflect the ethnic, social, cultural and religious needs of the Service Users and include general programmes of events e.g. Pancake Day, Passover etc.
- n) A variety of hot and cold beverages, snacks and prepared fruit will be available for Service Users to help themselves to, upon request, throughout the day and night and offered to all Service Users on a regular basis.
- o) If the nutritional care requirements highlight assistance or encouragement to eat and drink is required, it shall be provided ensuring sensitivity and respect for Service Users' dignity and individual abilities. Sufficient Staff will be available to support those in need of assistance and/or encouragement to eat.
- p) Protected meal times (an environment conducive to people enjoying their meals and

being able to safely consume their food and drink without being interrupted by non-urgent activities) will be encouraged, Service Users will be able to invite friends and family to join them but will not be disturbed by other interruptions e.g. GP's, hairdressers etc.

- q) Service Users will be supported to maintain good oral hygiene to promote comfort, increase appetite, enable ease and safety of eating and drinking, avoid infection and improve overall quality of daily living.

STANDARD 16: End of life Care/Dying and Death

Service Users are assured that Staff will treat them and their family with care, sensitivity, dignity and respect at the end of their life and that they will receive, where possible, planned, measured and seamless care at the time of their death.

- a) End of Life care relates to the last few days or weeks of life. The Home will have an End of Life Care Policy and Guidelines that reflect local and national guidance.
- b) The Provider shall ensure that a TEP form (Treatment Escalation Plan) is in place which complies with the legal requirements of the Mental Capacity Act (2005) and ethical guidance issued by the BMA/RCN and Resuscitation Council (UK 2007), including guidance for DNAR using the recognised documentation with Bath & North East Somerset Council and CCG.
- c) The Provider shall ensure comfort and support is provided to Service Users when it is recognised that they are entering the end of life phase.
- d) All deaths will be managed with dignity and propriety and Service Users' spiritual needs, rites and functions shall be observed. There will be systems in place to ensure, when death is expected, that Service Users do not die alone unless it is their wish.
- e) Where Service Users require end of life or palliative care, an assessment will be co-ordinated by an appropriate CHC assessor/Dorothy House nurse specialist or Community Nurse to assess whether it is appropriate for that care to be provided by the existing Provider or elsewhere.
- f) The nursing assessment will involve advance care planning, where possible, to determine Service Users' wishes, indicating personal preferences concerning place of care and death, in agreement with Supporters and family and will include Service Users' wishes relating to resuscitation, if this is stated.
- g) Care in the last days of life will be co-ordinated and delivered in accordance with the Service Users' Provider Care and Support Plan Service Users' end of life care will be planned including relatives if desired, so that Service Users and relatives know what will happen and are able to prepare.

- h) There will be a policy and procedure in place for the verification of death.
- i) The Provider will ensure compliance with the National Institute for Clinical Excellence NICE 2011 End of Life Care Standard for Adults QS13
- j) Staff will be appropriately trained to manage the processes and procedures sensitively, to ensure Service Users are treated with dignity and respect and receive appropriate care and symptom relief.
- k) The Provider shall ascertain who will take responsibility for a Service User's property following death, and where there is no next-of-kin; arrangements for burial or cremation of a Resident for whom the Council is responsible will be agreed with the Council. The wishes of the Service User or their representative will have been recorded on admission.
- l) If the Service User has no executor, next of kin or person apparently entitled to administer his or her estate or if such person refuses to administer his or her estate the Provider may ask the Council to remove his or her possessions from the Home in which case the Council will do so as soon as reasonably practicable.
- m) The appropriate duty desk or Purchasing Team must be notified by phone within 1 day and subsequently in writing within 7 working days of all deaths of Service Users for whom the Council is responsible.
- n) The Provider will notify the Care Quality Commission within 24 hours about the death of a person.
- o) When a Service User dies in the Home where there is either an authorised Deprivation of Liberty Safeguard in place or a Deprivation of Liberty Safeguard application submitted to the Local Authority, the Provider will notify the Local Authority DoLs team within 24 hours.

STANDARD 17: Infection Prevention and Control
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Service Users reside in a clean environment where standard precautions and routine safe practice ensure the infection risks to Service Users, Staff and visitors are minimised.

- a) The Provider will have effective policies and procedures in place to protect Service Users from infection and ensure that they are cared for in a clean, safe and appropriate environment.
- b) The Provider will have effective and formalised Quality Assurance regimes and Risk Assessments in place to help prevent and control infection.
- c) Protective equipment will be available and worn for all aspects of care which involve contact with blood or body fluids or where asepsis is required.

- d) Hand washing facilities will be prominently sited in areas where infected material and/or clinical waste are being handled and this will include liquid soap and disposable hand towels.
- e) Sharps will be managed safely to reduce the risk of inoculation injury.
- f) Clinical waste will be managed safely and in accordance with legislation so as to minimise the risk of infection or injury to Service Users, Staff and the public.
- g) All Service Users' equipment will be cleaned and maintained appropriately to prevent cross infection.
- h) The Home shall be kept clean, hygienic and free from offensive odours throughout.
- i) Laundry facilities will be sited so that soiled articles, clothing and infected linen are not carried through areas where food is stored, prepared, cooked or eaten and do not intrude on Service Users.
- j) The Provider shall ensure, so far as is reasonably practicable, that Staff are free of and are protected from exposure to infections that can be caught at work and that all Staff are suitably educated in the prevention and control of infection associated with the provision of health and social care.
- k) The Provider shall have procedures in place to prevent and control Legionella bacteria including an up to date Legionella assessment with a plan of preventative maintenance.
- l) A local outbreak policy will be in place for the surveillance, recognition, control and management of infection and outbreaks with information available to Service Users and their visitors. Staff will be trained and aware of actions to take including reporting to Public Health England. All infection outbreaks will be reported to Public Health England within two days of an outbreak.
- m) Infection control procedures will be explicitly included within all Staff job descriptions, induction, development and on-going training for all Staff.
- n) Monthly clinical audits will be undertaken to determine best practice is maintained and incidence/prevalence rates for HCAI's, wound infections, urinary tract infections, notifiable infections, antibiotic prescribing, hand washing and decontamination of equipment.
- o) Robust audits will be carried out to ensure Staff follow correct infection prevention and control measures including an audit of the cleanliness of the environment.
- p) Information related to HCAI will be shared with other health and social care providers.

- q) The Home will have a policy/guidance for Staff on transfer of information relating to infections when Service Users are admitted to hospital or another care environment.

STANDARD 18: Accident / Incident Reporting

The safety and wellbeing of Service Users is assured through the Provider's Accident and Incident Reporting processes. Lessons are learnt from accident/incident/near miss reporting processes.

- a) The Provider's policies will reflect the procedures to be undertaken following an accident or incident and Staff are fully aware of the processes. The Provider will have a policy around what actions shall be taken following a head injury.
- b) All accidents and incidents will be comprehensively and contemporaneously documented using a system that meets current Data Protection (GDPR) guidelines.
- c) Details of accidents and incidents will also be recorded within Service Users' daily records together with information to reflect the Service Users' health, safety and wellbeing.
- d) Injuries, including bruises that are sustained following an accident or incident, shall be fully documented, using body maps where possible. Treatment required following an accident or incident will be clearly documented, including the precise treatment and support required and any necessary health or social care professional input e.g. Paramedics, District Nurses, General Practitioner, Community Psychiatric Nurses.
- e) Accidents and incidents will be regularly audited and a comprehensive monthly analysis undertaken and documented to identify patterns or trends in order to investigate and put in place timely measures to minimise or prevent such events reoccurring.
- f) Repeated accidents and incidents, such as falls or aggressive behaviour, will be referred to specialist health and/or social care professionals to seek support and guidance in managing such situations effectively and in the best interests of the Service User. This shall evidence a dynamic approach which attempts to pre-empt hazards/potential triggers and a proactive response before an incident occurs.

STANDARD 19: Staff Recruitment and Retention

Staff are fit and competent to meet the health and welfare needs of Service Users.

- a) The Provider shall operate robust Staff recruitment and selection procedure which takes all reasonable steps to ensure that individuals employed, including

volunteers, those appointed through an agency and workers from other countries, are in all respects appropriate persons to work with vulnerable people. A written policy and procedure shall be in place to reflect this practice.

- b) The Provider shall adhere to all equal opportunities legislation and will be expected to embrace the principles of diversity and equality.
- c) These steps must include a Disclosure & Barring Service (DBS) check at the appropriate level in accordance with the Safeguarding Vulnerable Groups Act 2006 requirements.
- d) Providers employing Staff who are required to obtain permission to work in the United Kingdom either directly or through an agency must ensure that they meet the legal entry requirements, that they have the necessary skills, expertise and qualifications required and all necessary and relevant documentation is available prior to employment, copies of which must be evidenced in their personal file for inspection and monitoring purposes.
- e) The Provider shall ensure that at least two appropriate written references are taken up; one of which must be from the individual's last employer, and shall demonstrate the means by which the suitability of all Staff has been assessed. Where the reference provided only gives dates of employment the Provider must be able to demonstrate that all attempts have been undertaken to ensure a safe and robust system of recruitment. The Provider will follow up each written reference with a telephone call to the relevant referee in order to verify the reference.
- f) Staff shall go through a full recruitment process including completion of an application form which provides complete employment history, and addresses any gaps in employment history.
- g) Staff must have the personal qualities and caring attitudes which enable them to relate well to Service Users and Supporters, and poses the required skills in spoken English, written literacy and numeracy to do the tasks required for caring for and supporting Service Users.
- h) Evidence of professional registration/PIN number checks will be obtained for all qualified nursing Staff employed and regularly reviewed.
- i) Providers shall maintain a personnel file for every employee which evidences all required documentation for inspection and monitoring purposes. Such documentation will include evidence of a written record of interview to demonstrate the applicant's suitability for the post.
- j) Providers employing agency Staff will obtain a Staff profile prior to commencement of employment. This will include photographic ID, relevant skills and competencies for the position, qualifications, professional registration and an up to date training record.

- k) Providers will ensure that the manner in which it provides the Services supports the emotional wellbeing of Staff and promotes the following:
- A sense of security – Staff should feel free from physical threat, rebuke or censure. Have secure conditions of employment with the emotional demands of the work recognised. Staff are able to work within a supportive but challenging culture.
 - Consistency of care – Providers will ensure that the Services provided by Staff reflect the values and the culture of the person receiving the care. Staff will promote the positives of caring as a career and providing support for older people from an early stage;
 - A sense of belonging - Providers should ensure that Staff feel: Part of a team, valued and that their contribution is recognised and valued.
 - A sense of purpose - Staff should be trained to support and deliver an outcomes based services; and have an understanding of organisational, professional and personal goals.
 - A sense of achievement - The Provider will ensure that Staff are able to provide good care to Service Users; Staff will feel satisfied with the results of their efforts, understand how they contribute towards the Service User's goals; And understand the importance of the Service User being able to make full use of their own skills and abilities to the full.
 - A sense of significance - The Provider will ensure Staff understand and value working with older people, they understand the important role they undertake. And understand that the work and their individual efforts matter.

STANDARD 20: Staffing levels and Workforce Planning

Service Users are supported to achieve their maximum life potential and care needs by the provision of the appropriate level of professional expertise and skill mix.

- a) The Provider's Staffing levels will enable the Provider to meet all the service standard requirements as detailed in this specification, both day and night, with the right competency, skills and experience.
- b) Staffing levels will be based on the dependency needs of all the Service Users. The Provider will have a dependency tool, which will be reviewed on a regular basis and written evidence made available to ensure and demonstrate that they reflect the changing needs of the Service Users.
- c) Staff numbers and skill mix will be matched to all Service Users' needs and reflect a high quality of care provision.
- d) The Provider will have contingency plans in place to cover Staff absence, sickness annual leave and succession planning.

STANDARD 21: Staff Induction and Training

Service Users are cared for and supported by professionally inducted, trained, and competent Staff, utilising best practice and this will be reflected in the standard of care that they receive.

- a) The Provider (at its own expense) will ensure that there is a Staff induction, training and development programme, which will meet the Skills for Care standards, where Registered Nurses are employed, NMC Code of Professional Conduct Practice Guidance. These expectations will be clearly included in written policies and procedures to reflect a commitment to a supportive working and learning environment.
- b) The Provider will ensure that Staff new to care achieve the Care Certificate within twelve weeks of commencing employment. All existing Staff should be able to demonstrate that they also meet the standards of the Care Certificate.
- c) The Provider will ensure that all Staff working within the Home are fully trained and assessed as competent to meet the individual needs of Service Users including all mandatory training and specialist and clinical education. Such training will be provided by accredited organisations and will be evidence based to reflect up to date specialist and social care and clinical guidance. This will be undertaken on commencement and completed within 12 weeks.
- d) The Provider will undertake a training needs analysis for all Staff which is reviewed regularly and updated and formulated into Staff personal development plans. Providers will have a training matrix that evidences the training received and ongoing training requirements within the Staff team.
- e) The Provider will ensure that its Staff receive appropriate training and maintain a record of all training which is provided or arranged by it for each member of its Staff. Appropriate training shall include (but not be limited to) the following:
 - Adult safeguarding;
 - Health and safety and first aid;
 - Managing difficult and emergency situations;
 - Food handling (where appropriate);
 - Equality and diversity.
- f) The Provider shall ensure that its Staff are trained to understand and be sensitive to the diverse cultural, religious and ethnic needs of Service Users and shall provide guidance on use of translation and interpreting services where necessary.
- g) The Provider will ensure Staff have an understanding of the principles of personalisation and the ability to develop person centred practices.
- h) Where there are identified concerns related to social care practice or the clinical practice competencies of individual Registered Nurses this will be

effectively managed by the Home with evidence of the provision of mentorship and supervision.

- i) Registered Nurses in charge of the Home unsupervised will have the appropriate level of clinical and management competency.
- j) Where a Provider employs a newly qualified Registered Nurse, they will ensure that mentorship/preceptorship is provided for the first six months in post.
- k) Providers who support student nurse Placements and nurses' registration and adaptation programmes will be able to provide evidence of accreditation with a participating University.
- l) Providers supporting candidates undertaking Nursing Adaptation Programme Placements will ensure appropriate mentoring and provision of the required period of protected learning in accordance with Nursing and Midwifery Council requirements.
- m) Providers will have a system in place to confirm new employees have successfully completed induction competencies prior to completion of the probationary period.
- n) Staff will not commence duties unsupervised until they have been assessed as competent for the role.
- o) Casual Staff/trainees and student workers will be subject to the same requirements of all permanent Staff.
- p) Prepare, develop and implement an ongoing Staff training policy and also encourage/assist its Staff to attend appropriate vocational courses and obtain appropriate professional qualifications

STANDARD 22: Staff Supervision and Appraisal.
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Service Users are cared for by Staff that are suitably and regularly supervised, monitored, supported and appraised and this will be reflected in the standard of care that they receive.

- a) All Staff will receive formal supervision, including clinical supervision for trained Staff, at least six times per year. Supervision will be systematically used to guide the work of Staff, to reflect upon their work practices and as a means of support for Staff to facilitate good practice. Casual Staff, trainees and student workers will receive proportionate support and review.
- b) Robust appraisal systems will be in place and all Staff will receive an annual appraisal/personal development review.

- c) A written policy and procedure will be in place to support the Provider's practice in regards to supervision and appraisal. Supervision and appraisal sessions will be documented.
- d) Staff that require membership of a professional body in order to practice will provide evidence of continued registration as part of the appraisal process. Employers should support the requirements for the Nursing and Midwifery Council (NMC) Revalidation in their supervision and appraisal processes.
- e) Poor performance or Staff misconduct is identified, challenged and managed and documentary evidence made available to demonstrate that appropriate support has been provided and action taken.
- f) The Provider shall only ask Staff to contract out of Regulation 4 of the Working Time Regulations 1998 (as amended) in exceptional circumstances and shall maintain a record of all Staff who contract out of the forty-eight hour limit.
- g) The Provider shall use its best endeavours at all times to ensure that none of its Staff enter into any private arrangement or agreement of any kind with any Service User.

STANDARD 23: Management and Leadership

The Provider will take responsibility for the leadership through the Manager as well as their own investment of finance, interest and time.

- a) The philosophy within the Home is person-centred and promotes the benefits of open, trusting and collaborative relationships between Staff, Service Users and their social and professional networks.
- b) The Provider shall ensure that the Home is managed in such a way that it complies with all requirements under the Health and Social Care Act 2008 and the Care Quality Commission (Registration) Regulations 2010, or any amending legislation.
- c) The Provider promotes a clear understanding of the organisations purpose, values and vision and encourages learning and innovation by rewarding reflection, creativity, flexibility and positive risk management.
- d) The Provider will ensure that each paid member of Staff is employed by it under a contract of employment and has a comprehensive job description;
- e) The Provider will be responsible for the employment, conditions of service, salaries, taxes, national insurance and all levies of any kind relating to the employment of Staff employed by the Provider.
- f) The Provider shall allow the Council the right of reasonable access to any of its Staff, subject to their agreement and any representation required.

- g) A Manager shall be appointed that is registered with the Care Quality Commission or has applied to be registered with the Commission within three months of commencement of employment within the Home.
- h) The Manager clearly demonstrates up to date knowledge and skills, leadership, competence and experience to effectively manage the Home on a daily basis and shows a sound understanding of the requirements set out in the Framework Agreement, Call-Off Contract(s) and Service Specification.
- i) The Manager will hold a qualification or be working towards QCF Level 5 Diploma in Leadership in Health and Social Care within three months of appointment and completed within two years.
- j) The Manager maintains and demonstrates personal and professional competence and credibility in line with current practice and will ensure they delegate appropriately with clear lines of accountability.
- k) Staff will work collaboratively as an effective team in a culture of openness, promoting mutual support and respect with an appreciation of each other's roles.
- l) The Provider shall ensure the following are in place to effect the continuous and sustained delivery of the service:-
- Proactive and reactive support so that the Manager is able to competently meet all requirements of the service
 - Contingency arrangements that plan for potential failure or service interruption
 - Business planning so that continuity of the service is ensured and to assure those who rely on the service that it will continue to be provided
 - Adequate programme so that the fabric of the building, fixtures and fittings, decoration and furniture is maintained and in good order.
 - The Provider shall co-operate with the Commissioner in times where the contingency plans require a joint response to interruptions, including reasonable requests for information.
- m) There is an expectation that the Manager or their delegated representative will attend the quarterly Care Home Forums.
- n) The Provider will:
- Have appropriate disciplinary and grievance procedures in place throughout the Contract Period and make such procedures available for inspection by the Council;
 - Serve notice on the Council within twenty-four hours of the particulars of any incident or alleged incident which occurs during the Contract Period and which leads to the Provider:
 - Undertaking an investigation into allegations of serious or gross misconduct by any member of its Staff in relation to the Services, or;

- Taking disciplinary action against any member of its Staff for serious or gross misconduct in relation to the Services,
 - or reporting any member of Staff to the DBS for inclusion on their barred lists.
- Keep an accurate record of all disciplinary action which is taken by it against any member of Staff during the Contract Period in relation to the Services;
 - Enter the details of any disciplinary action which it has taken against any member of its Staff, in the personal file of the member of Staff in question.
- o) Business Continuity Plans – The Provider will have a plan which relates to:
- all relevant statutory requirements governing the Provider’s statutory duty of care under the provision and operation of the Service;
 - systems of prevention and recovery to deal with potential threats to the Provider’s viability;
 - clear roles and delegated responsibilities for Staff and Managers who will take charge of co-ordinating the initial response to an emergency or disaster;
 - temporary/permanent loss of premises;
 - data recovery;
 - Staff in respect of their recruitment, selection, training, grievance and discipline;
 - Staff levels necessary for the provision of the Service;
 - the provision and maintenance of a safe environment suitable for the use of Staff, Service Users and their visitors;
 - the performance of the Contract in accordance with Good Industry Practice.
- p) The Provider shall liaise with the Council for the purpose of sharing information in order to minimise any potential disruption to the delivery of the Service.
- q) The Council warrants that any instruction given to the Provider shall, in the Council’s sole discretion, be reasonably necessary for the prevention or mitigation of the emergency or disaster, and reasonably within the power and ability of the Provider to comply with, having regard to the nature of the Provider’s business and its obligations to the Council under the Contract.
- r) Any controlled waste produced in the performance of this Contract is to be transported by a carrier registered under the Control of Pollution (Amendment) Act 1989 and disposed of at a site licensed under the Environmental Pollution Act 1990. Any request for variation to be made in writing to the Council at least seven days (7) before the carriage or disposal is due to take place.

STANDARD 24: Quality Assurance

Continuous quality improvement systems are in place to ensure the Home is run in the best interests of Service Users, demonstrates the quality and consistency of information, measures Service User outcomes and ensures that risks to service are minimised.

- a) The Provider shall develop and implement throughout the Contract Period its own policies and procedures in relation to the following:
- A procedure for dealing with issues of confidentiality, data protection and access to records in which meet the requirements of the Framework Agreement, Individual Service Agreement Terms and Conditions and where applicable Block Contract;
 - Procedures for dealing with accidents, emergencies and critical incidents;
 - Procedures for dealing with aggressive or violent incidents;
 - A procedure for an 'out of hours' emergency response service;
 - A written quality assurance policy that ensures continuous improvement;
 - A safeguarding policy; which includes details of who has responsibility for safeguarding within the organisation, safer recruitment, Staff induction and training, allegations management and information sharing protocols.
 - A policy for maintenance of records;
 - A notification of incident policy;
 - An equality and diversity policy;
 - A harassment and bullying policy;
 - Guidance on safe working practice.
- b) The Provider will have quality assurance and monitoring systems in place which:-
- Seek the views and experience of Service Users, relatives, friends and health and social care professionals.
 - Enable realistic Assessment of the Services provided.
- c) All Staff will be actively involved in the quality assurance and monitoring processes.
- d) Quality Services will be recognised as a motivating force and Staff will strive for continuous improvement and best practice.

Quality assurance will demonstrate:-

- Measurable organisational improvement
- Training that provides Staff with the skills and tools to analyse problems and working processes
- Staff who are empowered and supported to make positive changes (analysing dilemmas/problems and suggesting solutions)
- Positive attitudes and working relationships

- Continuous building on good practice
 - Introduction of new procedures.
- e) All Registered Nurses must participate in clinical audit and reviews of clinical care in accordance with Nursing and Midwifery Council guidance.
- f) The following monthly audits will be undertaken as a minimum requirement:-
- Care records, care/support plans and record keeping
 - Medicines management
 - Training
 - Infection prevention and control, including health care acquired infections (HCAI's)
 - Nutritional screening and support
 - Tissue viability and wound care practice
 - Accidents, incidents and complaints
 - Call bell responses if such technical systems are in place.
- g) Audits will identify trend analyses and training issues, and action plans will report action taken and outcomes.
- h) Staff and Service User and/or representatives meetings will be used as a forum to identify, take stock and reflect on areas for improvement. Such forums demonstrate that the Home will be committed to involving and encouraging others to be included and listened to in the day to day running of the Home.
- i) The Home will supply Bath and North East Somerset Council and CCG with the relevant information for completion of quality audits at quarterly intervals in accordance with the Contract, Risk Management and Quality Monitoring of Care Homes Policy and in a format determined by the Council.

STANDARD 25: Financial Procedures/ Personal Finances

Service Users are safeguarded by the accounting and financial procedures of the Home. Service Users decide how to spend their money in the knowledge that personal finances are safeguarded by robust controls and audit procedures in the Home.

- a) Service Users shall receive their personal allowance; this must not be included as part of the fees. The Service User will retain control of their own money except where they state that they do not wish or lack capacity and safeguards are in place to protect the Service User.
- b) Providers shall ensure that all Staff that handles money on behalf of Service Users clearly understands the procedure for receipting and recording all transactions.

- c) The Provider will ensure that all Staff understands how the Service User's right to autonomy, choice, independence and fulfilment is maintained within the context of the Mental Capacity Act (2005) and Deprivation of Liberty Safeguards in relation to any financial management issues.
- d) There will be a clear policy and guidelines within the Home in respect of the Provider's Staff receiving gifts or legacies from those who use the Service and payments towards Staff costs on outings.
- e) Public Liability Insurance will be in place for a minimum of £5 million.
- f) Service Users will be advised of the level of insurance cover the Home maintains for any personal possessions brought into the Home (including if none is in place).

Complaints Procedure

The Provider will have a complaints policy and procedure which:

- a) focuses on meeting the needs of the complainant;
- b) is well publicised and provide information that is straightforward and tailored to meet the needs of the complainant, taking into account any specific communication needs;
- c) is made available to all Service Users and their family members or representatives;
- d) provides a single point of contact for anyone wishing to make a complaint;
- e) encourages feedback from Service Users and their representatives;
- f) acknowledges the complaint on receipt and offer to discuss the complaint and the nature of the investigation;
- g) offers Service Users support throughout the handling of the complaint, and advice on the availability of appropriate Advocacy support;
- h) deals with the complaint efficiently and thoroughly, avoiding unnecessary delay;
- i) ensures that the complainant receives a timely response in accordance with the timescales set out in the procedure;
- j) provides complainants with a written response to their complaint once it has been dealt with, explaining how it was resolved and what action has been taken;

- k) Specifically addresses the management of complaints from external organisations and individuals.

The Provider shall have a complaints monitoring system that:

- a) records the details of all feedback received including complaints, the outcome of each complaint and action taken as a result;
- b) undertakes regular reviews of complaints and formally evaluates the effectiveness of the procedure, including;
- the number and type of complaint received;
 - any broader themes that the complaints raise;
 - whether the complaint has been upheld;
 - the actions taken in response to complaints;
 - the number of cases referred to the Council's Complaints Manager or the Local Government Ombudsman.
- c) Reports annually (as a minimum) to the Provider's board/owners/directors or senior management team, including information about how complaints have been used to improved service delivery and development;
- d) Uses survey forms to capture the views of complainants in respect of the accessibility and effectiveness of the complaints procedure and provides this information to the board/senior management team.

The Provider shall ensure that its complaints procedure includes direction for Service Users to access the Council's complaints procedure. The Complaints Process can be found on the council web

site:<http://www.bathnes.gov.uk/healthandsocial/helpforadults/Pages/LocalProviderForum.aspx>

The Council will normally expect a Service User to use and exhaust the Provider's own complaints procedure initially, unless the Council considers it unreasonable for the Service User to have to do so.

Where the Council receives a complaint from a Service User or his/her representative, or a health or social care professional highlights an alleged shortcoming in care quality on behalf of a Service User, regardless of an individual arrangement under the Contract, it will inform the Provider in writing and the Provider shall respond within 21 days, having investigated the complaint in line with the Provider's Complaints Policy and Procedures.

Where the Council is not satisfied with the response from the Provider, it will request a meeting with the Manager, to be held within a further 21 days in order to achieve a resolution.

Complaints to the Council should be sent to:
 Complaints Manager,
 Bath and North East Somerset,
 Freepost SWB 10433,
 Bath BA1 1BF

Tel: 01225 477752
 Fax: 01225 396115
 Email: complaints_cypandadults@bathnes.gov.uk

And, for Service Users who have arranged their care direct with the Provider and they or their family are paying the Provider's fees:

Complaints should be sent to:
 Local Government Ombudsman,
 PO Box 4771,
 Coventry CV4 0E

Advice Team: 0300 061 0614
www.lgo.org.uk

NOTIFICATIONS

Event	Who must be notified	timescale
Any personal injury requiring medical attention	Purchasing Team Manager	1 working day
A Service User (regardless of whether such Service User is funded by BANES) who the Provider considers to be 'At Risk' of admission to hospital and who should be included on the CCG's 'At Risk' Register	Purchasing Team Manager	1 working day
The Service User being admitted to hospital	Purchasing Team Manager	1 working day
In the case of Care Homes not in Bath & North East Somerset, any event or allegation relating to the Service User reported to the Local Authority in the area where the Home is located, as an adult safeguarding referral.	Purchasing Team Manager	1 working day
The Provider must notify the Purchasing Team Manager as soon as practicable if it has been necessary to	Purchasing Team Manager	1 working day and must be confirmed in writing within 7 days.

use any restraint or restriction of freedoms outside a previously agreed Council Care and Support Plan together with the reasons.		
Intention to move Service User from one room to another or to other premises.	Purchasing Team Manager	Prior notice of 7 days except in an emergency, then within 1 working day.

Useful Contact Numbers

For all matters relating to the care of the individual Service User including requests for review and additional funding:

Purchasing Team Manager: See ISA Form or Individual Placement Form for the Individual Client

For Safeguarding Referrals:

Access Team
PO Bo 3343
Bath
BA1 2ZH
01225 396000

For matters relating to this Agreement (not individual Service Users), suspension and restriction of placements:

Integrated Adults Commissioning Team
PO Box 3343
BA1 2ZH
01225 396538

For payments and invoicing:

Social Services Finance Team
PO Box 3343
BA1 2H
01225 477000

For matters relating to Funded Nursing Care (formerly Registered Nursing Care contribution):

Funded Nursing Care Team 01225 831420

For matters relating to NHS Funded Continuing Health Care and care management of Residents funded solely by the NHS:

Continuing Health Care Team 01225 831420

Appendix 1:

Bath and North East Somerset Council Equipment in Care Homes Policy

April 2018 - 2022

1. Introduction

Equipment should be available in a Care Home to enable people to have greater control, independence and safety, either in the long term or short term following medical treatment, and/or a deterioration in their wellbeing which affects their ability to carry out usual day to day living activities.

This policy will help care home providers understand their equipment obligations to residents and staff. It will clarify who is responsible for funding the equipment.

2. Purpose:

- To ensure clarity of responsibility, for provision of equipment and supporting arrangements, for Care Homes, Council Commissioners and CCG.
- Enable lead commissioners of community equipment services to identify their obligations in relation to care homes for adults and older people.
- Registered Care Homes are expected, as part of their contractual obligations, to provide all standard equipment appropriate to the client group for which it is registered. Care Homes are responsible for ensuring that their staff are competent and confident in using the full range of equipment in the home.
- Enable the provision of community equipment to be considered part of a holistic care and support approach which can be provided either in addition to, or instead of, care and support services.

3. Background

Care Homes must have available suitable equipment to meet the needs of either the existing residents or any residents they choose to accept. Care Homes are expected to have a wide range of equipment to account for the diverse needs of the population. Evidence suggests that over the past two years demand for specialist equipment for adults and children with complex health needs is increasing with a higher volume of requests for items such as: hoists and slings, pressure care and bariatric equipment. Changes in technology may also mean that the types of equipment or assistive technology available are much broader and have the potential to offer more innovative solutions now and in the future. What was considered 'special/rare' five years ago, including some bariatric equipment, would be routine today.

This document has been developed using the following legislation.

- Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3)

- The Care Act (2014) & Related Regulations
- The Department of Health (2004) “Community Equipment and Care Homes”
- The Department of Health (2003) “Care Homes for Older People National Minimum Standards”
- The Care Standards Act (2000)
- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised)
- Care Quality Commission (CQC) Guidance for Providers on Meeting the Regulations (March 2015) - Regulation 15: Premises and Equipment
- Mandelstam (2016): Legal framework for Equipment Provision

This specification applies equally to provision for Service Users who are funded by Social Services funding, and those funded under the arrangements for NHS funded nursing care and Continuing Health Care CHC in Bath & North East Somerset. Community Equipment Services (CES): These services are contracted by local commissioners to provide community equipment on loan to adults and children following assessment by Health and/or Social Care practitioners. Equipment is provided to assist people to perform essential activities of daily living and to maintain their health, independence and wellbeing in the community.

4. Principles relevant to the Provision of Equipment in Care Homes

- The purpose of providing the equipment is to increase or maintain functional independence of users (including funded and informal carers), or to allow for their safe management within the care home.
- Care homes are responsible for having and maintaining their own range of equipment to meet a variety of care needs, including variations in height, weight and size. This equipment should relate to the care for which the home is registered and fulfil the care home’s health and safety obligations to their own care staff.
- Equipment provision should be focused on the residents' needs and should be provided by the care home if it is the type of equipment required by its residents as part of its statement of purpose/registration. The equipment provided must be issued as part of a risk management process and staff competently trained in the use of equipment.
- Moving & Handling Assessments - Care home staff will need to complete a moving and handling risk assessment as soon as a resident moves into the home. This must be reviewed each time there is a change in health or functional ability. Care homes are expected to have a full range of modern, up-to-date moving and handling equipment available. Staff will need to be competent and confident to recommend which moving and handling equipment is appropriate for the range of needs within the home.
- Equipment loaned by a community equipment service (CES) will be for the exclusive use of the person for whom it was prescribed.

- Equipment must not be passed from one user to another unless it is cleaned and/or decontaminated between each use as determined by the national standards on decontamination, manufacturers' instructions and local community equipment service guidelines.
- Care Homes receiving pressure care equipment such as mattresses and cushions will be responsible for cleaning, maintaining and checking the items as required in accordance with the manufacturers' instructions.
- The incorrect use of equipment can lead to safeguarding issues, for example risk of harm to residents when using equipment that was not prescribed for them. Or lack of regard to infection control procedures. Care homes must ensure that any risks are minimised through the correct use of the equipment, the training of staff and adherence to policies and standards.

5. Who should provide the equipment?

Care homes are responsible for having and maintaining their own range of equipment to meet a variety of care needs, including variations in height, weight and size. Residents in registered nursing homes will have their standard equipment provided by the nursing home. Standard equipment includes pressure care overlays and replacement mattresses to maintain tissue viability (static and dynamic systems, as well as profiling beds). This equipment should relate to the care for which the home is registered and fulfil the care home's health and safety obligations to their own care staff.

There may be some situations where they will need to draw on the resources of the local community equipment service. Residents in registered nursing homes funded by NHS Continuing Health Care may have bespoke equipment needs. Assessment and provision/funding of these specialist items will be undertaken by the local NHS CHC Team. This assessment may occur before admission to the nursing home and further assessments may also be required if clinical needs change.

Department of Health, National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (2012), para 172, p.47

Of general relevance, but specifically in the context of care homes, determinations between:

- a) The **certain** level of equipment that should be provided by care home providers;
- b) People's entitlement to **standard** equipment available to others living in the community, that is over and above that expected to be provided by the care home provider and is either the responsibility of the Council or NHS;
- c) Where the NHS needs to provide any additional equipment over and above the 'certain' and 'standard' equipment above, that relates to a person's **individual** needs (whether bespoke or not). The framework places a

responsibility on CCG's to ensure there is clarity in these arrangements and what is applicable in each case.

More generally, under the National Framework above, CCG's also need to: Ensure that the extent of equipment provision anticipated to meet people's need under NHS Continuing Healthcare is taken into account in commissioning, funding and provision arrangements for integrated equipment services.

Specialist Community Equipment

Certain categories of specialist community equipment are commissioned by NHS England. It sits outside of this service specification but is included here for reference. This includes for example: infusion pumps for immunoglobulin therapy. Equipment that is deemed to fit within such categories of specialist community equipment is not considered eligible for funding as Community Equipment within this specification.

Specialist Equipment considered by Single Panel Chair outside of Panel:

- ❖ Requests over £1,000
- ❖ Any requests for additional care home equipment

At the time of writing, the following criteria / principles are being applied in addition to Sirona's working practices. They are being developed by commissioners and being trialled with Sirona team managers: beginning a transition in ordering process and eligibility requirements to improve process, value for money and accountability.

Pending agreement from the Council's Single Panel Chairs Group, this will form the basis of commissioners' intentions for a decision making framework for community equipment under this Contract. It is to be harmonised with the existing process above as an interim measure while longer term processes are agreed in line with the relevant legislation and following a review of the Council's statutory duty.

- ❖ Where the case is being made that equipment is intended to be preventative, reduce need for care or admission to hospital / care home: staff have to clearly demonstrate where this is the case.
- ❖ Staff are encouraged to supply a broader narrative of the client's overall needs and support/care being provided as well as any previous / additional equipment that may be in place.
- ❖ Where a more cost-effective functional equivalent is available but has been disregarded without sufficient clear and reasonable justification, the request will be refused.
- ❖ The overall reasonableness of the request needs to be clear: e.g. where a high value item is requested for only occasional use or where bespoke items are requested when an off the shelf option is reasonable.

- ❖ Consistent with public sector procurement regulations, failure to plan ahead will not be considered a sufficient rationale for a request needing to be 'urgent'.

Consideration is also being given to:

- ❖ Bespoke items and the most complex high value requests being considered by Single Panel, rather than by a Single Panel Chair.
- ❖ Staff providing a breakdown of all other equipment previously purchased for the client and services provided.

6. Responsibilities of the Care Home

- For care homes providing nursing care, equipment is highly likely to include, amongst other things, equipment such as pressure reducing overlays and replacement mattresses to maintain tissue viability (static and dynamic systems). That is, if a client in a care home providing nursing care is assessed as requiring equipment for the prevention of pressure ulcers, the care home should in most cases provide the equipment for that client.
- When a person is being considered for a place, assessment of their needs should include consideration of the equipment that is needed to support their care.
- Care homes should not accept people whose assessed needs they are unable to meet. However, where the absence of a particular piece of equipment in a care home is temporary and the provision of equipment would facilitate a discharge from an acute hospital bed, or enable the client to stay in the home, the local community equipment service may step in.
- Where a piece of equipment of the type normally to be provided by the care home is lent by the CES to facilitate admission, the loan will be for a period of no more than 28 days during which the home will be expected to obtain its own item.
- The care home will need to meet the cost of all repairs arising from negligence, damage or inappropriate use of loan equipment, or the full replacement cost if damage is beyond repair.
- Care home staff must be appropriately trained in the use of the equipment as set out in the Medical Health products Regulatory Agency (MHRA — was the MDA) MDA DB 9801 and other related documents. Responsibility for ensuring that staff are trained lies with the care home.
- Risk assessments required for use of equipment will be carried out and reviewed as necessary by the care home and will be followed by all staff at all times.
- The care home will meet the cost of all repairs arising from negligence, damage or inappropriate use and the cost of replacement if it is lost.
- Care home staff will be responsible for notifying the community equipment service when the individual no longer requires a loaned item of equipment and

will make arrangements for its return. They will also be responsible for informing Community Equipment Services when equipment breaks down or requires repair or service, and will make it accessible when needed.

- The Care home will be signed up to the Central Alerting system (CAS).
<https://www.cas.dh.gov.uk/Home.aspx> This is a web based cascading system for issues on patient safety alerts, important public health messages and other safety critical information and guidance to the NHS and independent providers Alerts will be sent from a variety of agencies about concerns with equipment.

Table Showing Items of equipment that should be provided by Care Homes

Provider Code

CH – Care Home

CES – Community Equipment Stores (Sirona)

NHS – CHC/ NHS funded

GP – General Practitioner

N/A – Not Applicable

Type of Equipment	General and Dementia Nursing	Residential and Dementia Residential	Comments
Bathing Equipment			
Range of bath seats	CH	CH	
Range of bath boards	CH	CH	
Bath step	CH	CH	
Powered Bath lift	CH	CH	
Swivel Bathers	CH	CH	
Range of shower chairs including tilt in space	CH	CH	
Range of shower stools	CH	CH	
Non-stock Shower Chairs	CH	CES	May be provided following an assessment by clinical practitioner for an individual named resident.
Bariatric versions of standard equipment	CH	CES	Provision of certain bariatric items to residential care homes

			<p>following specialist risk assessment by a clinical practitioner.</p> <p>Where a home is identified as having a specialism/capacity for bariatric care, it would be expected that such equipment is provided by the home.</p>
Beds			
Powered variable height, profiling beds	CH	CES	<p>Responsibility of care home in terms of moving and handling legislation for care staff.</p> <p>CES will provide for residential care homes following an assessment by an approved practitioner for health needs.</p> <p>For example</p> <ul style="list-style-type: none"> • Where the client has acute respiratory need and requires the profiling function to sit upright and other solutions i.e. back rest, pillow lift have been tried and found to be unsuccessful. • Where the profiling function is essential to assist in the management of pressure care. • As part of a prescribed rehabilitation programme where the profiling and variable height functions will enable the client to transfer independently and prevent the use of a hoist. • May be funded by CHC • Clinical justification for the above must be provided by the referrer.
Variable height, profiling bariatric bed	CH/CES/NHS	CES/NHS	<p>The statement above applies in full AND where the client's weight is above the maximum weight limit of a standard variable height profiling bed, then the provision of a bariatric bed may be considered following a full documented risk assessment by the clinical practitioner. May be CHC funded in some cases.</p>

			Where a home is identified as having a specialism/capacity for bariatric care, it would be expected that such equipment is provided by the home.
Bespoke beds for people (CHC funded) with complex treatment and care needs	NHS	NHS	Through NHS Continuing Health care panel only and if the person is eligible for NHS Continuing Health Care funding (eligibility must be established independently of the equipment)
Bed blocks and raisers	CH	CH	Responsibility of care home in terms of meeting moving & handling legislation for care staff.
Range of back rests	CH	CH	
Bed Stick	CH	CH	
Blanket Cradle	CH	CH	
Over bed trolley/table	CH	CH	
Lifting pole	CH	CH	
Bed Side Rails: Divan bed rails (and bumpers) Profiling variable height bed rails (and bumpers)	CH	CH unless bed has been provided by CES	Subject to full documented risk assessment by the care home as these are high risk items.
Prevention Therapy and management of Pressure Areas			
High specification foam overlays/mattresses and cushions for low to medium risk	CH	CH	
Visco elastic/ memory foam mattresses/			Provision to residential care homes following a specialist risk

cushions – for medium to high risk	CH	CES	assessment for tissue viability medium to high risk needs only. Referrer will need to state clinical need and provide justification for equipment.
Alternating Dynamic (and pump) overlays/ mattresses/cushions – for medium to high risk	CH	CES	Provision to residential care homes following a specialist risk assessment for tissue viability medium to high risk needs only. Referrer will need to state clinical need and provide justification for equipment.
Specialised mattresses to move the resident – e.g. ToTo turning beds	CHS	CES	Following a specialist risk assessment, referrer will need to state clinical need and provide justification for equipment.
Seating			
Standard chairs including a range of riser/tilt and space recliners	CH	CH	<p>Providers when purchasing equipment should consider the following: -</p> <ol style="list-style-type: none"> 1. Basic riser recliners have limited use and that tilt in space chairs are most appropriate in the long term as they ensure good positioning and reduce skin integrity issues. If they also have a riser function this will enable the more mobile client to also use them. 2. A combination of dual and single motor chairs 3. All seating to have integral pressure relief where appropriate. 4. Providers should have a selection of chairs that are adaptable for different client's, both in terms of size variability and the ability to put on add-on parts such as extra supports. <p>If chairs are adaptable there is a potential that they could be</p>

			shared by clients (for e.g. morning/afternoon)
Specialist postural support bespoke chairs	CES/NHS	CES/NHS	These items may be available subject to single panel guidelines or if eligible for NHS Continuing Health Care funding and clinically prescribed for such equipment.
Chair blocks and raisers	CH	CH	
Moving and Handling Equipment			
Lifting cushion e.g. ELK or camel lifting aid	CH	CH	Lifting aid to support care home staff support residents up from the floor.
Mobile Standard Hoist	CH	CH/CES	
Ceiling Track Hoists	CH	CES/NHS	
Bariatric Hoist	CES/NHS	N/A	Provision will be following an assessment by a clinical practitioner. Bespoke slings would be made to measure for a client. These items may be available subject to single panel guidelines or if eligible for NHS Continuing Health Care funding and clinically prescribed for such equipment.
Standard slings	CH	CH	Care homes are expected to assess each client individually and provide a sling(s). This would include full body slings (including in situ), in seat hammock slings and toileting slings (in a size appropriate to the client)
Bespoke slings	CES	CES	Bespoke slings would be made to measure for a client and DO NOT include non-stock slings that are part of a manufacturer's standard catalogue range. Provision will be

			following an assessment by a clinical practitioner.
Standing Hoist (powered)	CH	CH/CES	For common/general use – equipment is to be provided by care home.
Standing Aid	CH	CH	Turntable, turning discs, swivel cushions e.g. Able Assist and Ambiturn. The CH should have a selection
Transfer boards	CH	CH	
Handling Belts	CH	CH	
Slide sheets/one way glides	CH	CH	
Hip Protectors	CH	CH	
Mobility Equipment			
Walking Sticks	NHS	NHS	
Fisher Walking Stick	NHS	NHS	
Walking frames with/without wheels	NHS	NHS	
Gutter walking frame	NHS	NHS	
Elbow crutches	NHS	NHS	
Gutter crutches	NHS	NHS	
3 or 4 wheeled walkers	NHS	NHS	
Standing Frame	NHS	NHS	
Ramps	CH	CH	
Assorted grab rails	CH	CH	
Sensory			
Range of sensory impairment equipment	CH	CH	This is environmental equipment.

Telecare			
Range of Telecare items	CH	CH	Care homes are expected to provide call systems, monitors, PIR's etc.
Sensor alarm mats and pads	CH	CH	
Toileting			
Bed-pans and urine bottles	CH	CH	
Range of commodes: standard and mobile	CH	CH	
Bariatric commode	CH	CES/NHS	
Toilet frames	CH	CH	
Raised toilet seats	CH	CH	
Continence pads (local policies)	NHS	NHS	Full assessment to be completed – must meet eligibility criteria for continence service.
Specialist sheets (local policies)	NHS	NHS	Full assessment to be completed – must meet eligibility criteria for continence service.
Wheelchairs			
Push wheelchairs, standard transit chairs and basic wheelchair cushions.	CH	CH	For general use
Wheelchairs and accessories provided by wheelchair services for permanent and substantial usage after trauma or short-	NHS wheel-chair	NHS wheel-chair	For a named individual to use following an assessment using

term palliative care.	services	services	wheelchair criteria by a qualified therapist only.
Bathing Equipment			
Range of bath seats	CH	CH	
Range of bath boards	CH	CH	
Bath step	CH	CH	
Powered bath hoist/lift	CH	CH	
Swivel bathers	CH	CH	
Range of shower chairs including tilt space shower chairs.	CH	CH	
Range of shower stools	CH	CH	
Non-stock shower chairs	CH	CES/NHS	May be provided following an assessment by a clinical practitioner for an individual named resident.
Bariatric versions of standard bathing equipment	CH	CES/NHS	Provision of certain bariatric items to residential care homes following specialist risk assessment by a clinical practitioner. Where a home is identified as having a specialism/capacity for bariatric care, it would be expected that such equipment is provided by the home.
Respiration			
For maintenance of respiration e.g. suction units	CH	N/A	
Oxygen cylinders/ concentrators	GP	GP	

Oxygen administration consumables	GP	GP	
Simple nebulisers	CH	GP	
Resuscitation equipment (e.g. mouth to mouth)	CH	CH	e.g ambu masks and bags
Pulse oximeters	CH	N/A	
Non-standard complex nebulisers and humidifiers (e.g. for ENT, CPAP, BIPAP)	NHS	NHS	
Nursing Equipment and Nursing Procedures			
Venepuncture	GP/NHS	GP/NHS	
Vacutainer bottles for blood tests	GP/NHS	GP/NHS	
Syringes and needles	CH	NHS	
Catheterisation			
For management of catheterisation e.g. stands, packs	CH	GP/NHS	
Catheters and bags	GP	GP	Via prescription
Dressings			
For procedures related to aseptic and clean dressing.	GP	GP	Via prescription
Medicine administration			

For administration of oral medicine/medication.	CH	CH	Medicine via prescription
For administration of rectal medication	CH	NHS	These procedures are carried out by District Nurses for residential care homes.
For administration of medication by injection	CH	NHS	These procedures are carried out by District Nurses for residential care homes.
Standard syringe driver	CH	NHS	Proportional to the size of the home
Specialist syringe drivers e.g. for epidurals	NHS	NHS	
Nursing Procedures			
Routine nursing procedures – Temperature, BP	CH	CH	
BM -glucometer	CH	NHS	

Performance Measures

The performance measures within this section relate to the services provided by the Care Home providers. The measures are reported to commissioners and Council/CCG through the Councils contract review.

How much did we do?	How well did we do it?
<p>Local Indicators</p> <ul style="list-style-type: none"> ❖ Number of safe guarding's with reference to equipment. ❖ Review of maintenance records ❖ Number of single panel request for specialist equipment. 	<p>Local Indicators</p> <ul style="list-style-type: none"> ❖ No of safe guarding's over the year ❖ Record of 6monthly maintenance visits by a recognised provider. ❖ No and cost of single panel requests for specialist equipment. ❖ No of concerns raised at Council contract review. ❖ CQC inspection report – Good in Safe
<p style="text-align: center;"><u>Is Anyone Better Off?</u></p> <p>There are currently no formal performance measures in this domain. However, the Commissioners review residents feedback, complaints and compliments at the providers contract review and expect to see</p> <ul style="list-style-type: none"> ❖ Low number of customer complaints involving equipment (less than 1 per year) 	

Outcome Based Service Specification
For
People Living with Complex Dementia Needs
(Complex Dementia Care Homes or Units only)

Note: this specification applies only where the Care Home has entered into an arrangement to provide services to people living with complex dementia

Introduction

The requirements of the Specification for People Living with Complex Dementia Needs are in addition to those set out in the Specification for the Provision of Care for Adults in Care Homes. Where there is any conflict in the requirements detailed in part A and part B, the requirements of this part B will take precedence.

For clarity, all responsibilities and obligations arising in the Specification for the Provision of Care for Adults in Care Homes must be taken to apply to the provision of a Complex Dementia service even if not specifically mentioned in this Specification.

Background

The proportion of people living in Care Homes who are living with Dementia is rising. The National Service framework for Older People recommends that Local Authorities and independent care providers should work together to develop specialist dementia care provision.

- The Alzheimer's society report that there are 850,000 people with dementia in the UK, with numbers set to rise to over 1 million by 2025. There are 40,000 younger people with dementia in the UK. 70% of people in care homes have dementia.
- Dementia has a huge impact on people living with the condition, their families, carer and society more generally.
- On in 6 people aged 80 and over have Dementia.
- Dementia costs society an estimated £26 billion a year, more than the cost of cancer, heart disease and stroke.

Population Projections

B&NES is set to continue changing in coming years with the Joint Strategic Needs Assessment (JSNA) suggesting a 12% rise in the population by 2037 to 199,100. The number of over 75's in B&NES is set to increase by 75% in that time.

People living with dementia are accessing care homes at a later stage meaning that care homes are increasingly providing services for people living with more complex dementia. As a result of the increase in diagnosis and people living longer people accessing care homes with dementia are increasingly likely to be living with other chronic health conditions. Dementia services will, therefore need to improve and maintain people's physical and mental health so that people can maintain independence for as long as possible whether in their own home or in a care setting.

Definition of dementia, for the purposes of this specification

Dementia is an umbrella term. It describes the symptoms that occur when the brain is affected by certain diseases or conditions. They are mainly different types of dementia that are often named according to the condition that has caused the dementia.

The most common type of dementia is Alzheimer's disease, followed by vascular dementia. Other forms of dementia are Lewy Body, Parkinson's related dementia, Korsakoffs (alcohol related

dementia which can improve if alcohol consumption ceases), Frontotemporal Dementia including Pick's disease (generalised cerebral atrophy).

Listed below are examples of cognitive functions which may be severely impaired as a result of dementia:

- Memory
- Visual perception
- Orientation
- Concentration
- Language
- Ability to sequence
- Judgement
- Disinhibition

People can be considered to have a complex dementia when they experience at least three of the following:

- Dual diagnosis that causes additional symptoms and fluctuations in a person's mental state/presentation (depression, anxiety, bi-polar, schizophrenia, learning disability)
- Chronic dis-inhibition (such as undressing, attempted inappropriate touching of other Service Users/Staff)
- Attempted inappropriate interference with others (such as no awareness of social space, trying to give care to other Service Users)
- Noisiness that does not readily respond to reassurance 1:1 interventions.
- Risk of attempted suicide/self-harm
- Behaviour that poses a risk to self and or others (such as banging head against hard objects, throwing themselves to the floor)
- Unpredictable attempted physical aggression
- Consistent resistance to necessary personal care (requiring 2:3 care staff)
- Non-compliance with essential medication (which may result in a covert medication care plan)
- Mood disturbance and/or hallucinations that cause the person distress
- High level of agitation (which may include shouting, pacing, calling out, swearing, such behaviours do not respond readily to reassurance or distraction)
- Day and Night reversal.

Eligible Groups

People can be considered to have a complex dementia when they experience at least three of the following:

- Dual diagnosis that causes additional symptoms and fluctuations in a person's mental state/presentation (depression, anxiety, bi-polar, schizophrenia, learning disability)
- Chronic dis-inhibition (such as undressing, attempted inappropriate touching of other Service Users/Staff)
- Attempted inappropriate interference with others (such as no awareness of social space, trying to give care to other Service Users)
- Noisiness that does not readily respond to reassurance 1:1 interventions.
- Risk of attempted suicide/self-harm
- Behaviour that poses a risk to self and or others (such as banging head against hard objects, throwing themselves to the floor)
- Unpredictable attempted physical aggression

- Consistent resistance to necessary personal care (requiring 2:3 care staff)
- Non-compliance with essential medication (which may result in a covert medication care plan)
- Mood disturbance and/or hallucinations that cause the person distress
- High level of agitation (which may include shouting, pacing, calling out, swearing, such behaviours do not respond readily to reassurance or distraction)
- Day and Night reversal.

Ethos of Care

It is expected that care providers will adopt a person centred, holistic approach to people with dementia recognising that it is a physical disease which causes huge neurological, psychological and social change for individuals and carers.

Adopting such an approach will mean that care providers will be expected to provide evidence which demonstrates that they are not attributing all behaviours and symptoms to dementia and ignoring possible physical conditions. Care providers will be able to demonstrate that they have a detailed knowledge of the inter-relationship between mental and physical health this will be documented in Provider Care and Support Plans. Such care plans will ensure that care providers recognise people with dementia can also have other co-existing illness which if not treated will exacerbate the symptoms of dementia.

Managers will be expected to ensure Service Users have sustained high quality interaction with ALL care Staff as opposed to brief superficial interactions which will occur when a Care Home is focused on delivering physical care. A person centred approach allows and encourages care workers to be more flexible and encourages them to use their initiative and be creative.

Managers and care Staff will be expected to demonstrate that they are providing the six main psychological needs to people with dementia (Kitwood Dementia Reconsidered) Attachment, Inclusion, Comfort, Identity, Occupation and Love.

Outcomes for People with Dementia

Service Users with dementia living in B&NES Care Homes are assured that the care and support they receive promotes their quality of life.

1. Providers/Managers will ensure the standardised application of good practice that focuses on a person centre approach by ensuring Staff are trained in dementia awareness, complex dementia with challenging behaviour symptoms, dual diagnosis, capacity and awareness best interest decision making , and safeguarding. See Appendix 1, Section 1.
2. Staff should, therefore, be able to demonstrate preventative interactions that de-escalate challenging behaviour through a variety of techniques such as distraction, leave and return, reading signs verbal and non-verbal of impending distress/agitation. This should also include sensory calming objects.
3. Staff will be able to demonstrate meaningful interactions that will reduce behavioural symptoms when they have a holistic in depth knowledge of the person, achieved for example by Life Story Work, which should be kept in a Service User's personal file. Staff will not use interventions that disempower, infantilize, ignore, withhold, accuse, disrupt, mock or disparage an individual.

4. Staff will need to be trained in “safe holds” but will be expected to adopt the least restrictive principle with increased staffing for example frequent 1:1, and 2:1 care being used as opposed to an increased reliance on medical interventions. It should be evident from Staff interactions with Residents that Staff accept Residents different realities and do not try to force their own reality upon them. Staff should also ensure that visitors follow this example.
5. When a Service User has complex behaviour needs Staff will produce a specific care plan including the following:
 - A description of the person’s behaviour
 - Reasons for the persons “challenging” behaviour in relation to their past personality/life experience
 - Risks identified to the person and care staff as a result of the complex behaviour and how these risks will be addressed
 - Frequency and triggers of risks
 - Proactive and preventative interactions
 - Outside professionals involved in the care plan; such as Care Home Liaison, Care Co-ordinator and or Consultant/ Doctor from CIT, Psychologists, Art Therapists, and GP.
 - Views of the person’s carer/relatives/family.
6. Separate care plans will be devised for specific issues such as risks around nutrition and hydration (advice from SALT worker), falls risks, tissue viability. Risk assessments should include positive but reasonable risk taking to allow for freedom of choice.
7. Managers and care Staff will be expected to recognise and document that they have considered that the presentation of agitation and or aggression may be a symptom of unmet needs.
8. The care plans will be expected to demonstrate Staff participating in outside training (See Appendix 1, Section 1).

The above care plans will be reviewed and updated on a regular basis and when there has been a significant incident or change to a person’s “challenging” behaviour and associated risk.

General Outcomes

1. Providers/Managers will be expected to demonstrate that each Service User has individually tailored Provider Care and Support Plans which cover a whole range of needs from mental and physical health needs to spiritual/religious, communication and activity needs: (See Appendix 1, Section 2). These care plans will illustrate high levels of individual care staff attention and carefully planned meaningful activity and close personal support. They should show that Service Users are being given the opportunity to participate in general decision making.
2. The Manager should ensure, by training and modelling that ALL Staff are engaging constantly with Service Users in a meaningful way. The Manager should NOT allow or encourage interactions that are superficial, repetitive and therefore indicate stagnant and institutional care.

3. There should be evidence that care giving is not seen as completing daily tasks relating to physical care. This will be demonstrated by employing an activities co-ordinator who will be responsible for providing regular varied and meaningful activities which are devised around knowing the individual Service Users. Activities will not be centred on generation stereotypes.
4. The activities co-ordinator will also be expected to build upon the Managers modelling interventions and encourage ALL care Staff to be involved in one to one meaningful relationships/activities with Service Users. This will ensure the removal of them and us barriers leading to cultural change where Staff will accept and uphold a Service User's sense of reality from moment to moment. Activities within the home will show that knowledge exists of how to "match" the right level of activity/occupation appropriate to where an individual is in relation to their point of experience of a dementia.
5. The Provider shall organise Staff to allow time for supporting Service Users in groups or one-to-one to include, where relevant, connections to social network, community facility or external environment that is meaningful to them. Evidence of this shall be clearly recorded.
6. Staff will be expected to respond in a way that is meaningful to the person and support them to safely express themselves. Staff will monitor for changes in Service Users and look for behaviour cues that may indicate a change is needed in the way support is provided. This may require support from the GP or Liaison team.
7. The Manager shall differentiate between symptoms of aggression, confusion and disorientations which may be the result of delirium/toxic confusional state due to infection, dehydration, constipation or the side effects of medication. This will rely on registered nurses where relevant or other medical advice being sought.
8. The Provider shall ensure Staff work as part of any multi-agency team to support the Service Users to include effective liaison with Complex Intervention and Treatment Team and the Service Users' General Practitioner.
9. Providers shall recognise when their service may need additional support or a more specialised service to meet the needs of Service Users and refer this to the Commissioner for review to be instigated in timely manner.
10. The Provider/Manager will ensure that the Care Home provides Service Users with a rich and stimulating environment through, e.g. sensory equipment, rummage boxes, sensory materials all of which should be evident around the home.
11. Managers and Staff will support carers by being appropriately inclusive and communicating with them regularly. If a carer/relative is asked not be notified about certain events / incidents that is considered the "norm" to avoid distress this should become part of the Service Users care plan.
12. Guidance for visitors/Carers will be shared with family members et al (See Appendix 1, Section 3).
13. If a Manager feels a relative/visitor is disrupting a Service Users care and or is putting a Service User at risk the appropriate team will be contacted to help try and resolve the issue. It

is NOT expected that the Provider/ Manager will serve notice on the Service Users until an attempt involving a specialist organisation, such as CITT, has been made.

Environment

The Care Home environment should have orientation aids i.e. colour, objects and appropriate signage throughout the building.

The layout and facilities of the Care Home will help Service Users to understand and make use of the spaces and facilities. It will support all Service Users' abilities and limit the impact of their disabilities thereby minimising confusion and distress. This should include frequent access to a "safe" garden with staffing levels that allow Service Users to use the garden without coming to any harm.

Corridors should be divided into coloured sections or divided up with objects and or seating to prevent a feeling/lack of institutionalisation.

Bedroom doors should be easily identifiable within photographs, colour or notice boards, whatever is appropriate for that individual. Similarly there needs to be pictorial signage on lounges, dining rooms and toilets.

Lounges should have sofas as opposed to lots of individual chairs. They should also have artwork and pictures that provide a cue to the function of the room.

Bathrooms must not be clinical but warm and inviting and should serve to orientate and welcome the person. (See Social Care Institute for Excellence and the Kings Fund website.)

It is expected that the outcomes in the B&NES framework contract will be achieved in ways that are specifically tailored to meet the needs of people with dementia. The additional outcomes and principles, as stated above, are for those people who require an enhanced level of support owing to the impact of dementia on their lives and the complexity of their needs.

Dementia Specification - Additional Information Section

Section 1 – Domains to be included in Care Home Care Plan

Behaviour

Cognition

Psychological/Emotional

Communication

Mobility (including Falls Risk)

Nutrition

Continence

Skin Integrity

Breathing

Drug therapies and medication: symptom control

Altered states of consciousness

Spiritual/Religious

Section 2 – Training

Mental Health:

- General Mental Health 1.5 hours
- Depression in Later Life: 1.5 hours
- Anxiety 1 hour
- Bi-Polar Disorder 1 hour
- Psychosis 1 hour

Dementia:

- Dementia Awareness: 1.5 hours
- Person Centred Care: 1.5 hours
- Communication in dementia: 1.5 hours

Challenging behaviour:

- Behavioural & Psychological Symptoms in Dementia: 1.5 hours

Activity Provision:

- Meaningful activity provision: 1.5 hours

Staff Wellbeing:

- Stress management: 1.5 hours

****Certificates of attendance will be provided**

****Topics can be repeated to capture shift patterns**

**** These sessions are provided free of charge**

**Mental Health / Dementia Induction Day training matched to
The Care Certificate Standards Framework:**

Overview of Mental Health Conditions

- 1.4 Working in partnership with others
- 9.1 Understand the needs and experiences of people with mental health conditions, dementia or learning disabilities
- 9.2 Understand the importance of promoting positive health and well-being for individuals who have mental health conditions, dementia or learning disabilities

Dementia Awareness

- 9.1 Understand the needs and experiences of people with mental health conditions, dementia or learning disabilities
- 9.2 Understand the importance of promoting positive health and well-being for individuals who have mental health conditions, dementia or learning disabilities
- 9.3 Understanding the adjustments which may be necessary in care delivery relating to an individual who may have a mental health condition, dementia or a learning disability
- 9.4 Understanding the importance of early detection of mental health conditions, dementia and learning disabilities

Person Centred Care

- 1.4 Working in partnership with others
- 5.1 Understand Person Centred Values
- 5.2 Understand working in a Person Centred Way
- 5.6 Support the individual to maintain their identity and self-esteem
- 5.7 Support the individual using person centred values
- 7.1 Understand the principles that underpin privacy and dignity in care
- 7.2 Maintain the privacy and dignity of individuals in your care
- 7.3 Support individual's rights to make choices
- 7.4 Support individuals in making choices about their care

Communication in Dementia

- 6.1 Understand the importance of effective communication at work
- 6.2 Understand how to meet the communication and language needs, wishes and preferences of individuals
- 6.3 Understand how to promote effective communication
- 6.5 Use appropriate verbal and non-verbal communication
- 6.6 Support the use of appropriate communication aids/ technologies

Behavioural & Psychological Symptoms of Dementia

- 1.4 Work in partnership with others
- 5.3 Demonstrate awareness of individual's immediate environment and make changes to address factors that may be causing discomfort and distress
- 5.5 Support individuals to minimize pain of discomfort
- 5.6 Support the individual to maintain their identity and self-esteem
- 5.7 Support the individual using person centred values
- 6.1 Understand the importance of effective communication at work
- 6.2 Understand how to meet the communication /language needs, wishes and preferences of individuals

- 6.3 Understand how to promote effective communication
- 6.5 Use appropriate verbal and non-verbal communication
- 6.6 Support the use of appropriate communication aids/ technologies
- 7.1 Understand the principles that underpin privacy and dignity in care
- 7.3 Support individual's rights to make choices
- 7.4 Support individuals in making choices about their care

Meaningful Activity:

- 1.4 Working in partnership with others
- 5.1 Understand Person Centred Values
- 5.2 Understand working in a Person Centred Way
- 5.6 Support the individual to maintain their identity and self-esteem
- 5.7 Support the individual using person centred values
- 7.3 Support individual's rights to make choices
- 7.4 Support individuals in making choices about their care
- 7.5 Understand how to support active participation
- 7.6 Support the individual in active participation in their own care

Staff Wellbeing

- 13.9 Manage Stress

Section 3 - Rules and Guidance for Visitors

All staff, residents and visitors have the right to be treated with respect and feel safe at all times. We do not tolerate violence or aggression towards our staff, residents or other visitors. If this occurs positive action will be taken and the Police may be called.

Visitors need to be aware that whilst staff offer support to visitors, this will be limited so as not to interfere to the detriment of the care of the residents at who are their priority.

Visitors need to recognize that in order to preserve a person's dignity they will be asked to leave the room whilst personal care is undertaken.

Visitors need to be aware that they must not distract staff whilst they are administering medication.

It is the responsibility of staff to provide support and encouragement to residents at meal times. It is also the responsibility of staff to provide all meals to ensure the person has a balanced nutritional diet. This may include monitoring food and fluid intake or a special diet. However treats can be provided as long as there are no detrimental effects on the person's health.

Although there are no specific visiting times:

- Visitors are requested to not arrive before a resident has received their morning personal care and breakfast has been given.
- Visitors are requested not to come to the home at meal times, as this can be distracting / disruptive for persons with dementia.
- Visitors will be expected to leave prior to a resident going to bed.

SCHEDULE 2 – Payment Mechanism

Payment Mechanism for Individual Service Agreement

1. Application and validity

- 1.1. This Payment Mechanism shall apply to Placements made under the Individual Service Agreement.
- 1.2. No charge or sum shall be payable to the Provider for the Services other than as set out in a Service User's ISA Form and/or this Payment Mechanism.
- 1.3. The Council shall not be liable to pay for any Additional Services. The Council shall not be liable to make any payment that has not been expressly agreed in advance in writing with the Council. The Provider shall in the first instance consult the Council in relation to any service or facility that may be required or requested for a Service User and shall co-operate with the Council in case such service or facility is available to the Service User from the National Health Service or elsewhere.
- 1.4. No increase, update or variation to the Contract Price (or any component thereof or any other charge or sum) shall be valid except and until such increase, variation or update is expressly agreed in advance in writing with the Council.
- 1.5. The Council may elect at its sole discretion to end any arrangement by which the Provider collects Client Care Charges and/or Top-Up Fee Payments and collect such charges directly from the Service User and/or third party in which case Paragraph 16 of this Schedule shall apply.

2. Interpretation

- 2.1. Unless otherwise specified the definitions and rules of interpretation set out in the Individual Service Agreement shall apply.
- 2.2. Additional Services – any services or facilities outside the scope of the Services including but not limited to domestic goods and services such as hairdressing, newspapers, drinks.
- 2.3. Client Care Charge – The amount that the Council has assessed that the Service User must pay from their income towards the Contract Price.
- 2.4. Contract Price – The total fee charged by the Provider for the Service provided and taking into account any Annual Price Review, including the Council Charges, any Client Care Charge, any First Party Top-Up Fee Payment, any Third Party Top-Up Fee Payment and excluding any FNC Contribution.

- 2.5. Council Charges – The element of the Contract Price that the Council is responsible for funding, which equates to the Contract Price less any Client Care Charge, First Party Top-Up Fee Payment, Third Party Top-Up Fee Payment or FNC Contribution as applicable to the relevant Service User.
- 2.6. First Party – The Service User who makes a Top-Up Fee Payment in the circumstances outlined in Clause 6.
- 2.7. FNC Contribution – The contribution payable by the CCG for funded nursing care in accordance with Paragraph 8 of this Schedule.
- 2.8. Individual Service Agreement - The individual service agreement entered into between the Council and the Provider.
- 2.9. Market Forces Payment - The payment which the Council has agreed to make over the Published Rate (for older people only) in order to secure a placement. This type of payment will be reviewed on a regular basis by the Council.
- 2.10. Payment Period – The two-week period as more fully described in Paragraph 3.4 of this Schedule.
- 2.11. Personal Expenses Allowance – the weekly amount that a Service User at the Home is allowed to keep for their personal expenses.
- 2.12. Published Rate - the price level set by the Council each year to take effect at the beginning of April, which is applicable to Placements for older people in homes with personal care, nursing homes, including homes for older people with dementia (this rate is informed by the Fair Price of Care (FPoC));
- 2.13. Third Party – Any person or organisation who agrees to pay a proportion of the Contract Price as a Top-Up Fee Payment.
- 2.14. Top-Up Fee Payment - an additional payment made by either the Service User where eligible under Paragraph 6 or by a Third Party.

3. Individual Placements

- 3.1. The Council shall pay (or arrange to pay) to the Provider the agreed Council Charges for the Placement in accordance with the provisions of and agreed Commencement Date on each ISA Form.
- 3.2. The Council Charges may in certain circumstances include a Market Forces Payment, which will be reviewed periodically, in relation to the individual Service User.
- 3.3. For each individual Placement the Provider shall submit a breakdown of the weekly Placement cost broken down between Care Costs and Hotel Costs in a format and in a reasonable timescale as requested by the Council (the current format can be viewed in Schedule 1 of the Framework Agreement).
- 3.4. Payment of the Council Charges shall be made on a two-weekly basis on the Wednesday of the second week (e.g. weeks commencing 2nd and 9th September will be paid on Wednesday 11th September) (a **“Payment Period”**).
- 3.5. On payment the Council shall issue a remittance advice to the Provider, providing a breakdown of the Council Charges and detailing the Service Users to which the payment relates.
- 3.6. The Provider shall confirm the accuracy of received remittance advices, including a nil return where the remittance is accurate within one week of receipt.
- 3.7. Failure to confirm remittance advices in accordance with Paragraph 3.6 may result in delay or suspension of future payments.

4. Client Care Charges, Allowances and other costs

- 4.1. The Provider shall collect any Client Care Charge from the Service User (or other person responsible for paying it on behalf of the Service User) unless it has been agreed in writing that the Client Care Charge will be paid by the Council.
- 4.2. Any Client Care Charge applicable to Fixed Term Placements shall be collected by the Council and not by the Provider. The Council shall pay to the Provider the Council Charges plus any Client Care Charge.
- 4.3. The Provider shall ensure so far as reasonably possible that it collects such Client Care Charges within 60 days of their due date and shall notify the Council in accordance with Paragraphs 7.2 to 7.4 where payments are overdue.
- 4.4. The Service User shall not be permitted to use their Personal Expenses Allowance to pay any Client Care Charge or Top-Up Fee Payment, but must be available in full to the relevant Service User.

- 4.5. The Provider shall not enter into a contract directly with either the Service User or any other party for payment or part-payment of Service(s) other than as permitted in this Payment Mechanism.
- 4.6. Until a Service User has been financially assessed as to whether he or she should pay a Client Care Charge the Council shall pay the Contract Price. The Provider shall be responsible for the collection of the Client Care Charge from the date when the Service User has been assessed and this has been confirmed with the Provider, unless the Council has confirmed in writing that it will pay for this.
- 4.7. Where a Service User is financially re-assessed the Council may amend the Client Care Charge and the Council Charges and also take account of any past overpayment or underpayment by either the Service User or the Council. The Provider shall collect any outstanding Client Care Charge direct from the Service User and shall make any refunds to the Service User.
- 4.8. The Provider may agree with the Service User or anyone on his or her behalf to provide Additional Services to the relevant Service User. The Provider agrees and acknowledges that the Provider shall be responsible for agreeing and arranging payment for any such Additional Services directly with the relevant Service User or the relevant person on his or her behalf and the Council shall not be responsible for any such payments or arrangements.
- 4.9. The Provider shall disclose to the Council on request, details of any such Additional Services in accordance with Paragraph 4.8 charged to any Service User as follows: the exact nature of any service or item provided, the price charged and in the case of regular payments, the frequency of payments.
- 4.10. The Provider shall not ask for or receive a deposit from any person in respect of the Service(s) provided under the Care and Support Plan and ISA Form.
- 4.11. The Contract Price shall be inclusive of any maintenance, replacement or repair of décor, bedding, furniture, fixtures and fittings damaged as a result of challenging behaviour of the relevant Service User.

5. Third Party Top-Up Fee Payment

- 5.1. If a Service User has chosen a Home where the Contract Price is higher than the Council Charges and Client Care Charge combined, the Provider shall collect the Third Party Top-Up Fee Payment from the Third Party and shall not seek to claim any additional sums from the Service User, Council or Third Party other than as set out in this Payment Mechanism and the ISA Form.
- 5.2. A Third Party Top-Up Fee Payment shall not be set up without the Council's knowledge.
- 5.3. Where a Third Party has agreed to pay a Top-Up Fee Payment, such Top-Up Fee Payment shall be specified on the ISA Form.

- 5.4. The Provider shall enter into a Third Party Agreement with the Third Party, in a format specified by the Council.
- 5.5. The Provider shall follow the procedure set out in Paragraph 0 where there is a Payment Default relating to Third Party Top-Up Fee Payments.

6. First Party Top-Up Fee Payments

- 6.1. At the Council's discretion, the Service User shall be able to make Top-Up Fee Payments only in the following circumstances:
 - 6.1.1. where they are subject to a 12 week property disregard;
 - 6.1.2. where they have sufficient savings to make the required payments;
 - 6.1.3. where they have a deferred payment agreement in place with the Council; or
 - 6.1.4. where accommodation is being provided under S117 of the Mental Health Act 1983 for mental health aftercare.
- 6.2. Where a Service User has agreed to make a Top-Up Fee Payment to be collected by the Provider, such will be specified on the relevant Service User's ISA Form.
- 6.3. The Provider shall follow the procedure set out in Paragraph 0 where there is a Default in payments of First Party Top-Up Fee Payments.

7. Payment Default

- 7.1. Where the Provider collects a Client Care Charge and/or Top-Up Fee Payment directly from a Service User or Third Party, the Provider shall issue monthly invoices or arrange a monthly direct debit with the payee. In the case of Payment Default, the Provider shall follow the process set out below to recover the payments due.
- 7.2. The Provider shall retain copies of all invoices and correspondence issued to the Service User or Third Party and shall provide copies thereof to the Council on request. The Provider agrees and acknowledges that without copies of all such invoices and correspondence claims for Payment Defaults cannot be made.
- 7.3. The Provider shall give the Service User or Third Party notice in writing (Reminder Invoice) of the Payment Default and amounts due once the payment is thirty (30) days overdue. Where the Default Payment remains unpaid sixty (60) days from the payment due date, the Provider shall issue a further notice in writing to the Service User or Third Party (First Overdue Payment Letter) and at the same time shall send a Notification of Risk of Default (in the form provided in Appendix A) to the social work team identified on the relevant ISA Form.
- 7.4. If there is no satisfactory response from the Service User or Third Party by day ninety (90) following the payment due date, the Provider shall send a Second Overdue Payment Letter to the Service User or Third

Party advising them that the Provider will now notify the Council formally of the Payment Default, that the Council may take action to recover the amount due, and that the Council reserves the right to move the Service User to alternative accommodation which is suitable to their assessed needs and which is affordable within their personal budget.

- 7.5. Within 21 days of issuing the Second Overdue Payment, the Provider shall make any formal claim to the Council for the Payment Default in writing (in the form provided in Appendix B) giving the amount, the names and addresses of payees, enclosing any invoices and correspondence not already provided. A claim for a Payment Default will not be accepted by the Council if it is received more than 111 days after the original payment due date.
- 7.6. The Council, on receipt of the formal notice, will seek to process such payment promptly within twenty one (21) days provided the amounts due are verified as due under the Contract in line with the ISA Form for the individual Service User and the terms of this Payment Mechanism.
- 7.7. The Council shall not be held liable for any sums due in respect of Client Care Charges, First Party Top-Up Fee Payments or Third Party Top-Up Fee Payments unless notification in writing to the payee has been made as specified in Paragraphs 7.2 to 7.4 above. For the avoidance of doubt this shall also apply in the case where a Service User dies and they or their financial representative is in Payment Default (including where payments due were in Default before the death of the Service User).
- 7.8. The Council will not be held liable for any sums due in respect of Third Party Top-Up Fee Payments that it is not made aware of by the Provider.
- 7.9. Once the Council has been sent the Notification of Risk of Default, the Provider shall keep the Council informed of any payments on account made by the Service User or Third Party and provide copies of any correspondence (including emails) received in respect of the debt.
- 7.10. The Council reserves the right to take action to pursue the matter through administrative and/or legal action directly against the Service User or Third Party to recover any amounts that are subject to a Payment Default and any action taken or not taken by the Council under this Payment Mechanism shall be without prejudice to any other right, action or remedy available to the Council whether arising under the Individual Service Agreement, Framework Agreement or otherwise.

8. FNC Contributions

- 8.1. Any FNC Contributions shall be paid on the CCG's behalf by the Council, acting as the CCG's payment agent. The Council will only pay the FNC Contribution specified by the CCG for the relevant Service User.
- 8.2. FNC Contributions are reviewed under arrangements made by the CCG. If the Council has overpaid the Contract Price or Council Charges as a result of late notification of changes to the FNC Contribution or for any

other reason, the Council may recover this either by deduction from future payments due to the Provider or by invoicing the Provider.

9. Temporary absences from the Home

- 9.1. The Contract Price payable in respect of a Service User's Placement shall continue to apply (without variation unless expressly agreed in writing otherwise by the Council and Provider) during the period of absence that the relevant Service User's Placement is retained by the Provider with the Council's agreement in accordance with this Paragraph 9. Service Users shall remain responsible for any Client Care Charge and/or Top-up Fee Payment applicable to the Services received by them during such absence period.
- 9.2. During any absence any additional 1:1 support payments applicable to the Service User shall not be paid.
- 9.3. If a Service User is absent but their Placement is retained by the Provider in accordance with this Payment Mechanism, his or her bed shall not be used by anyone else without written agreement of the Parties. If this is agreed, the Contract Price applicable to that Service User shall be suspended during the period while the bed is used by anyone other than that Service User.

10. Changing Needs Review

- 10.1. Any proposed change in Contract Price requested by the Provider as a result of agreed changes to Service User needs must be provided to the Council, for submission to, and agreement by the Single Panel.
- 10.2. Any variation to the Contract Price shall be made in writing in accordance with the Individual Service Agreement.

11. Death of a Service User

- 11.1. Upon the death of a Service User, the Council shall pay the Provider the Council Charges, for the date of death plus one (1) clear day thereafter.
- 11.2. All other payments relating to an individual Service User, including any additional 1:1 support payments, will cease to be payable on the date of death.
- 11.3. In the event of the death of a Service User for whom a period of notice has been given by either the Council or the Provider, the payment expected for any such period of notice still outstanding shall not be made. The Provider shall be paid in accordance with Paragraph 11.1.

12. Change in Service Users Financial Status

- 12.1. Where a change to the funding arrangements for an individual Service User results in that Service User funding their own care, that Service User's Council funded Placement will be terminated.
- 12.2. In this case, the Provider shall enter into a separate arrangement with the Service User directly, within 14 days of the Council confirming the change in the Service User's circumstances.

13. Price Review process

- 13.1. The Council will review the Contract Price annually following consideration of the Council's current payment rates, inflation/deflation, costs of regulation, the Council's financial position and the interests of Service Users.
- 13.2. The outcome of the review will be communicated to Providers by the end of March, to take effect the following financial year.
- 13.3. The new rates will commence in April of the following financial year, on a date determined by the Government for the changes in welfare benefits.
- 13.4. This Paragraph 13.4 shall not apply to Continuing Healthcare Services and FNC Contributions or any other sums paid under Paragraph 8 of this Schedule. The rates for Continuing Healthcare Services and FNC Contributions are determined by the local CCG and Department of Health, respectively.
- 13.5. Save as set out in Paragraph 13, the Contract Price shall not increase for any Placement already made by this Council under this or any previous Contract issued by this Council and entered into by the Provider, other than where agreed by the Council to reflect changes to a Service User's needs as assessed by the Council, under Paragraph 10.
- 13.6. Any requests for an increased Contract Price which exceed the Council's Published Rate shall not be approved, without clear evidence of exceptional Service User needs. These requests shall be submitted to the Single Panel to be reviewed.
- 13.7. Any requests for an increased Contract Price shall be subject to negotiation before consideration at Single Panel. This shall be undertaken by an officer from the Council, CCG, Virgin Care or AWP, under instructions from the Single Panel.
- 13.8. The rationale for any request for a Contract Price increase shall be evidenced by the Provider. The Provider may be contacted by the Chair of the Single panel to explain the Council's position and discuss the Provider's rationale for the increased cost.

14. Late Payment of Commercial Debts (Interest) Act 1998

- 14.1. Interest on commercial debts is payable under the above Act. However, interest will only run on outstanding payments if a payment has not been issued within 30 days after the receipt of a valid invoice.
- 14.2. No sum shall be treated as due if in dispute or unascertained, until such time as any such dispute has been resolved, and the amount of such sum has been unequivocally ascertained and is known by the Party responsible for paying it; and in the interests of commercial certainty, no interest may be claimed in respect of any sum unless that claim is made within two months of the date when the sum was paid.

15. Annual Amendment

- 15.1. The Council reserves the right to amend any part of this Payment Mechanism on an annual basis. Any amendments shall be communicated in advance of 1st April for the year to which they will be relevant.

16. Variation to Pricing Mechanism – Client Care Charges and Third Party Top-Up Fee Payments

In the event that the Council elects to change the way that Client Care Charges and Third Party Top-Up Fee Payments are collected, in accordance with Paragraph 1.5, this Payment Mechanism will be varied as follows:

Paragraph 3.1 to be amended to: “The Council will pay the Contract Price to the Provider for each Payment Period for all individual Placements, in accordance with this Schedule.”

Paragraph 4.1 to 4.3 to be deleted

Insert at 4.1: “The Council shall pay any Client Care Charges to the Provider as part of the Contract Price, and shall collect Client Care Charges directly from the Service User.”

Paragraph 4.5 to be deleted

Paragraph 4.6 to be deleted

Paragraph 5.1 to be amended to read: “If a Service User has chosen a Home where the Contract Price is higher than the Council Charges and Client Care Charge combined, the Council shall collect the Third Party Top-Up Fee Payment from the Third Party. The Provider shall not seek to claim any additional sums from the Service User, Council or Third Party other than as set out in this Payment Mechanism and the Individual Service Agreement Form.”

Paragraph 5.2 – 5.5 to be deleted

Paragraph 6.2 and 6.3 to be deleted

Insert at 6.2: “Any First Party Top-Up Fee Payments shall be collected from the Service User by the Council.”

Paragraph 7 to be deleted

Appendix A and Appendix B – to be deleted

Appendix A - Notification of Risk of Default

Notification of Risk of Default

To: Purchasing Team Manager Name:

This is to give B&NES Council notification of risk of default in respect of Client Care Charge/Third Party Top-Up Fee (delete as appropriate)

To be completed and sent to Purchasing Team Manager (address as per Schedule 1) when contributions are 60 days overdue.

Name of Care Home:

Contact Telephone Number:

Name of person dealing with this matter:

Name of Service User:

The following amount is outstanding on contributions due for the above person's placement. £

The due date for payment was

A reminder invoice was sent on

Any response from payee/other relevant information

Please note in order to make a claim for defaults, copies of all relevant invoices/correspondence will be required.

Appendix B - Claim to the Council for Default Payment

Formal Notification of Default

To be completed and sent to Purchasing Team Manager (as per Schedule 1) when contributions are 90 days overdue.

To: Purchasing Team Manager Name:

This is formal notification of a claim for a payment default in respect of contributions due as follows:

Name of Care Home:

Name of person dealing with this matter:

Contact Telephone Number:

Name of Service User:

Name of Payee/Financial Representative:

This is to notify Bath & North East Somerset Council that the following amount £ is outstanding on contributions to the cost of above person's placement which started on (date)

Payment of the sums in default is formally requested pursuant to the Payment Mechanism.

Nature of contribution: Client Care Charge/Third Part Top-Up Fee (please delete as appropriate)

- The due date for payment was
- A reminder invoice was sent on
- A Notification of Risk of Default was sent to the Purchasing Team Manager on
- A second reminder was sent on

Any response from payee/other relevant information

Please enclose copies of all relevant invoices/correspondence.

SCHEDULE 3 - TUPE, Exit and Service Transfer Arrangements

1 DEFINITIONS

1.1 For the purposes of this Schedule 3, the following words and expressions shall bear the following meanings:

“Employee Liabilities” means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims whether in tort, contract or 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 Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis.

“Outgoing Service Provider” means the party providing services to the Council similar or the same as the Services and which is being replaced by the Provider.

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Provider or any Sub-contractor to the Council or to a replacement service provider.

“Service Transfer Date” means the date of a Service Transfer.

“Staffing Information” means written information about each of the Provider’s or its Sub-contractor’s staff as referred to in paragraph 3.1.1 of this Schedule 3 including in particular: the percentage of working time spent by each of them in the provision of the services; job title, remuneration (meaning salary and benefits and any enhanced redundancy terms) pension entitlement, age, gender, length of service, notice period, particulars of employment in accordance with section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two years, details of any grievances raised by any of them in the preceding two years, any Court or employment tribunal proceedings brought by any of them in the preceding two years, any potential proceedings which the Provider’s or its Sub-contractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one month or more regardless of the reason at the time the staffing information is requested.

“Transferring Outgoing Service Provider Employees” means those employees of the Outgoing Service Provider to which TUPE will apply on the Commencement Date.

“Transferring Service Provider Employees” has the meaning ascribed to it in Paragraph 3.1.2 of this Schedule 3.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive.

2 **TUPE**

- 2.1 The Council and the Provider agree that the commencement of the provision of the Services by the Provider under this Individual Service Agreement may be a “relevant transfer” to which TUPE will apply. The Council and the Provider further agree that, as a result of the operation of TUPE, the contracts of employment between the Outgoing Service Provider and the Transferring Outgoing Service Provider Employees (except in relation to any contract terms relating to occupational pension schemes) will, if applicable, have effect from the Commencement Date as if originally made between the Provider and each such Transferring Outgoing Service Provider Employee.
- 2.2 The Provider shall perform and discharge all its obligations in respect of all the Transferring Outgoing Service Provider Employees from and after the Commencement Date. The Provider shall indemnify the Council against all Employee Liabilities arising from the Provider’s failure to perform and discharge any such obligation.
- 2.3 The Provider shall indemnify the Council against all Employee Liabilities arising from the Provider’s failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Outgoing Service Provider Employees arising from or as a result of any act or omission by the Provider relating to a Transferring Outgoing Service Provider Employee occurring before the Commencement Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Outgoing Service Provider Employee and/or on or after the Commencement Date or any other matter, event or circumstance occurring or having its origin on or after the Commencement Date.
- 2.4 The Provider shall comply with all applicable obligations under the Pensions Act 2004 in respect of the Transferring Outgoing Service Provider Employees.

3 **PRE-SERVICE TRANSFER OBLIGATIONS**

- 3.1 The Provider agrees that, subject to compliance with the Data Protection Legislation:

3.1.1 within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer; or
- (b) receipt of the giving of notice of early termination of this Individual Service Agreement or any part thereof; or
- (c) the date which is six months or less before the due expiry date of this Individual Service Agreement,

it shall provide a list of those of its, or its Sub-contractors, employees who are wholly or mainly assigned to the provision of the Services which the Provider believes will transfer to the Council or the replacement service provider (as the case may be), together with Staffing Information in relation to such employees;

3.1.2 at least 10 Working Days prior to the Service Transfer Date, the Provider shall provide to the Council for itself or on behalf of any replacement service provider (as the case may be) a final list of employees which shall transfer under TUPE (the “**Transferring Service Provider Employees**”); and

3.1.3 the Council shall be permitted to use and disclose information provided by the Provider under Paragraph 3 of this Schedule 3 for informing any tenderer or other prospective replacement service provider.

3.2 The Provider warrants that the information provided under Paragraph 3 of this Schedule 3 shall be true and accurate.

3.3 From the date of the earliest event referred to in Paragraphs 3.1.1(a) to 3.1.1(c) of this Schedule 3, the Provider agrees that it shall not, and agrees to procure that its Sub-contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:

3.3.1 increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or

3.3.2 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or

3.3.3 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

4 APPLICATION OF TUPE ON A SERVICE TRANSFER

4.1 The Council shall determine whether or not based upon a reasonable assessment of the facts a Service Transfer is a situation to which TUPE may apply. In circumstances where it is so reasonably determined, it is agreed the Council or a replacement service provider would inherit liabilities in respect of employees of the Provider or any Sub-contractor engaged in the provision of the Services and, accordingly, the provisions in Paragraphs 5 to 6 of this Schedule 3 shall apply.

5 TUPE INDEMNITIES - EXIT

5.1 The Provider shall, and shall procure that any Sub-contractor shall, perform and discharge all its obligations in respect of all the Transferring Service Provider Employees up to and including the Service Transfer Date. The Provider shall indemnify the Council for itself and on behalf of any replacement service provider against all

Employee Liabilities arising from the Provider's, or any Sub-contractor's, failure to perform and discharge any such obligation.

5.2 The Provider shall indemnify the Council for itself and on behalf of any replacement service provider against any Employee Liabilities in respect of the Transferring Service Provider Employees arising from or as a result of:

5.2.1 any act or omission by the Provider or any Sub-contractor occurring on or before the Service Transfer Date;

5.2.2 any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-contractor other than a Transferring Service Provider Employee for which it is alleged that the Council or any replacement service provider may be liable by virtue of the Individual Service Agreement and/or TUPE; and

5.2.3 any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Provider or any Sub-contractor in relation to its or their obligations under Regulation 13 of TUPE except to the extent that the liability arises from the Council's or any replacement service provider's failure to comply with Regulation 13(4) of TUPE.

5.3 If any person who is not a Transferring Service Provider Employee claims, or it is determined, that his contract of employment has been transferred from the Provider or any Sub-contractor to the Council or any replacement service provider pursuant to TUPE, then:

5.3.1 the Council will and shall use its reasonable endeavours to procure that the replacement service provider will, within five Working Days of becoming aware of that fact, give notice in writing to the Provider; and

5.3.2 the Provider may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Council or the replacement service provider or take such other steps as it considers appropriate to deal with the matter.

5.4 If such offer is accepted, or if the situation has otherwise been resolved by the Provider, the Council shall and shall use its reasonable endeavours to procure that the replacement service provider shall immediately release the person from his employment.

5.5 If, after 15 Working Days period specified in Paragraph 5 of this Schedule 3 has elapsed:

5.5.1 no such offer of employment has been made; or

5.5.2 such offer has been made but not accepted; or

5.5.3 the situation has not otherwise been resolved,

the Council may and shall advise the replacement service provider that it may within five Working Days give notice to terminate the employment of such person.

- 5.6 Subject to the Council or the replacement service provider acting in accordance with the provisions of Paragraph 5 of this Schedule 3, the Provider shall indemnify the Council for itself and on behalf of the replacement service provider against all Employee Liabilities arising out of termination pursuant to the provisions of Paragraph 5.5 of this Schedule 3.
- 5.7 If any such person as is described in Paragraph 5.3 of this Schedule 3 is neither reemployed by the Provider or any Sub-contractor nor dismissed by the Council or replacement service provider within the time scales set out in this Paragraph 5 of this Schedule 3, such person will be treated as a Transferring Service Provider Employee.
- 5.8 The Council shall, and shall use its reasonable endeavours to procure that the replacement service provider shall indemnify the Provider against all Employee Liabilities arising from the Council's or a replacement service provider's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Service Provider Employee arising from or as a result of any act or omission by the Council or a replacement service provider relating to a Transferring Service Provider Employee occurring before the Service Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Service Provider Employee or on or after the Service Transfer Date or any other matter, event or circumstance occurring or having its origin after the Service Transfer Date.

6 **THIRD PARTY RIGHTS**

- 6.1 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 ("**CRITPA**") shall apply to Paragraph 5 of this Schedule 3 to the extent necessary that any replacement service provider shall have the right to enforce the obligations owed to, and indemnities given to, the replacement service provider by the Provider under that Paragraph 5 in its own right pursuant to clause 1(1) of CRITPA.

SCHEDULE 4 - Variations Process

Introduction

- 1.1 This Schedule 4 details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Individual Service Agreement.
- 1.2 No variations may be made to the Individual Service Agreement unless signed by the Council's Authorised Officer.
- 1.3 The Council may propose a variation to the Individual Service Agreement under this Schedule 4 only where the variation does not amount to a material change to the Services.

2. Procedure for proposing a Variation

- 2.1 The Council may propose a variation to the Individual Service Agreement using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Council shall serve on the Provider a written notice of the proposal to vary the Individual Service Agreement ("**Notice of Variation**").
- 2.3 The Notice of Variation shall:
 - 2.3.1 contain details of the proposed variation providing sufficient information to allow the Provider to assess the variation and consider whether any changes to the Price set out in this Individual Service Agreement are necessary; and
 - 2.3.2 require the Provider to notify the Council within 7 days of any proposed changes to the Price set out the Individual Service Agreement.
- 2.4 Upon receipt of the Notice of Variation, the Provider has 7 days to respond in writing with any objections to the variation.
- 2.5 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve the Provider with the variation form set out below to be signed and returned by the Provider within 7 days of receipt.
- 2.6 Upon receipt of a signed agreement from the Provider, the Council shall notify the Provider in writing of the commencement date of the variation.

3. **Objections to a Variation**

3.1 In the event that the Council receives a written objection to a variation, the Council may:

3.1.1 withdraw the proposed variation; or

3.1.2 propose an amendment to the variation.

4. **Changes to the Price**

4.1 Where the Provider can demonstrate that a variation would result in a change to the Price set out in this Individual Service Agreement, the Council may require further evidence from the Provider that any additional costs to the Provider will be kept to a minimum.

4.2 The Council may require the Provider to meet and discuss any proposed changes to the Price that would result from a variation.

4.3 Where a change to the Price set out in this Individual Service Agreement is agreed by the Council, the Council shall notify its acceptance of the change to the Provider in writing.

4.4 In the event that the Council and the Provider cannot agree to the changes to the Price set out in this Individual Service Agreement, the Council may:

4.4.1 withdraw the variation; or

4.4.2 propose an amendment to the variation.

Variation Form

PARTIES TO THIS VARIATION AGREEMENT

THIS VARIATION AGREEMENT is made on _____ (*insert date*) **BETWEEN: BATH & NORTH EAST SOMERSET COUNCIL** (“the Council”) and _____ (“the Provider”).

The Council and the Provider are entering into this Variation Agreement to vary the Individual Service Agreement (the “Individual Service Agreement”) dated _____ and made between the Council and the Provider relating to [insert title of Individual Service Agreement].

The Council and the Provider agree that:

1. The Individual Service Agreement is varied as detailed below:

[]

2. The Individual Service Agreement shall as from _____ be deemed to have been varied in accordance with the terms of this Variation Agreement.
3. Words and expressions in this Variation Agreement shall have the meanings given to them in the Individual Service Agreement.
4. The Individual Service Agreement, including any previous variations, shall remain effective and unaltered except as amended by this Variation Agreement.
5. This Variation Agreement shall be governed, interpreted and enforced according to the laws of England and Wales.

Authorised to sign for and on behalf of the Council:

Name:

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Designation:

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Signature:

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Dated:

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Authorised to sign for and on behalf of the Provider:

PROVIDER:

--

Name:

--

Designation:

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Signature:

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Dated:

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SCHEDULE 5 – Safeguarding Requirements

Note: Hyperlinks and URLs in this schedule are provided for reference only. It shall be the Provider's responsibility to ensure it is in compliance with the most up-to-date information and guidance throughout the Contract Period in relation to the matters set out below.

1. Safeguarding Policies and Procedures

- 1.1 The Provider shall ensure that its safeguarding policies, procedures and related guidelines are reviewed at least every three years and updated in light of changes to legislation, national and local guidance (this will include guidance on safeguarding adults from the Department of Health, Home Office, CQC and ADASS).
- 1.2 These policies and procedures shall be in line with the multi-agency policy in place for B&NES – see: <https://www.safeguarding-bathnes.org.uk/adults>.
- 1.3 The Provider shall include in the policy a named person in the organisation that all staff can identify as the lead for safeguarding adults and who deals with relevant concerns. The Provider must also identify a lead for Prevent, Mental Capacity Act, FGM, Self-Neglect and Human Trafficking. This can be the same or different people within the organisation.
- 1.4 The Provider shall have clear procedures which include details of how individual Staff who are concerned that an adult or child is at risk, has or may have been abused, is required to report this immediately to the identified named person within its organisation and consider with them a referral to the relevant social care team and document that decision.
- 1.5 The Provider shall detail in its policy and procedures how it will ensure effective multi-agency working around safeguarding including but not limited to compliance with all relevant B&NES multi-agency policy and procedures including but not limited to the Safeguarding Adult Review Process and Serious Untoward Incident Process where required.
- 1.6 The Provider shall have a clear policy regarding safeguarding children, in the context of the provision of Care Home services and Working Together to Safeguard Children 2018. This policy shall be in line with the multi-agency policy in relation to the safeguarding of children that is in place within B&NES.

2. Effective Supervision

- 2.1 The Provider shall have a supervision policy / statement setting out the arrangements for Staff. This will include details on the frequency and ensure opportunities are provided to discuss safeguarding prevention and safeguarding concerns where relevant for adults or children at risk. Supervision shall be delivered by suitably skilled and experienced supervisors who have access to their own supervision.

3. Safe Recruitment and Retention of Staff

- 3.1 The Provider shall have in place a Safe Recruitment Policy and ensure this is in line with statutory guidance and B&NES multi-agency policies. The Provider shall ensure those Staff responsible for interviewing staff, volunteers and agency staff have undertaken appropriate safer recruitment training.
- 3.2 The Provider shall include in the Safe Recruitment Policy:
 - 3.2.1 details of the recruitment process for paid staff, volunteers and agency staff;
 - 3.2.2 details of how the Provider will comply with Government criteria for Disclosure and Barring Service (DBS) checks (including validation of certificates). <https://www.gov.uk/disclosure-barring-service-check/overview>
 - 3.2.3 a section on managing a positive DBS disclosure. This will include how the Provider deals with convictions, relevant 'soft' information and third party information; and

- 3.2.4 that any positive disclosures or relevant information on DBS checks will be reported to the Council's Authorised Officer(s) using the Council's risk assessment tool. Where the Provider is concerned about the DBS check and the appropriateness of the person to work with vulnerable adults, it shall discuss this with the Council safeguarding team.
- 3.3 The Provider shall ensure that the Council's Authorised Officer (and LADO where necessary) is promptly kept advised at all times of any "Relevant Personnel" who subsequent to his/her commencement of employment as a member of staff receives a conviction or caution.
- 3.4 The Council reserves the right to verify the existence and/or substance of any DBS disclosure, or criminal record, or DBS adults' barred list disclosure, or certificate of good conduct, in relation to any member of Staff and the Provider shall immediately provide the Council with any information that the Council reasonably requests to enable it to be satisfied that the obligations under this Schedule and Clause 16 have been met.
- 3.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to a Service User.
- 3.6 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to a Service User.
- 3.7 The Provider shall ensure that the Council is kept advised at all times of any Staff, or other persons employed/engaged in the performance of any part of the Services if subsequent to the commencement of his/her employment/engagement hereunder their previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to a Service User.
- 3.8 The Council reserves the right to issue a notice to the Provider requiring it to no longer employ or use the services of any person in the provision of any part of the Services if in the reasonable opinion of the Council the employment or use of such person poses a risk of harm to a Service User. Any such decision by the Council shall be final conclusive and binding on the Provider and the Council shall not (unless it is willing to do so voluntarily and at its absolute discretion) be required, at any time, to disclose to the Provider the reasons for its decision.
- 3.9 On receiving the notice described in Paragraph 3.8 above, the Provider shall forthwith remove such member of Staff from the provision of the Services and shall immediately provide a replacement.

4. Managing Allegations against Paid, Volunteers and Agency Staff

- 4.1 The Provider shall ensure that it includes in its policies and procedures sections which demonstrate its compliance with national and local guidance on allegations management.
- 4.2 The Provider shall designate a lead member of staff with responsibility for managing allegations of abuse against people who work with adults at risk and children, liaising with the Council's safeguarding adults service and designated adult safeguarding manager in accordance with statutory guidance.
- 4.3 With regard to allegations against those Staff working with adults at risk, the B&NES multi-agency procedure will be implemented and the Provider shall ensure it works within this.

5. Knowledge and Use of the Multi-Agency Escalation Policy

- 5.1 The Provider shall ensure the Multi-Agency Escalation Policy is made available and training provided as required to its entire Staff to implement the policy as detailed on the multi-agency web pages:

https://www.safeguarding-bathnes.org.uk/sites/default/files/lsab.lscb_escalation_protocol_.pdf

6. Whistleblowing Policy

- 6.1 The Provider shall have a Whistleblowing Policy with a clear process for raising concerns about individuals or organisational culture at all levels in the organisation.

7. Policy for the Use of Social Networking

- 7.1 The Provider shall have a Use of Social Media Policy for Staff use of social networking. This Policy should detail expectation regarding an individual's behaviour, conduct and interaction when using all social media including social networking sites. This includes contact with adults, parents and children who use the Services.

8. Knowledge and Use of other Policies

- 8.1 The Provider to ensure it is aware of the other policies and guidance the B&NES multi-agency body have in addition to the Multi-Agency Safeguarding Policy and Procedures. See: <https://www.safeguarding-bathnes.org.uk/adults>

9. Single Central Record

- 9.1 The Provider shall maintain records of checks in compliance with DBS guidance, in order to ensure they can provide evidence of any checks (including the DBS) if requested to do so by the Council and reviewed annually.

<https://www.gov.uk/government/publications/handling-of-dbs-certificate-information>

10. Safeguarding Audit and Monitoring

- 10.1 The Provider shall complete the range of audits and monitoring as required by the Council's Authorised Officer and the B&NES multi-agency body when requested. These will be shared with the Council's Authorised Officer who will discuss at your contract review to ensure remedial actions identified are being addressed.
- 10.2 The Provider shall participate in case audits (single or multi-agency) or case reviews and completing relevant actions in order to demonstrate compliance as required.

11. Training and development of staff/volunteers relevant to their role within the organisation

- 11.1 The Provider shall ensure that a safeguarding training needs analysis is undertaken of relevant staff and reviewed annually and that the multi-agency training audit is specifically completed as requested.
- 11.2 The Provider will report Staff training through its annual audit and will maintain the Single Central Record as set out above.
- 11.3 The Provider shall ensure:
- 11.3.1 all Staff are made aware of safeguarding and the law in relation to the Mental Capacity Act 2005 (for agencies providing support to individuals over the age of 16 years) during their induction;
- 11.3.2 all Staff understand the Provider's safeguarding policies and procedures;

- 11.3.3 all relevant new Staff will complete safeguarding awareness training either through the Council's Common Induction Training or sourced by the Provider;
- 11.3.4 safeguarding awareness training (referred to as Level 2 training) is completed by all Staff (this is available via the Council or must be sourced independently by the Provider);
- 11.3.5 that relevant staff have the appropriate level of investigation training;
- 11.3.6 that Safeguarding adults training is updated at regular intervals in compliance with current applicable Law and local multi-agency policies including Multi-agency Safeguarding Adults Policy and Procedures in place from time to time, which at the date of this Individual Service Agreement is at least every three years for Staff working with adults;
- 11.3.7 that relevant Staff undertake Mental Capacity Act training during their induction and that this is appropriately refreshed.

SCHEDULE 6 – Processing, Personal Data and Data Subjects

Description	Details
Providing information to data subjects under Article 13 and 14 of the GDPR	<i>Each Party is responsible for ensuring that the Data Subject is informed regarding the processing activity at the point of collecting personal data from the Data Subject in accordance with Article 13 and 14 of the GDPR. Such information shall include relevant information regarding any sharing of personal data.</i>
Responding to data subject requests under Articles 15-22 of the GDPR	<i>The Provider shall respond to any Subject Access Request made in relation to data that they hold and forward any Subject Access request to the Council where such records are held separately by the Council.</i>
Notifying the Information Commissioner (and data subjects) where necessary about data breaches	<i>Either Party shall notify the Information Commissioner and Data Subject(s) where such a breach has occurred when such a breach is as a result of their party's processing activity and where they are a Data Controller in their own right.</i> <i>In any case where a Default is likely to result in a risk to Data Subjects for whose personal data the other Party is responsible as a Joint Data Controller, the other party must immediately inform the other when such risk has been assessed as being evident.</i>
Maintaining records of processing under Article 30 of the GDPR	<i>Both Parties shall maintain a record of processing activity where required in accordance with Article 30 of the GDPR. Such a record should upon request be available for either party to view for the purposes of ensuring the effective management and accountability of personal records.</i>
Carrying out any required Data Protection Impact Assessment (DPIA)	<i>Both Parties are responsible for conducting, in their own right, a DPIA where applicable in a format considered appropriate. Any Party which identifies any residual risk associated to jointly controlled records shall notify the other.</i>
The agreement must include a statement as to who is the point of contact for data subjects.	<i>Each Party will have a point of contact respectively for any individual wishing to make contact, such point of contact should direct the individual to the other Party where appropriate.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>Either Party shall provide the other with such data as is required for the continued provision of service. This may include transfer to a third party or return to the Council for onward transfer.</i> <i>The Provider will be responsible for informing Data Subjects with Active Cases in any situation where the provision will be moving to a Third Party.</i> <i>Either Party shall retain any such records as required by statute.</i>

