

**TERMS AND CONDITIONS OF**  
**SUPPORT SERVICES UNDER OPTION 2**  
**of the**  
**Social Care (Self-Directed Support (Scotland) Act 2013)**  
**REF ELC-18-1654**

# TERMS AND CONDITIONS

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## PREAMBLE

- (A) The Council has carried out an Assessment of the Supported Persons care needs;
- (B) The Supported Person has opted to exercise their right to choose their Provider for Support Services under the Social Care (Self-directed Support) (Scotland) Act 2013 (Option 2); and
- (C) The Provider is the provider of choice, chosen by the Supported Person and has been issued with the Assessment; and
- (D) The Provider has prepared and developed a Support Plan which sets out the Care Package to be delivered by the Provider to the Supported Person and reflects the Assessment;
- (E) The Council has therefore issued an Individual Purchase Agreement to the Provider, which sets out the Support, Care at Home and/or Housing Support Service to be delivered to the Supported Person as being pursuant to the Support Plan and Assessment and to be delivered in terms of these Terms and Conditions together with the Schedule, all of which sets out the Support Service to be provided by the Provider, the Scheduled Payments, the Support Plan (and/or as the case may be the Assessment) and the Care Package itself to be delivered by the Provider to the Supported Person.
- (F) The Provider has accepted the Individual Purchase Agreement;
- (G) The Agreement between the Parties shall be deemed to consist of any Individual Purchase Agreement accepted by the Provider and such shall be pursuant to the Support Plan and be subject to these Terms and Conditions, the Specification, the KPI Schedule, Balanced Scorecard, and any other annexed or appended Schedules or parts and shall be deemed together to constitute this Agreement for the provision of Support services for the Supported Person, who has been assessed as in need for a Support Services, to enable the said Supported Person to live independently (“**this Agreement**”).

IT IS HEREBY AGREED as follows:

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

The defined Terms in this Agreement shall apply to the Terms and Conditions, the Specification, the KPI Schedule, the Balanced Scorecard and other parts of the Schedule and the Individual Purchase Agreement and shall have the meaning prescribed to them below, or as otherwise expressly provided:

- |  |  |
|--|--|
| 1.1.1 <b>Access to Health Services</b> | Means the Provider’s obligation to assist the Supported Person with maintaining their own health in terms of the Assessment and Support Plan.  |
| 1.1.2 <b>Achieved Outcome</b>          | Means the Personal Outcome set out in the Supported Person’s Assessment and Individual Purchase Agreement and reflected in the Support Plan has been demonstrably achieved to the satisfaction of the Council. |

**1.1.3 Additional Services**

Means any facilities, goods or services not in scope of this Agreement and not specified in the Individual Purchase Agreement that may be supplied by the Provider to the Supported Person on the request of the Council or the Supported Person with the consent of the Council either in addition to the Service or in an emergency or urgent situation;

**1.1.4 Adult Support and Protection and Child Protection**

Means in the context of protection of vulnerable groups the commitment to ensure the Protection of Adults and Children at Risk of Harm, and other Supported Persons all within the meaning of the Adult Support and Protection (Scotland) Act 2007 to ensure:

- i. Timely recognition and identification of vulnerable adults and children at risk of harm
- ii. Recognition of risk from various resources in different situations
- iii. Recognition of harmful or abusive behaviour
- iv. Highlighting duty to staff to report all suspicions relating to harm, neglect, exploitation or abuse
- v. The Provider investigates and reports on the above to the Council or the proper authorities, Care Inspectorate, Police and or the NHS
- vi. Appropriate victim support procedures are in place to support the victims and deal appropriately with the perpetrators

1.1.5 <b>Assessment</b>	Means the Council's Assessment of the Supported Person requiring Support Services, Care at Home Service and /or Housing Support Service containing an assessment of the Supported Persons regular or irregular Service requirements and setting out the Desired Personal Outcomes of the Supported Person and the Indicative Budget to be reflected in the Support Plan submitted by the Provider and annexed to the Individual Purchase Agreement
1.1.6 <b>Attendance Failures</b>	Means in reference to any delayed or late Scheduled Visit, shortened visit by arriving late or leaving early, missing or absence of a Scheduled Visit and shall include any irregular shift patterns, sporadic or delayed or postponed visits or any Scheduled Visits delivered outside of the agreed times and dates as agreed with the Council (or with the Supported Person with the Council's consent) and set out in the Individual Purchase Agreement and/or the Support Plan all as the case may be and shall include any repeated or persistent failures of the same
1.1.7 <b>Balanced Scorecard</b>	Means the Balanced Scorecard appended to Part 3 of the Schedule and used by the Council as a measurement tool of the Provider's performance of the KPI's and this Agreement throughout the Duration
1.1.8 <b>Business Continuity</b>	Means the obligation on the Service Provider to deliver the Service and the Care Package without interruption and in terms of and in accordance with these Terms and Conditions, the Specification, the KPI's and the Support Plan and the Provider's Business Continuity Plan
1.1.9 <b>Business Continuity Plan</b>	Means the Provider's plan for Business Continuity addressing foreseeable circumstances that could affect the daily operation of the provision of Service and

demonstrating remedies and solutions in the event of:

- i. Adverse weather conditions;
- ii. Staff shortages, recruitment failures other staffing issues
- iii. Disruption to the transport infrastructure
- iv. Any actual or potential industrial action
- v. Major accidents or epidemics
- vi. Disruption to the power or water supply
- vii. Change of the Provider's company structure

**1.1.10 Care at Home Service**

Means a Care at Home Service managed, co-ordinated and delivered by the Provider to the Supported Person under Option 2 to deliver the Care Package to the Supported Person at the Home of the Supported Person as set out in the Assessment and Individual Purchase Agreement and reflected in the Support Plan to ensure the Personal Outcomes are achieved, and such service shall be subject to and delivered in terms of these Terms and Conditions, the Specification, KPI Schedule and any other supplemental documentation and including for the avoidance of doubt any Risk Assessments or reviewed assessments or Reviewed Support Plan;

**1.1.11 Care Inspectorate**

Means the Social Care and Social Work Improvement Scotland (SCSWIS) and known as the 'Care Inspectorate' established under the Public Services Reform (Scotland) Act 2010;

**1.1.12 Care Inspectorate Grade (CI Grade)**

Means the Grade awarded annually by the Care Inspectorate (or following a Large Scale Investigation) for Quality of Care and

Support, Quality of Staffing and Quality of Management and Leadership

#### 1.1.13 Care Package

Means the package of Personal Care (which may include a Support Service (with or without Care at Home and/or Housing Support Service) delivered in accordance with the Assessment and agreed Support Plan to the Supported Person at their Home (or otherwise as the case may be) and in accordance with the Specification reflecting the achievable Desired Personal Outcomes setting out the Support Worker Activities to be undertaken by the Support Worker and delivered to the Supported Person for the Period all as identified by the Assessment and/or the Individual Purchase Agreement and set out in the Support Plan in accordance with and in terms of the Specification and shall include one or more of the following Care Packages:

- i. Care at Home, Personal Care and Support delivered by a Support Worker to and at the Home of the Supported Person and comprising of regular or irregular Scheduled Visits or Support Worker Activities for the Period
- ii. meaning holistic care designed to meet and achieve the Desired Personal Outcomes to assist the Supported Person to improve self-care options and activities of daily living
- iii. Waking Night Shift delivered by Waking Night Staff

- iv. Sleepover delivered by Sleepover Staff
- v. a Care Package designed to assist the Supported Person achieve a discharge from a hospital setting, and or a return from a care home, Short Break or in pursuance of the Hospital to Home Service and shall include Personal Care which may require to be continued through a delivery of any of the Care Packages specified in this definition (i-viii) , and/or any one or more of them and shall be reviewed in accordance with the Personal Outcomes set out in the Support Plan
- vi. a Housing Support Service and shall include assistance with Tenant's Duties
- vii. Short visits of 15 minute duration for the purposes of dropping off medication or other such similar short purpose etc.
- viii. Shared Support Services delivered by the Provider to the Supported Person at the Supported Person's Home or otherwise at an alternative location in groups with other Supported Persons all in terms of the Support Plan.

- ix. Support Services delivered in accordance with the Support Plan and Individual Purchase Agreement that may require the support to be delivered outside of the home.

<b>1.1.14 Care Package Review</b>	Means a review of the Supported Person's Care Package and progress towards achievement of the Desired Personal Outcomes such review to be carried out by the Provider at least every 6 months (or earlier if requested by the Council) for reasons specified in these Terms and Conditions, the Specification and KPI's, the results of the Care Package Review to be submitted to the Council and any changes agreed with the Council.
<b>1.1.15 Care Period</b>	Means the intended duration of Support to the Supported Person and set out in the Individual Purchase Agreement whether such is regular, irregular or permanent and/or continued Care, or whether for a short reviewable duration
<b>1.1.16 Carer</b>	Means a family member or friend of the Supported Person who voluntarily cares for the Supported Person
<b>1.1.17 Case Manager</b>	Means the Provider's appointed Case Manager appointed to manage the relevant Support Worker responsible for delivering the Care Package to the Supported Person
<b>1.1.18 Change in Care Package</b>	Means a change in the Care Package to be delivered to the Supported Person following a Care Package Review
<b>1.1.19 Child Behaviour Support Plan</b>	Means a Child Behaviour Support Plan designed to ensure the behaviour of a child is managed consistently by those supporting the child at home, at school and when out in the community

<b>1.1.20 Close Monitoring</b>	Means the Council's close monitoring of the Provider's management and operation and delivery of the Service, to the extent that a full Care Package Review, Support Service Review or Service Review is deemed not necessary, though some aspects of the Provider's service may require some scrutiny all at the discretion of the Council
<b>1.1.21 Commencement Date</b>	Means the date of commencement of the Care Period specified in the Individual Purchase Agreement in respect of the Supported Person.
<b>1.1.22 Community Resources</b>	Means local resources for public use and benefit including (but not limited to) libraries, shops, theatres, leisure centres, public parks, sports and leisure facilities and other like local facilities, groups and clubs intended for the enjoyment of the public
<b>1.1.23 Complaint</b>	Means any complaint generally whether such is made to the Provider, and/or the Council or any other governing body
<b>1.1.24 Complaints Register</b>	Means the Provider's maintained register containing all formal Complaints made directly to it by the Supported Person or the Supported Person's Representative that the Provider delivers care to, the outcome of such complaint and the action taken and other details specified in this Agreement
<b>1.1.25 Contract Review</b>	Means a review by the Council of the Provider's management and operation of the Service including where necessary a review and/or audit of its accounts systems, monitoring systems and records handling, ECMS and Telecare systems (if any), visits records and invoicing, policies, Safer Recruitment, training and all other management operations incumbent on the Provider, if in the reasonable opinion of the

Council, such is necessary in order to deliver its duty of care.

- 1.1.26 Contract Termination** Means the termination of this Agreement by the Council in terms of the these Terms and Conditions
- 1.1.27 Corporate and Statutory Partners** Means the Councils partners and shall include:
- i. NHS Lothian Hospital to Home Service
  - ii. NHS Lothian Services
  - iii. The IJB (being the East Lothian Integration Joint Board)
  - iv. Any other third party other than the Council that delivers a Support Service to the Supported Person within the care of the Provider and the responsibility of the Council
- 1.1.28 Council's Representative** Means the council representative nominated and notified to the Provider at the commencement of this Agreement
- 1.1.29 Data Protection provisions** Means the data protection provisions contained in these Terms and Conditions and Data Sharing Agreement, the Schedule of which sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller.
- 1.1.30 Day Time Support** Means a Support Service, Care at Home Service and/or Housing Support Service provided by the Provider at the Supported Persons Home (or otherwise as the case may be) usually between the hours of 07:00 and 22:00 hours.

**1.1.31 Desired Personal Outcomes**

Means:

**Quality of life**

Feeling safer

Having things to do

Seeing people

Staying as well as possible

Residential preference

**Process**

Being listened to

Having a say

Responded to

Reliability

Consistency

**Change/maintenance**

More independence

Improved confidence/morale

Improved skills

Improved mobility

Reduced symptoms

**1.1.32 Deteriorations**

Means a deterioration in the Supported Persons health and well-being to the extent that a Care Package Review is required

**1.1.33 Disclosure Scotland**

Means the Disclosure Bureau empowered under Part V of the Police Act 1997 to issue criminal record certificates and enhanced criminal record certificates and based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA

**1.1.34 Duration**

Means the period set out in the Individual Purchase Agreement as being the duration of the Service delivery to the Supported Person and including the Commencement Date until

the Expiry Date, or some such other date agreed between the Parties unless terminated in accordance with the Termination provisions herein or any agreed Extension period agreed between the Parties

<b>1.1.35 Emergency</b>	Means an emergency as specified in Clause 14 herein
<b>1.1.36 Emergency Care</b>	Means a requirement for the Provider to deliver additional Support as a matter of urgency to the Supported Person within 24 hours of the date of Referral.
<b>1.1.37 Enabling</b>	Means support that is provided to enable the Supported Person to be as independent as possible.
<b>1.1.38 Equality and Human Rights Commission</b>	Means the body set up under the Equality Act 2006 having its head office at Arndale House, Arndale Centre, Manchester M4 3EQ;
<b>1.1.39 Existing Supported Person</b>	Means the Supported Person who is receiving a Care Package from the Provider which does not change following a Review, or may change in the event of a Care Package Review, or may or may not change in the event of a Service Restart
<b>1.1.40 Expiry Date</b>	Means the date on which the Support Service to the Supported Person is scheduled to end and reflected in the Individual Purchase Agreement or earlier if the Supported Person chooses another provider or no longer requires a Care Package or the date on which the Individual Purchase Agreement is terminated for any reason whichever is the earlier;
<b>1.1.41 Financial Year</b>	Means the period of twelve months in any given year ending with 31 March;
<b>1.1.42 Framework</b>	Means the 2017 Care at Home Framework of Providers with the Council reference no CON-16-090

<b>1.1.43 Framework Providers</b>	Means Care at Home service providers, under the Framework contract to deliver care at home services to the Council under Option 3 of the Self Directed Support (Scotland) Act 2013;
<b>1.1.44 GDPR</b>	as more particularly defined in the Data Sharing Agreement
<b>1.1.45 GDPR Questionnaire</b>	Means the questionnaire issued to the Provider by the Council for the Provider to complete in performance of its data protection obligations to demonstrate to the Council's satisfaction how the provider manages and treats Personal Data.
<b>1.1.46 Good Practice Principles</b>	<p>Means the good practice principles to be employed by the Provider in the delivery of the Service and being designed to encourage in the Supported Person:</p> <ol style="list-style-type: none"> <li>1. Participation</li> <li>2. Dignity</li> <li>3. Involvement</li> <li>4. Informed Choice</li> <li>5. Collaboration</li> <li>6. Responsibility</li> <li>7. Risk Enablement</li> <li>8. Innovation</li> </ol>
<b>1.1.47 ELHSCP</b>	Means the East Lothian Health & Social Care Partnership
<b>1.1.48 Equivalency Model</b>	Means an internal administrative tool used by the Council to set the Indicative Budget based on a rate no higher than £15.87 per hour or such other rate set by the Council and notified to the Provider from time to time for Support Services
<b>1.1.49 GIRFEC</b>	Means the Scottish Government Programme 'Getting it Right for Every Child' instigated to

improve outcomes for all children and young people by promoting a shared approach (with the child and their family together with schools, professionals and other partners) that builds solutions with and around children and families as updated, amended and substituted from time to time

**1.1.50 Home**

Means unless otherwise specified the normal residence or home of the Supported Person

**1.1.51 Hospital to Home Service**

Means the NHS Lothian Hospital to Home Service

**1.1.52 Houses of Multiple Occupancy**

has the statutory meaning accorded to it in the Private Rented Housing (Scotland) Act 2011

**1.1.53 Housing Support Services**

Means the one-to-one Support Service provided by the Service Provider to the Supported Person which shall include:

- i. Ensuring the Supported Person complies with its Tenants' Duties;
- ii. Ensuring the Supported Person participates in and gets involved with the local community;
- iii. Provision of Support Services in respect of budgeting and debt management;
- iv. Provision of Support Services in relation to any social benefit claims;
- v. Assistance with the security of the Supported Person's dwelling;
- vi. Assisting and mediating with any disputes between the Supported Person and its neighbours;
- vii. Providing Counselling and advice in relation to tenancy issues

**1.1.54 Improvement**

Means for the purposes of this Agreement and Specification, the Personal Outcomes are being progressed and/or achieved to the satisfaction of the Council and merits a Review of the Support Plan and/or Care Package Review for the purposes of reducing the one to one Care and/or for purposes of reducing the Scheduled Visits

**1.1.55 Incidental Breach**

Means a one off or isolated or trivial breach by the Provider to fulfil its obligations under this Agreement that is not deemed a Remedial or Material Breach nor (unless recurring or persistent or otherwise provided herein) to the extent that such a breach has little or no detrimental impact on the welfare of the Supported Person or the Support Service as a whole and more particularly described and governed by Clauses 31.1 and 31.2

**1.1.56 Indicative Budget**

Means the budget calculated by the Council and referred to the Provider with the Assessment based on its equivalency model as being the maximum cost of delivering the Care Package to the Supported Person in order to achieve the Desired Personal Outcomes

**1.1.57 Individual Purchase Agreement**

Means the Individual Purchase Agreement agreed with the Provider in respect of an individual Supported Person in need of Support Services who has selected the Provider as their choice of Provider under Option 2, and which Individual Purchase Agreement sets out and includes (but may not be limited to) the agreed Support Plan and Outcomes to be achieved and/or Care Package to be delivered by the Provider and shall include the Commencement Date and Care Period and may where appropriate include the Expiry Date of the service provision, Indicative Budget and costs of the same in the form of the Scheduled Payment

and shall be pursuant to these Terms and Conditions a template of which is annexed to the Schedule Part 5;

- 1.1.58 KPI** Means the Provider's key performance indicators that sets the standards of the Provider set out and specified in the KPI Schedule and measured by the Balanced Scorecard
- 1.1.59 KPI Schedule** Means the key performance indicators setting the standards for the Provider's management and delivery of the Service and more particularly set out in the KPI Schedule and measured by the Balanced Scorecard and pursuant to this Agreement
- 1.1.60 Material Breach** Means any serious or material breach of this Agreement by either Party or the Provider to fulfil its obligations under this Agreement that may include a persistent or Incidental or Remedial Breach and more particularly specified in 31.5 and 31.6
- 1.1.61 Mental Disorder** Means any mental disorder as specified within the Mental Health (Care and Treatment) (Scotland) Act 2003, including dementia and learning disability
- 1.1.62 Mental Welfare Commission** Means the Mental Welfare Commission for Scotland, as defined by the Mental Health (Care and Treatment) (Scotland) Act 2003 and having a place of business at Argyle House, 3 Lady Lawson Street, Edinburgh EH3 9SH
- 1.1.63 Moving and Handling Techniques** Means the Provider's process and policy and plans (including Moving and Handling Safer Handling Plans) for moving and handling of Supported Persons and assisting transfers with one of two carers, the use of Moving and handling equipment the use of Specific hoisting equipment, Room and environment set up, awareness of controversial techniques, recognising changes

in client abilities, awareness of legislation, employer and employee responsibilities and in terms of and in accordance with the Health and Safety Executive's advice and guidance on Moving and Handling if applicable, at any given time

**1.1.64 National Care Standards Principles**

Means the Part B Principles

**1.1.65 National Care Standards**

Means the New National Care Standards (new at the time of writing) and National Principles governed by the Regulation of Care (Scotland) Act 2010 and being:

- i. Outcomes 1-9 set out in the 2010 Regulations and the following principles:
- ii. Dignity and respect
- iii. Compassion
- iv. Be included
- v. Responsive care and support
- vi. Wellbeing

All as set out and specified in the Regulation of Care (Scotland) Act 2010 and any other relevant standards which are applicable to the Provider and the Services it delivers and in the context of the Specification shall include GIRFEC where applicable

**1.1.66 National Outcomes**

Means Outcomes 1 – 9 specified in the Public Bodies (Joint Working) (National Health & Wellbeing Outcomes) (Scotland) Regulations 2014 (or such other supplemented, amended or substituted Government Framework from time to time

**1.1.67 Night-time Support**

Means a Care at Home Service that is provided by the Provider at the Supported Persons Home or normal residence (and may include the residence in the event of Respite) during the hours of 22.00 until 07.00

1.1.68 <b>PB(JW)(S)A</b>	Means the Public Bodies (Joint Working) (Scotland) Act 2014
1.1.69 <b>Older Adults</b>	Means people over 65 years of age
1.1.70 <b>Ombudsman</b>	Means the individual appointed by Her Majesty on the nomination of the Scottish Parliament in terms of the Scottish Public Service Ombudsman Act 2002
1.1.71 <b>Option 2</b>	Means the Supported Person's election of his or her preferred service provider, as set out and specified in the Self-Directed Support (Scotland) 2013
1.1.72 <b>Option 3</b>	Means the Council's selection of the Supported Person's preferred service provider from the Framework and as set out and specified in the Self-Directed Support (Scotland) 2013
1.1.73 <b>Outcomes</b>	Means the over-arching national Health and Wellbeing Outcomes in terms of the Public Bodies (Joint Working) (Scotland) Act 2014, with regard to the Institute for Research and Innovation in Social Services (IRISS) (April 2013) of which one or any number of them are specified as being Desired Personal Outcomes for any individual Supported Person identified in the Assessment and targeted as the Personal Outcomes in the Support Plan and reflected in the Support Plan
1.1.74 <b>Overprovision</b>	Means an exceptional event whereby the provision of care in an isolated incidence set out in Clause 5.14 herein arises from the particular circumstances of the Supported Person to which the Provider reasonably considers the events of Clause 5.14 to apply

<b>1.1.75 Part B Principles</b>	Means the National Care Standards Principles and values outlined and set out in the New National Care Standards Part B Clause 3 designed to ensure the maximum possible participation and involvement in the design and management of each Supported Persons Care Package
<b>1.1.76 Payment</b>	Means the payment due by the Council to the Provider for the delivery of the Service to the Supported Person as set out and prescribed in the Individual Purchase Agreement and in accordance with the provisions of Clause 5 herein
<b>1.1.77 Person Centred Approach</b>	Means an approach whereby the Provider ensures the Supported Person is at the centre of decision making relating to their life
<b>1.1.78 Personal Budget</b>	Means the Personal Budget developed by the Provider and agreed with the Council as being the agreed cost of providing the Care Package to the Supported Person at the Rate designed to achieve the Personal Outcomes and reflected in the Individual Purchase Agreement to be paid by way of 4 weekly Scheduled Payments in arrears in return for the Remittance Advice over the Duration
<b>1.1.79 Personal Care</b>	Has the statutory meaning prescribed to it, set out in the National Care Standards
<b>1.1.80 Personal Outcomes</b>	Means the Desired Personal Outcomes assessed as being achievable set out and identified in the Assessment, and reflected and detailed and identified in the Support Plan and shall be one or more of the Desired Personal Outcomes assessed as being achievable for the Supported Person and all as identified in the Individual Purchase Agreement
<b>1.1.81 PVG Act</b>	Means The Protection of Vulnerable Groups (Scotland) Act 2007

1.1.82 <b>Pre-Paid Payment Cards</b>	Means the pre-paid payment card issued by the Council to the Provider which is pre-paid to a sum equal to the Personal Budget and to which the Provider may draw down payment in return for Services in accordance with the Pre-Paid Payment Card Directions.
1.1.83 <b>Pre-Paid Payment Cards Directions</b>	Means the instructions and directions for authorising the drawing down of the payment for Services, either by scheduled payments or in terms of the directions to be issued to the Provider along with the Pre-Paid Payment Card at the time of issue
1.1.84 <b>Provider</b>	Means the organisation from which the Council commissions the Service and identified in the these Terms and Conditions and Individual Purchase Agreement
1.1.85 <b>Provider's Representative</b>	Means the provider representatives nominated and notified to the Council from time to time
1.1.86 <b>Rate</b>	Means the Rate utilised by the Council's Equivalency Model and the basis for the Indicative Budget
1.1.87 <b>Registration</b>	Means registration granted by the Care Inspectorate in terms of the Regulation of Care (Scotland) Act 2001 and 'Registered' shall be construed accordingly
1.1.88 <b>Regulations</b>	Means the Regulation of Care (Scotland) Act 2001
1.1.89 <b>Rejected Invoice</b>	Means in the event an Invoice is submitted to the Council for payment which has been rejected by the Council for reasons permitted under these Terms and Conditions, or if invoice is neither supported with the requisite information required by the Council to pay or is incorrect, contains errors or falsifications or otherwise disputed or is submitted late and not within the specified time period for payment or requires resubmission or had not been agreed with the Council in advance

<b>1.1.90 Remedial Breach</b>	Means a breach by the Provider to fulfil its obligations under this Agreement that is not deemed an Isolated Breach nor a Material Breach, to the extent that such a breach is remedial and specified more particularly in and governed by the terms of Clause 31
<b>1.1.91 Remittance Advice</b>	Means the remittance advice issued by the Provider to the Council on receipt of the Scheduled Payment and pursuant to these Terms and Conditions
<b>1.1.92 Re-referral</b>	Means a Referral to the Provider of the Supported Person for a Service Restart or new Care Package following a review or end of Care Period, or return home from hospital or for a resumption of Care Package following Short Breaks, if such is the choice of the Supported Person and the Provider has the capacity to accept such
<b>1.1.93 Report</b>	Means any report that the Provider is obligated to deliver and submit to the Council to meet all of its monitoring and reporting obligations set out in the Specification and KPI Schedule and measured by the Balanced Scorecard
<b>1.1.94 Representative</b>	Means the person, if any, nominated by the Supported Person by a power of Attorney prior to the onset of incapacity, or by a court order in terms of the Adults with Incapacity (Scotland) Act 2000 or otherwise a legal guardian to be first contacted or advised by the Provider and the Council regarding the Supported Person's circumstances or any significant change thereto, who shall, in the event of the Supported Person failing to nominate any such person, be the Supported Person's next of kin or any other person who the Provider and the Council agree has a relevant interest with regard to the Supported Person, whom failing, the Council
<b>1.1.95 Respite</b>	Means a short term placement of the Supported Person away from their Home or

normal residence for the purposes of relieving the usual Carer of their care responsibilities;

**1.1.96 Review**

Means any review of any of the following: a Support Service Review, Service Review, Support Plan Review, Care Package Review or any other such review appropriate in the circumstances including a review of the Providers service as a whole;

**1.1.97 Reviewed Support Plan**

Means the Support Plan following a review of the Support Plan for the Supported Person following a Care Package Review or re-Assessment and shall where the context so applies be deemed thereafter to be the Support Plan for the purposes of the Individual Purchase Agreement, these Terms and Conditions, and Specification

**1.1.98 Risk Assessment**

Means any Risk Assessment and the process of Risk Assessment generally, including without limitation, the identification of (or failure to identify) particular risks and their impact, risk reduction measures, contingency plans and remedial actions to be carried out on a regular basis of each Support Service in relation to each Supported Person and the Service delivery, in accordance with the Specification and the KPI's which the Provider shall manage and maintain and report to the Council upon request at any time

**1.1.99 Safer Recruitment**

Means a practice to ensure that the Provider obtains the following prior to appointment of any members of staff in any recruitment process the Candidate:

- i. Passes a PVG check
- ii. Possesses the appropriate qualifications
- iii. has the appropriate experience and skill level to meet the appointment
- iv. is legally entitled to work in the UK
- v. is supported by 2 referees

- vi. has the appropriate SSSC qualifications

**1.1.100 Satisfaction Survey**

Means the satisfaction survey carried out by the Provider to determine the level of general satisfaction with the Service by the Supported Persons in the Provider's care at any time the format and frequency of which shall be agreed with the Council

**1.1.101 Schedule**

Means the Schedule in 5 parts annexed to these Terms & Conditions of Contract and containing:

- i. The Specification
- ii. The KPI Schedule
- iii. The Balanced Scorecard
- iv. Data Sharing Agreement
- v. Individual Purchase Agreement

**1.1.102 Scheduled Payment**

Means the 4 weekly scheduled payment agreed with the Provider for the delivery of the Support Services to the Supported Person within the Personal Budget in terms of and set out in the Individual Purchase Agreement to be paid by the Council to the Provider on a 4 weekly basis in arrears in accordance with Clause 5.2.1 and based on a calculation equivalent to the Rate

**1.1.103 Scheduled Visit**

Means the specified appointed time and date on which the Provider shall commit to ensuring a Support Worker delivers the Support Service to the Supported Person agreed with the Supported Person and the Council and specified in the Support Plan and/or Individual Purchase Agreement

**1.1.104 Scottish Social Services Council**

Means that body set up under the Regulation of Care (Scotland) Act 2001 and having its head office at Compass House, 11 Riverside Drive, Dundee DD1 4NY

<b>1.1.105 Self Directed Support</b>	Has the meaning prescribed to it in the Social Care (Self-directed Support) (Scotland) Act 2013 as amended, supplemented and substituted from time to time
<b>1.1.106 Service</b>	Means the service provided by the Provider to the Council in respect of delivering the Support Service, Care at Home Service and/or Housing Support Service to the Supported Person under Option 2, and includes the management, administration and delivery of the Support Service, Care Package and /or Housing Support Service delivered to the Supported Person by the Provider over the Care Period in accordance with the Individual Purchase Agreement and Specification and pursuant to these Terms and Conditions
<b>1.1.107 Service Objectives</b>	Means the Provider's Service Objectives to achieve Service Outcomes
<b>1.1.108 Service Outcomes</b>	<p>Means the Provider's goals to improve the provision of the Service consisting of any one or more of the following achievements:</p> <ul style="list-style-type: none"> <li>i. A demonstrable reduction in time spent on Support Service delivery to the Supported Person</li> <li>ii. Achieving 'buy-in' from the Supported Person and their Carers to the Support Plan and Support Plan</li> <li>iii. Reducing dependency on the Service</li> <li>iv. Achieving enablement in so far as is reasonably possible</li> <li>v. Making use of community resources</li> <li>vi. Promoting and utilising telecare systems to reduce hands on support</li> <li>vii. Eradicating waste of resource in the delivery of the Support Plan</li> <li>viii. Reducing the level of travel to deliver the Support Plans to Supported People</li> <li>ix. Avoiding and reducing duplication or excessive unnecessary delivery of Support Services</li> </ul>

- x. Reducing administrative and assessment processes to provide a more efficient fast delivery to Supported Persons urgently in need of a Support Service
- xi. Aiming to achieve economies of scale, rationalisation and integration of Service wherever possible
- xii. Aiming to achieve improvements in the quality of the Service

**1.1.109 Service Restart**

Means a restart of a Care Package by the Provider to the Supported Person Support Plan following a Suspension of Service (Planned) or a Suspension of Service (Reactive) and may follow a short absence from home for whatever reason of the Supported Person

**1.1.110 Service Review Date**

Means the date that the Council shall carry out a Service Review if the Council calls for the same in terms of this Agreement

**1.1.111 Sleepover**

Means a sleeping night shift by Sleepover Staff at the Supported Persons Home (or other normal residence including whether the Supported Person is in Respite or otherwise) who shall mostly sleep during the period of 22:00 hrs until 07:00 hrs on any given shift, but only wake to assist the Supported Person if such is required

**1.1.112 Sleepover Staff**

Means any Support Worker engaged by the Provider to deliver a Sleepover to the Supported Person

**1.1.113 Specification**

Means the service specification set out and described in detail in the Schedule Part 1 and shall include where the context so applies any provisions in the these Terms and Conditions

**1.1.114 Staff**

Means the Provider's staff including Support Workers, Support Planner's where appropriate and where the context so applies its management and administrative and first

contact staff, any telephone handling staff, Case Managers and any supporting staff within the control of the Provider and shall include any agency or contract staff or volunteers or charity workers engaged or appointed by the Provider and anyone else for whom the Provider is responsible

**1.1.115 Support**

Means a Care Inspectorate inspected and graded support service delivered to a Supported Person, and the delivery of the Care Package to the Supported Person or where the context applies, an element of it required by the Supported Person, all as identified and set out in the Support Plan and Individual Purchase Agreement (as reviewed and varied from time to time)

**1.1.116 Support Plan**

Means the Support Plan drawn up by the Provider agreed with the Council and the Supported Person based on the Assessment and Indicative Budget (or following a Support Plan Review) to reflect the Desired Personal Outcomes identified in the Assessment (and shall include if applicable a Child Behaviour Support Plan and other statutory plans and assessments) and such shall include a Risk Assessment, Risk Management Plan and shall also include details of any Key Support Worker and Case Manager and shall where applicable include any advice, guidance or instruction relating to Moving and Handling Techniques

**1.1.117 Support Planner**

Means the appropriate person employed by the Provider to develop a Support Plan to reflect the requirements of the Assessment

<b>1.1.118 Support Plan Review</b>	Means a review at any time by the Council of the Supported Person's Support Plan (and such may include a review of Moving and Handling Techniques and Safer Handling Plans or Risk Assessment). Such review may include a re-Assessment or Care Package Review and may result in a Change in Care Package arising from either a Suspension of Service (Planned or Reactive) or an Improvement or Deterioration or a Service Restart and to be reflected in the Reviewed Support Plan
<b>1.1.119 Support Service</b>	Means the provision by the Provider to the Supported Person of the Support, Care at Home or Housing Support Service in the form of a Care Package and in accordance with these Terms and Conditions and the Specification and Schedules and always in accordance with the Support Plan, Individual Purchase Agreement and Assessment
<b>1.1.120 Support Service Review</b>	Means a Review of the Support Service to be carried out by the Council on the Review Date (or more frequently if called for and provided by the terms of this Agreement) in respect of the Provider's care of the Supported Person to be carried out each year in terms of Clause 28
<b>1.1.121 Supported Person</b>	Means an individual identified by the Council as requiring Support Services from the Provider whose needs have been assessed as requiring Support Services from the Provider, or any person in receipt of Services including such persons when Services to them are

suspended on a temporary basis and fall into one or more of the following groups:

Children

Children 0 yrs- 25yrs

All Adults

Adults over 65

Adults- with Learning Disability

Adults with Mental Health Issues

Adults with Physical Disabilities/Sensory Impairment

Adults with Dementia

Adults on the Autistic Spectrum

and who has elected to receive the Support Services from the Provider as the Provider of choice under Option 2 of the Social Care (Self-directed Support)(Scotland) Act 2013;

**1.1.122 Supporting Evidence**

Means the evidence to be provided by the Provider to the Council on request of the Council specified in Clause 5.8 herein

**1.1.123 Suspension of Service (Planned)**

Means any required suspension of service due to:

- i. Hospital admission
- ii. Short breaks
- iii. Holiday/known period of unavailability
- iv. Alternative arrangements being made by the Supported Persons Carers, family or Representatives
- v. Improvement in the Supported Person's ability to care for themselves
- vi. Relocation of the Supported Person to another administrative area

**1.1.124 Suspension of Service (Reactive)**

Means any required suspension of service arising from:

- i. A refusal on the part of the Supported Person to receive the Service
- ii. Emergency admission to hospital, care home, Short Breaks or other facility
- iii. Relocation of the Supported Person to another administrative area
- iv. The Supported Person is deemed by the Provider to be at serious risk of harm by the continued provision of the Care Package
- v. Death of the Supported Person
- vi. Viral or bacterial pandemic

**1.1.125 Technology Enabled Care (TEC)**

Means a technology enabled Care at Home Service designed to benefit Supported Persons, their carers, Support Planners, Support Workers and commissioners to address and to assist and improve commissioning, procurement, implementation and evaluation of types of solutions effectively such as tele-medicine, tele-coaching, tele-care and self-care and support applications that may have the potential to transform the way the Provider delivers the Service, and transform the way people engage in and control their own healthcare and empowering them to manage it in a way that is right for them

**1.1.126 Telecare System**

Telecare is the continuous automatic and remote monitoring of real-time emergencies and life style changes including environmental, health and personal care monitoring systems that link to Provider's staff, contact centres and emergency response teams in order to manage the risks associated with independent living

**1.1.127 Tenant's Duties**

Means the Supported Person's obligations under their lease.

<b>1.1.128 Termination</b>	Means the termination of this Agreement pursuant to and governed by Clauses 31 and 32
<b>1.1.129 Terms and Conditions</b>	Means these terms and conditions together with the Schedule annexed pursuant to the Individual Purchase Agreement.
<b>1.1.130 This Agreement</b>	Means this Agreement consisting of the Terms and Conditions, any appendices hereto, the Schedule in 5 parts, any appendages thereto, any supplemental agreements and/or notifications relating to this Agreement, and which constitutes the entire agreement between the parties and of which the Individual Purchase Agreement and Support Plan are pursuant.
<b>1.1.131 Time and Task Model</b>	Means the model of delivery of Support Services, Care at Home Support and Housing Support designed to meet the Personal Outcomes identified for the Supported Person by the Council and all set out in the Assessment and/ Support Plan as being detailed tasks or Outcomes and estimated hours scheduled to be carried out at specific times over a period of hours per week
<b>1.1.132 Transition Period</b>	Means any transition period between the cessation of the Care Package delivered by the Provider and the implementation of a new Support Service, Care at Home and/or Housing Support Service provider (or, on expiry of Care Period the period between Expiry and delivery of any new Care Package) and any period of time whereby the Supported Person is subject to a change of service provider or a Change in Care Package or a change in the Service that they receive for any reason and in any way
<b>1.1.133 Visits</b>	Means the actual attendance at the Supported Persons home by the Support Worker
<b>1.1.134 Volunteer</b>	Means any person engaged by the Provider on a volunteer basis, or being any person undertaking to assist the Provider, in the

	Services provided to the Supported Persons at the request of the Provider other than by way of a contract of employment or on the basis of work experience or charity and who does not receive any payment for the same by way of wages or otherwise except repayment of necessary outlays such as travelling expenses and for whom the Provider is wholly responsible
<b>1.1.135 Vulnerable Groups</b>	Means all adults and children and anyone identified as being in need of care or receiving care including proposed Supported Persons not yet receiving the care but may be subject to a referral process or in a Transition period
<b>1.1.136 Waking Night Shift</b>	Means the scheduled delivery of night time support by Waking Night Staff at the Supported Persons Home or otherwise as the case may be
<b>1.1.137 Waking Night Staff</b>	Means any Support Worker engaged by the Provider to deliver night time support on a Waking Night Shift to the Supported Person at the Supported Persons Home or otherwise as the case may be and not to sleep during the period of 22:00 hrs until 07:00 hrs on any given day
<b>1.1.138 Wellbeing Indicators</b>	Means any Wellbeing Indicators that children and adults need to be Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included
<b>1.1.139 Work Practices</b>	Means the mechanism by which the Provider ensures quality delivery of the Service by ensuring compliance with the National Care Standards at all times, effective efficient self-monitoring, consistent reporting to the Council, monitoring and Review of the relevant Supported Persons Support Plan, continued development and training approach to all staff, good efficient administration and monitoring practices
<b>1.1.140 Written Agreement</b>	Means the written agreement between the Service Provider and the Supported Person

- 1.2 References to any statutory provisions herein shall be construed as references to those provisions as respectively amended, supplemented or re-enacted either before or after the date of this Agreement from time to time.
- 1.3 In this Agreement, words importing the singular number only shall be deemed to include the plural number and vice versa unless the context otherwise requires.
- 1.4 Reference to persons in this Agreement shall include all entities with legal personality including natural persons, partnerships and companies save where the context otherwise requires.
- 1.5 Unless the context otherwise requires, each reference in this Agreement to:
- 1.5.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic transmission or similar means;
  - 1.5.2 a Schedule is a schedule to this Agreement unless expressly stated otherwise;
  - 1.5.3 a Clause or paragraph unless expressly stated otherwise is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
  - 1.5.4 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.6 For the avoidance of doubt, nothing herein contained or implied or done in terms of this Agreement shall prejudice or affect the powers, rights, duties and obligations of East Lothian Council or its statutory successors as Local Authority, Planning Authority, Building Control Authority, Roads Authority, Education Authority, or IJB or similar such authority under or by virtue of any public or local Act, order, statutory instrument, regulation or byelaw or relieve the Provider of the necessity of obtaining from East Lothian Council or its statutory successors in said capacity all consents, permissions, warrants and/or approvals as may be requisite under or by virtue of any such public or local Act or others;
- 1.7 Any phrase introduced by the words "including", "include", "in particular" or any similar expression is illustrative only and is not to be construed as limiting the generality of any preceding words.
- 1.8 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.9 References to any gender shall include the other gender.
- 1.10 These Terms and Conditions together with the Schedule annexed hereto shall apply to any Individual Purchase Agreement.

## **2 COMMENCEMENT AND DURATION**

- 2.1 This Agreement and the rights and obligations of the parties shall commence on the Commencement Date and expire on the Expiry Date (or the date on which the Provider has

performed and completed its obligations whichever is the later) subject to any Transition, early termination or change following a Review.

- 2.1.1 The Provider shall ensure that at no time shall the Supported Person be placed at risk of harm and shall ensure that suitable alternative arrangements are in place prior to any cessation of Service for whatever reason.
- 2.1.2 The Provider shall ensure the continuation of the Service to the Supported Person within the care of the Provider throughout the duration of the Individual Purchase Agreement until otherwise arranged or agreed with the Council.
- 2.1.3 The Provider shall not under any circumstances cease or fail to deliver the Service to the Supported Person until such time as alternative suitable arrangements have been made for the Supported Person and agreed with the Council. This Clause 2.1.3 shall survive the Expiry of this Agreement. Any continuation of the Service beyond the term of this Agreement shall continue under the same terms as these Terms and Conditions and at the same Rate until suitable alternative arrangements are made.

### **3 DUTIES OF THE PROVIDER**

- 3.1 The Provider shall deliver the Services in accordance with this Agreement.
- 3.2 In any Emergency that requires action outside the scope of this Agreement, the Provider shall ensure Supported Persons' needs are treated as being of paramount importance. The Provider shall report any emergency event or action to the Council as soon as possible and within the time limits and terms set out herein in the Individual Purchase Agreement, these Terms and Conditions and for the avoidance of doubt in accordance with the Specification where the context so applies.
- 3.3 Provision of the Service shall conform in all respects with the requirements of all and any relevant statutes, orders, regulations or by-laws currently in force and pursuant to Support Services.
- 3.4 The Council relies on the skill and judgement of the Provider in the provision of the Services and the execution of this Agreement in terms of this Agreement, and the Provider shall perform this Agreement at all times in accordance with the provisions of this Agreement, the Specification and the KPI's which shall be measured by the use of the KPI's set out in the KPI Schedule and the Balanced Scorecard.
- 3.5 The Provider shall provide the Services to the Supported Person for the Duration unless this Agreement is extended following a Review or terminated earlier in accordance with these Terms and Conditions by the Council or the Supported Person.

- 3.6 The Provider shall ensure that the policies and procedures detailed herein are in force and are regularly reviewed and amended (at least once a year) to ensure that they reflect up-to-date knowledge and best practice in relation to the support of Supported Persons. Copies of such amendments shall be supplied to the Council upon request. The Provider shall ensure that all relevant Staff are necessarily qualified, experienced and trained in terms of those policies and procedures in terms of this Agreement.

#### **4 PROVISION OF ADDITIONAL SERVICES**

- 4.1 The Supported Person may request the Provider to provide Additional Services in which case the Provider and the Supported Person shall agree the payment mechanism and cost and delivery of the same between them at no cost to the Council provided the Provider obtains the prior written consent of the Council in order to do so.
- 4.2 The Provider shall not supply Additional Services or Overprovision without being requested to do so by the Council or the Supported Person and only if such request is in writing and in the case of the latter, the Provider has obtained the Council's prior written consent.
- 4.3 The Council shall not pay for any Additional Services or Overprovision unless such are expressly requested by the Council or consented to by the Council and only in an urgent or emergency situation, and provided such does not cause the Council to be in breach of its statutory or policy obligations.
- 4.4 In the event the Council agrees to procure the Additional Services and agrees to pay the Provider for the same, the Individual Purchase Agreement shall be amended to reflect the change and the change to any Scheduled Payment or if an Additional Service is intended to be isolated or a single event the Provider shall issue an invoice to the Council for the agreed additional sum and quoting a pre-approved ledger code or purchase order number for payment by the Council which shall be made within 28 days of the date of the Invoice. No invoice shall be submitted to the Council for payment if a period of more than 84 days has passed since the date of the Council agreement to pay for such Additional Service.
- 4.5 The Council reserves the right to withhold payment of all or part of any charge for Additional Services or Overprovision unless otherwise agreed with the Council in writing and in accordance with the provisions of this Clause 4.
- 4.6 The Council shall be entitled to return any Invoices addressed to the Council that were not properly authorised by the Council and such shall be treated in accordance with Clauses 4.4 and 4.5, this Clause 4.6 and Clauses 5.14, 5.15 and 5.16 unless the Provider obtains subsequent written approval from the Council, in which case it shall re-submit those Invoices updated to reflect the date of the re-submission, after appropriate approval is obtained.

#### **5 PAYMENT AND FINANCIAL ARRANGEMENTS**

- 5.1 The Provider shall warrant that it has Capacity to deliver the Service to the Supported Person for the period set out in the Support Plan and Individual Purchase Agreement from the Commencement Date until the Expiry Date (subject to any extension period following Transition or Review).
- 5.2 The Provider shall deliver the Care Package to the Supported Person in terms of the Individual Purchase Agreement and the Council shall:

- 5.2.1 pay to the Provider the Scheduled Payment to be paid by the Council to the Provider 4 weekly in arrears in exchange for and return of the Remittance Advice; or
- 5.2.2 allocate the Personal Budget for the Supported Person on to Pre-Paid Payment Cards to be issued to the Provider, to draw down payment for services as and when necessary and in accordance with the Pre-Paid Payment Card Directions. The terms of any such Pre-Paid Payment shall be deemed to be the same for a Scheduled Payment.
- 5.3 Notwithstanding the foregoing the Council shall not be liable for and shall not pay any sums over and above the Scheduled Payment.
- 5.4 Notwithstanding the foregoing, the Council shall not pay, nor be obligated to pay, any Invoice submitted to it by the Provider that has not been previously agreed with the Council in terms of Clause 4.
- 5.5 Payment shall only be made by way of a Scheduled Payment for direct actual Care Package provision for the previous 4 weeks as set out in the Individual Purchase Agreement.
- 5.6 Further Scheduled Payments will not be made to the Provider in the event that the Provider fails to submit a Remittance advice for the previous Scheduled Payment received, and the Council shall be entitled to withhold further Scheduled Payments due to the Provider until such time as it receives the relevant Remittance Advices for all payments received by the Provider.
  - 5.6.1 The Provider shall ensure that each and every Remittance Advice is accurate and reflects the details of each delivery of the Care Package including the spend in terms of the Individual Purchase Agreement.
  - 5.6.2 In the event that the Care Package actually delivered is less than required under the Individual Purchase Agreement (without the Council's consent), then in such an event the onus is on the Provider to notify the Council as soon as reasonably practicable and provide such explanation as to why the Service delivered is less than agreed and set out in the Individual Purchasing Agreement, and such shall be treated as an Overpayment to be notified to the Council by the Provider to be deducted from the next due Scheduled Payment and reflected in the next due Remittance Advice all in accordance with this Clause 5.
  - 5.6.3 In the event that the provisions of Clause 5.6.2 occurs, the Provider shall request from the Council a review of the Supported Person's Assessment and Support Plan, unless it reasonably considers such a reduction in the delivery is a temporary situation and that a Review is not required.
  - 5.6.4 The Council shall be entitled to call for a Review of the Service, Care Package, Assessment and Support Plan and re-issue a revised Individual Purchase Agreement at any time at its discretion.
- 5.7 Travelling time, equipment and administration time shall be deemed to be incorporated into the Scheduled Payment as set out in the Individual Purchase Agreement, and is expressly not recoverable from the Council under this Agreement.
- 5.8 The Council is entitled to seek evidence from the Provider that the Service and Care Package is being delivered and if requested by the Council at any time for any purpose during the Duration the

Provider shall produce any or all of the following Supporting Evidence:

- 5.8.1 The Council's reference number of the Supported Person;
- 5.8.2 The dates, days and times at which Services were provided to the Supported Person;
- 5.8.3 Any Attendance Failures to the Supported Person;
- 5.8.4 The number and nature of any complaints from or in respect of the Supported Person;
- 5.8.5 Evidence the Support Service has been delivered to the standard required under this Agreement;
- 5.8.6 Any incidents of a major or minor extent in respect of the Supported Person;
- 5.8.7 The name of the Support Worker delivering the care coupled with a note of the qualification level.
- 5.8.8 The reasons given for any deviation from the Support Plan (including Attendance Failures), irregular shift patterns or service delivery, Care Package delivery by different Support Workers,
- 5.8.9 Any Overprovision of care necessitated from the circumstances of the Supported Person;
- 5.8.10 Any reduction in hours following the achievement of the Personal Outcomes;
- 5.8.11 The total number of hours of Services provided to the Supported Person;
- 5.8.12 The total sum due by the Council in relation to the Services provided to the Supported Person; and
- 5.8.13 The total sum due by the Council in respect of all Supported Persons within the care of the Provided;
- 5.8.14 Any Additional Services delivered to the Supported Person.

- 5.9 The Council may at its discretion review and check the Data and Supporting Evidence at any time and reserves the right to scrutinise Supporting Evidence at its discretion, including for purposes relating to any complaint, Care Package Review, Close Monitoring, Large Scale Investigation or any Review or any other reason the Council deems appropriate. In such an event, the Scheduled Payment may be withheld until such time as it is supported by the Supported Evidence requested by the Council and the provisions of Clause 5.18 shall apply. In the event the Council identifies any anomalies or errors or falsifications in terms of Clauses 5.9, 5.10 or 5.11, the provisions of Clauses 5.17 and 5.18 herein shall apply.

- 5.10 Notwithstanding the provisions of Clause 5.11 herein, any supplemental Invoices submitted to the Council containing financial errors, or any inaccurate Remittance Advice whether in the description of the Services or arithmetical, shall be returned to the Provider and deemed withdrawn for correction and re-issue and, in one-off isolated cases shall be treated as an Incidental Breach, and the provisions of Clause 5.17 and 5.18 shall apply. Repeated incidents of Invoices or any Remittance Advice containing financial errors or errors in the description of the Service or arithmetical errors shall at the Council's discretion be treated as a remedial or material breach.
- 5.11 Any Invoices or Remittance Advice or any other evidential supporting statements containing falsifications or false statements whether arithmetical or in the description of the Services or Care Package delivered shall be returned to the Provider and treated as withdrawn and the provisions of Clause 5.17 and 5.18 shall apply. The Provider shall make such amendments to its accounts systems as is necessary, and/or in the absence of supporting evidential documentation such shall be deemed to be and treated as withdrawn and the Council shall not accept any correction and/or resubmission of the same (unless such is a clear and isolated error and which may at the Council's discretion be treated either as an Incidental Breach or Remedial Breach) and depending on the nature and frequency of the falsifications, any Invoices or Remittance Advice that the Council has approved the resubmission of under the provisions of this Clause 5.11 shall have its date amended to reflect the resubmission and the correct payment due (which shall include any relevant deduction in the event of a previous overpayment) shall be made on the next Scheduled Payment Date.
- 5.12 Any invoices or Scheduled Payments paid by the Council which later are determined as paid in error or if the invoice or Remittance Advice contains incorrect, false statements or falsifications then such shall be determined as being in each case an Overpayment and Remedial, Incidental or Material Breach (at the Council's discretion), and the provisions of 5.6.2, 5.17 and 5.18 herein shall apply.
- 5.13 Scheduled Payments shall be paid on the date specified in the Individual Purchase Agreement. Correct and verified Invoices for Additional Services or authorised Overprovision shall be paid within 30 days from the date of Invoice. Any Overprovision of Service provided by the Provider who considers such in its reasonable opinion as justifiable at the time, shall be absorbed by the Scheduled Payments at the Provider's costs and reconciled by the Provider at the end of the Care Period. In the event that the Provider demonstrates to the Council at the end of the Care Period that there has been an Overprovision of Care and such is not covered by the Scheduled Payments, and is therefore requiring payment from the Council, then the provisions of Clauses 5.14 and 5.15 shall apply.
- 5.14 In the event that the circumstances of the Supported Person has demonstrably necessitated an Overprovision of care, beyond the agreed activity set out in the Support Plan then the Provider shall ensure it notifies the Council immediately and no later than 24 hours following on from the said provision. In the event the Council is not notified of the said event and Overprovision within 24 hours, subject to the provision of Clause 5.15 the Provider shall not charge and the Council shall not be liable to pay for the said Overprovision and such cost must be borne by the Provider, unless it can be demonstrated that the Overprovision was essential and it was not reasonably practicable or possible to obtain the Council's consent in advance.
- 5.15 Any Invoice or Remittance Advice that shows or Overprovision and charges for that Overprovision must be entirely supported by the requisite Data and Supporting Evidence together with a full and detailed explanation of the event that gave rise to the said Overprovision. Such Invoice or Remittance Advice shall be approved by the Council in advance of issue and fully supported by the

Supporting Evidence, failing which the Council shall be entitled to reject the Invoice, or the Remittance Advice which shall not be chargeable to the Council, and such shall be treated as a Rejected Invoice, until such time as the Supporting Evidence is submitted to the Council, verified and approved. In the event that an Overprovision to which this Clause 5.15 applies is absorbed by a Scheduled Payment, then the relevant amount of that Overprovision shall be deducted from the next Scheduled Payment due, and if none is due, shall be recoverable from the Provider as a debt, who shall pay the said amount to the Council on demand.

- 5.16 Any Invoice showing an Overprovision that is justified and verified shall be paid within the terms of Clause 5.13 herein or 5.16 whichever is appropriate.
- 5.17 If the Council determines that an overpayment has been made to the Provider in respect of any Services carried out under this Agreement, such overpayment shall be deducted by the Council from the next Scheduled Payment or invoice (if any) which failing, the Provider shall immediately reimburse the Council for such overpayment or otherwise shall be fully recoverable by the Council directly from the Provider on demand.
- 5.18 The Council shall be entitled to withhold or retain any Scheduled Payment not supported by accurate and correct evidential documentation if requested by the Council until such time as the Council is satisfied that the Scheduled Payment is correctly charged and supported by the requisite evidential records, in which case, once the Council is satisfied the provisions of Clause 5.13 shall apply.
- 5.19 In the event that the Council notifies the Provider it is treating an Invoice as a Rejected Invoice, in such an event, the Provider shall withdraw the Invoice and treat as null and void until such time as verified by the Council in which case the Provider shall resubmit another Invoice with any supporting requisite Supporting Evidence requested by the Council within the next 28 days, and the said Invoice shall be clearly dated with the date that the said Invoice is re-submitted.
- 5.20 The Council reserves the right during the Duration to amend this Clause 5, in the event the Council determines to streamline its payment mechanisms by use of an e-payment/e-invoicing System, to determine that all Invoices will be submitted and paid and concord with that e-payment/e-invoicing system.
- 5.21 In the event that the Rate is lower than the Provider's standard rate, the Provider shall under no circumstances charge the Supported Person or his or her legal representatives a top up rate or shortfall without first:
  - 5.21.1 Ensuring that the Supported Person fully understands the implications of their own contribution;
  - 5.21.2 That no undue influence or coercion has been imposed on the Supported Person;
  - 5.21.3 That any discussion with the Supported Person in relating to a Supported Persons contribution, additional fees, top up fees or charges are done so in accordance with the provisions of these Terms and Conditions, and in particular in accordance with CClauses 7, 8, 9, 10 and 11 and in particular 5.21.4;
  - 5.21.4 That the Provider has ensured that the Supported Person has benefitted from advocacy support from a Council representative.

- 5.21.5 That following such advice and support set out in 5.2.1. the Provider has entered into a formal agreement with the Supported Person setting out clearly and in language that the relevant Supported Person can understand, the agreed arrangements. The Provider must prior to implementing any such contribution, additional fees, top up fees or charges obtain the prior written approval of the Council, which shall not be unreasonably withheld or delayed where it is in the opinion of the Council that the Supported Person's wishes and best interests are being met by making such contribution, additional fees, top up fees or charges.
- 5.21.6 The Council reserves the right to terminate the Contract in terms of Clauses 31 and 32 immediately upon becoming reasonably aware that any undue influence or coercion has been imposed on a Supported Person to agree a private contribution, additional fees, top up fees or charges and shall treat the same as a material breach of contract and further may at its discretion either report the matter to the Care Inspectorate or suspend all new business or withdraw the Supported Person from the Provider's care, or apply any provision or provisions it thinks necessary under Clauses 31 and 32.
- 5.22 Any sums due to the Council at the expiry of a Care Period or upon the termination of this Agreement, or in the event that the Provider no longer provides a Service to any Supported Person within the County of East Lothian on behalf of the Council, in such an event, the Parties shall reconcile the accounts between them. The Provider shall immediately and no later than within 14 days from the date of withdrawal of the last Supported Person from the Provider's care, reimburse any Overpayment or any Scheduled Payment not properly due to the Provider in terms of this Agreement or any other sums properly due to the Council, and which failing shall be paid by the Provider to the Council on demand.
- 6. REGISTRATION**
- 6.1 The Provider shall be Registered with the Care Inspectorate to deliver Support Services (with or without Care at Home and/or Housing Support Services) for Adults and Children at a Care Inspectorate Grade of no less than 3 for Quality of Care and Support, Quality of Staffing and Quality of Management and Leadership, to manage, operate and deliver the Service in terms of this Agreement to Supported Persons and shall remain so throughout the Duration of this Agreement.
- 6.2 The Provider shall provide to the Council a copy of the Registration Certificate each year and at any time on request. If at any time the Provider is subject to a Large Scale Investigation or has achieved a Care Inspectorate Grade that is lower than the Care Inspectorate Grade at the date of execution of this Agreement, in such an event, the Provider shall notify the Council immediately, and submit to the Council a copy of the Registration Certificate at that date together with all relevant information and any other information reasonably requested from the Council in relation to the same.
- 6.3 The Council shall be entitled (but not bound) to terminate this Agreement in the event that the Provider at any time throughout the Duration achieves a Care Inspectorate Grade of Lower than 3 from the Care Inspectorate for any or all of the Quality of Care and Support, Quality of Staffing and Quality of Management and Leadership themes.
- 6.4 Throughout the Duration, the Provider shall demonstrably strive to improve the grade accredited to it by the Care Inspectorate, with a view to achieving a Care Inspectorate Grade 6 for Quality of Care and Support, Quality of Staffing and Quality of Management and Leadership and maintain the same throughout the Duration. The Council may choose to examine and scrutinise the Provider's

processes and procedures, the quality of its delivery of the Service, its Staffing, management and operational applications and leadership during a Service Review and/or as the case may be if any Review is carried out in terms of this Agreement, for evidence that the Provider is striving to improve its Care Inspectorate Grade.

- 6.5 In the event at any time the Provider anticipates or is notified that it is likely the accredited grade will fall below the grade awarded to the Provider at the date of acceptance of the Individual Purchase Agreement, in such an event, such shall trigger a Review and the Council shall determine:
- 6.5.1 Whether to suspend the Service to the Supported Person, or reallocate the Care Package either temporarily or permanently; or
  - 6.5.2 Apply such appropriate alternative resolution in terms of these Terms and Conditions; or
  - 6.5.3 Terminate the Service.
- 6.6 In the event that the Care Inspectorate imposes conditions, serves notices to cancel Registration or vary categories of Registration of the Service the Provider shall immediately notify the Council in writing. Where verbal notification is given the Provider shall follow this with written confirmation within three working days and submit a copy of the same together with any other relevant information from the Care Inspectorate to the Council within seven days of receipt by the Provider. In the event that the said Registration is subject to one or more conditions, failure by the Provider to comply and evidence that it has complied with such condition(s) shall be deemed to be a material breach and the Council shall be entitled to terminate this Agreement in terms of Clauses 31 and 32 without notice and without cost or penalty to the Council and without any compensation due to the Provider.
- 6.7 In the event that the Care Inspectorate gives notice to the Provider of a proposal to cancel the Registration or if the Care Inspectorate has made a Summary Application to the Sheriff for an Order cancelling the Registration then the Council shall be entitled to terminate this Agreement without notice irrespective as to whether or not the Provider has made representations to the Inspectorate about the cancellation or the period for making such representations has elapsed or the Summary Application to the Sheriff is being opposed and all in terms of Clauses 31 and 32.
- 6.8 The Provider shall deliver to the Council all inspection reports and any other documents making recommendations or applying conditions or setting out requirements for the Provider received from the Care Inspectorate relating to the Service, within seven days of receipt by the Provider.
- 6.9 In the case of variation which restricts the categories to which the Provider may deliver the Support Services, in such an event the Council shall be entitled to withdraw Supported Person's from the Provider's Care permanently or temporarily or may terminate this Agreement in terms of Clause 31 and 32.

## **7. SUPPORTED PERSONS RIGHTS**

- 7.1 The Council regards the interests, wellbeing and Support needs of Supported Persons as paramount. Therefore, the Provider shall at all times during the Duration ensure that the Supported Person's rights as an individual, as referred to in the National Care Standards (as updated, supplemented or substituted from time to time), are fully respected.

## **8. INFORMATION FOR SUPPORTED PERSONS**

- 8.1 Prior to delivery of the Services, the Provider shall provide Supported Persons or their Representatives with the following information:-
- 8.1.1 the introductory information pack as referred to in the first National Care Standards; and
  - 8.1.2 a written agreement as referred to in the second National Care Standards; and
  - 8.1.3 and ensure it shall communicate with the Supported Persons and their Representatives fully in terms of the Specification.
- 8.2 The information and communication obligations more particularly described and set out in the Specification Clause 3 shall constitute an element of the Support Plan which shall be reviewed and regularly updated by the Provider to ensure accuracy of the same and a copy of the said information and any amendments thereto shall be supplied to the Council wherever necessary or on the Council's request.
- 8.3 The Provider shall produce a Support Plan in accordance with the provisions of Specification and under Regulation 5 of the Regulations.
- 8.4 Where the Supported Person has access to an advocate or interpreter or other person to assist them to communicate, then such advocate or interpreter shall be treated for the purposes of this Clause 8 as the responsibility of the Provider, and shall comply in all respects with the Staffing Provisions of this Agreement, and the Provider shall take the requisite steps ensure the facilities offered by such persons comply with and are in accordance with the provisions of Clause 3 of the Specification and Clauses 11 and 12 of these Terms and Conditions. For the avoidance of doubt, any individual engaged for the purposes of this Clause 8.4, or engaged for the applicable provisions of the Specification by the Provider shall be born at the Provider's sole cost, shall not be treated as an Additional Service, and the Provider shall not charge, nor shall the Council pay for the same.

## **9. SIGNING OF DOCUMENTS BY SUPPORTED PERSONS**

- 9.1 The Supported Person shall not be required or requested by the Provider to sign any agreement, consent form, disclaimer notice or acceptance notice which in any way conflicts with this Agreement or which affect the Supported Person's statutory rights. Any agreement, consent form, disclaimer notice or acceptance notice entered into in contravention of this Clause 9.1 shall not affect the Provider's obligations under this Agreement or the Supported Person's rights. Nothing in this Clause 9.1 shall prevent the Provider from requesting the Supported Person to give written consent (or where the Supported Person is incapable of giving such consent, his Representative) to Personal Data being provided to the Council in terms of Clause 18.

## **10. SUPPORTED PERSON'S CONSENT**

- 10.1 Where the consent of the Supported Person, written or otherwise, is required in terms of this Agreement and that Supported Person is incapable of so consenting, the Provider shall seek to ensure that the Representative is made aware of and agrees to the proposed arrangements. In such an event the Provider shall ensure that the Representative has provided a written acknowledgement that they agree to or accept the proposed arrangements as aforesaid and such shall be provided to the Council if the Provider reasonably considers it necessary, or upon the Council's request. The Provider shall carry out the necessary due diligence to ensure that the Representative has the necessary power or attorney for health and wellbeing, and/or is entitled under the Law to consent to such arrangements for and on behalf of the Supported Person and the

declaration shall also specify that the Representative is so entitled, and also that the declaration is not and does not purport to be a legal obligation binding the Supported Person or the Representative.

10.2 In respect of Supported Persons whose ability to make informed choices may be impaired the Provider shall apply the following principles:-

10.2.1 The Provider shall implement all obligations imposed on it in relation to rights of Supported Persons referred to in the National Care Standards;

10.2.2 Supported Persons shall be assumed to be capable of exercising choice unless such is demonstrably not to be the case; and

10.2.3 Supported Persons shall be given as much information as possible in ways that they can understand about any issues affecting them in terms of the provisions contained in this Agreement.

## **11. STAFFING**

11.1 Neither the Provider nor its Staff shall be deemed to be or entitled to act or hold themselves out as partners or agents or employees of the Council, nor hold itself out as being in Partnership with the Council and the Provider shall at all times be responsible and liable for the actions and omissions of its Staff. The Provider shall be prohibited during the term of this Agreement from independently undertaking to deliver any Additional Services for Supported Persons without the prior written consent of the Council and in the event the Provider delivers care to the Supported Person beyond the Council's Referral and out-with the scope of the Individual Purchase Agreement, in such an event the Provider shall indemnify the Council for all damages, actions and/or claims arising therefrom and make arrangements to reimburse the Supported Person or the Council immediately for any costs incurred by either of them in relation to the same.

11.2 In the event that the Provider is notified by Disclosure Scotland that a Staff member is barred from PVG Scheme membership for the type(s) of regulated work undertaken (or if the Provider itself is so barred), the Provider shall immediately remove the said member of Staff (or itself as the case may be) from the provision of the Service. The Provider shall in addition notify the Council immediately of its receipt of such notification from Disclosure Scotland, or from an agency, and confirm what actions have been or shall be taken following thereon to secure the safety and wellbeing the Supported Person, and shall include a statement as to how the same may affect or does affect the Support Person within their care.

11.3 The Provider shall have in place and implement a Safer Recruitment Policy and all policies and procedures are required to satisfy the Care Inspectorate's requirements in relation to the employment and management of staff.

11.4 The Provider shall ensure that its Staff complies with any requirement under Part 3 of the Regulations for itself and its Staff to register with the Scottish Social Services Council and be cognisant of and comply with any relevant Code of Practice issued by the Scottish Social Services Council.

11.5 The Provider shall support non-qualified Staff to attain any skills and qualifications required of them by the Scottish Social Services Council and the Council in order to provide the Services and the Provider shall keep training records for all Staff and make such reports available for inspection by the Council upon request.

- 11.6 The Provider shall ensure that it, its Staff and anyone for whom the Provider is responsible undertakes and warrants that it shall not release or make comment on any Personal Data or confidential information or any information that is in the interests of the Council, not to upload documents, photographs, marketing media, branding, logo's belonging to, originating from or in the interests of the Council, nor to comment on Council business nor the Council Administration or make any political comments on, on any public or private forum or comments page, social media or social networking forum or platform or domain or on any on-line site or cyberspace, telecoms network nor in any private email, texting or messaging network (unless for texting and messaging purposes which are for the legitimate business reasons only and only by using trusted secure telecoms and secure IT networks). The Provider shall also ensure that it and its Staff and anyone else for whom the Provider is responsible shall not engage in any on-line activity that may in the reasonable opinion of the Council bring the Council's reputation into disrepute.
- 11.7 For the Duration, the Provider shall ensure it employs an appropriate number of Staff to ensure Business Continuity and for the continuing delivery of the Service to the Supported Person and in particular it shall employ sufficient number of management staff to ensure adequate support for and monitoring of front line Support Workers and sustained quality Service delivery.
- 11.8 The Provider shall employ Safer Recruitment and selection procedures that ensure the protection of Adults at Risk of Harm and Child protection by implementing a Safer Recruitment policy, and follow established Safer Recruitment practices and guidelines.
- 11.9 The Provider shall also ensure:
- 11.9.1 That a Support Worker allocated to the Supported Person is aware of, responsible for and capable of planning for the Supported Person's needs, and is cognisant of the Supported Persons Personal Outcomes and communicates regularly with the Provider and the Council on any progress, Improvements and/or deterioration from progress as soon as reasonably possible;
  - 11.9.2 That all staff are suitably recruited, inducted, qualified, trained, experienced, supervised and hold the necessary registration with the Scottish Social Services Council and complies the said Scottish Social Services Council's Employers Code of Practice and Regulations (in particular Part 3 of the Regulations or such other applicable and current regulations and codes from time to time).
  - 11.9.3 It shall be solely responsible for, verify and ensure that it verifies that all Staff coming into contact with the Supported Person have obtained the relevant and appropriate Scottish Disclosure (in terms of Clause 11.2 herein), PVG clearance and/or updated PVG as appropriate in all respects with all obligations under the PVG Act and or any other disclosure requirements including but not limited to ensuring that all Staff comply with the PVG Act and/or other disclosure requirements, ensuring that the Provider is in receipt and has all necessary documentation exhibited including written statements from the agency supplying additional Staff (if any and if permitted by the Council in which case shall be wholly

subject the terms of this Agreement) that any member of its staff (including charity workers and Volunteers if applicable) are compliant with the said PVG and Disclosure requirements all in terms of this Clause 11;

- 11.9.4 The Provider does not and shall not permit any member of Staff to commence working with any vulnerable person or Supported Person, nor have any contact with the same (including accompanying another Support Worker into contact with the Supported Person) nor have access to any database containing personal information relating to the Supported Person or Carer until all references have been checked and the PVG checks are complete, and the relevant proposed Staff has signed the requisite Confidentiality Agreement (which shall include a signed consent by the Staff member to the sharing of all data relevant to them and applicable to the Service) has been fully inducted into the Provider's procedures and processes surrounding data protection, all to the Provider's satisfaction.
- 11.9.5 That all Staff are regularly supervised and appraised and are clear on their roles, their obligations and responsibilities to the extent necessary to meet the Supported Person's needs, deliver the Support Plan and focus on the Personal Outcomes;
- 11.9.6 That all staff are trained on and clear that they must demonstrate reliability, good timekeeping, politeness, respect, consideration, professionalism and the provider shall monitor and review on a regular basis;
- 11.9.7 It continues to provide all staff with the continued necessary training and support to ensure the requirements of this Clause 11 and Clause 12 herein are met;
- 11.9.8 It indemnifies the Council against all claims against the Council arising from a breach of security or abuse by the Provider's staff or anyone for whom the Provider is responsible;
- 11.9.9 That its staff are not only capable, appropriately trained, suitably experienced and qualified to provide the level of Service required by this Specification to deliver the Care Package to the Supported Person but also fully aware of the aims and objectives of the Support Plan to achieve the Personal Outcomes, promote independence and reduce the requirement and dependency on for support over time;
- 11.9.10 That the Support Workers and all other Provider's employees, agents, acting in the service of the Provider or on behalf of the Provider shall deliver the Service Specification in terms of this Specification and the KPI Schedule and in accordance with the Terms and Conditions.

- 11.9.11 It uses clear and effective communication with all staff at all times to ensure the effective efficient delivery of the Service;
- 11.10 The Provider must at all times have regard for the health, safety and wellbeing of Staff employed or engaged in the provision of the Service. The Provider shall comply with all health and safety law and associated guidance and be responsible for the production of its own Health and Safety Policy.
- 11.11 For the avoidance of doubt the Provider shall ensure all its staff, agents, and anyone for whom the Provider is responsible in law and engages to deliver the Service must have in place Enhanced Disclosure certificates from Disclosure Scotland or its equivalent;
- 11.12 The Council shall be entitled to require any member of staff, agent, or anyone else for whom the Provider is responsible to be removed from the provision of a Care Package or any element of it (or the Service itself if the Council deems it reasonable) to the Supported Person in the event the obligations contained in this Clause 11 are not complied with.
- 11.13 The Supported Person shall be entitled to refuse to accept the care of a Support Worker or refuse Support Services from any particular member of Staff in which case the provisions of 11.14 apply. Notwithstanding the provisions of 11.14, the Provider shall notify the Council immediately, or as soon as reasonably practicable.
- 11.14 In the event of an occurrence set out in 11.13 occurring, in such an event the Provider shall notify the Council immediately if there is any risk of an Attendance Failure or risk of a reduced Service to the Supported Person and shall in the interim if reasonably practicable to do so ensure that an acceptable Staff member is substituted in place of the said Support Worker, Staff Member, agent, Volunteer or anyone else for whom the Supported Person objects to, to immediately deliver the Care Package or operate within the Support Service as appropriate until other suitable arrangements can be made, and the Provider shall use best endeavours to ensure that the Supported Person's health and wellbeing are paramount, and their care needs are met and provided for by an alternative member of the Provider's Staff.
- 11.14.1 In the event that an Attendance Failure occurs as a result of the events set out in the foregoing Clause 11.14, an adjustment shall be made to the next Remittance Advice as showing a deduction to be made from the following Scheduled Payment all in terms of Clause 5.
- 11.15 If following an incident set out in Clause 11.14, the Supported Person indicates it wishes the Provider to continue to deliver the Service, then the Provider shall use all reasonable endeavours to make such necessary arrangements to substitute the Support Worker with an alternative Support Worker. The Provider shall not charge the Council any additional costs in so doing. The Council shall be entitled to refer the Supported Person to an alternative Provider (or Framework

Provider or otherwise) if it considers it necessary or if the Provider is unable to make such suitable alternative arrangements to the satisfaction of the Supported Person and the Council.

- 11.16 In the event the Council is not satisfied with the Provider's handling of the situation it may treat such as an Incidental or Remedial Breach at its discretion, unless the situation pursuant to this Clause 11.16 results from an unresolved Complaint or negligence on the part of the Provider to the extent that the Council concludes that the Supported Person has been, and may continue to be, at risk of harm, in which case such may treat as a Material Breach.
- 11.17 In the event of the Provider fails to comply with the procedures set out in this Clause 11 herein (and in particular the Disclosure and PVG clearance procedures) and/or a Staff member refuses to complete a statement concerning their previous convictions in accordance with this Clause 11 or in the event of a disclosure of information at any stage relating to a member of Staff which in the reasonable opinion of the Council renders that Staff Member unsuitable for the delivery of support to the Supported Person or any part of the Service or the Staff member or agent (as the case may be) refuses to comply with a Risk Assessment or reveals information or exhibits behaviour which in the reasonable opinion of the Council renders such staff member, or agent or person for whom the Provider is responsible, unfit or not suitable for continued delivery of the Service or Care Package to the Supported Person, in such an event the Provider shall ensure that such a person is immediately replaced at its own additional cost, to the extent that no Supported Person receives a reduction in quality or attendance as a result and the Provider shall indemnify the Council against all claims against the Council and arising therefrom.
- 11.18 The Provider shall ensure that all Staff are aware that on no account are they to give their home or mobile telephone numbers to the Supported Person, or have any contact social or otherwise with the Supported Person out with the times necessary to deliver the Care Package to the Supported Person;
- 11.19 The Provider shall under no circumstances, and shall ensure that all Staff are aware, that on no account are they to release any Personal Data or any information whatsoever relating to any Supported Person or their Carer and/or Representative or release any information relating to the Service, the Council or the Council's Social Work Department, social workers or Council officers, nor comment or release, exhibit or display any text or photographs or photographic material on any social media, blog, forum or website or application or in any publication or in anything in the public domain regardless of the media or form, other than the Provider's own website and/or social media for positive and appropriate messages only, and in such an event, only with the prior written consent of the Supported Person or his or her Legal Representative.
- 11.20 Declaring for the avoidance of doubt that a breach of Clause 11.19 herein shall be deemed a material breach of this Agreement and the Council shall be entitled to call for a Review, which may result in a cessation of further Referrals being made to the Provider until the Council is satisfied that no recurrence of the breach shall occur.

- 11.21 The Provider shall be singularly and entirely responsible for the employment conditions of service of the Provider's Staff and shall bear all costs including (but not be limited to):
- 11.21.1 Payment of wages, income tax, National Insurance Contributions, pension contributions and other wage costs;
  - 11.21.2 Fees and levies of any kind;
  - 11.21.3 Travel costs and expenses;
  - 11.21.4 Uniforms and identity cards;
  - 11.21.5 Training and induction costs;
  - 11.21.6 Any equipment or tools required to deliver the Service including Telecare and ECMS equipment, mobile phones, tablets or other personal devices and technological applications;
  - 11.21.7 Any specialist care, training, staff or other outlays required to deliver the Care Package and Service;
- 11.22 The Provider shall ensure that all Staff are issued with and carry at all times during working hours an identity card showing the Provider's name, the employees name and the employees photograph;
- 11.23 The Provider shall deliver upon request to the Council (and it shall ensure it has the necessary and requisite consent from the relevant person in order to do this) the following information in respect of existing members of staff, or agents or new applications from individuals seeking to join the Provider's staff :
- 11.23.1 Date of Enhanced Disclosure Certificate, PVG Clearance or the equivalent required for the Protection of Adults and/or Children whichever is appropriate;
  - 11.23.2 Name of applicant, member of staff or agent;
  - 11.23.3 Position applied for;
  - 11.23.4 Enhanced Disclosure Scotland unique identification number;

- 11.23.5 Particulars of the staff member who checked the Enhanced Disclosure Scotland Certificate;
- 11.23.6 The decision that the staff member made in relation to the acceptability of the Enhanced Disclosure Scotland Certificate;
- 11.23.7 A record of any Risk Assessment undertaken by the Provider in relation to any Enhanced Disclosure Scotland Certificate;
- 11.23.8 Evidence of 2 written references from a current or recent employer are sought and obtained;
- 11.24 The Provider shall indemnify the Council against any costs and claims against it and arising from a failure to adhere to any of the provisions of this Clause 11.
- 11.25 The Council reserves the right to terminate the Service delivered by the Provider to the Supported Person in the event the Provider fails to deliver to the standard envisaged by this Agreement. In such an event, the Council shall be entitled to refer the Supported Person to a Framework Provider until such time as the Supported Person expresses an alternative preference.

## **12. STAFF INDUCTION AND TRAINING**

12.1 The Provider shall ensure that the relevant Staff:

- 12.1.1 Receive training from suitably qualified, competent and experienced trainers;
- 12.1.2 Receive such training in appropriate surroundings that can meet the requirements of the training;
- 12.1.3 Are trained on all relevant policies, procedures, statutory requirements, techniques and plans (including Moving and Handling Safer Handling Plans) and codes of practice;
- 12.1.4 Are appropriately and adequately trained in Moving and Handling Techniques and the dispensing of medication and shall ensure that a Moving and Handling Techniques lead officer Staff member is responsible for disseminating requisite information and carrying out necessary checks to ensure all Moving and Handling advice is taken forward and delivered adequately by Support Workers;

- 12.1.5 Are appropriately skilled, trained and qualified to deliver support to Supported Persons in terms of 12.2 herein.
  - 12.1.6 Receive the relevant induction into the Provider's company to be completed within 3 months of appointment;
  - 12.1.7 Supported Persons are introduced to the Support worker prior to commencement of the delivery of the Care Package, and the Provider shall ensure that such staff shadow or accompany other staff prior to commencing the delivery of the Care Package where reasonably practicable.
  - 12.1.8 Have the necessary and requisite skill to meet regulation and inspection standards and understand the Personal Outcomes and Support Plan designed for the Supported Person;
  - 12.1.9 Receive bespoke additional training on specific issues or conditions to meet the identified needs of the Supported Person such as epilepsy or some such other similar condition requiring specialist skill from a Support Worker;
  - 12.1.10 Are trained in using tools, techniques and methodology in respect of communication and managing behaviours that challenge;
- 12.2 The Provider shall ensure that any Staff that are intended to be working with the Supported Person who may have behaviours that are challenging, undergo additional training in respect of:
- 12.2.1 Autistic Spectrum Disorders;
  - 12.2.2 Positive Behavioural Support (or training in an equivalent approach);
  - 12.2.3 De-escalation technique/physical interventions;
  - 12.2.4 Managing challenging behaviours;
  - 12.2.5 Supporting people with dementia;
  - 12.2.6 Substance misuse;
  - 12.2.7 Mental Health issues;

12.2.8 Learning disabilities;

12.2.9 Appropriate communication techniques.

- 12.3 The Provider shall ensure the relevant staff receive an appropriate level of management support and regular formal supervision and access to requisite training to enable them to meet the needs of the Supported Person and strive to achieve the Personal Outcomes;
- 12.4 The Provider shall ensure that all staff delivering the Support Service hold the requisite Scottish Social Services Council qualifications and are registered for Social Service Workforce in Scotland (or such replacement or substitute body from time to time) as a minimum.
- 12.5 The Provider shall ensure it supports all Staff to attain any necessary skills and qualifications required of it and its Staff by the Scottish Social Services Council (or other substitute or relevant body) in order to provide the Service and the Provider shall maintain training and qualification records for all Staff and such shall be submitted to the Council upon request.

### **13. PROTECTION OF VULNERABLE PEOPLE, ADULTS AND CHILDREN AT RISK OF HARM**

- 13.1 In the delivery of the Service the Provider shall at all times be cognisant of and commit to the delivery of the Service in terms of the Adult Support Protection and Child Protection policies and procedures.
- 13.2 The Provider shall deliver the Service at all times in accordance with and as required by the National Care Standards, the Council's guidance on the Protection of Vulnerable People, the Adult Support and Protection (Scotland) Act 2007, Inter Agency Child Protection Guidelines (available from the Council upon request), the Protection of Children Scotland Act 2003 (as amended, substituted and supplemented from time to time), the Scottish Government Programme 'Getting it Right for Every Child', Carers (Scotland) Act 2016, the Edinburgh, Lothian and Borders Interagency Guidelines, Ensuring Rights and Preventing Harm and any other applicable legislation policy and Government guidelines in force from time to time concerning the protection of vulnerable children, adults and young adults.
- 13.3 The Provider shall work with the Council and other external agencies including the NHS to protect Vulnerable Groups at Risk of Harm.
- 13.4 The Provider commits to protecting the welfare of adults and children receiving the Service and any other adults or children who the Provider comes into contact with and shall develop and implement as material priority response policies, procedures and steps necessary to secure any Supported Person suspected, alleged or identified as being subject to any abuse, neglect or exploitation .

- 13.5 The Provider shall at all times comply with the Staff provisions set out in Clause 12 of these Terms and Conditions and ensure that it and its Staff are at all times aware of its policies and procedures for the support and protection of Adults and Children at Risk of Harm and comply with the Councils policies and procedures for Adult Support and Protection and Child Protection, and shall continually review and monitor the same.
- 13.6 The Provider shall immediately notify the Council's Complaints Unit of any allegations or evidence of abuse.
- 13.7 Without prejudice to the foregoing generality, the Provider shall develop and implement written operational policies and procedures for all Staff to identify, investigate and report (internally and externally to the Council, the NHS and/or the police) harm or suspected, alleged or identified harm of the adults and children within its care and/or otherwise; and
- 13.7.1 such shall be compliant with Inter-Agency Child Protection Procedures for Edinburgh and the Lothians and the obligations under this Agreement; and
  - 13.7.2 shall establish robust policies and procedures in relation to Child Protection and Adult Support and Protection; and
  - 13.7.3 such shall be available upon request to the Council, the Supported Person, their Carers and Representatives and the Provider's staff; and
  - 13.7.4 shall regularly be reviewed, updated and further developed by the Provider;
  - 13.7.5 such policies and procedures set out in this Clause 13= shall include the following policies and guidance on:
    - 13.7.5.1 Identifying vulnerable adults who are particularly at risk;
    - 13.7.5.2 A mechanism for reporting facts, circumstances and suspicions or allegations of financial, physical, psychological, sexual or any other form of harm or abuse or neglect or exploitation or any failure to act on behalf of the Supported Person;
    - 13.7.5.3 Recognising risk from different sources and in different situations and recognising abusive and self-harming behaviour from others;
    - 13.7.5.4 Highlighting the duty of all staff to report all suspected abuse, neglect or exploitation;

- 13.7.5.5 Highlighting the duty of the Provider and its managers to investigate such reports and communicate the same to the Council and the Police and all other agencies or bodies that have legal duties or statutory requirements to be informed of suspected harm;
  - 13.7.5.6 Procedures for reporting harm;
  - 13.7.5.7 Inter-agency information sharing and clarity on confidentiality, data protection and disclosure of information in such circumstances;
  - 13.7.5.8 The immediate steps necessary to ensure the Supported Person is immediately removed from the suspected, alleged or identified harm and to ensure the needs of the Supported Person is addressed and their needs considered and treated as paramount;
  - 13.7.5.9 Protection guidance for whistle blowers;
  - 13.7.5.10 Guidance for Staff on knowing and understanding personal boundaries;
  - 13.7.5.11 Guidance for Supported Persons, carers and Representatives on how to recognise abuse and report concerns and reassure them that any person expressing a concern will be treated seriously and with compassion and shall receive a positive response;
  - 13.7.5.12 Working within best practices as specified by this Agreement.
- 13.8 The Provider shall ensure prompt action is taken in response to an individual complaint or expressed concern and shall ensure it follows current best practice and timescales identified in its complaints procedure for dealing with the same;
  - 13.9 The Provider shall ensure that its Staff are contractually bound and obliged to adhere to the Provider's operational procedures and emphasise that all those who express concern are treated seriously and sensitively and shall receive positive responses from the management at all levels.
  - 13.10 The Provider shall ensure it implements rigorous procedures in place to prevent any staff gaining any personal benefit when working with vulnerable people;
  - 13.11 The Provider shall ensure compliance with all guidelines, policies and procedures reflect the Edinburgh, Lothians and Borders Interagency Guidelines and GIRFEC guidelines and all other Council, Care Inspectorate and other guidelines referred to in this Agreement.

- 13.12 The Provider shall also ensure that there are procedures in place in relation to victim support and dealing with perpetrators which may be necessary in terms of a Care Package and shall where necessary include appropriate independent services including advocacy, counselling and victim support.
- 13.13 The Provider shall ensure that where a harm has been identified it applies an action plan and Risk Assessment in relation to victim support and dealing with any individuals strongly suspected, alleged or identified as harming, neglecting, abusing or exploiting any Supported Person and such is incorporated into the Support Plan which may include if appropriate advocacy services, counselling or victim support, and such is closely monitored. Declaring that for the avoidance of doubt, all actions taken as a result of this CClause 13 are notified to the Council and agreement is sought to the proposed actions to be taken.
- 13.14 In the event that a harm or risk of harm is identified under this Clause 13, and such is deemed to be due to the negligence or failure of the Provider to recognise, monitor or take the necessary actions to promptly remedy the same or of the Provider's failure to identify and apply the appropriate necessary actions or implement the appropriate action plan and Risk Assessment, in such an event, the Council at its discretion may treat as Material Breach and apply the appropriate remedies for the same, and/or may treat as requiring Close Monitoring by the Council of the Supported Person or may treat if the circumstances dictate as a Remedial Breach. In any case, notwithstanding the foregoing provisions the Council may carry out at its discretion a Review, and/or closely monitor the Provider's delivery of the Service as a whole and/or to the Supported Person as it sees fit given the circumstances and shall if it emerges that the Supported Persons within the Provider's care were or continue to be, at risk of harm due to the neglect of the Provider or failure of the Provider to address promptly and appropriately, terminate this Agreement without notice or penalty or compensation due to the Provider, and shall in such an event be entitled to recover all costs from the Provider (including the costs of incurring additional expense from referring Supported Persons to an alternative Framework Provider, agency or other provider) arising from the necessity to do the same.

#### **14. EMERGENCIES, BUSINESS CONTINUITY AND NOTIFICATION OF ACCIDENTS AND INCIDENTS**

- 14.1 The Provider shall as soon as it becomes aware of any accident, emergency or other incident relating to the Supported Person inform (initially by telephone) the Council and the Representative where such an incident occurs during the provision of the Services. The Provider shall also submit a written report to the Council as soon as reasonably practicable. Without prejudice to the generality of the Provider's obligations under this Clause 14.1 (and other relevant Clauses under these Terms and Conditions) and the Provider shall comply with the following:

14.1.1 The Provider shall notify the Council of the death of the Supported Person immediately by telephone when it becomes aware of the same and thereafter in writing within one day and the Provider shall provide the Council with such details thereof as required by the Council. The Provider shall also notify the Representative, and their next of kin (if not the Representative), as soon as reasonably practicable, but in any event no later than the day following the Provider becoming aware of the death; and

14.1.2 In the event of hospitalisation of the Supported Person, the Provider shall inform the Council, the Representative and any other person authorised to be advised in

the Support Plan and notify the same of the expected duration of the hospitalisation, as soon as reasonably practicable but in any event, no later than the working day following the Provider becoming aware of such hospitalisation.

14.2 If a situation of danger to the Provider's Staff or other Supported Persons should arise as a result of the actions of the Supported Person the Provider shall instigate his policies and procedures including Risk Assessment in relation to this situation and immediately inform the Council of the situation so that the Council can advise and assist the Provider and/or Supported Persons as is consistent with its statutory duties and responsibilities. This shall include if the Council considers it appropriate after reviewing the Supported Person's needs and the provision of alternative support arrangements for any Supported Person.

14.3 The Provider shall ensure it has appropriate and efficient responsiveness procedures in place to deliver Support to any Supported Person in cases of emergency.

14.4 The Provider shall immediately notify the Council in the event it becomes aware that it is the subject of a Care Inspectorate investigation; and

14.4.1 Shall keep the Council fully informed of the progress of such investigation; and

14.4.2 Shall notify the Council of the outcome of such investigation, any attached conditions, its proposals to address those conditions and as soon as it becomes aware of the same, even if the Provider intends to appeal the conclusions of the said investigation; and

14.4.3 Shall notify the Council immediately if the Care Inspectorate reduces or raises the Provider's registered Care Inspectorate Grade; in such an event

14.4.3.1 The Council shall be entitled to carry out a Review and if appropriate re-Assess the Supported Person; and

14.4.3.2 The Council shall be entitled to reduce the Rate to reflect the grade awarded to the Provider by the Care Inspectorate and remove any benefits the Provider might be entitled to receive by virtue of the previous Care Inspectorate Grade; or

14.4.3.3 In the event the Provider's care Inspectorate Grade is reduced below a Care Inspectorate Grade of 3 across the Quality of Care and Support, Quality of Staffing and Quality of Management and Leadership themes, in such an event the Council shall be entitled to terminate the Service provision with the Provider, in accordance with the provisions of Clauses 31 and 32 and in particular 32.2 and 32.3.

14.5 The Provider shall promptly inform the Council of any incident or issue involving:

- 14.5.1 Any Attendance failure or repeated or recurring Attendance Failures;
- 14.5.2 Theft or loss of property or money belonging to the Supported Person;
- 14.5.3 Any flood, fire or power failure on the premises or at the Supported Person's residential home;
- 14.5.4 Illegal restraint or restriction of liberty of the Supported Person;
- 14.5.5 Incidents of financial exploitation of the Supported Person, or maladministration of the Supported Persons funds or property;
- 14.5.6 Incidents of actual or intended emotional, physical or sexual abuse of the Supported Person;
- 14.5.7 Any significant incident, including allegations or evidence of harm or risk of harm or abuse relating to the Supported Person or Carer;
- 14.5.8 Sudden death of the Supported Person;
- 14.5.9 Suicide of the Supported Person;
- 14.5.10 Details of death of the Supported Person in the event of suspicious circumstances surrounding the death;
- 14.5.11 Serious injury to the Supported Person;
- 14.5.12 Any suspension, allegation against, inquiry into, dismissal or disciplinary proceeding of a member of Staff who has supported the Supported Person;
- 14.5.13 Assault of the Supported Person;
- 14.5.14 Supported Person missing from home;
- 14.5.15 Any Adult Support and Protection or Child Protection concerns;

- 14.5.16 Any significant changes in the needs or circumstances of the Supported Person;
- 14.5.17 Any formal complaints in respect of the Care Package or Support Worker or Service provision;
- 14.5.18 Unexplained absence of a Support Worker;
- 14.5.19 Concerns relating to a Carer providing care and/or support;
- 14.5.20 Any concerns relating to persistent absence of the Supported Person, or persistent refusals by the Supported Person to accept the Support Worker into the home to deliver the Care Package;
- 14.5.21 Any concerns relating to the condition or suitability of the Supported Persons home.

14.6 In the event of any or one or any number of the events specified in this Clause 14 herein occurring, and such is due to an act, omission or negligence of the Provider or any of the Provider's Staff, the Council shall be entitled to terminate the Care Package immediately without cost or penalty to the Council or compensation to the Provider.

14.7 The Provider shall notify the Council immediately, or as soon as reasonably practicable and in any event no later than within a 24 hour period in the event of any of the following matters:

14.7.1 In the event of a key safe number change (or other such similar circumstance reasonably requiring notification to the Council);

14.7.2 Admission to or return from hospital or Short Breaks;

14.8 Any notification delivered to the Council for any of the reasons set out in this Specification and/or the foregoing Terms and Conditions shall be given as soon as reasonably practicable by email within 3 working days the receipt of which must be asked for, even if such notice has been given initially by face to face or telephone.

## **15. HEALTH AND SAFETY**

15.1 The Provider shall ensure it implements and maintains a health and safety policy.

15.2 The Provider shall keep itself informed as to any changes in the law and adjust its policy as required.

- 15.3 A copy of the Provider's Health and Safety policy shall be provided to the Council upon request and at each and every Service Review.
- 15.4 The Provider shall ensure Staff are given adequate training to allow them to respond and attend to minor household injuries and accidents. Where there is any doubt as to the severity of the injury Staff should refer the Supported Person to the appropriate medical service.
- 15.5 The Provider shall ensure that following any injury or accident to the Supported Person within their care is subject to a Risk Assessment, and that such is carried out and implemented immediately if the situation calls for the same, or otherwise as soon as is reasonably practicable given the circumstances. Such Risk Assessment must be delivered to the Council as soon as it is complete, and highlighting any changes or required changes to the Supported Persons care resulting from the Risk Assessment.
- 15.6 The Provider shall maintain an accident and incident register clearly noting the circumstances of any incident, the response and the outcome, and such shall be exhibited to the Council at any Review if such pertains to a particular Supported Person.
- 15.7 The Provider shall implement appropriate procedures as required by the Reporting of Injuries Diseases and Dangerous Occurrences Regulations (RIDDOR).
- 15.8 The Provider shall undertake all appropriate Risk Assessments and act upon the outcomes of these.

## **16. COMPLAINTS AND SUGGESTIONS**

- 16.1 The Provider shall operate a complaints and suggestions procedure that is acceptable to the Council. A copy of this procedure and any amendments thereto shall be made available to:
  - 16.1.1 all Supported Persons and brought to their attention by whatever means of communication is appropriate to their needs and/or disabilities, and a copy of which shall be provided within the Support Plan/ Package of Care; and/or
  - 16.1.2 Representatives; and
  - 16.1.3 the Council on request.
- 16.2 Supported Persons shall be informed by the Provider the processes and means of registering a complaint prior to the delivery of the Services.
- 16.3 The Provider shall maintain a Complaints Register which shall be available at all reasonable times to the Council upon request, and a summary of which in a format agreed by the parties shall be sent to the Council no less than once annually and more often if required under the Council's monitoring procedures or in the event of an investigation, Close Monitoring, or any Review. The Complaints Register shall be submitted to the Council at or immediately prior to the said Service Review, Service Review and/or Care Package Review, together with any relevant supporting documentation.
- 16.4 The Provider shall ensure the Complaints Register is kept up to date and is accurate, and shall submit to the Council upon request.

- 16.5 The Complaints Register shall accurately reflect the details and nature of the complaint, the investigative procedure and steps taken to investigate and resolve the complaint, and shall include details of any resolution proposals or any change to the Support Service delivered to the Supported Person (such as a change in the Support Worker, or the provision of more than one Support Worker or some such other change), the resolution of the complaint and any other relevant consequences.
- 16.5.1 In the event the Council determines that the Complaints Register is not accurate, or contains errors, is evidently not kept up to date and maintained, or contains falsifications, or lacks evidence that the appropriate and necessary remedies have been applied to resolve the complaint, the Council shall be entitled to treat the Provider as being in breach, and may at its discretion carry out a Service Review or Close Monitoring, or in persistent cases or cases where the Council deems the Supported Person to be at Risk of Harm, terminate this Agreement in accordance with the provisions of Clauses 31 and 32.
- 16.5.2 The Provider shall inform Supported Persons that they are also entitled to access the complaints procedure operated by the Council, the Care Inspectorate, the Ombudsman and; where applicable, the Mental Welfare Commission. The Provider shall co-operate fully with the Council and the other organisations to which this Clause 16 refers. Where the Provider is a listed authority in terms of the Scottish Public Services Ombudsman Act 2002 (or such updated, amended, supplemented or substituted legislation applicable from time to time) it shall comply with its obligations under Section 22 (or such applicable section) of that Act.
- 16.6 If any information regarding the identity of a member of Staff is required by the Council in relation to any complaint made to them in respect of the Services the Provider shall provide that relevant information. Any claim arising from a member of Staff against the Provider or the Council arising from the disclosure of the said information applicable to this Clause 16 and resulting from the Provider's failure to obtain the said member of Staff's consent to such disclosure under its employment contract and in terms of this Agreement with the said member of Staff, such claim or action shall be wholly borne by the Provider, and the Provider shall indemnify the Council against any action or claim against it and arising from the same.
- 16.7 The Council shall determine if a complaint shall be regarded as significant and all complaints shall be notified to the Council.
- 16.8 The Provider shall immediately inform the Council of the outcome of all complaints including any which have been subject to investigation by an external authority such as the NHS, the police and/or including the Care Inspectorate, the Scottish Social Services Council, and the Mental Welfare Commission. Such notification shall be in writing (by fax or email) or by telephone. Where the Provider gives verbal notification under this Clause 16 then the Provider shall confirm the same in writing to the Council within three working days.

## **17. CONFIDENTIALITY**

- 17.1 Subject to any contrary rule of law the Provider shall ensure that the Supported Person has access on request to any records and information held by the Provider pertaining to them.
- 17.2 Other than as permitted in terms of Clause 17.3 below and as specifically required for the purposes of performing its obligations under this Agreement or duties to disclose information to another regulated body in the interests of the Supported Person but all in terms of this Agreement, the Provider shall itself regard and shall ensure that its Staff, shall regard as strictly

confidential and as such shall not disclose to any unauthorised person any information obtained in relation to the Council or any Supported Person and in doing so the Provider shall ensure that its staff comply with the policies, procedures and confidentiality provisions contained in the Data Sharing Agreement.

- 17.3 Subject always to any contrary legislation or rule of law; any pending civil or criminal investigation or inquiry, the Provider shall be entitled to disclose information relating to the Supported Person to the Legal Representative or guardian of that Supported Person or other suitably interested person in respect of the Supported Person, where such information has already been made available to the Supported Person and the Supported Person's consent to such disclosure has been obtained.
- 17.4 It shall be the Provider's responsibility to ensure that its Staff observe the principles of confidentiality referred to in this Agreement and give an undertaking not to disclose any information which they may receive in accordance with the provisions contained herein.
- 17.5 Subject to any requirement to disclose information in terms of its statutory duties or force of law or order from the court of competent jurisdiction, the Council shall also maintain the obligations of confidentiality in relation to Supported Persons and the Provider.
- 17.6 The obligations of confidentiality contained herein shall survive the termination of this Agreement and shall not be varied except by law.

## **18. DATA PROTECTION**

- 18.1 Where the Provider provides any Personal Data to the Council in connection with its duties hereunder, the Council shall use that Personal Data for purposes of ensuring the Provider's compliance with the terms of this Agreement. The Provider shall on request execute and return the Data Sharing Agreement and if requested to do so, sign any variation or supplemental agreement at any time on request of the Council if such arises from a change in law or implementation of new regulations relating to the governance and management of data. The Council may share that Personal Data with other regulators (including the Councils and Provider's external auditors, Customs and Excise and law enforcement agencies, the NHS, the Police, the Care Inspectorate, and the Mental Welfare Commission). The Personal Data may be checked with other Council service departments for accuracy, to prevent or detect fraud or maximise the Councils revenues. It may be shared with other public bodies for the same purposes. The Provider undertakes to ensure that all persons whose Personal Data are (or are to be) disclosed to the Council are duly notified of this fact.
- 18.2 Where the Provider processes (or will process) Personal Data it hereby confirms that it has (or will acquire) a valid notification with the Information Commissioner as defined in the Data Protection Act 2018 covering its processing of Personal Data, including in that notification the disclosure of Personal Data to the Council. This requirement shall not apply if the Provider is, by virtue of the Data Protection (Notification and Notification Fees) Regulations 2000, exempt from the requirement to notify.
- 18.3 The Provider acknowledges that in order for it to perform its duties hereunder, it may be necessary for the Council to disclose to the Provider Personal Data, including sensitive Personal Data, relating to Supported Persons, such information being referred to as Supported Person Information. The Council is the Data Controller in respect of the Supported Person Information.
- 18.4 The Provider hereby warrants:-
  - 18.4.1 that the processing of the Supported Person Information will be subject to technical and organisational security measures of a sort, which if the Provider

were the Data Controller in respect of the Supported Person Information, would satisfy the Seventh Data Protection Principle;

- 18.4.2 that it will ensure compliance with the measures described in Clause 18.4;
  - 18.4.3 that it will process the Supported Person Information only in accordance with instructions from the Council and the terms of this Agreement; and
  - 18.4.4 that it will comply with all obligations imposed by the Seventh Data Protection Principle as though the Provider were the Data Controller in respect of the Supported Person Information.
- 18.5 In this Agreement the expressions “Personal Data”, “Data Controller”, “Data Processor”, “Processing” and “Process” shall have the meanings assigned to them by the Data Protection Act 2018, and the “Seventh Data Protection Principle” shall mean the Seventh Principle set out in Part 1 of Schedule 1 to that Act.
- 18.6 Supported Person Information shall be used by the Provider purely to enable the Provider to provide the Services to Supported Persons in accordance with this Agreement and as requested by the Council, and for no other purpose. It shall not be processed or disclosed for any other purpose whatsoever save to the extent that the Provider is required to do so by law or with the express consent of the Supported Person or other individual to whom the Personal Data in question relates. In the case of the Supported Person who lacks the mental capacity necessary to consent to the processing in question, this shall instead mean with the express consent of a person entitled in law, to make decisions relating to the personal welfare of the Supported Person but only to the extent that such processing will be of benefit to the Supported Person, (and the benefit cannot otherwise be realised), and the processing is in accordance with the wishes of the Supported Person so far as these can be ascertained. The Provider shall ensure that the recipients of any Personal Data disclosed under this Clause 18 are made aware of the duty of confidentiality which attaches to it.
- 18.7 The Provider shall not be required to pass information to the Council in relation to the Supported Person, member of Staff or any other person, if the same would cause the Provider to breach the terms of the Data Protection Act 2018. The Provider shall supply detailed reasons in terms of the said Act in support of such an assertion within a reasonable timescale specified by the Council. Where the cause of the potential breach of the said Act is lack of consent to disclosure of the information, the Provider undertakes to use its best endeavours to obtain the consent required to prevent the potential breach from occurring.
- 18.8 The Provider shall enter into a Data Sharing Agreement with the Council and complete the Council’s GDPR Questionnaire within 5 days of request.
- 18.9 The obligations contained in this Clause 18 shall survive the termination of this Agreement.
- 18.10 This Clause 18 may not be varied except otherwise by Law or subject to change by the GDPR (the “GDPR” being the **General Data Protection Regulation (GDPR)** (Regulation (EU) 2016/679) to be implemented by the Information Commissioner currently being progressed through Parliament under the Data Protection Bill entered into Parliament on 14 September 2017) and such Clauses or terms and conditions in these Terms and Conditions shall be deemed to be amended, supplemented or substituted by the relevant GDPR condition or conditions in whole or in part whichever is appropriate, and

in the event of a conflict of conditions, the GDPR terms and conditions shall subsist.

## **19. FREEDOM OF INFORMATION**

- 19.1 The Provider acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ('FOISA') and The Environmental Information (Scotland) Regulations 2004 (together the 'Information Legislation') and acknowledges in particular that the Council may be required to provide information relating to this Agreement or the Provider to any person on request in order to comply with the Information Legislation.
- 19.2 Where the Council seeks to consult the Provider in connection with a request for information made under the Information Legislation the Provider shall facilitate the Council's compliance with the Information Legislation by consulting timeously with the Council and providing relevant information as required to address the request for information.
- 19.3 In the event that the Provider is or becomes a designated Scottish public authority by Order of the Scottish Ministers under section 5 of FOISA, the Provider shall comply with the Information Legislation.
- 19.4 The obligations contained in this Clause 19 shall survive the termination of this Agreement. This Clause 19 may not be varied except otherwise by rule of, or a change in the law.

## **20. RECORDS MANAGEMENT**

- 20.1 The Provider shall provide the Council with all assistance requested by the Council in order to assist the Council in complying with its obligations under the Public Records (Scotland) Act 2011 (as amended, supplemented or substituted from time to time) and with the Council's records management plan where such compliance is in respect of records created or to be created by the Provider on behalf of the Council in terms of this Agreement. This assistance shall be at no cost to the Council.

## **21. HUMAN RIGHTS**

- 21.1 The Provider shall in its implementation of this Agreement comply with the requirements of the Human Rights Act 1998 ("the 1998 Act") and all secondary legislation made under the 1998 Act as though the Provider were a Public Authority for the purposes of the 1998 Act.
- 21.2 The Provider shall take all reasonable steps to ensure the observance of the condition contained in Clause 22.1 by all Staff employed by the Provider;

## **22. NON DISCRIMINATION AND EQUALITIES**

- 22.1 The Provider shall comply with Equal Opportunities legislation, including the Equality Act 2010 and any other equalities legislation implemented from time to time, and employ a commitment to fair access, fair exit, diversity and inclusion and ensure that such is embedded within the culture of the Service.
- 22.2 The Provider shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of gender, marital status, colour, race, nationality or ethnic origin, sexual or gender orientation, age, disability, faith or belief or anything contrary to the relevant legislation.

- 22.3 The Provider shall notify the Council in writing in the event of and as soon as it becomes aware of any investigation or proceedings involving its Staff, the Provider's company, or any Supported Person or Carer or Representative of the Supported Person for which the Provider is responsible under the Equality Act 2010 (or the current Equalities legislation from time to time) and provide it with all necessary details and information and shall keep the Council informed as to the progress and outcome of any such investigation.
- 22.4 The Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider under the Equality Act 2010 (or the current Equalities legislation from time to time).
- 22.5 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Provider's performance of this Agreement being in contravention of the Equality Act 2010 (or the current Equalities legislation from time to time), the Provider shall on request and at its own cost:-
- 22.5.1 provide any information to the body referred to in Clause 22.5 as requested in the timescale allotted;
  - 22.5.2 attend any meetings as required and permit Staff to attend;
  - 22.5.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
  - 22.5.4 allow itself and any Staff to appear as witnesses in any ensuing proceedings; and
  - 22.5.5 co-operate fully and promptly in every way required by that person or body conducting such investigation during the course of that investigation.
  - 22.5.6 Notify the Council as soon as it reasonably becomes aware of such investigation and keep the Council updated to the proceedings and the outcome of the proceedings.

## **23. OTHER STATUTORY REQUIREMENTS**

- 23.1 The Provider shall throughout the duration of this Agreement observe and comply with all other statutory enactments, guidance and instruments and all by-laws and regulations of local or other authorities insofar as these are applicable to the provision of the Services including and without prejudice to the foregoing generality those applicable to health and safety at work and vulnerable people.

## **24. INDEMNITY**

- 24.1 Except as may otherwise be expressly stipulated in this Agreement, the Council shall not be liable to the Provider or to any Supported Person or to any third party for any loss, cost, expense, penalty or damage incurred or suffered including but not limited to any personal injury or death or damage to property arising directly out of or in consequence of or in connection with the material failure of the Provider to properly deliver the Services in accordance with this Agreement.

- 24.2 The Provider shall indemnify the Council against all proceedings, reasonable costs, expenses, liabilities, injury, loss or damage arising from or incurred by reason of any claim, demand or action made or raised against the Council by or on behalf of the Supported Person, employee of the Provider or the Council, or any other third party which arises out of a material breach of the Provider's performance/negligence under this Agreement or its agents, sub-Contractors and employees, of the terms of this Agreement. The Council shall act reasonably in relation to any costs, expenses or damages paid by it, shall take all reasonable steps to minimise its payments/costs/losses and shall only make payment in relation to legally valid claims or proceedings.
- 24.3 The Provider shall have no liability for and shall not be liable to indemnify the Council in relation to any matter which occurs as a result of a material breach, negligence or failure where committed by an employee of the Council.

## **25. INSURANCE**

- 25.1 The Provider shall ensure that adequate insurance is maintained for employers liability, public liability, administration of drugs or medicines and medical malpractice, building and building contents and such other insurance as the Council considers appropriate and is intimated to the Provider prior to the commencement of this Agreement. The Provider shall provide evidence of valid insurance policies and all due premium payments have been paid that meet the criteria contained in this Agreement to the Council on request.
- 25.2 Insurance shall be deemed to be adequate only if it meets or exceeds the following minimum levels of cover:
- 25.2.1 £5 million for Public Liability Insurance;
  - 25.2.2 £10 million for Employer's Liability Insurance;
  - 25.2.3 £2 million Professional Indemnity.
- 25.3 The level of cover held by the Provider in relation to Administration of Medicines and medical malpractice insurance (whether in its Public Liability policy or Professional Indemnity policy) shall be no less than the sum specified for the same in Clause 25.2.
- 25.4 Such insurance cover as detailed in this Clause 25 shall remain in force for the period in which any claim may be raised by the Supported Person or any third party in relation to the Services.
- 25.5 In the event of the Provider having motor vehicles which are used in the provision of the Services, the Provider shall maintain adequate vehicle and passenger insurance cover together with a valid MOT Certificate in respect of such vehicles and shall, on request, provide evidence to the Council that such cover has been effected and due premiums have been paid.
- 25.6 Where Staff use vehicles not owned or leased by the Provider in the provision of the Services the Provider shall ensure that such Staff have appropriate insurance, a valid MOT Certificate and an appropriate driving licence at all times and shall on request provide evidence to the Council that such cover has been effected and due premiums have been paid.
- 25.7 The Provider shall inform Supported Persons of the need for them to insure their private property and shall encourage Supported Persons to purchase adequate insurance.

## **26. PERFORMANCE STANDARDS**

- 26.1 The Provider shall at all times, meet the National Care Standards and regard these as minimum standards of Service delivery. The requirements of the Specification, the Assessment and the Support Plan shall also be met at all times during the term of this Agreement.

## **27. PERFORMANCE MANAGEMENT**

- 27.1 The Provider shall comply with the Council's systems for monitoring, evaluating and auditing the operation and performance of this Agreement as detailed herein and the Specification. Prior to the commencement of this Agreement the Council will advise the Provider of the systems for required for monitoring, evaluating and auditing for the purposes of providing the Council with the requisite detailed monitoring reports. The Council reserves the right to visit the Supported Person at any reasonable time without giving notice (spot checks) and without prejudice to the Supported Person's right to privacy from time to time and whenever the Council deems such is necessary.
- 27.2 The Council shall monitor and review the KPI's, management and operation of the Service and delivery of Care Packages throughout the duration of this Agreement and shall use the Balanced Scorecard for the purposes of such measurement and monitoring to be reviewed at the Service Review (or at any other Service Review or Care Package Review as is appropriate and the case may be), and the Provider shall ensure that it provides to the Council all such necessary and requisite records pertaining to the Services prior to any pre-arranged meetings (a schedule of which will be provided by the Council); or in advance of any Review and all within such reasonable time period to allow for the Council to examine and scrutinise such records appropriately including and without prejudice to the foregoing such general financial, staffing, procedural, care and complaints records as the Council reasonably require for this purpose or as required under this Agreement.
- 27.3 The Provider shall also supply to the Council copies of the Care Inspectorate pre-inspection return and the Provider's self-evaluation against the Care Standards within 5 days of submission (or deadline for submission) to the Care Inspectorate.
- 27.4 The Provider shall ensure that the Council is invited by the Provider to attend Care Inspectorate feedback sessions, no later than 14 days prior to such feedback session (or as soon as the Provider is aware, or should be aware, of such feedback session is to take place).
- 27.5 Throughout the duration of this Agreement the Provider shall allow duly authorised officers of the Council (which can include specific contract monitoring and operational staff) access to the Services for the purposes of consulting with employees, Supported Persons and/or their representatives (subject always to the rights of Supported Persons to decline to be included in any such consultation) as to the effectiveness and operation of the Service.

## **28. REVIEW**

- 28.1 The Council shall carry out a Review should the Council consider such appropriate or necessary. Such Review may involve, a Support Service Review, Support Plan Review, Re-Assessment, Support Plan Review and/or a Care Package Review or Review of the Service as a whole in respect of one or more Supported Persons where the Council considers such appropriate. The Council Representative shall lead the Review unless, at the Council's discretion but after consulting the Provider, the Council invites an external agency to lead the Review.
- 28.2 The Council shall inform the Provider of the protocol for any Review as soon as reasonably practicable.
- 28.3 The Provider and the Council shall agree to implement agreed improvement plans, and the Provider shall prepare and develop creative proposals to implement changes in the way it

delivers the Service with the aim of achieving the Desired Achievable Outcomes and/or substantial reductions where possible in the dependency of one to one care by Supported Persons within its care and otherwise.

28.4 This Council and the Provider shall hold regular meetings at intervals agreed between them. These meetings shall include representatives of the Council, the Provider, and any other relevant agencies where appropriate.

28.5 The Provider shall submit to the Council a progress report in relation to Services provided, the agreed improvement plans as detailed in Clause 28.3 and 28.6.4 and in particular the supporting evidence set out in 28.6.1, 28.6.2 and in 28.6.3 herein.

28.6 The Council shall carry out a Service Review of the Provider's delivery of the Service by the Provider annually or as and when it reasonably determines, and together with the Provider both working together in good faith and the spirit of this Agreement or if a situation occurs which in the reasonable opinion of the Council such justifies a Service Review, the Council shall be entitled to carry out a Service Review and at such Service Review and/or Service Review the provisions of this Clause 28 and the following shall apply and be evidenced at the discretion of the Council:

28.6.1 The Provider shall ensure it provides the Council with all such necessary up to date information as specified in this Agreement and Specification and all data required and in advance of any Review or upon request in order to inform such Review and shall include (but shall not be limited to):

28.6.2 Statistics in respect of:

28.6.2.1 Attendance and Attendance Failures;

28.6.2.2 Business Continuity;

28.6.2.3 The Provider's efficient delivery of Emergency Care delivered within the responsiveness thresholds set out in Clause 6 of the Specification;

28.6.3 Other evidence including:

28.6.3.1 continued delivery using Good Practice Principles;

28.6.3.2 continued delivery of Support Services, Care at Home Services and Housing Support Services;

- 28.6.3.3 The current Care Inspectorate Grade (either in upwards or downwards direction) and report, and include any other changes or conditions required by the Care Inspectorate
- 28.6.3.4 The number and nature of complaints upheld by the Care Inspectorate;
- 28.6.3.5 The number of Improvements over the Review period;
- 28.6.3.6 The Provider's incident, issues and accident register;
- 28.6.3.7 The number and nature of complaints together with the Provider's Complaints Register and showing any allegations against the Provider, its staff or relating to the Service (together with supporting evidence on the resolutions, outcomes and consequences of the same);
- 28.6.3.8 Consistent achievement of the Personal Outcomes;
- 28.6.3.9 That any Deteriorations have been addressed and reassessed appropriately with the Council and appropriate Personal Outcomes re-set;
- 28.6.3.10 That the National Care Standards are being applied and evidence that the Provider is fulfilling its duty in relation to the Carers (Scotland) Act 2016 (in particular part 4 carer involvement);
- 28.6.3.11 GIRFEC principles are being applied and referred to;
- 28.6.3.12 That it continues to deliver the Service by utilising the Centred Person Approach;
- 28.6.3.13 Of fast efficient delivery of New Business;
- 28.6.3.14 Satisfaction Survey results;
- 28.6.3.15 That Outcome Reviews are regularly being carried out;
- 28.6.3.16 That the Support Plan and such is being reviewed, adhered to and monitored;

- 28.6.3.17 The use of Technology Enabled Care systems (if the Provider has such systems in place) demonstrating the quality of cost effective care and support to improve Personal Outcomes for Supported Persons at home or in the community, enhanced through the application of technology as an integral part of the care and support process;
- 28.6.3.18 Evidence that the Provider is continually monitoring and developing its approach to individuals with little or no verbal skills or capacity to express themselves clearly;
- 28.6.3.19 That the Provider ensures its staff, Support Planners, Support Workers and any supporting staff are properly informed and appropriately trained in order to communicate effectively with a relevant Supported Person;
- 28.6.3.20 Evidence of Adult Protection and Child Protection policies and statutory guidelines are being applied and adhered to.
- 28.6.4 The Provider shall ensure consistent Business Continuity by:
  - 28.6.4.1 Drawing up a detailed Business Continuity Plan and Risk Register that shall consist of and evidence the same by:
  - 28.6.4.2 Demonstrating it has working efficient responsiveness procedures in place;
  - 28.6.4.3 Continually Reviewing Support Plans to ensure the Supported Person receives the appropriate level of care;
  - 28.6.4.4 Continually Reviewing the Support Plan to identify Improvements and potential reductions in the level of Service;
  - 28.6.4.5 Continually monitor the progress of the Supported Person to measure and identify improvements and progress towards achieving the Personal Outcomes;
  - 28.6.4.6 By demonstrating it Manages any Suspension of Service (Planned), Suspension of Service (Reactive) and Service Restarts and Emergency Responses efficiently;

28.6.4.7 By demonstrating that it utilises an efficient effective TEC System or otherwise has appropriate links and use of any Council Telecare System;

28.6.4.8 Ensuring that staff communication delivering Care Packages to the same Supported Persons share all relevant information to each other effectively to ensure the continuity and quality of care;

28.6.4.9 Evidence that the Provider manages sustainable growth with appropriate management resources in place to ensure continued Service delivery.

## **29 VARIATION**

29.1 The terms of this Agreement may not be varied without the prior mutual agreement in writing of the Council and the Provider or as provided in this Agreement and excepting the requirement to enter into a new Data Sharing Agreement in readiness for the new GDPR Rules set out in Clause 18, this Clause 29 or otherwise by law.

29.2 Notwithstanding this Clause 29, the Council may vary:

29.2.1 the form or frequency of the Care Packages or the Individual Purchase Agreement. The Council undertakes to discuss any potential changes with the Provider and where possible take account of the views of the Provider prior to implementation of any variation; and

29.2.2 on giving four weeks prior written notice to the Provider:

29.2.2.1 the Personal Budget may be varied but only if there is a variation to a Care Package or if the Rate is increased by the Annual Uplift; or

29.2.2.2 in the event that the Provider is subject to a lowering of its Care Inspectorate Grade at any time during the Duration of this Agreement and such affects the Quality of Care and Support, Quality of Staffing and Quality of Management and Leadership, and affects the Provider's ability to manage, operate and deliver the Service and/or Care Packages in terms of this Agreement to Supported Persons the Personal Budget may be reduced but only after discussion and with the prior written consent of the Provider and only if there is a change to the Support Plan that merits the reduction;

29.2.2.3 the Scheduled Payments frequency or method of payment if a variation is required due to a change in the Council's internal procedures, legal requirements or best practice guidance. Such changes may include but are not limited to; alteration to the paying account, alteration to the particular method of electronic transfer used, replacement of any form of electronic transfer with another form of payment (such as by cheque), alteration to the date of

payment (but not so that any payment becomes overdue).

### **30 ASSIGNATION, SUBCONTRACTING AND CHANGES TO INCORPORATION**

- 30.1 The Provider shall not be entitled to assign, subcontract or novate its obligations under this Agreement nor assign the Individual Purchase Agreement under any circumstances without the Council's prior written consent.
- 30.2 Notwithstanding the foregoing generality, in the event that the Provider does assign or novate its obligations under this Agreement or subcontracts in whole or in part the Provider's obligations under this Agreement, or sells or disposes of its shareholding to a third party, then it shall procure the consent of the Council as soon as possible to continue with this Agreement. In such an event, the Supported Person shall be given the option to choose whether to continue with the Provider under the circumstances, and if so, the Provider shall be required to be reassessed to ensure it meets the standards required by this Agreement.
- 30.3 In the event the Provider assigns, subcontracts or novates its obligations to a third party without the prior written consent of the Council or in the event that it fails to procure either a subcontract in terms *mutatis mutandis* this Agreement or in the event of the sale to a third party company the Council may consider the Provider to be in breach, and if so, may terminate this Agreement and the Individual Purchase Agreement at its discretion, and no further Scheduled Payments shall be paid to the Provider.
- 30.4 In the event of circumstances set out in 30.3, the Council shall be entitled to terminate the Agreement or if it is in the reasonable opinion of the Council appropriate to do so, impose Close Monitoring on the new provider (if the Supported Person chooses to continue with the Provider in its restructured form), and treat the new provider as being the Provider of choice under Option 2 of the Supported Person.
- 30.5 The Provider shall notify the Council at the earliest opportunity of its intention to sell or otherwise dispose of or transfer the operation of its business either in whole or in part and of its intention to seek a voluntary liquidation for the purposes of restructuring or amalgamation.
- 30.6 The Provider shall notify the Council of any change in its legal status and obtain its prior consent prior to an incorporation of a change of name, or in the event it changes its trading name. In the event the Provider incorporates a change of name or changes its trading name, it shall ensure that the Council is made fully aware and has the opportunity to approve, any communication between the Provider and the Supported Persons within its care relating to the change of name or status, and shall take account of reasonable representations made by the Council prior to the issue of such communications. The Provider shall not incorporate a change of name or change its trading name if the Council reasonably objects to the proposed new name, or the timing of the proposed change.
- 30.7 On the occurrence of any change of control in the Provider as detailed in Clause 30.1 the Council shall seek reassurances from the Provider and the new provider concerning the continuity of care and the standard of Services being delivered. Any new incoming provider shall be Close Monitored until the Council is satisfied with the continuity of care and the standard of Services being delivered. If the performance of the Services is not to the Council's complete satisfaction, the Council reserves the right to terminate this Agreement.
- 30.8 The Provider may neither assign nor sub-Contract its interests and/or obligations under this Agreement to any other person without the prior written formal consent of the Council to be formally requested by the Provider no less than 3 months prior to such proposed assignation unless

in cases of urgency or emergency and only with the immediate notification to the Council and consent of the Supported Person. Notwithstanding the foregoing, the Council may consider granting such approval provided it obtains the necessary and requisite reassurances from the Provider concerning the new Provider's capacity and capability to perform the Provider's obligations under this Agreement and the continuity of care and the standard of Services being delivered.

- 30.9 On the occurrence of any event under this Clause 30, the Provider and/or any new provider/contractor shall undertake to guarantee the obligations of the Provider under this Agreement and the performance of the Services of this Agreement in the form of the Parent Company Guarantee. If such guarantee is not forthcoming it shall be deemed to be a material breach and the Council shall be entitled to terminate this Agreement in terms of Clause 31 and in accordance with Clause 32.

## **31 BREACH**

- 31.1 Where the Council considers the Provider's breach to be minor, or an isolated incidence of one of the following types of breach occurs:

- 31.1.1 A one off isolated breach;
- 31.1.2 Is immediately remedial in nature;
- 31.1.3 Has little impact on the delivery of the Service as a whole;
- 31.1.4 Has little or no cost implications to the Council, or is remedial in the sense that such costs will be recovered or reimbursed;
- 31.1.5 Has little or no detrimental impact on the welfare of the Supported Person;
- 31.1.6 The Provider achieves at any time an instance of a score of 2 on the Balanced Scorecard;
- 31.1.7 A single Complaint of a trivial nature unless the outcome of the complaint is that such is unfounded;

The Council shall notify the Provider in writing of the alleged breach and allow the Provider a reasonable period in which to remedy the breach. Where the Provider fails to remedy the breach within the allotted time to the Council's satisfaction, the Council may implement a contingency strategy to ensure continuity of the Services in accordance with Clause 31.2.

- 31.2 In the event the Provider commits an Incidental Breach and subject always to the provisions of Clause 32.2:
- 31.2.1 the Council may apply Close Monitoring until such time as the Council is satisfied that the Incidental Breach in question has been remedied;
  - 31.2.2 the Council shall be entitled to withdraw the Supported Person from the Provider's

care until such time as it is satisfied that the Provider can continue to or resume the delivery of the Care Package to the standard required under this Agreement;

- 31.2.3 the Council shall be entitled to withdraw the Supported Person from the care of the Provider permanently and refer the same to a Framework Provider or another alternative Provider, depending on the particular circumstances and interests of the Supported Person;
  - 31.2.4 the Council shall not be charged, nor shall it pay, any Scheduled Payment in the event that such is in respect of a proven late, short, delayed or failed visit or any Attendance Failure nor if such is supported by false records or errors or not accompanied by the requisite details all as set out in this Agreement.
  - 31.2.5 The Council may if an Incidental Breach relates to false reporting or financial irregularities, monitor the Provider's practices and may, if it deems such is reasonably necessary, request further information and evidence in support of any future invoicing or future Scheduled Payments.
  - 31.2.6 Failure to comply with this Clause 31.2, and/or repeated and persistent failures shall be deemed a Remedial (or as the case may be) a Material Breach.
- 31.3 Notwithstanding the provisions of Clauses 31.1 and 31.2 herein, the Provider shall be deemed to have committed a Remedial Breach in the event of any of the following:
- 31.3.1 A recurring Incidental Breach;
  - 31.3.2 Persistent Attendance Failures;
  - 31.3.3 Persistent failures to across the Service to deliver the Person Centred Approach to Supported Persons;
  - 31.3.4 Persistent failures to demonstrate the Personal Outcomes are being progressed and achieved;
  - 31.3.5 lack of evidence that the Personal Outcomes are being met and that Supported Persons are not reducing the dependency on one to one care, or that such Supported Persons are becoming more dependent on one to one care, or progress is behind schedule and the Personal Outcomes are falling short of expectations;
  - 31.3.6 Persistent failures to comply with reporting and monitoring obligations;
  - 31.3.7 Failures to comply with statutory compliance obligations;
  - 31.3.8 More than one Complaint of a recurring theme that requires investigation;

- 31.3.9 any cost implications to the Council which may necessitate an audit of the Provider's accounts, processes and systems in order to be recovered and reimbursed;
  - 31.3.10 Repeated incidents of scoring 2 on the Balanced Scorecard;
  - 31.3.11 Any breach of Confidentiality provisions by the Provider or its Staff;
  - 31.3.12 A breach of the Safer Recruitment requirements under this Agreement;
  - 31.3.13 Failures to appropriately manage and operate the Service in order to deliver the Service as a whole in terms of this Agreement and the Specification.
- 31.4 In the event the Provider commits a Remedial Breach identified in Clause 31.3 and which the Council considers remedial (to the extent that Supported Persons shall not under any circumstances be considered to be at Risk of Harm), then the Council shall be entitled to:
- 31.4.1 Carry out a Care Package Review; and/or
  - 31.4.2 Carry out Close Monitoring of the Provider, its Staff and the management of its business;
  - 31.4.3 Carry out a Service Review of the Provider's Service, which may involve a complete review of the Service and the performance of the Provider's management of the Service, an audit of its accounting systems, and the delivery of the quality aspects of the Specification over the previous relevant and appropriate period; and/or
  - 31.4.4 The Council shall be entitled to withdraw the Supported Person from the Provider's care; and/or
  - 31.4.5 The Council shall be entitled to suspend the Service to the Supported Person by the Provider until such time as it is satisfied that the Provider has remedied the breach to its satisfaction; and/or
    - 31.4.5.1 Recover any incurred costs or erroneously paid Scheduled Payments and/or Invoices or overpayments and such shall be payable to the Council on demand and all within the terms of Clause 5;
- 31.5 Notwithstanding the provisions of Clause 31.4, the Provider shall be deemed to have committed a Material Breach in the event of the following:
- 31.5.1 Any breach that poses a risk to the health and wellbeing of the Supported Person.
  - 31.5.2 Any breach of Clause 13 and which results in the actual harm to the health and wellbeing of a Vulnerable Person or Adult or Child at Risk of Harm;
  - 31.5.3 Any incidents of concerns, which in isolation may be considered trivial in nature and

deemed by virtue of this Agreement ordinarily Incidental or Remedial but are repeated and persistent despite continued efforts to resolve them to the Council's satisfaction and yet continue to remain unresolved for a period in excess of 6 months.

- 31.5.4 Repeated or persistent failures to deliver Invoices timeously, persistent and repeated overcharging for Additional Services not supported by accurate and correct supplemental evidence and or repeated falsification or errors contained in the supporting evidence.
- 31.5.5 Any breach of the material obligations contained within this Agreement.
- 31.5.6 The outcome of a Large Scale Investigation results in a lowering of the Care Inspectorate Grade to a grade lower than 3 across the themes for Quality of Care and Support, Quality of Staffing and Quality of Management and Leadership, or the Care Inspectorate imposes conditions which the Provider is failing to meet or demonstrating to the satisfaction of the Council that it is on track as meeting within the deadlines imposed by the Care Inspectorate.
- 31.5.7 The Provider measures a score of 1 on the Balanced Scorecard, or over the previous year fails to reach an average score of 3 across the Service.
- 31.5.8 Any provision of Clause 32.1 is triggered.

31.6 In the event the Provider commits or is deemed to commit a Material Breach:

- 31.6.1 The Council may apply one or more of the remedies applicable to a Remedial Breach without prejudice to its rights under Clause 32 herein; or
  - 31.6.1.1 The Council shall be entitled to Terminate this Agreement in terms of the provisions of Clause 32 without cost or penalty or compensation to the Provider and the Council shall be entitled to recover all costs in so doing from the Provider which may include the cost of referring the Supported Persons within the care of the Provider to a Framework Provider, or otherwise, and the difference in the cost of the care, if such alternative provider charges for the care at a higher rate shall be recoverable from the Provider including for avoidance of doubt any proper and reasonable administration costs incurred as a result of a re-procurement of the Provider's Service.

## **32 TERMINATION**

- 32.1 Without prejudice to the rights and remedies otherwise available to them under the law, the Council and the Provider shall each have the right to terminate this Agreement forthwith by notice in writing to the other if the other shall:-
  - 32.1.1 become insolvent, apparently insolvent, bankrupt or is sequestrated; or
  - 32.1.2 any of the events set out in Clauses 6.1, 6.3, 6.6, 6.7, 6.9, 13.14, 14.4.3.3, 16.5.1 and 31.5 applies, in which case the provisions of 32.3 shall also apply;

- 32.1.3 be wound up by the Court or be voluntarily wound up by its creditors or members; or
  - 32.1.4 go into liquidation, whether compulsory or voluntary (other than any voluntary liquidation for the purpose of a bona fide solvent amalgamation, re-organisation or re-construction; or
  - 32.1.5 effect an arrangement or composition with its creditors, or
  - 32.1.6 cease or threaten to cease to carry on business; or
  - 32.1.7 have a receiver, administrator, administrative receiver, judicial factor or other similar officer appointed over all or any of its assets; or
  - 32.1.8 commit a material breach of the terms of this Agreement; or
  - 32.1.9 commit a repeated breach of the terms of this Agreement which shall not be capable of remedy, or if capable of remedy, which shall not have been remedied within the period specified by the Party not in breach or to the reasonable satisfaction of the Party not in breach.
  - 32.1.10 be expressly specified as a Material Breach in terms of this Agreement;
  - 32.1.11 persistently commit repeated Incidental Breaches or Remedial Breaches to the extent that such is deemed by the Council (acting reasonably) to be tantamount to a Material Breach.
- 32.2 Notwithstanding the provisions of Clauses 31 and 32, such shall not operate so as to restrict the Council's statutory obligations and powers with regard to the safety and wellbeing of a particular Supported Person.
- 32.3 In the event of termination:-
- 32.3.1 the Provider shall use its best endeavours to make such alternative arrangements to provide appropriate arrangements and suitable alternative services for the Supported Persons within the Provider's care, and the long-term needs of the Supported Persons shall be of paramount consideration;
  - 32.3.2 any costs or additional expense incurred or anticipated by the Council as a result of the Provider's breach, for the purposes of ensuring the continuity of personal needs and welfare of Supported Persons may be charged by the Council to the Provider, and such shall be payable on demand, if in the reasonable opinion of the Council the Provider is in material breach of this Agreement and which breach could reasonably have been avoided or the Provider has failed to comply with Clause 32.3.1 herein;
  - 32.3.3 any payments made by the Council during any period in which the Provider is or was in material or repeated breach of its obligations in terms of this Agreement shall be without prejudice to and under reservation of all and any claims for reimbursement which the Council may have in respect of any such material breach by the Provider;
  - 32.3.4 the provisions of Clauses 32.3.2 and 32.3.3 above shall survive the termination of this Agreement.

### **33 RESOLUTION OF DISPUTES**

- 33.1 In the event of any dispute between the parties, either party may serve a notice on the other outlining the terms of the dispute and proposing a time and place for a meeting between the parties' representatives where the representatives shall attempt to resolve the dispute. The other party shall respond to such a notice within five working days of receipt. If the matter is not resolved within ten working days of service of the notice the matter may be referred by either party to the appropriate senior officer of each party for resolution. If the dispute is not resolved within a further ten working days, the matter may be referred by either party to a mutually acceptable third party, whom failing, on the application of either party to a third party appointed by the President of the Law Society of Scotland (which third party in either case shall be an expert not an arbiter). If the parties hereto so agree in writing, the decisions of any such third party including decisions regarding the expenses of the dispute resolution shall be final and binding on the parties.
- 33.2 For the purpose of resolving disputes in terms of Clause 33.1 the Council and the Provider shall formulate operational guidelines as to the levels of officer hierarchy within the respective organisations to which disputes should be referred.
- 33.3 Nothing in this Agreement shall prejudice the rights or remedies available to the Council to seek such alternative action under the law.

### **34 FORCE MAJEURE**

- 34.1 If either party to this Agreement cannot perform any of its obligations when they are due to be performed because of Force Majeure (as defined in Clause 34.5 below), and if such party gives written notice to the other party specifying the circumstances constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that these circumstances shall continue, then the party in question may be excused the performance or the practical performance as the case may be of contractual obligations which are affected by Force Majeure from the date on which it became unable to perform them and for so long as Force Majeure continues, subject to the provisions of Clauses 34.2 and 34.3.
- 34.2 The Provider and its sub-contractors connected to the delivery of the Services should have in place a comprehensive and current business continuity plan for use in the event of an emergency, serious incident and/or crisis. The business continuity plan shall cover all aspects of the organisation to include personnel, resources and service delivery which shall be required to enable continuity of business critical activity and minimise disruption to Supported Persons.
- 34.3 If the period of Force Majeure exceeds two months either party may serve on the other one month's notice of termination of this Agreement.
- 34.4 Both parties agree to use their best efforts to ensure that during any period when Force Majeure exists that the needs of Supported Persons are accommodated to the fullest extent practicable.
- 34.5 For the purpose of this Agreement "Force Majeure" shall be deemed to be any circumstance affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party to perform.

### **35 EXERCISE OF POWERS AND GOOD FAITH**

- 35.1 In exercising its discretion, or any of its powers or obligations in terms of this Agreement, the Council shall at all times do so in a reasonable manner.

- 35.2 The Parties to this Agreement agree to exercise and act in good faith and the spirit of working together at all times.

## **36 CORRUPT PAYMENTS OR INDUCEMENTS**

- 36.1 The Provider shall not offer or give, or agree to give, to any member, employee or representative of the Council any gift or consideration of any kind as an inducement or reward for doing any act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract with the Council.
- 36.2 In the event of a breach of the obligation contained in Clause 36.1 (which for the avoidance of doubt shall be deemed a material breach), the Council shall be entitled to recover from the Provider the amount of any loss reasonably incurred resulting from the Council enforcing its right to terminate this Agreement under Clause 31 in accordance with the provisions of Clause 32.

## **37 NOTICES**

- 37.1 Any written notice to be provided to the Council in terms of this Agreement shall be sufficiently served if it is delivered or sent by Registered or Recorded Delivery post to the Council Representative or any other person notified by the Council from time to time as being the appropriate person to receive such notices, failing which, to the principal office of the Council.
- 37.2 Any written notice to be provided to the Provider in terms of this Agreement shall be sufficiently served if it is delivered or sent by Registered or Recorded Delivery post to the Provider Representative or any other person notified by the Provider from time to time as being the appropriate person to receive such notices.
- 37.3 Notices shall be deemed to have been received by the addressee if they have not been returned as undelivered five working days after posting and any receipt issued by the postal authority shall be conclusive evidence of the fact and date of posting any such notice.
- 37.4 Where the Provider is required otherwise than by written notice to give information to the Council they shall do so by contacting the Council Representative or the appropriate person or post holder.

## **38 COURTS POWER TO MODIFY CONTRACT**

- 38.1 If any court of competent jurisdiction holds any provision of this Agreement invalid, illegal or unenforceable for any reason the remaining provisions shall continue in full force and effect (notwithstanding such invalidity, illegality or unenforceability) and the court shall have the power to modify this Agreement if this is required to ensure that the parties can so enforce the remaining provisions.

## **39 WAIVER OF REMEDIES**

- 39.1 No forbearance, delay or indulgence by either party enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party, nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy conferred upon or reserved right for either party in this Agreement is exclusive of any other right, power or remedy available for that party and each such right, power or remedy shall be cumulative. Declaring for the avoidance of doubt that a failure to respond to a request for information or consent or approval by either Party shall be deemed to be a waiver of the receiving Party's request or right to consent or approve. Failure to so respond within such reasonable period shall be deemed to be a breach.

#### **40 ENTIRE AGREEMENT**

- 40.1 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties to this Agreement and constitutes the entire agreement between the parties relating to the Support Service, which shall be deemed to include any requisite subsequent documents envisaged by this Agreement such as the Individual Purchase Agreement, Assessment, Support Plan and/or Review documentation. It is acknowledged and agreed by both parties that no warranties or representations (whether written or oral) made by or on behalf of the other party, other than those expressly set out or referred to herein have been relied upon.

#### **41 TRANSFER OF EMPLOYMENT**

- 41.1 It is the Councils preliminary view that the terms of the European Acquired Rights Directive 77/187/EEC and the Transfer of Public Undertakings (Employment Protection) Regulations 1981 (SI 1981/1794) as amended may apply to this Agreement. The Provider shall take full account of the requirements of the Directive and the Regulations.

#### **42 JURISDICTION**

- 42.1 This Agreement shall be interpreted in accordance with Scots Law. Subject to the resolution of Disputes contained within this Agreement, the Scottish Courts shall have exclusive jurisdiction.

## **SCHEDULE PART 1**

### **SPECIFICATION**

**This is the Service Specification (“this Specification”) referred to in the foregoing Terms and Conditions of Support Services Under Option 2 (Social Care (Self Directed Support) (Scotland) Act 2013) ELC-18-1654 and shall be deemed to be incorporated thereto together with the KPI Schedule and Balanced Scorecard and any other Schedules annexed to the Terms and Conditions all of which together shall be deemed to form ‘this Agreement’ and pursuant to the Individual Purchase Agreement which shall be deemed to be as relative hereto.**

**All defined Terms in the foregoing Terms and Conditions shall have the meanings ascribed to them in this Specification, unless otherwise expressly provided.**

**Where Clause numbers are referred to in this Specification such shall be deemed to be Clauses contained within this Specification unless otherwise specifically specified.**

#### **1. Service**

- 1.1 The Provider shall deliver the Service as set out in the Individual Purchase Agreement and Support Plan all in terms of this Agreement either at the Supported Persons Home, or as otherwise specified in the Individual Purchase Agreement and/or Support Plan as the case may.
- 1.2 In addition to Clause 1.1 of this Specification the Provider shall ensure it applies and delivers the Service at all times to demonstrate its contribution towards the achievement of the Desired Personal Outcomes, the National Outcomes and National Care Standards Principles when establishing, developing and delivering Support Services, Care at Home and Housing Support Services.
- 1.3 The Council shall measure and monitor the Provider’s performance by the utilisation of the Balanced Scorecard.
- 1.4 The Provider shall comply with all legal requirements under the Public Services (Scotland) Act 2010 all associated regulations and National Care Standards and Principles and ensure its Staff follow and apply the same at all times for the Duration.
- 1.5 In respect of the delivery of the Care Package and provision of the Service the Provider shall ensure that it and its Staff comply with the provisions of Clause 11 of the foregoing Terms and Conditions and:
  - 1.5.1 use best endeavours to ensure that the delivery of the Service to the Supported Person is delivered with the purpose of achieving the Personal

Outcomes detailed in the Individual Purchase Agreement and as set out in the Support Plan (if applicable) and the Support Plan;

- 1.5.2 wherever and whenever possible, include the Supported Person in any discussion or dialogue relating to the delivery of the Care Package and/or provision of the Service;
- 1.5.3 Ensure the Supported Person is provided with the opportunity to contribute to any such discussions relating to the provision of the Service;
- 1.5.4 Ensure it includes the Supported Person's Carers and Representatives in any discussions relating to the care provision of the Supported Person and accepts representations from them, where and when appropriate and reasonably practicable;
- 1.5.5 Take such necessary and reasonable steps on commencement of the delivery of the Care Package to provide an appropriate level of support for the Supported Person with a view to reducing the level of support (if in the reasonable opinion of the Provider and the Council such is reasonable and practicable) to prevent continued dependency on the Service;
- 1.5.6 Ensure that it and its Support Workers and other staff are cognisant of and take a proactive approach to promote independence and reduce the level of support during the Period and deliver the Service while aiming to achieve the Desired Personal Outcomes all in terms of the Support Plan; except in such cases where the Supported Person has been assessed as needing an ongoing and/or potentially increasing Service;
- 1.5.7 Encourage Supported Persons to remain resident in their own home as long as possible;
- 1.5.8 Use reasonable endeavours to encourage any Supported Person to utilise local community support and services where practicable;
- 1.5.9 Use reasonable endeavours to utilise any locally available appropriate group service provision, or community supporting enterprises, or any such available local community resources to encourage the Supported Person to engage in community activities if such Supported Persons have been assessed as likely to benefit for the same and in doing so reduce the Supported Person's dependency on one to one Care;

- 1.5.10 Encourage Support Workers and other Provider's staff to continuously monitor, assess and report back to the Provider on the progress of the Supported Person and when necessary, in the event the Provider is aware of a Deterioration or Improvement, notify the Council of the same and seek a re-Assessment from the Council and if appropriate a Review of the Support Plan, the Support Plan and/or Care Package Review;
- 1.5.11 Carry out Risk Assessments as appropriate and when required and maintain up to date Risk Assessments of all relevant aspects of the Service to ensure the Provider delivers the continued Services safely and effectively;
- 1.5.12 Use best practice techniques and ensure Staff are clear on the same including appropriate procedures and company policy when the Provider or its staff are dealing with medication, the administration of medication or medical procedures.
- 1.5.13 Implement an appropriate supervision and support policy to include formal supervision sessions of the Support Workers on a consistent and regular basis;
- 1.6 The Provider hereby agrees that although it is to be cognisant of, and shall ensure that all relevant staff are cognisant of, any information or Risk Assessment developed by the Council or provided to the Provider by the Council, such shall not be relied upon by the Provider to the extent that it shall discharge the Provider of its obligations, and as such the Provider must always in every case carry out its own Risk Assessment and satisfy itself that any evidential risks are managed and mitigated.
- 1.7 The Provider shall at all times deliver the Service while aiming to achieve the Desired Personal Outcomes and the Service Outcomes, and shall if requested to do so by the Council, demonstrate the same during any Review.
- 1.8 In the event that there is a statutory order in place the Provider shall ensure it and its Staff fully comply with the order.
- 1.9 In the event a child is subject to a Compulsory Supervision Order under the Children's Hearing (Scotland) Act 2011 then in such an event the Provider shall ensure it and its Staff fully comply with the Order
- 1.10 In the event of a Change in Care Package following a Care Package Review or other Review, the Provider shall ensure the Supported Person and if appropriate their Carer and/or Representative is kept fully up to date and involved in the changes. In such an event and at all times, and the terms of Clauses 8 of this Specification shall fully apply;

- 1.11 Under no circumstances shall the Provider's Staff or anyone for whom the Provider is responsible be permitted to smoke or drink alcohol on the premises or at the Home of the Supported Person.
- 1.12 Either the Council or the Provider may seek a Care Package Review at any time if in the reasonable opinion of either, such is considered necessary or beneficial to the Supported Person.

## **2. Attendance**

2.1 In the event of an Attendance Failure, the Provider shall ensure alternative Support provision is provided for the Supported Person in replacement of the missing attendance hours or Service provision as soon as reasonably practicable, and shall regardless of the foregoing, ensure and satisfy itself and take such necessary steps to ensure the Supported Person suffering the Attendance Failure is checked on and determined as being in a satisfactory state of health and mental wellbeing during the period while waiting for the replacement Support.

2.2 In the event a support Worker is late for a Scheduled Visit (or leaves early, or the visits are irregular), the Provider shall ensure that the Support Worker is fully aware that it must notify the Case Manager or whom failing a second nominated person within the Provider's control, as soon as the said Support Worker reasonably anticipates that it is likely to be late, or is late, or is likely to miss the Scheduled Visit to the Supported Person, and in such an event the Case Manager shall:

- 2.2.1 Ensure that the Supported Person and if appropriate and available the Supported Person's Carer or if appropriate Representative is notified immediately either by the Case Manager or the Support Worker, whichever is appropriate;
- 2.2.2 That such is recorded on its systems as an Attendance Failure, with appropriate details noted of the Support Worker, the Supported Person, the amount of time that the Supported Person was without the Scheduled Visit, any consequences impacting the Supported Person arising from the Attendance Failure, the reasons for the Attendance Failure and any other relevant information which shall be recorded and maintained, and such details to be included in the next Remittance Advice to the Council and the Provider shall ensure that the sum equivalent to the cost of the failed Scheduled Visit shall be deducted from the Scheduled Payment and reimbursed to the Council, or notified to the Council for deduction from the next Scheduled Payment unless the missing period of time is less than 15 minutes, in which case a sum equivalent to no less than 25% of the Rate shall be deducted from the next Scheduled Payment;

2.2.3 The Provider shall monitor and record the times of attendance of the Support Workers delivering Care Packages to each and every Supported Person. In the event the Provider becomes aware or should reasonably be aware that a Support Worker is persistently arriving late, leaving early or at times failing to attend at all, then such must be recorded in the Report and persistent failures shall be treated as Attendance Failures.

2.3 In the event of recurring or persistent Attendance Failures either in respect of the delivery of a Supported Person's Support Service, the Provider shall take such necessary and immediate steps to address the Attendance Failures with the Support Worker or Support Workers responsible and to use best endeavours to avoid any future Attendance Failures and Report the same to the Council, and in such an event, the Council may at its discretion treat the same as either an Incidental or Remedial Breach or in severe repeated cases may treat as a Material Breach if the Supported Person is as a result at Risk of Harm or suffered a serious detriment to his or her quality of care as a result.

### **3. Communication**

3.1 The Provider shall in so far as possible ensure the communication values and principles outlined in the National Care Standards are upheld and that the Supported Person is involved to the maximum possible extent in designing and controlling the care and support they receive, and in addition, in so far as reasonably possible, the personal aims and requirements of the Supported Person is reflected in the Support Plan and further:

3.1.1 The Supported Person is included in all discussions and decisions involving the preparing of the Support Plan and any changes to it following a Care Package Review, a Service Restart, any Support Plan Review or Reviewed Support Plan and/or any other changes, or in the event of any proposed reductions or increases to the Supported Person's level of Support;

3.1.2 The Provider shall continue to develop approaches to enable the Supported Person to express his or her views to inform the care and support they receive;

3.1.3 The Provider shall use best endeavours to ensure that Staff are appropriately trained in communication techniques to the extent that the Provider is satisfied that it can ensure the Supported Person understands and agrees, in so far as he or she is able to do so, the Support Plan that is being developed and recommended for him or her;

3.1.4 Where the Supported Person has limited or no verbal expression or is incapable of expressing his or her own views, the Provider shall use all reasonable endeavours to realise appropriate communication tools and/or advocacy to enable and assist the Supported Person to express in so far as reasonably possible his or her views, including the use of technological solutions, and/or the provision

of additional training for the Support Workers responsible for the delivery of the Care Package, and such training and access to appropriate tools shall extend to the Provider's Support Planners to develop the appropriate skills required, to support, assist and enable the Supported Person in this respect;

- 3.1.5 At any time during the duration of this Agreement (which shall include for the avoidance of doubt such extended period or transitional period as the case may be) the Council shall be entitled to refer the Supported Person to an alternative Provider or Framework Provider in the event the Council deems such Supported Person to be at risk of harm.
- 3.2 The Provider shall commence delivery of the Care Package to the Supported Person no later than 72 hours from the date of acceptance of the Individual Purchase Agreement or such other earlier or later date agreed with the Council.
- 3.3 The Provider shall deliver to the Supported Person the Personal Care over the number of hours required to deliver the Care Package specified in the Assessment and/or Support Plan for the duration of the Care Period and such shall be charged to the Council at no more than the Rate and shall be delivered at all times in terms of this Agreement.
- 3.4 In the event the Provider has accepted the obligation to deliver the Care Package to the Supported Person but subsequently determines it does not have actual capacity or Staff resources to deliver the Referral, in such an event the Provider shall be responsible for making such other suitable arrangements with a Framework Provider or another provider of equal or better grading with the Care Inspectorate at its own cost until such time as it can resume the delivery of the Service to the Supported Person and in such an event may be deemed by the Council to be an Incidental Breach or Remedial Breach until an appropriate resolution has been achieved to the Council's satisfaction.
- 3.5 A recurrence of the event specified in Clause 3.4 of this Specification shall entitle the Council to Close Monitor the Provider's Service or carry out a Service Review as it deems appropriate.
- 3.6 In the event that the Provider indicates that it no longer has the capacity to deliver the Care Package to the Supported Person, and has not used reasonable endeavours to make alternative suitable arrangements for the Supported Person then the Council shall be entitled to offer the Referral of the Supported Person to a Framework Provider or otherwise an alternative provider, and shall be entitled to recover the difference in cost in doing so from the Provider until the Expiry Date or end of the Care Period whichever is the earlier.

#### **4. Payment**

- 4.1 In exchange for the Provider providing the Service in terms of this Agreement the Council shall pay the Provider the Scheduled Payment on the dates specified in the Individual Purchase Agreement subject to the provisions of the foregoing Terms and Conditions.

## **5. Limitations**

- 5.1 There shall be no reduction in the delivery of the Care Package hours or activities to the Supported Person unless with the prior consent of the Council and/or a change to the Individual Purchase Agreement.
- 5.2 In respect of any specific service requirements required by the Supported Person and identified in the Assessment, the Individual Purchase Agreement or Support Plan, such shall not be departed from by the Provider due to the personal circumstances of a Support Worker.
- 5.2.1 In the event a Support Worker is unable or incapable of performing the tasks set in the Care Package at any given time, the Provider undertakes to ensure alternative arrangements shall be deployed to deliver the Support to the Supported Person as soon as immediately possible.
- 5.2.2 In the event that the Provider considers that the Supported Person or Carer behaves in a manner or has persistently behaved in a manner that causes serious risk to the welfare of a Support Worker or any of the Provider's Staff, in such an event the Provider shall notify the Council immediately, or as soon as reasonably practicable and provide the Council with a full Report into the circumstances.
- 5.2.3 The Provider shall be entitled in the event of an occurrence set out in Clause 5.2.2 of this Specification occurring to call for a Care Package Review or a Case Conference. In such an event, the continued support of the Supported Person shall continue to be the responsibility of the Provider though declaring the provisions of Clause 5.2.4 of this Specification shall apply.
- 5.2.4 In the event of an event set out in Clause 5.2.2 of this Specification occurring where it is necessary, appropriate and reasonably practicable to do so, the Provider shall deploy additional Staff to support a Support Worker, or replace the Support Worker with no less than two alternative Support Workers until such time as alternative arrangements can be made, or the Council has approved and agreed to terminate the Care Package.
- 5.2.5 The Provider shall ensure if an event set out in Clause 5.2.2 of this Specification occurs that:

- 5.2.5.1 The Provider has taken the necessary steps to mitigate and/or ameliorate the circumstances occurring; and
  - 5.2.5.2 The Provider has informed and kept informed, the Council of the difficulties of finding alternative solutions to the continued delivery of the Care Package in terms of the applicable Assessment, the Individual Purchase Agreement or the Support Plan; and
  - 5.2.5.3 The Provider has ensured that Staff are appropriately trained, experienced and qualified to deal with the Supported Person's needs and has not deployed inadequately trained, qualified or experienced Support Workers to deliver the Care Package; and
  - 5.2.5.4 The behaviour of the Supported Person set out in 5.2.2 has not arisen or been aggravated by a failure by the Provider to apply the principles set out in Clause 3 of this Specification.
- 5.3 In the event of any Review affecting a Supported Person, the Provider shall ensure that it maintains an appropriate level of communications with the Supported Person and the provisions of Clause 3 of this Specification shall apply.
- 5.4 Under no circumstances shall the Provider cease to deliver the Service to the Supported Person unless:
  - 5.4.1 It has achieved the prior written consent of the Council;
  - 5.4.2 Alternative care provision has been put in place and a date agreed with the Provider and new provider to deliver a Care Package without interruption; and
  - 5.4.3 The Provider has used best endeavours to assist the Council and any such new provider with the Transition and implementation of the a Care Package to be delivered by an alternative service provider;
  - 5.4.4 The Provider has used best endeavours to ensure the continuation of the Service to the Supported Person, but the Provider is under no reasonable doubt that the presence of its Staff are at serious risk of harm by the Supported Person or his or her Carer, in which case, the Provider shall notify the Council immediately upon making the decision not to continue with the delivery of the Service to the Supported Person, and in such an event, the Council will bear the responsibility for the Supported Person and if it is reasonable to do so and terminate the Individual Purchase Agreement.

## **6. Responsiveness and Emergency Responses**

- 6.1 In the event the Council refers a Referral to the Provider on the request of the Supported Person and the Provider accepts such Referral, it shall as soon as reasonably practicable and within no later period than 72 hours from receipt of the Assessment develop a Support Plan with the Supported Person and/or his or her Carer and/or Representative (and the Council) and such Support Plan shall reflect the needs and Desired Personal Outcomes to be achieved by the Supported Person as set out in the Assessment and be submitted to the Council within 7 days from the date of the Referral or by such other date agreed with the Council, (but in any event such shall be delivered to the Council no later than 21 days from the date of the Referral) for the Council's approval .
- 6.2 Declaring for the avoidance of doubt that the Provider shall not agree any Commencement Date for the commencement of the Care Package with the Supported Person or his or her Carer and/or Representative until the Provider is in receipt of the Individual Purchase Agreement.
- 6.3 The Provider shall ensure that it has capacity to commence the delivery of the Care Package, on the date agreed with the Council, and shall ensure that it is ready to commence delivery of the Care Package in terms of the Support Plan on the Commencement Date.
- 6.4 The Council shall refer the Referral together with the Assessment to the Provider (on the request of the Supported Person) who shall work with the Supported Person, their Carers and Representatives to further develop the Support Plan.
- 6.5 On receipt of the Support Plan the Council shall determine whether the same is acceptable and within the Council's Personal Budget. In the event the cost of the Support Plan exceeds the Personal Budget, the Supported Person shall be given the option to contribute towards the difference in cost his or herself, or in failing, the Council shall be entitled to refer the Supported Person to a Framework Provider to deliver the Service, unless the Supported Person chooses an alternative provider other than the Provider or an alternative Framework Provider.
- 6.6 The Provider shall commence delivery of the Care Package to the Supported Person on a date agreed with the Council, but no later than 7 days from the date of Referral (except in cases of Emergency in which case Clauses 9.3 or 9.4 of this Specification applies), unless otherwise agreed with the Council.
- 6.7 The Provider shall deliver to the Supported Person the Personal Care over periods and times set out in the Support Plan and deliver the Care Package specified in the Support Plan and pursuant to the Individual Purchase Agreement for the duration of the Care Period and such shall be charged to the Council at no more than the cost specified in the Individual Purchase Agreement, and shall be delivered at all times at a standard set out in and in terms of this Specification.

- 6.8 In the event that the Provider indicates that it does not have capacity to continue to deliver the Service after it has agreed the Individual Purchase Agreement, the Provider shall be obligated to make the necessary arrangements with another provider to deliver the Service and bear the cost of the difference itself until such time as it can continue to deliver the Service to the Supported Person or until the Expiry Date whichever is the sooner.

## **7. Telecare**

- 7.1 In the event that the Provider has invested in assistive TEC systems (if such systems connect and link into the Council's Telecare System) it shall utilise such TEC systems where it is a viable alternative to direct support provided it has obtained the Council's approval and such is in accordance with the Support Plan.
- 7.2 In the event that a Telecare systems are already in situ at the Supported Persons Home, the Provider shall be entitled to invest in and entitled to install the appropriate IT and telecoms infrastructure and software capable of ensuring that such Telecare system (whether installed by the Provider or otherwise) links up promptly to Provider Staff, Contact Centres and emergency response teams, provided it ensures it obtains the necessary consents to do so for relevant parties; or
- 7.3 If the Provider invests in its own managed Telecare system and installs the same in the Homes of the Supported Persons with the Supported Persons consent, it shall ensure it utilises appropriate IT and telecoms infrastructure and software to ensure safe delivery of the Support Service.
- 7.4 In the event that any Supported Person already has a Telecare system in situ at his or her Home either at Commencement Date or installed at some other time during the Duration, and such has been installed by the Council or another party for whom the Council is responsible for the purposes of enhancing the Support Service provision, in such an event the Provider shall be entitled to utilise such a Telecare system at its discretion but shall, in the event it does opt to utilise such system, install in its computer systems such necessary software in order to run, operate and manage such Telecare system efficiently at its own cost.

## **8. Personal Outcomes and Reviews**

- 8.1 The Provider shall deliver the Care Package to the Supported Person at Home or otherwise in terms of the Support Plan pursuant to the Individual Purchase Agreement and shall use all reasonable endeavours to achieve the Personal Outcomes specified in the Assessment with the objective of promoting independence and enabling the Supported Person to be independent and rely less on the Service.

- 8.2 The Provider shall comply with and shall ensure its Staff comply with the Regulation of Care (Scotland) Act 2001 (as updated, amended or substituted from time to time);
- 8.3 The Provider shall closely monitor and review the progress of the Supported Person during the Duration and in any case at least once in a six month period and notify the Council as soon as reasonably practicable if in the reasonable opinion of the Provider the Supported Person may benefit from a Care Package Review, a Change in Care Package, a move to a shared service or if the Provider is or should reasonably be aware that the Supported Person has suffered a Deterioration or exhibited an Improvement.
- 8.4 The Council shall be entitled to review the Support Plan in respect of the Supported Person as and when it considers reasonably necessary and in any case at least once every six months at a date agreed between the Parties. In the event that in the reasonable opinion of the Council the Supported Person should be reassessed or has or can reasonably be considered to have suffered a Deterioration or exhibited an Improvement, and the Council has not been notified of the same by the Provider, in such an event the Council shall be entitled to carry out a re-Assessment of the Supported Person and /or a Support Plan Review and thereafter can call upon the provider to make such necessary changes to the Support Plan and a Change in Care Package, and such Reviewed Support Plan shall be delivered to the Supported Person by the Provider for the duration of the Care Period or until further review.
- 8.5 In the event that the Supported Person has suffered a Deterioration or exhibited Improvement warranting a change in Care Package and has been subject to a Care Package Review, in such an event the Support Plan shall be redeveloped to reflect the requirements of the Assessment following the Care Package Review and a new Individual Purchase Agreement shall be issued to the Provider for acceptance, which may include a revised Scheduled Payment and the Provider shall deliver the said newly agreed Support Plan to the Supported Person in terms thereof.
- 8.6 Should the Provider not demonstrate an improvement in the Supported Person's level of independence, nor demonstrate significant progress to achieve the Personal Outcomes within the time period set out and specified in the Support Plan and reflected in the Support Plan (or if not specified within the Support Plan within such reasonable period of time from the date of commencement of the Service provision to the Supported Person), then in such an event, the Council shall be entitled to re-Assess the Supported Person, carry out a Care Package Review, or Close Monitor the Provider or if the Council has reason to consider the lack of progress is due to serious failures in the Service provision, carry out a Service Review. Providing that no such improvement or progress shall be expected if a lack of such is envisaged in the Assessment and the Support Plan.

## **9. Business Continuity**

- 9.1 The Provider shall enter into an agreement developed with the Supported Person (and in the case of Children the parent, the Carer and if necessary the Representative) in terms of the National Care Standards, which:
- 9.1.1 Shall be consistent with this Agreement and Specification;
  - 9.1.2 Shall reflect the Assessment;
  - 9.1.3 Shall be signed or countersigned by the Council in the event the Supported Person is not capable of signing the said agreement or acknowledgement due to an incapacity and in such an event, the Council shall jointly with the Carer or Representative (if any and as appropriate) assume the rights under such agreement and shall be entitled to rely on the same for the benefit of and on behalf of the Supported Person. In such an event, a copy of the said Agreement shall be supplied to the Supported Person and their Carer/Representative;
- 9.2 The Provider shall ensure that it is contactable and accessible at all times for the Duration and:
- 9.2.1 Shall appoint and retain at all times, an appointed Case Manager to manage the delivery of the Supported Person's Care Package and also the Support Worker responsible for the delivery of the same;
  - 9.2.2 Provide the Council with the contact details including a telephone number for the Case Manager to be available Monday to Friday between the hours of 09.00 – 17.00;
  - 9.2.3 Notify the Council in the event that any key worker, area manager, regional manager, director (or any individual within the Provider's workforce holding a position of responsibility) resigns, retires, is dismissed, seconded or transferred elsewhere, made redundant or for any other reason leaves the employ of the Provider or the responsibility for the care of the Supported Person.
  - 9.2.4 ensure that an out of hours service is available (and the Council provided with the relevant numbers and contact details) for cases of emergency or urgency when such arise out with the above days and times set out in 9.2.2;
  - 9.2.5 supply the Council with a dedicated email address which shall be checked by the Provider for Council emails each and every hour between the days and hours referred to in 9.2.2 of this Specification;

9.3 The Provider shall develop, maintain, implement and hold responsibility for processes and procedures in relation to business continuity in respect of the Service it delivers and any Emergency situation faced by the Council, and shall provide the Council with the same upon request and shall include for the avoidance of doubt in relation to the Service the processes and procedures in the event of the occurrence of the following:

9.3.1 Severe weather conditions affecting travel by the Care Provider to Supported Person;

9.3.2 Flu pandemic, or other virus/bacteria pandemic;

9.3.3 Supported Person missing from home;

9.3.4 Fire or flood of Supported Person's home;

9.3.5 Fire or flood or cessation of utilities services to Supported Persons home;

9.4 In relation to the services not delivered by the Provider, the Provider shall use all reasonable endeavours to assist the Council in an emergency situation (provided the Provider has capacity to do so) to deliver an Emergency Care Package to any individual displaced from their usual place of Support as a result of:

9.4.1 Fire or flood or cessation of utilities services to a residential home;

9.4.2 Fire or flood or cessation of utilities services to a day care centre;

9.4.3 Any flu or virus or other illness pandemic across the staff employed at the said day centre or residential home rendering it impossible to deliver the service to the occupants thereof.

9.5 In such an event of any occurrence of the situation in 9.4 occurring, the Provider shall deliver such assistance at the Rate, unless it can demonstrate any Additional Costs as a result of assisting the Council, in which case the Council shall bear such Additional costs.

## **10. Managing Challenging Behaviour**

10.1 The Provider shall ensure that Staff are appropriately qualified, trained and experienced to the extent that they are capable of understanding the needs of

Supported Persons who may have, or may develop behaviour that is challenging arising from:

10.1.1 An existing condition preventing them from fully understanding the situation they find themselves in;

10.1.2 A failure to understand the Support Plan and/or Support Plan in general or the reasons for it;

10.1.3 A failure to understand demands or challenges they are faced with;

10.2 The Provider shall ensure that the necessary policies and procedures are in place to identify and deal with behaviours that may prove challenging and require support from other professionals. In doing so, the Provider shall:

10.2.1 Ensure the appropriate level of support is sought as soon as reasonably practicable from other professionals;

10.2.2 Ensure that any recognisable triggers for behaviour that is challenging in respect of any Supported Person is reported by the Staff to the Provider, and is recognised, recorded and monitored;

10.2.3 Ensure procedures are in place to deploy preventative measures, interventions, tools and techniques to address any such behaviour appropriately;

10.2.4 Ensure processes and procedures are in place to assist staff in recognising the indicators of potentially challenging behaviour from the Supported Person and how to handle such.

10.2.5 Ensure that Staff facing such challenging behaviour are well supported by the Provider and that such measures identified in Clause 10.2.2 of this Specification are known to them and available at all reasonable times, or in the event of out of hours, there is an appropriate level of emergency support for both the Staff and the Supported Person.

10.3 The Provider shall implement and maintain a policy and procedure on restraint and confinement which shall include details of all training of Staff that is in keeping with the Principles for Practice set out in Rights, Risks and Limits to Freedom 2006 produced by the Mental Welfare Commission for Scotland (or such updated, amended or supplemented document in its replacement).

- 10.4 The Provider shall ensure its Staff are aware of the duties and responsibilities of the Mental Welfare Commission in protecting and promoting the human rights of people with mental health problems, learning disabilities, dementia and related conditions all in accordance with Clause 13 of the foregoing Terms and Conditions. The Provider shall ensure that applicable issues and incidents are reported to the Mental Welfare Commission and the Provider and Staff shall refer to and adhere to the guidance.

## **11. Access to Health and Social Care Services**

- 11.1 The Provider shall ensure that the Supported Person is encouraged to maintain or improve their health and wellbeing as set out and identified in the Support Plan, and such may include (but not be limited to);

- 11.1.1 Assistance with accessing health service professionals and services;
- 11.1.2 Assistance and support to ensure the Supported Person understands health advice, guidance and treatment if necessary;
- 11.1.3 Notifying the Carer or Representative in the event of any health Referrals or interventions;
- 11.1.4 Liaising with any clinical or specialist service, health service, and/or social work department to facilitate the most appropriate intervention if necessary.

## **12. Suspension of Service (Planned and Reactive), temporary suspension and end of Care Package**

- 12.1 In the event that at any time the Provider considers the Supported Person to have achieved the Personal Outcomes or is making significant progress towards the same, the Provider shall as soon as reasonably practicable call for a re-Assessment and Review of the Support Plan;
- 12.2 In the event a Review identifies that the Supported Person exhibits Improvements or the achievement of the Personal Outcomes, the Council and the Provider shall develop a stepped planned ending to the Care Package and in such an event the provisions of Clause 12.4 of this Specification shall apply.
- 12.3 In the event the Supported Person refuses to accept the Service on any particular day and the Provider is concerned or should reasonably be concerned that the health and wellbeing of the Supported Person is at risk of harm, in such an event, the Provider shall notify the

Council immediately and the Provider and the Council shall work together to treat such as an emergency and develop alternative arrangements for the Supported Person.

- 12.4 The Provider shall notify the Council as soon as reasonably practicable that it envisages an end to a Care Package or temporary cessation of a Care Package whether due to a Suspension of Service (Planned) or in the event of a Suspension of Service (Reactive) as soon as reasonably practicable and in so doing shall:

- 12.4.1 Agree with the Council to terminate the Individual Purchase Agreement unless:

12.4.1.1 it is envisaged that a Suspension of Service (whether Planned or Reactive) is envisaged to only be a temporary suspension of 7 days or less, in which case the Provisions of Clause 12.4.1.2 of this Specification shall apply; Declaring that the Provider shall notify the Council as soon as it becomes aware and anticipates a Suspension of Service (whether Planned or Reactive).

12.4.1.2 In the event of a Suspension of Service (Reactive) the Provider shall notify the Council immediately or as soon as reasonably practicable (but no later than 24 hours (failing which, no payment shall be charged to the Council and treated as an Attendance Failure and shall appear on the next Remittance Advice as a deduction from the next Scheduled Payment) and accept the instructions of the Council on whether to end the Care Package or suspend the same, declaring that the Council shall not in the event of a planned hospital admission or Short Breaks, be liable to the Provider for any costs or payments in relation to the said Supported Person for the period of the said hospital admission or Short Breaks and such shall be deducted from the next Remittance Advice to be deducted from the next Scheduled Payment.

- 12.4.2 In the event of a Suspension of Service whether Planned or Reactive upon the notification to the Council by the Provider, (or otherwise as the case may be) the Council shall be entitled to request the Provider suspends the delivery of the Care Package to the Supported Person for a reasonable Period, to be ready to resume the delivery of the Care Package immediately upon the return to Home of the Supported Person, provided the Supported Person returns Home within 7 days of the said Suspension of Service;

- 12.4.3 On resumption of the delivery of the Care Package to the Supported Person, the Provider shall ensure that all aspects of the interrupted Care Package are resumed to the extent that it was delivered to the Supported Person by the relevant Support Worker in terms of the Assessment or the Support Plan or any Reviewed Assessment, Individual Purchase Agreement or Support Plan or any change to the Care Package as appropriate.

12.5 Notwithstanding the provisions of the foregoing Terms and Conditions, it shall be a material breach of this Agreement in the event the Provider fails to notify the Council of:

12.5.1 An event set out in Clause 12.4.1.2 of this Specification;

12.6 In the event of a Suspension of Service (Reactive) where the Provider has no explanation or information, and has not responded to requests for the same nor has made any apparent efforts to determine the same surrounding the reasons for a failure to deliver a Care Package, then:

12.6.1 The Council shall be entitled to terminate the Service with the Provider; and

12.6.1.1 Such shall be without notice; or

12.6.1.2 Without cost, penalty or compensation owed to the Provider or due by the Council; and

12.6.1.3 Shall be subject to the Remedies and actions set out in the foregoing Terms and Conditions under Clauses 31 to 33.

12.6.2 In such an event of the provisions of this Clause 12.6 of this Specification occurring, the Provider shall continue to deliver the Care Package to the Supported Persons for which it is responsible until such suitable alternative arrangements can be made, and shall, in addition:

12.6.2.1 Continue to conform to the Terms and Conditions and this Specification and the Individual Purchase Agreement;

12.6.2.2 Work with the Council and the Supported Person, his or her Carers and/or Representative to prepare and develop a stepped end of Care Package and Transition Plan to replace the applicable Individual Purchase Agreement and Support Plan.

### **13. Service Restart**

13.1 The Council shall notify the Provider of a Service Restart in the form of a Re-referral. Should the Provider not have capacity to accept such it shall notify the Council as soon as reasonably possible.

## **14. Council Obligations**

- 14.1 The Council shall supply the Provider with the Assessment at Referral;
- 14.2 The Council shall ensure that the Provider shall be entitled to participate (if reasonably practicable) in any discussions and/or dialogue with or in respect of the Supported Person and their Carer's and/or Representative in relation to any proposed Care Package Review or Change in Care Package and if reasonably practicable in respect of any new Care Package or newly Supported Person.

## **15. Client Monies and Gifts**

- 15.1 The Provider shall ensure that no member of Staff is appointed as being responsible for the financial affairs of the Supported Person, nor shall such member of Staff accept a bank card, credit or debit card or PIN number, draw money from the Supported Persons bank account, post office account or any other account holding money for the Supported person nor accept a gift of money, a loan or lend money to the Supported Person or enter into any other financial arrangement with the Supported Person.
- 15.2 The Provider shall ensure that members of Staff undertake not to accept any gifts of property of any kind from the Supported Person;
- 15.3 The Provider shall ensure that written records are kept of any financial dealings on behalf of the Supported Person, whether such amounts are petty or otherwise and shall keep a record and receipt together with signatures from the Supported Person of all transactions on behalf of the Supported Person and account for:
  - 15.3.1 Monies received from the Supported Person;
  - 15.3.2 Monies spent;
  - 15.3.3 Remaining monies given to the Supported Person;

## **SCHEDULE PART 2**

### **KEY PERFORMANCE INDICATORS**

**This is the KPI Schedule (“the KPI’s”) referred to in the foregoing Terms and Conditions and Specification and where applicable the other Schedules of the Support Services under Option 2 the Social Care (Self Directed Support) (Scotland) Act 2013 ELC-18-1654 and shall be deemed to be incorporated thereto together with any other Schedules annexed to the Terms and Conditions, all of which together shall be deemed to form ‘this Agreement’ pursuant to any Individual Purchase Agreement and the said KPI’s shall be subject to the Remedies set out in the Terms and Conditions for either Incidental Breach, Remedial Breach or Material Breach and measured by the Balanced Scorecard.**

1. LSI
2. Complaints and Handling
3. Reporting and Monitoring
4. Quality Service Delivery
5. Statutory Compliance
6. Health & Safety and Data Protection
7. Management, Administration and Invoicing
8. Safer Recruitment
9. Development of Outcome Based Service and Reduction of Dependency on Care
10. Continued Compliance with the Performance Indicators

Note: The Remedies for any breach under this KPI Schedule, whether Incidental, Remedial or Material, are defined and set out in the foregoing Terms and Conditions of Contract.

KPI no	A Material Condition	B Performance indicator	C Performance Threshold	D Action
1.	<b>LARGE SCALE INVESTIGATION (LSI), CARE INSPECTORATE REGISTRATION AND CARE INSPECTORATE GRADE</b>	<p>The Provider shall at all times ensure it is registered with the Care Inspectorate and has a Grade of no less than 3 for the delivery of care for Care and Support, Staffing and/or Management and Leadership.</p> <p>If the Provider is subject to a Large Scale Investigation at any time throughout the duration of this Agreement, regardless if such relates to a different contract or location or whether such is triggered prior to Contract commencement.</p> <p>The Provider shall maintain its Care Inspectorate Grade and strive to improve the same.</p>	<p>Maintaining the Care Inspectorate Registration throughout the Duration.</p> <p>Maintaining the Care Inspectorate Grade at the date of execution of this Agreement, and in any event to no less than Grade 3 for Care and Support, Staffing and/or Management and Leadership during the Duration.</p> <p>If an LSI is triggered then such shall also trigger the Action set out in Column D of this KPI 1.</p>	<p>If the Provider is subject to a Large Scale Investigation at any time during the Duration such shall be deemed to be and treated as a Material Breach.</p> <p>Should the outcome of an LSI result in a lower Care Inspectorate Grade, below the Provider's Care Inspectorate Grade submitted date of execution of this Agreement, then such shall be deemed to be and treated as a Remedial Breach.</p> <p>Should the outcome of an LSI result in a reduction of the Provider's Care Inspectorate Grade to Grade 3 or below for any of the Care and Support, Staffing and/or Management and Leadership then such shall be deemed to be and treated as a Material Breach</p>
2.	<b>COMPLAINTS AND HANDLING</b>	The Provider shall mitigate, manage, monitor, report and resolve	The Council shall assess:	Depending on the nature, recurrence and volume of Complaints, the Council shall

		<p>complaints. The Provider shall report accurately, timeously and provide the requisite evidence to the Council;</p> <p>The Satisfaction Survey indicating 70% satisfaction overall</p>	<p>The Provider's response, management and recurrence of Complaints, the nature and number of them, whether they are resolved or continuing and the resulting impact on Supported Persons</p> <p>Evidential improvements in the Service arising from the good management of complaints</p>	<p>be entitled to one or more of the Remedies for Incidental Breach and/or Remedial Breach as it reasonably considers appropriate.</p> <p>The Council shall be entitled in cases where the Council considers the nature or handling of a complaint serious or persistent, or exposing the Supported Person to a risk of harm to treat as a Material Breach if the Council considers the same to be appropriate in the circumstances.</p>
3.	<b>REPORTING AND MONITORING</b>	<p>The Provider shall comply with all reporting and monitoring obligations contained in this Agreement owed by the Provider and shall include any statutory obligations to report to the Council or some other body.</p> <p>The Provider shall monitor, accurately record and report on all ongoing obligations under this Agreement.</p>	<p>The Provider shall ensure and warrant that its staff records their activities, times of visits and incidents accurately.</p> <p>The Provider shall in all cases report accurately and routinely as and when required under this Agreement, which may in some cases be immediate, and in all cases, time shall be of the essence.</p>	<p>Incidental breaches of a minor nature shall entitle the Council to one or more Remedies for Incidental or Remedial Breach.</p> <p>Any failure to report any emergency or serious incident or risk of harm or actual harm, or persistent failures to report generally, or incidents of the Provider or its staff reporting falsely or failure to evidence adequate monitoring, or persistent failures to report and/or failures to perform and statutory reporting obligations shall be deemed to be and treated as a Remedial Breach and/or Material Breach as the Council thinks appropriate.</p>

				Falsifying records of Support Worker visits and activities shall be deemed and treated as a Material Breach.
4.	<b>QUALITY SERVICE DELIVERY</b>	<p>The Provider shall deliver and routinely evidence it is delivering the Care Packages and the Service Outcomes generally in terms of this Agreement.</p> <p>The Care Packages shall be evidentially delivered wholly as set out in the Support Plan and without variance (unless with the prior approval of the Council) and at the scheduled dates and times using consistent placement and regular shift patterns of Support Workers where possible.</p>	<p>Any of the following shall trigger an Action:</p> <p>General failure to deliver the Service in accordance with the terms of this Agreement and no evidence that the Provider is meeting the Service Outcomes nor achieving the Personal Outcomes;</p> <p>Numerous or persistent Attendance Failures;</p> <p>Irregular shift patterns and changes of staff to the extent that such is not delivered to a regularly and reliably to the standard acceptable to the Council;</p> <p>Lack of appropriate communication with the Supported Person, any mis-communicating or communicating inappropriately with the Supported Person</p>	<p>Single or incidental Attendance Failures or short visits shall entitle the Council to treat as an Incidental Breach.</p> <p>Numerous failures to different Supported Persons, or more than one failure to the same Supported Person shall be treated as either a Remedial Breach or Material Breach, at the discretion of the Council</p> <p>Persistent failures or recurring failures of similar themes, shall be deemed to be and treated as a Material Breach.</p> <p>Any failure to deliver a Care Package or element of it at a standard commensurate with the Provider's Care Inspectorate Grade submitted date of execution of this Agreement, shall be treated at the Council's discretion as an Incidental, Remedial or Material Breach, whichever is reasonably appropriate.</p> <p>The withdrawal of a Care Package to the Supported Person, or the failure to Restart or continue (under the Retention provisions) either at short notice or without appropriate arrangements in place prior to the withdrawal shall be deemed to be a Material Breach.</p>

5.	<b>STATUTORY COMPLIANCE</b>	<p>The Provider shall comply with the Statutory obligations incumbent on a Care Provider and shall adhere to and comply with any relevant legislation, government, COSLA and Care Inspectorate guidance and East Lothian NHS policies and protocols ('Statutory Obligations') and adhere to all response and notification obligations contained in this Agreement in relation to the same.</p>	<p>The Provider's work practices, policies and procedures shall demonstrably adhere to National Care Standards and all relevant legislation.</p> <p>The Provider's response and notification obligations comply and evidentially adhere to statutory guidance and protocols.</p> <p>The Provider responds speedily to each and every incident whether of a minor or major nature in terms of the Statutory Obligations and respond timeously (time being of the essence) to any request for information from the Council or any other statutory body.</p>	<p>Should the Provider fail to evidence that it has implemented and adheres to the Statutory Obligations, or should it fail to notify the Council or respond timeously to a reasonable Council request during the Duration, the Council shall be entitled to treat the same as a Material Breach.</p> <p>Slowness in responding or evidence that the Provider's work practices are not up to appropriate standard may trigger an Incidental Breach, and continued failure to respond with such shall be deemed to be and treated as a Remedial Breach.</p> <p>The continued absence of a response to a reasonable request from the Council to provide evidence of compliance with the Statutory Obligations shall be at the Council's reasonable discretion deemed to be and treated as a Material Breach.</p>
6.	<b>HEALTH AND SAFETY AND DATA PROTECTION</b>	<p>The Provider shall comply with the Health and Safety provisions of this Agreement and agree to enter into a Data Protection Agreement with the Council in terms of the draft Data Protection Agreement annexed to the Schedule.</p>	<p>Any incident of a minor or major nature in breach of the Health and Safety provisions of this Agreement.</p> <p>Any breach of the Data Protection Act 2018 by the Provider or its</p>	<p>Depending on the nature of the breach, the Council shall treat as an Incidental or Remedial Breach.</p> <p>For persistent breaches, or breaches of a serious nature involving an injury or potential injury of a Support Worker, or harm or risk of harm to the Supported</p>

		<p>The Provider shall ensure its staff are appropriately qualified and experienced in the delivery of the Service, and that Support Staff comply with the requirements set out in this Agreement.</p>	<p>Staff or anyone for whom the Provider is responsible.</p> <p>Any failure by the Provider's Staff to administer medication appropriately.</p> <p>Any failure by the Provider's Staff to apply appropriate legislative controls and procedures when dealing with the Supported Person, including failure to follow the Moving and Handling requirements set out in the Specification.</p>	<p>Person, or a breach of the Data Protection Act 2018 in respect of Personal or Sensitive Information shall at the discretion of the Council deem to be and treated as a Material Breach.</p>
<b>7</b>	<b>MANAGEMENT, ADMINISTRATION AND INVOICING</b>	<p>The Provider shall manage the Service in accordance with this Agreement.</p> <p>The Provider shall monitor the Service and delivery of the Care Packages accurately and efficiently and evidence all required information as and when required in terms of this Agreement.</p> <p>The Provider shall ensure it has in place requisite Care Managers, Support Planners and supervisors, to ensure efficient delivery of the Service and continued improvement.</p> <p>The Provider shall ensure all Scheduled Payments are supported by appropriate and accurate records in respect of the Care Packages delivered and the timings of visits and</p>	<p>Failure to recruit, appoint and retain appropriate managers of requisite qualification and experience to manage and co-ordinate the delivery of the Care Packages and all in terms of this Agreement.</p> <p>Falsifying records or submitting false records, failure to maintain and submit as required accurate records in a format capable of being accurately analysed by the Council's HSCP and Finance departments.</p> <p>Failure to provide accurate records and a breakdown of Care delivered in support of any Scheduled Payment.</p>	<p>All incidents shall be deemed and treated as Remedial Breach.</p> <p>Persistent and continuing failures shall be deemed and treated as Material Breach.</p> <p>Falsifying records and knowingly exposing the burden on existing Staff shall be deemed and treated as Material Breach.</p> <p>If the Provider Invoices the Council for Additional Services inconsistent with the Rate or for a sum in excess of the Scheduled Payment or unauthorised Additional Costs and/or Services then such shall be deemed to be and treated as a Remedial Breach. Persistent failures</p>

		<p>shall include details of any Attendance Failures</p> <p>The Provider shall ensure it has Capacity in terms of management staff and Support Workers to accept Referrals and deliver the Care Packages.</p>	<p>The Provider shall ensure that it has recruited and appointed the requisite number of qualified and/or experienced Support Workers and management Staff to deliver the Service and meet its Capacity and shall ensure that there is no over burdening of its existing Staff.</p> <p>Repeated unmanaged failures such as Attendance Failures, failures to deliver to remote locations or recurring failures to deliver types of Care that may require over and above the usual resources.</p> <p>Failure to employ good accounting systems and operates open book accounting and monitor spend.</p> <p>Provider exceeds the Personal Budget without authority from the Council.</p>	<p>shall be deemed to be and treated as a Material Breach.</p> <p>Early termination of this Agreement by the Provider for reasons other than those set out in this Agreement shall be deemed to be and treated as a Material Breach.</p>
8.	SAFER RECRUITMENT	<p>The Provider shall comply with the Safer Recruitment provisions set out in this Agreement.</p>	<p>None.</p>	<p>Failure to comply may be deemed by the Council to be and treated as a Remedial Breach.</p> <p>Repeated failures, or failures of a serious nature shall be deemed to be and treated as a Material Breach.</p>

9.	<b>DEVELOPMENT OF OUTCOME BASED SERVICE AND REDUCTION OF DEPENDENCY ON CARE</b>	The Provider shall continue to monitor the Care provided to each Supported Person receiving a Care Package from the Provider with a view to improving the efficiency of such provision, but also with a view to finding innovative ways to reduce the dependency on the Support Service, meet the Service Outcomes.	<p>There shall be evidentially a reduction in the dependency of care.</p> <p>Evidence that Supported Persons are generally achieving the Desired Personal Outcomes.</p> <p>Evidence that the Support Worker or Workers are delivering the Care Packages wholly in terms of the Support Plan (whichever is appropriate).</p>	Little or no evidence that the Provider is substantially meeting the Service Outcomes, and no consistent reduction of the hourly dependency of Supported Persons and no evidence that Supported Persons are achieving generally the Desired Personal Outcomes, all of which shall be treated as Remedial Breaches.
10	<b>CONTINUED COMPLIANCE WITH THE PERFORMANCE INDICATORS</b>	The Provider continues to deliver the Support Service within or beyond the parameters of Column B of this KPI Schedule and demonstrates the achievement of the Service Outcomes, a reduction in dependency on care, reduction in the number of hours it delivers to Supported Persons, deployment of innovative ways in which to deliver the Service efficiently including the utilisation of local and community resources and technology in the delivery of the care.	The Provider's performance does not trigger any of the remedial actions for Breach under this KPI Schedule, or such actions are isolated and incidental and/or the Provider delivers the Service in accordance with column B of this KPI 12.	The Council does not impose any of the remedial actions for Breach under this KPI Schedule

## SCHEDULE PART 3

### THE BALANCED SCORECARD

<b>Contract</b>	<b>East Lothian Council – Support Services Under Option 2 of the Social Care (Self Directed Support) (Scotland) Act 2013 ELC-18-1654</b>							
<b>Contractor Name</b>					<b>Completed by</b>	[Enter name of person]		
<b>Review Period / Contract Reference</b>					<b>Date</b>	[Enter date completed]		
<b>Key: 1 Major Concerns; 2 Minor Concerns; 3 Meeting Expectations; 4 Exceeding Expectations (See attached metric for more specific guidance)</b>								
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>Comments</b>	<b>Action Agreed / Progress with Actions</b>	<b>Response</b>	
<b>Quality</b>								
Outcome based Service								
Person-Centred Services are being delivered								
Responsiveness								
Service User Satisfaction								
Complaints								
Care Inspectorate Gradings								

<b>Delivery</b>							
Staff Training							
Staff continuity/ consistency							
Missed Visits							
Late Visits							
Medication							
<b>Service</b>							
Communications, information flow and relationship management							
<b>Cost</b>							
Remittance Advice on time and accurate							
<b>PROVIDER STATUS:</b>							
<b>Overall Score</b>	1. Continue with Contract 2. Suspend allocation of Packages of Care to Provider until issues resolved and commence close monitoring 3. Refer to Corporate Procurement (Sustained/ serious issues)						

<b><u>Scorecard Metric Guidance</u></b>				
<b><u>Quality</u></b>	<b>Level 1: Major Concerns</b>	<b>Level 2: Minor Concerns</b>	<b>Level 3: Meeting Expectations</b>	<b>Level 4: Exceeding Expectations</b>
<b>Outcomes:</b> <b>(1) Development of an Outcomes Focused Service</b> <b>Timeframe: Set out in the Individual Purchase Agreement</b> <b>Collection Tool: Meeting with Provider</b>	Progress significantly behind schedule and significantly falling short of expectations	Progress with implementation behind schedule in part and falling short of expectations	Progress with implementation on track and meeting expectations	Progress ahead of planned implementation and exceeding expectations
<b>(2) Person-Centred Services are being Delivered</b> <b>Timeframe: As set out in the Individual Purchase Agreement</b> <b>Collection Tool : Meeting with Provider</b>	50% or less of agreed outcomes are met.  As set out in the Individual Purchase Agreement .	60% of agreed outcomes are met  As set out in the Individual Purchase Agreement .	90% of agreed outcomes are met  As set out in the Individual Purchase Agreement .	100% of agreed outcomes are met  As set out in the Individual Purchase Agreement .

<b>Service User Satisfaction</b> As per East Lothian Questionnaire- co-ordinated by ELC on six monthly basis <b>Timeframe: Six monthly</b> <b>Collection Tool: ELC Review Team</b>	Service User satisfaction rate is less than 60%.	Service User satisfaction rate is between 60 & 70%	Service User satisfaction rate is between 70 & 80%	Service User satisfaction rate exceeds 80%
<b>Complaints</b> <b>Timeframe: During life time of contract reported every six months</b> <b>Collection Tool: CI complaints and complaints received by ELC and Provider</b>	Percentage of complaints reported by Providers received in the quarter (relative to number of hours delivered) is higher than average	Percentage of complaints received in the quarter (relative to number of hours delivered) is average	Percentage of complaints received in the quarter (relative to number of hours delivered) is near average	Percentage of complaints received in the quarter (relative to number of hours delivered) is zero
<b>Note:</b> Complaints data will be looked at in context. ELHSCP to be mindful of the number of complaints upheld; lessons learned and shared throughout organisation. Data to include complaint 'themes' e.g.: staffing; time; medication.				
<b>Care Inspectorate Gradings</b> <b>Timeframe: As reported by CI</b> <b>Collection Tool: CI Report</b>	Recent Care Inspections give cause for concern – 2s or below	Recent Care Inspections give cause for concern – 3s or below in some areas	Recent Care Inspections are satisfactory – 4s and 5s	Recent Inspections are good – 5s and 6s in all areas

<b><u>Delivery</u></b>	<b>Level 1: Major Concerns</b>	<b>Level 2: Minor Concerns</b>	<b>Level 3: Meeting Expectations</b>	<b>Level 4: Exceeding Expectations</b>
<b>Staff Training</b> <b>Timeframe: Six Monthly Snapshot</b> <b>Collection Tool: Written Report</b>	Front Line care staff < 45% have SVQ2 Qualification.	Front Line care staff 50% have SVQ2 Qualification.	Front Line care staff 55%+ have SVQ2 Qualification.	Front Line care staff 80% + have SVQ2 Qualification.
	Supervisors <55% have SVQ3	Supervisors 60% have SVQ3	Supervisors 66% have SVQ3	Supervisors 85% + have SVQ3
	Service Managers <80% have SVQ4	Service Managers <90% have SVQ4	Service Managers <100% have SVQ4	Service Managers 100 % have SVQ4
<b>Note:</b> <ul style="list-style-type: none"> <li>For SVQ read 'SVQ or equivalent'.</li> <li>The Care Inspectorate are happy to count 'working towards' qualifications. A Six monthly snapshot would clarify progress towards achievement of qualification.</li> </ul>				

<b>Staff Continuity/ Consistency</b> <b>Timeframe:</b> <b>Collection Tool: Provider reports</b>	To be determined – combination of number of visits and number of carers.  Lower than average	To be determined – combination of number of visits and number of carers.  Average	To be determined – combination of number of visits and number of carers.  Near average	To be determined – combination of number of visits and number of carers.  Higher than average
<b>1 Late Visits</b> <b>2 * Notification of Late Visits</b> (Standards SU will be contacted within 15 mins of planned visit notified time to SU) Late visits will be measured when a visit is 30 minutes late.  <b>Timeframe: Six monthly throughout life time of contract</b>  <b>Collection Tool- Provider Data</b>	<ul style="list-style-type: none"> <li>• 15% of visits are more than 30 minutes late; and</li> <li>• *15% of SU not contacted within 15 mins of planned visit time</li> </ul>	<ul style="list-style-type: none"> <li>• 10% of visits are more than 30 minutes late; and</li> <li>• *10% of SU not contacted within 15 mins of planned visit time</li> </ul>	<ul style="list-style-type: none"> <li>• 5% of visits are more than 30 minutes late; and</li> <li>• *5% of SU not contacted within 15 mins of planned visit time</li> </ul>	No late visits.

<b>Missed Visits</b> No visit provided – or visit provided out with acceptable timeframe (more than 30 minutes late)  <b>Timeframe: Six monthly throughout life time of contract</b>	1% of visit are missed per month	1% of visits are missed per quarter	No missed visits	No Missed Visits
<b>Medication</b> <b>Timeframe: Last working day of each month</b>  <b>Collection Tool: Copy of form which Providers already use to collect information for Care Inspectorate</b>	Number of medication visits mis-handled per month?	Number of medication visits mis-handled per month?	Number of medication visits mis-handled per month?	How many medication visits mis-handled per month?
<b>Note:</b> Medication incidents, such as ‘double dosing’ should be reported to the CI under ASP. All medication errors to be copied to the Council using e-forms, and sent to the relevant case manager at the Council.				

<b><u>Service</u></b>	<b>Level 1: Major Concerns</b>	<b>Level 2: Minor Concerns</b>	<b>Level 3: Meeting Expectations</b>	<b>Level 4: Exceeding Expectations</b>
<b>Communications, information flow and relationship management</b>  <b>Timeframe: On going throughout term of contract</b>  <b>Collection Tool:</b>  <b>East Lothian Council</b>	Inadequate communications and information flow: for example; <ul style="list-style-type: none"> <li>Failure to or significant delays in providing or responding to requests for information</li> <li>Information provided is inconsistent, ambiguous or inaccurate</li> <li>No effective communication systems</li> <li>No response to prompts for information.</li> <li>Poor relationships caused by either constant conflict or ongoing lack of communication</li> </ul>	Inadequate communications and information flow: for example; <ul style="list-style-type: none"> <li>Delays in providing or responding to requests for information</li> <li>Information provided is vague or inadequate</li> <li>Communication systems inadequate</li> <li>Constant prompts required to gain information.</li> <li>Poor relationships caused by either conflict or limited communication</li> </ul>	Adequate communications and information flow: for example; <ul style="list-style-type: none"> <li>Timely provision or response to requests for information</li> <li>Information provided is clear and adequate</li> <li>Adequate communication systems</li> <li>Information provided with minimal prompts.</li> <li>Good relationships resulting from a common understanding of requirements and needs</li> </ul>	More than adequate communications and information flow: for example; <ul style="list-style-type: none"> <li>Prompt provision or response to requests for information</li> <li>Information provided is clear, accurate and well communicated</li> <li>Pro-active communication systems including instigation and follow up</li> <li>No prompts required for information to be provided.</li> <li>Positive relationships resulting from a mature, professional approach with recognition of contribution of both sides to manage the relationships</li> <li>Willingness to accept candid feedback and negotiate and resolve conflicts / disputes</li> </ul>

<b><u>Cost</u></b>	<b>Level 1: Major Concerns</b>	<b>Level 2: Minor Concerns</b>	<b>Level 3: Meeting Expectations</b>	<b>Level 4: Exceeding Expectations</b>
<b>Number of Remittance Advice notes to confirm Scheduled Payments received</b>  <b>or</b> <b>Invoices for additional services (if any) signed off by Adult Wellbeing Team (Timeframe: monthly)</b>  <b>Collection Tool: East Lothian Council</b>	Remittance Advices repeatedly late, or inaccurate or not for appropriate period or inaccurate generally  or  Invoices repeatedly inaccurate or repeatedly not received at appropriate time or repeatedly for Additional Services not approved by the Council in advance.	Remittance Advices or Invoices sometimes inaccurate or sometimes not received at appropriate time.	Remittance Advices or Invoicing generally accurate and on time	Remittance Advices or Invoicing always accurate and on time

## SCHEDULE PART 4

### DATA SHARING AGREEMENT

between

**EAST LoTHIAN COUNCIL**

and

[ ]

- (1) **EAST LoTHIAN COUNCIL** the Local Authority for the administrative area of East Lothian constituted in terms of the Local Government etc. (Scotland) Act 1994 or its successor and having its Head Office at John Muir House, Haddington, East Lothian EH41 3HA (the "Council"); and
- (2) [ ], a [Company] registered under the Companies Acts (Registered Number [ ]) [administered by the Financial Services Authority and registered as an Industrial and Provident Society in Scotland in the FCA Mutuals Public Register (Registered number [ ]) and having its registered office at ("**[Company]**")];

hereinafter "the Parties"

#### WHEREAS

- (A) **[COMPANY]** has or shall be engaged to deliver Care at Home, Housing Support and/or Support Services to the Council in terms of Options 1, 2, 3 or 4 under the Social Care (Self Directed Support (Scotland) Act 2013 ("Options") the Terms and Conditions of which are agreed between the Parties as follows:
- i. In respect of Options 1 and 4 by individual agreement or by the Contract (hereinafter defined); and
  - ii. In respect of Option 2 by the Terms and Conditions of Support Services for Option 2 (Self Directed Support (Scotland) Act 2013 (and the said Terms and Conditions have the Council reference number ELC-18-1654); and
  - iii. In respect of Option 3, more particularly described in the Framework Contract for Care at Home and Housing Support Services Reference Number Con-16-090;

(whichever is appropriate for which Option and being hereinafter referred to as "**the Contract**"); and

- (B) It is anticipated that in order for [Company] and the Council to perform their respective obligations under the Contract it will be necessary for them both to process, access and share Personal Data in respect of Supported Persons (more particularly described in the Contract) ("**Data Subjects**"); and
- (C) Both Parties may require to share the Data with other third Parties in order to meet their obligations under the Contract; and

- (D) It is necessary to ensure that sufficient guarantees are granted to each other to ensure that the exchange of the data and subsequent control and retention of it is wholly secure and protected; and
- (E) in order to ensure that there are sufficient security guarantees in place and that any recording or processing complies with obligations equivalent to those of the 7<sup>th</sup> and 8<sup>th</sup> Data Protection Principles, both contained in the Data Protection Act 2018 (as such Schedule of the Data Protection Principles and Data Protection Act 2018 is updated, amended or substituted from time to time) and those of Article 5 (f) of the GDPR; and
- (F) Also in order to set out clearly that the intellectual property rights and ownership of all Council Data, Personal Data and any Derived Data shall at all times and in all events belong to the Council as the commissioner and owner of such Data;

**THE PARTIES HEREBY AGREE** and do **AGREE** as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

**"Act"** means the Data Protection Act 2018 as amended, substituted and/or supplemented from time to time and includes GDPR;

**"Commencement Date"** means the commencement of this Agreement being the date of last execution of this Agreement or, shall be deemed to commence on the date any Shared Data was disclosed by the Council to [Company] whichever is the earlier;

**"Data"** means Personal Data as defined under the Act and any other information of whatever nature that, by whatever means, is provided to one Party to this Agreement to the other or provided otherwise by members of the public or other third parties for processing or for the Purpose, and shall include any data that meets the definition of Personal or Sensitive Personal Data under the Act, and any Data relevant to a Data Subject whether Personal Data or not and is accessible by either Party or otherwise from members of the public or other third parties for processing on the their behalf, and shall include, without limitation, any Personal Data or Personal Sensitive Data, photographs, bank account details or other financial information, and any identifying details on any media, all as defined under the Act and shall include any Derived Data, (the subject-matter, duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects are all as set out in the Schedule):.

**"Data Controller"** shall mean the Party in control of the Data at any given time and may if the context so applies apply to both Parties under this Agreement;

**"Data Processor"** shall mean either or both Parties to this Agreement who are at any given time processing the Data shared by the other Party;

**"Data Protection Provisions"** means the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects

**"Data Subject"** means an individual to which data is subject to, in particular the students and pupils of East Lothian Schools;

**"GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679);

**"Legal Framework"** means the principal laws concerning the protection and use of personal information including but not limited to:

- the Data Protection Act 2018
- the Human Rights Act 1998 (article 8)

- the Freedom of Information (Scotland) Act 2002
- the Public Records Act 2011
- the GDPR

and such Legal Framework shall be deemed to include any legislation or law regarding the controlling, processing and sharing of Personal Data and/or relevant to the above legislation as amended, supplemented and/or substituted from time to time and shall include any law or regulation directed to a Data Controller the obligations of which shall be the responsibility of the Party in control of the Data or Derived Data at any given time in so far as it applies to one or either or both of them as Data Controller or Joint Data Controllers, whichever the case may be;

**“Personal Data”** means such Personal Data as defined in the Legal Framework;

**“Purpose”** means for the purpose of performing the contractual obligations under the Contract;

**“Schedule”** means the schedule to this Data Sharing Agreement setting out the specifics of the Data Sharing Provisions;

**“Shared Data”** means the Data to be shared between parties for the Purpose, and shall include Derived Data and any commercial or administrative Data shared for the Purpose;

**“Sensitive Personal Data”** means such Sensitive Personal Data as defined in the Legal Framework.

1.2 In this agreement any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes references to:

1.2.1 that enactment as re-enacted, amended, extended or applied by or under any other enactment (before, on or after the date of this agreement);

1.2.2 any enactment which that enactment re-enacts (with or without modification); and

1.2.3 any subordinate legislation made (before, on or after the date of this agreement) under that enactment, as re-enacted, amended, extended or applied.

1.3 In this agreement:

1.3.1 references to a person include an individual, a body corporate and an unincorporated association of persons;

1.3.2 references to a party to this agreement include references to the successors or assignees (immediate or otherwise) of that party.

1.3.3 nothing in this Agreement or anything contained or implied or done or to be contained in or by this Agreement shall prejudice or affect the powers, rights, duties and obligations of the Council or its statutory successors as Local Authority, Health & Social Care Authority, Education Authority or similar such authority and which for the avoidance of doubt shall include the East Lothian Integration Joint Board, under or by virtue of any public or local Act, order, statutory instrument, regulation or byelaw or relieve [Company] or its contractors, sub-contractors, agents or volunteers of the necessity of obtaining from the Council or its statutory successors in said capacity all consents, permissions, warrants and/or approvals as may be requisite under or by virtue of any such public or local Act or others and for the avoidance of doubt relieve the [Company] or its contractors, sub-contractors, agents or volunteers of the necessity of complying with the GDPR at all times while it is in control of the Data;

1.4 Clauses 1.1 to 1.3.3 apply unless the contrary intention appears.

## 2. APPLICATION OF THIS AGREEMENT

2.1 This agreement shall apply to:

2.1.1 all Shared Data sent by either Party in its capacity as Data Controller to the other Party; and

2.1.2 all Shared Data accessed and/or processed by the receiving Party of the Shared Data;

2.2 For the purposes of:

2.2.1 Minimising the risk of enforcement action by the UK Information Commissioner's Office ("ICO") and other Regulators arising from a breach of the Legal Framework;

2.2.2 Ensuring requisite safeguards are in place to protect the identity of individuals and generate public trust;

2.2.3 Clarifying for the avoidance of doubt to the Parties and their employees, the parameters and principles of sharing data.

### 3. DATA PROCESSING/SHARING

3.1 In consideration of the undertakings provided by Council in clause 4, the Parties agree that in Processing and Sharing any Shared Data to which this agreement applies, the Parties agree that they shall:

3.1.1 Process any Shared Data at all times in accordance with the Legal Framework and solely for the Purpose and at all times accurately, relevantly, securely and in a format capable of being used for the Purpose and shall not process Shared Data for any other purpose or in any other manner except with the express prior written consent of the other Party;

3.1.2 in a manner cognisant of the Legal Framework and consistent with the Act and with any guidance issued by the UK and/or the Scottish Information Commissioner, implement appropriate technical and organisational measures to safeguard the Shared Data from unauthorised or unlawful Processing or accidental loss, destruction or damage, and that having regard to the state of technological development and the cost of implementing any measures, such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and to the nature of the Shared Data to be protected;

3.1.3 ensure that each of its employees, agents and subcontractors are appropriately trained in handling Personal and Sensitive Personal Data in terms of the Legal Framework, the Data Sharing Code of Practice (as updated, substituted or supplemented from time to time) and best practice and made aware of the relevant Party's obligations under this agreement with regard to the security and protection of the Shared Data and shall require that they enter into binding obligations with [Company] *mutatis mutandis* this Agreement

3.1.4 except as required for the Purpose, not divulge the Shared Data whether directly or indirectly to any 3rd party or otherwise without the express prior written consent of the delivering Party except to those of its employees, agents and subcontractors who require to access the Data in order to deliver their obligations and/ or who are engaged in the Processing of the Data and are subject to the binding obligations referred to in clause 3.1.3 or except as may be required by any law or regulation;

3.1.5 in the event of the exercise by Data Subjects of any of their rights under the Legal Framework in relation to the Data, the Parties undertake to inform the other Party as soon as possible, and both Parties agree to further assist each other with all information requests which may be received from any Data Subject in relation to any Shared Data.

3.1.6 in the event that either Party receives a request for any information contained in the Shared Data pursuant to Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 or the Environmental Information Regulations (Scotland) 2004, in respect of this Agreement, not to respond to the person making such request without first informing the other Party within five

(5) working days, and the other party further agrees to timeously assist the party receiving the request with any such requests for information in accordance with such laws;

3.1.7 not to Process or transfer the Shared Data outside of the United Kingdom except with the express prior written authority of the Party owning the data; and

3.1.8 [Company] shall permit its data processing facilities, procedures and documentation to be submitted for scrutiny by the Council or its representatives in order for the Council to determine the level of compliance with the terms of this agreement.

3.2 In the event that in order to comply with the [Company]'s performance obligations and deliver the functions identified in the Contract, [Company] is required under the Contract to interface with a third party supplier or provider of services, and as such, transfer and release the Data to that said third party, the onus shall be on [Company] to ensure that it is satisfied that the Personal Data is protected in terms equivalent to these terms and conditions. [Company] shall indemnify the Council against any claims arising from a breach of the same.

3.3 All Data and Derived Data processed in pursuance of the Contract shall be deemed to be in the ownership of the Council, and nothing contained within this agreement shall imply otherwise.

#### 4. JOINT OBLIGATIONS

4.1 Both Parties warrant to the other Party that all Shared Data shall be retained securely and clearly m[Company]ed.

4.2 Both Parties warrant to the other Party that each shall take the necessary steps to ensure that staff within their respective employ are made aware of their responsibilities under the Legal Framework.

4.3 Both Parties warrant to the other Party that each shall ensure and undertake to ensure that the respective employees of each abide by the rules and policies in relation to the protection and use of confidential information.

4.4 In consideration of the obligations undertaken by the Parties in clause 3, the Parties agree that each shall ensure that it complies at all times with the Legal Framework, and, in particular, the disclosure of Personal Data and/or Sensitive Personal Data in the event that such is made by either Party to the other Party is made with the Data Subject's awareness or is otherwise lawful.

4.5 Except as required by the Purpose, disclosure will not be made to any third party by either Party without the consent of the other Party unless it is recorded in an Information Sharing or Processing Agreement (whichever is appropriate in the circumstances) to which the other Party is a signatory and consents to the sharing and/or processing of the Shared Data.

4.6 Any such agreement or disclosure will be based on the following principles:

4.6.1 the necessary condition(s) in Schedule 2 and 3 of the Act or in Articles 6 and 9 of the GDPR are satisfied;

4.6.2 there is a demonstrable justifiable need for the disclosure to take place; and

4.6.3 the Party making such disclosure ensures it has provided the Data Subjects with the requisite information to identify who it is sharing the data with, what is being shared and why in the form of a Privacy Statement;

4.6.4 the Party making any secondary disclosure warrants to the other Party that it is satisfied that adequate security arrangements are in place as a result of the existence of an Information Sharing or Processing Agreement with the third party and has obtained the other Party's requisite consent.

4.6.5 Secondary disclosure may be made without the consent of the other Party if ordered by the court. In which event the Party ordered by the court to so disclose will notify the other Party of its actions immediately upon receipt of such an order.

#### 4.7 Access, Monitoring & reviewing arrangements

4.7.1 Both Parties undertake to maintain accurate records in respect of the Shared Data and inform the relevant Data Subjects of any procedures for seeking access to information held about them and or within the relevant Party's control.

4.7.2 The Parties shall ensure it has, or shall develop systems to record consent given or refused, the sharing or transfer of any Shared Data.

4.7.3 In the event any Shared Data disclosed by one Party to the other Party is amended, modified or updated, then any changes made shall be recorded accurately by the Party making the changes and notified to the other Party as soon as possible.

4.7.4 The Parties may formally review this Agreement after one year unless new or revised legislation or national guidance necessitates an earlier review.

4.7.5 Either Party can request an extraordinary review at any time following a complaint, an investigation or where a joint discussion or decision is deemed in the reasonable opinion of the Council to be necessary to address local service developments.

### 5. TERMINATION

5.1 This agreement shall terminate automatically upon termination or expiry of the Contract and shall not continue for a purpose not in scope of the Purpose, or in terms set out in 5.2 herein and on termination of this agreement the Parties shall forthwith return and deliver to each other all Data disclosed by the other Party and all Derived Data resulting from it, and such shall be delivered in a format capable of being read and processed by the other Party, and the each Party shall destroy all the other Party's Data and Derived Data in its possession or under its control.

5.2 Either Party shall be entitled to terminate this Agreement forthwith by notice in writing to [Company] if:-

5.2.1 the other Party is in a material or persistent breach of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied within twenty one (21) days from the date of receipt by the Party in breach of a notice from the Party identifying the breach and requiring its remedy; or

5.2.2 the other Party becomes insolvent, has a receiver, administrator, or administrative receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for solvent amalgamation or reconstruction).

5.3 In the event this Agreement expires or terminates for any reason, both Parties shall continue to be responsible to the other Party and any Data Subject in law and under the Legal Framework for all Shared Data in its control or possession, and DECLARING that this clause 5 shall survive the expiry of this Agreement.

### 6. GOVERNING LAW

6.1 This agreement will be governed by the laws of Scotland, and the Parties submit to the exclusive jurisdiction of the Scottish courts for all purposes connected with this agreement, including the enforcement of any award or judgement made under or in connection with it.

### 7. NON WAIVER

7.1 Failure by either Party to exercise or enforce any rights available to that party or the giving of any forbearance, delay or indulgence shall not be construed as a waiver of that Party's rights under this agreement.

## 8. INVALIDITY

8.1 If any term or provision of this agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision or part shall to that extent be deemed not to form part of this agreement but the enforceability of the remainder of this agreement shall not be affected provided however that if any term or provision or part of this agreement is severed as illegal or unenforceable, the parties shall seek to agree to modify this agreement to the extent necessary to render it lawful and enforceable and as nearly as possible to reflect the intentions of the parties embodied in this agreement including without limitation the illegal or unenforceable term or provision or part.

## 9. ENTIRE AGREEMENT

9.1 This agreement and the documents attached to or referred to in this agreement shall constitute the entire understanding between the parties in relation to the subject matter of this agreement and shall supersede all prior agreements, negotiations and discussions between the parties. In particular the parties warrant and represent to each other that in entering into this agreement they have not relied upon any statement of fact or opinion made by the other, its officers, servants or agents which has not been included expressly in this agreement. Further, each party hereby irrevocably and unconditionally waives any right it may have:

9.1.1 to rescind this agreement by virtue of any misrepresentation;

9.1.2 to claim damages for any misrepresentation whether or not contained in this agreement;

save in each case where such misrepresentation or warranty was made fraudulently.

## 10. NOTICES

10.1 Notices shall be in writing and shall be sent to the other party m[Company]ed for the attention of the person at the address set out in the recitals above. Notices may be sent by first-class mail and shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been delivered instantaneously on transmission providing that they are confirmed as set out as above.

## 11. INDEMNITY AND LIABILITY

11.1 Each party agrees to indemnify the other against all losses, costs, damages, awards of compensation, any monetary penalty notices or administrative fines for breach of the Legal Framework and/or expenses (including legal fees and expenses) suffered or incurred by a Party, or awarded, levied or imposed against the other Party, as a direct result of any breach by the a Party of its obligations under this Agreement.

11.2 Neither Party be liable to the other for loss of profits, business, revenue or goodwill;

11.3 Notwithstanding any other provision of this Agreement nothing in this Agreement shall exclude or limit either Party's liability under, or in connection with, this Agreement for:-

11.3.1 fraud or fraudulent misrepresentation;

11.3.2 death or personal injury resulting from the negligence of that Party; or

11.3.3 for any other matter in respect of which liability cannot by applicable law be expressly limited or excluded.

## 12. COMPLAINT HANDLING

- 12.1 Any complaint pursuant to the handling, use and/or unauthorised release of Shared Data by a Data Subject shall be dealt with under the relevant complaints procedure of the Party whose acts or omissions are the subject of the complaint.
- 12.2 The Parties agree to cooperate in any complaint investigation where they have information that is relevant to the investigation.
- 12..3 [Company] shall advise the Council of any complaints relative to a breach of the Act or the Legal Framework and the outcome of any complaint investigation as soon as reasonably possible following the said complaint and the completion of the investigation

**IN WITNESS THEREOF** these presents consisting of this and the preceding 8 pages are executed as follows:

They are Sealed and subscribed on behalf of **East Lothian Council** by

\_\_\_\_\_  
( \_\_\_\_\_ , Proper Officer)

\_\_\_\_\_  
(Date)

Haddington, East Lothian

\_\_\_\_\_  
(Place of signing)

They are subscribed for and on behalf of [Company] by

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Place of signing)

This is the Schedule to the Data Sharing Agreement referred to in the Terms and Conditions of Contract for SUPPORT SERVICES UNDER OPTION 2 of the Social Care (Self-Directed Support (Scotland) Act 2013) REF ELC-18-1654

[DATA SHARING AGREEMENT SCHEDULE]

[Insert details of:

subject-matter and  
duration of the processing  
the nature and purpose of the processing  
the type of personal data and  
categories of data subjects ]

EXAMPLE

## SCHEDULE PART 5

### Individual Purchasing Agreement

#### Schedule 5 of the Terms and Conditions for Support Services Under Option 2 of the Social Care (Self Directed Support) (Scotland) Act 2013 ELC-18-1654

### INDIVIDUAL PURCHASE AGREEMENT (IPA)

This IPA applies to the Support Services under Option 2 of the Social Care (Self Directed Support) (Scotland) Act 2013 ELC-18-1654. The Support Plan and/or any other information relevant to the delivery of Services for the Supported Person supplied to the Provider by the Purchaser will also form part of the Individual Purchase Agreement.

#### SECTION 1 – PARTIES TO THE IPA

1.1 The Purchaser		1.2 The Provider	
Name of Purchasing Council		Provider Name	
Key contact		Key Contact	
Contact address (inc postcode)	Randall House Macmerry EH33 1RW	Contact address (inc postcode)	
Contact telephone number	CONTACT CENTRE	Contact telephone number	
Contact e-mail address	Community care email	Contact e-mail address	
Emergency contact details if different from above	Duty s/w number?	Emergency contact details if different from above	

#### SECTION 2 –SUPPORT ARRANGEMENT DETAILS

Name of Supported Person:	
Date of Birth:	Mosaic number :
Start date of IPA:	Expected duration/end date :
IPA review date:	
Purpose of Support Arrangement:	As detailed in the Support Plan Attached
Core Price per 4 week	£

**SECTION 3 – FINANCIAL SUMMARY**

Please detail below the fees agreed per week

<b>Annual Personal Budget</b>	<b>£</b>
<b>Four weekly Scheduled payment</b>	<b>£</b>

EXAMPLE

**SECTION 4- AUTHORISED SIGNATORIES TO AGREEMENT:**

The Provider and the Purchaser agree to the Support Plan for the Supported Person in accordance with the details set out above and in the individuals support plan.

For the purposes of this Individual Purchase Agreement, the date the Support Arrangement commences may not be affected or altered in any way by the date of signature of this Agreement.

**PURCHASER: AUTHORISED SIGNATORY****NAME:****POSITION:****SIGNATURE:****DATE:****SERVICE PROVIDER AUTHORISED SIGNATORY:****NAME:****POSITION:****SIGNATURE:****DATE:****AMENDMENTS AND VARIATIONS TO THIS INDIVIDUAL PURCHASE AGREEMENT**

*Amendments and Variations to the IPA must be made in writing by the requesting party and agreed by the Purchaser and the Provider, in advance of the variation to the IPA taking effect.*