



CONTRACT FOR SERVICES

between

ABERDEEN CITY COUNCIL

and

GRANITE CARE CONSORTIUM LTD

**FOR THE PROVISION OF CARE AND SUPPORT SERVICES AT HOME WITHIN
THE ABERDEEN NORTH LOCALITY**

Contract Reference Number: 000-NGFX8353

This Contract is entered into between:

ABERDEEN CITY COUNCIL, a local authority constituted under the Local Government etc. (Scotland) Act 1994, having its principal offices at Marischal College, Broad Street, Aberdeen AB10 1AB (hereinafter referred to as the "**Council**" which expression will include its statutory successors, permitted assignees and transferees);

and

Granite Care Consortium Ltd, a company incorporated in Scotland with Company Number SC676856 and having its registered office at 1st Floor, Unit 4 Scotstown Road, Bridge Of Don, Aberdeen, AB23 8HG but its main operational base for the purposes of this Contract at 1st Floor, Unit 4 Scotstown Road, Bridge Of Don, Aberdeen, AB23 8HG (hereinafter referred to as the "**Service Provider**").

WHEREAS:

- A. On 4th March 2020, the Council issued its invitation to tender ("**ITT**") entitled " Provision of Care and Support Services at Home", to tenderers (including the Service Provider) in respect of the supply of non-residential care Services.
- B. On the basis of the Service Provider's response to the ITT the Council selected the Service Provider to enter into this Contract (which comprises these presents, the schedule in the Parts annexed hereto and any documents referred to therein).

IT IS AGREED AS FOLLOWS:

1. Contract

- 1.1 The Service Provider has agreed, and the Council has agreed to engage the Service Provider, to provide the Services in return for payment of the Payment by the Council to the Service Provider, all on the terms and conditions within this Contract.

2. Form of Contract

- 2.1 This Contract includes the Schedule annexed, which is in the following

Part 1	Special Terms and Conditions
Part 2	Terms and Conditions for Services
Part 3	Service Specification
Part 4	Quality Standards
Part 5	Monitoring and Reporting
Part 6	Personal Data
Part 7	Payment and Invoicing
Part 8	ITT Response

3. Interpretation

- 3.1 Unless otherwise provided or the context otherwise requires, the words and expressions used in this Contract shall have the same meanings as set out in Part 2 (Terms and Conditions for Services).

4. Duration

- 4.1 This Contract shall take effect on 1st November 2020 (the "Commencement Date") and, unless terminated at an earlier date by operation of law or in accordance with the terms and conditions of this Contract, shall expire on 31st October 2022 (the "Expiry Date") (and the period between the Commencement Date and this date shall be known as the "Term").
- 4.2 The Council may extend this Contract for two consecutive one-year extensions by giving not less than three months' notice in writing to the Service Provider prior to the Expiry Date. The terms and conditions of this Contract shall apply throughout any such extended period.

5. Notices & Representatives

- 5.1 The Parties' nominate representatives for the purposes of clause 20.1 of Part 2 (Terms and Conditions for Services) are as follows (all notices must also be addressed to these persons):

	Council	Service Provider
	Denise Thomson	Lisa Stephen
Name		
	Social Care Contracts Manager	Operations Director, Granite Care Consortium Ltd
Position		
	Commercial & Procurement	1 st Floor, Unit 4
Address	Shared Service Aberdeen City Council Woodhill House AB16 5GB	Scotstown Road, Bridge of Don, Aberdeen AB23 8HG
Tel	01224 537814	01224 531335
Mobile	07919227440	
Email	dthomson@aberdeencity.gov.uk	Lisa.stephen@granite.care

- 5.2 Either Party may change its representative and/or address for notices upon giving notice to the other Party.
- 5.3 Upon request, receipt of notice shall be confirmed in writing by e-mail with a read-receipt notice or letter delivered by hand or by registered post or by the recorded delivery service. Any notice shall be sent to the address of the Party shown above, or to such other address as the Parties may from time to time may agree, and will be deemed effectively given on the day when receipted or recorded.

6. Law and Jurisdiction

- 6.1 This Contract will be governed by and interpreted in accordance with the Laws of Scotland and the Parties agree, subject to clause 34 (Resolution of Disputes) of Part 2 (Terms and Conditions for Services), to submit to the exclusive jurisdiction of Aberdeen Sheriff Court.

7. Legal Costs

- 7.1 Each Party will bear and be responsible for their own legal costs in respect of the negotiation, execution and implementation of this Contract.

8. Entire Contract

8.1 This Contract shall constitute the entire Contract between the Parties and shall supersede all prior communications between the Parties and shall constitute unconditional acceptance by the Parties IN WITNESS WHEREOF these presents consisting of this and the following two pages of signatures, together with the preceding three pages and the Schedule consisting of Parts 1- 8 annexed hereto are executed as follows:

Signed:

M Pittendreich

.....
subscribed on behalf of Aberdeen City Council by:

...D. Michele Pittendreich.....

(print full name of above) a duly authorised signatory and Proper Officer of Aberdeen City Council

Commercial Legal Team Leader

Dated this 18th day of December 2020

Signed:

Matthew Reid

.....
subscribed on behalf of Granite Care Consortium Ltd by:

MATTHEW REID

.....
(print full name of above) a duly authorised signatory of Granite Care Consortium Ltd Director (GCC)/

Head of Development (INSPIRE)

(e.g. director, partner, member, sole trader etc.)

Dated this 30th day of November 2020

Signed:

Nick Price

.....
subscribed on behalf of Granite Care Consortium Ltd by:

Nick Price

.....
(print full name of above) a duly authorised signatory of Granite Care Consortium Ltd

Managing Director (MY CARE (GRAMPIAN))

Dated this 30th day of November 2020

Signed:

M Burns

.....
subscribed on behalf of Granite Care Consortium Ltd by:

...Mike Burns.....

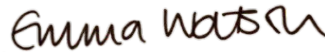
(print full name of above) a duly authorised signatory of Granite Care Consortium Ltd

CEO (ABERDEEN CYRENIANS)

(e.g. director, partner, member, sole trader etc.)

Dated this 1st day of December 2020

Signed:



.....
subscribed on behalf of Granite Care Consortium Ltd by:
Emma Watson

.....
(print full name of above) a duly authorised signatory of Granite
Care Consortium Ltd

.....General Manager.....(ARCHWAY)

Dated this 1st day of December 2020

Signed:



.....
subscribed on behalf of Granite Care Consortium Ltd by:
ANGELA CURRIE

.....
(print full name of above) a duly authorised signatory of Granite
Care Consortium Ltd

.....Director of Operations.....(BLACKWOOD)

Dated this 1st day of December 2020

Signed:



.....
subscribed on behalf of Granite Care Consortium Ltd by:
HAZEL BROWN

.....
(print full name of above) a duly authorised signatory of Granite
Care Consortium Ltd

.....CEO.....(CORNERSTONE)

Dated this 2nd day of December 2020

Signed:



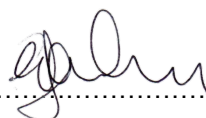
.....
subscribed on behalf of Granite Care Consortium Ltd by:
David Bothwell

.....
(print full name of above) a duly authorised signatory of Granite
Care Consortium Ltd

.....Director.....(PARAMOUNT)

Dated this 2nd day of December 2020

Signed:



.....
subscribed on behalf of Granite Care Consortium Ltd by:
Eileen Jane Cumming

(print full name of above) a duly authorised signatory of Granite
Care Consortium Ltd

.....Director.....(PENUMBRA)

Dated this 3rd day of December 2020

Signed:

John Booth

.....
subscribed on behalf of Granite Care Consortium Ltd by:
John Booth

(print full name of above) a duly authorised signatory of Granite
Care Consortium Ltd

.....Director.....(VSA)

(e.g. director, partner, member, sole trader etc.)

Dated this 3rd day of December 2020

This is the schedule referred to in the foregoing **Contract** between Aberdeen City Council and Granite Care Consortium Ltd dated.....

THE SCHEDULE

PART 1: SPECIAL TERMS AND CONDITIONS

Amendments to Terms and Conditions

The Contract between the Council and Service Provider shall be in accordance with the terms and conditions in Part 2 (Terms and Conditions for Services) except where modified or deleted by the special conditions herein:

Members' Guarantee

- 1.1 It is a material condition of this Contract that the Service Provider procures the execution and delivery to the Council of a Members Guarantee for each Member of the Service Provider, within 60 days of the latest signature on this Contract and a Members Guarantee for each New Member within 30 days from the date they are admitted as a New Member.

Appendix 1 to Part 1

PART 1 – CONSORTIUM MEMBERS

No.	Consortium member
1.	INSPIRE (PARTNERSHIP THROUGH LIFE) LTD , a company incorporated in Scotland with Company Number SC113676 and having its registered office at Beach Boulevard, Aberdeen, AB24 5HP
2	MY CARE (GRAMPIAN) LTD a company incorporated in Scotland with Company Number SC171462 and having its registered office at 2 Golden Square, Aberdeen, Scotland, AB10 1RD
3	ABERDEEN CYRENIANS a company incorporated in Scotland with Company Number SC070903 and having its registered office at 62 Summer Street, Aberdeen, Aberdeenshire, AB10 1SD
4	ARCHWAY (RESPITE CARE & HOUSING) LIMITED a company incorporated in Scotland with Company Number SC098460 and having its registered office at 71 Westburn Road, Aberdeen, AB25 2SH
5	BLACKWOOD HOMES & CARE a Registered Society with Registration Number 1728RS and having its registered office at 160 Dundee Street, Edinburgh, EH11 1D
6	CORNERSTONE COMMUNITY CARE a company incorporated in Scotland with Company Number SC070762 and having its registered office at Johnstone House, 52-54 Rose Street, Aberdeen, United Kingdom, AB10 1HA
7	PARAMOUNT CARE (ABERDEEN) LTD a company incorporated in Scotland with Company Number SC247174 and having its registered office at TAXLAB LIMITED, 4 Glenfield, Livingston, West Lothian, EH54 7BG
8	PENUMBRA a company incorporated in Scotland with Company Number SC091542 and having its registered office at Norton Park, 57 Albion Road, Edinburgh, EH7 5QY
9	ABERDEEN ASSOCIATION OF SOCIAL SERVICE (VSA) a company incorporated in Scotland with Company Number SC018487 and having its registered office at 38 Castle Street, Aberdeen, AB11 5YU

Members 1-9 are referred to in this Contract as '**Members**'.

The Members are together referred to as "**Them**", or "**They**" as the context requires.

"**Member**" means any of Them.

Appendix 2 of Part 1

Members Guarantee

DATED

Members Guarantee

between

[Insert]

and

Aberdeen City Council

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9. General
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EiJane Cumming

This Members Guarantee is dated [DATE]

Parties

- (1) [MEMBER COMPANY NAME] incorporated and registered in Scotland with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Guarantor**)
- (2) **ABERDEEN CITY COUNCIL**, a local authority constituted under the Local Government etc. (Scotland) Act 1994, having its principal offices at Marischal College, Broad Street, Aberdeen AB10 1AB (hereinafter referred to as the "**Council**" which expression will include its statutory successors, permitted assignees and transferees);

BACKGROUND

- (A) By Contract dated [DATE] the Council agreed to engage Granite Care Consortium Ltd (**Service Provider**) for the supply of non-residential care Services.
- (B) It is a condition of the Contract that the Service Provider procures the execution and delivery to the Council of a Members Guarantee for each Member and any New Member substantially in the form of this guarantee.
- (C) The Guarantor has agreed to guarantee the due performance of the Contract by the Service Provider, only insofar as it relates to those services which the Guarantor, or its subcontractor(s), is contracted to deliver by the Service Provider

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this guarantee.

1.1 Definitions:

control: has the meaning given in section 1124 of the Corporation Tax Act 2010 and **controls**, **controlled** and the expression **change of control** shall be construed accordingly.

Guaranteed Obligations: has the meaning given in clause 2.1(a) (*Guarantee*).

VAT: value added tax or any equivalent tax chargeable in the UK

1.2 Clause headings shall not affect the interpretation of this guarantee.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to **writing** or **written** includes fax and email
- 1.7 A reference to **this guarantee** or to any other Contract or document is a reference to this guarantee or such other guarantee or document, in each case as varied from time to time.
- 1.8 References to clauses are to the clauses of this guarantee.
- 1.9 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **Guarantee and indemnity**

- 2.1 The Guarantor (individual member of Granite Care Consortium Ltd):
 - (a) guarantees to the Council the due and punctual performance of all of the Service Provider's present and future obligations under and in connection with the Contract if and when they become due and performable in accordance with the terms of the Contract, provided always that the extent of the Guarantor's obligations are restricted to those services which it or its subcontractor is contracted to deliver by the Service Provider (**Guaranteed Obligations**);
 - (b) shall, if the Service Provider fails to perform in full and on time any of its obligations, duties and undertakings under the Contract immediately on demand perform or procure performance of the same at its own cost and expenses, only insofar as the obligations have been subcontracted to it by the Service Provider.
- 2.2 The Guarantor, as obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1(a) and clause 2.1(b) agrees to indemnify and keep indemnified the Council in full and on demand from and against all and any losses, costs and expenses suffered or incurred by the Council arising out of, or in connection with:
 - (a) any failure by the Service Provider to perform or discharge the Guaranteed Obligations; or
 - (b) any of the Guaranteed Obligations being or becoming totally or partially unenforceable by reason of illegality, capacity, lack or exceeding of powers, ineffectiveness of execution or any other matter,

but the Guarantor's liability under this clause 2.2 shall be no greater than the Service Provider's liability under the Contract was (or would have been, had the relevant obligation been fully enforceable).

3. Council protections

- 3.1 **Continuing guarantee.** This guarantee is and shall, at all times, be a continuing security until the Guaranteed Obligations have been satisfied or performed in full, and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Council may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.
- 3.2 **Preservation of Guarantor's liability.** The Guarantor's liability under this guarantee shall not be reduced, discharged or otherwise adversely affected by:
- (a) any arrangement made between the Service Provider and the Council;
 - (b) any alteration in the obligations undertaken by the Service Provider whether by way of any addendum or variation referred to in clause 4 (*Addendum or variation to the agreement*) or otherwise;
 - (c) any waiver or forbearance by the Council whether as to payment, time, performance or otherwise;
 - (d) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Service Provider or any other person;
 - (e) any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Service Provider's obligations under the Contract , so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;
 - (f) any legal limitation, disability, incapacity or other circumstances relating to the Supplier, or any other person; or
 - (g) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Service Provider or any other person.
- 3.3 **Immediate demand.** The Guarantor waives any right it may have to require the Council (or any trustee or agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this guarantee.
- 3.4 **Deferral of rights.** Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, the Guarantor shall not, as a result of this guarantee or any payment performance under this guarantee:
- (a) be subrogated to any right or security of the Customer;
 - (b) claim or prove in competition with the Council against the Service Provider or any other person;
 - (c) demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity, and

any sums received by the Guarantor in breach of this clause 3.4 (*Deferral of rights*) shall be held by the Guarantor in trust for and shall be promptly paid to the Council.

- 3.5 **Guarantee additional to all other security.** This guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, security, right or remedy obtained or held by the Council from time to time in respect of the discharge and performance of the Guaranteed Obligations by the Service Provider. .

4. **Addendum or variation to the Agreement**

The Guarantor authorises the Service Provider and the Council to make any addendum or variation to the Contract, the due and punctual performance of which addendum and variation shall, subject to the terms of this guarantee and, amongst other things, be guaranteed by the Guarantor in accordance with the terms of this guarantee.

5. **Payment**

- 5.1 All sums payable by the guarantor under this guarantee shall be paid in full to the Council in Pounds Sterling
- (a) without any set-off, condition or counterclaim whatsoever; and
 - (b) free and clear of any deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Guarantor.
- 5.2 If any deductions or withholding is required by any law or regulation to be made by the Guarantor, the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.
- 5.3 The Guarantor shall promptly deliver or procure delivery to the Council of all receipts issued to it evidencing each deduction or withholding which it has made.
- 5.4 The Guarantor shall not and may not direct the application by the Council of any sums received by the Council from the Guarantor under any of the terms in this guarantee.
- 5.5 If payment of any sum properly due by the Guarantor to the Council under this guarantee is not made by the due date for payment then without prejudice to any other remedies competent to the Council in terms of this guarantee, the Council may apply the available legislation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) and supplemented by the Late Payment of Commercial Debts (Scotland) Regulations 2002.
- 5.6 The Council shall not be entitled to recover any amount in respect of interest under both this guarantee and any arrangements entered into between the Service Provider and the Council in respect of any failure by the Service Provider to make any payment in respect of the Guaranteed Obligations.

6. Costs

- 6.1 The Guarantor shall, on a full indemnity basis pay to the Council on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Council incurs in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this guarantee or any attempt to do so; and
 - (b) any discharge or release of this guarantee.
- 6.2 Each party shall pay its own costs in connection with the negotiation, preparation and execution and registration of this guarantee, and all documents ancillary to it.

7. Conditional discharge

- 7.1 Any release, discharge or settlement between the Guarantor and the Council in relation to this guarantee shall be conditional on no right, security, disposition or payment to the Council by the Guarantor, the Service Provider or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.
- 7.2 If any such right, security, disposition or payment as referred to in clause 7.1 (*Conditional discharge*) is avoided, set aside or ordered to be refunded, the Council shall be entitled subsequently to enforce this guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

8. Representations and warranties

- 8.1 The Guarantor represents and warrants to the Customer:
- (a) that it is duly incorporated with limited liability and validly existing under the laws of Scotland
 - (b) that it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
 - (c) that it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
 - (d) that it has been duly authorised to enter into this guarantee;
 - (e) that it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
 - (f) that this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
 - (g) that all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained;

- (h) its entry into and performance of its obligations under this guarantee will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- (i) it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this guarantee and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

9. General

9.1 Confidentiality

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customer, clients or suppliers of the other party except as permitted by clause 9.1(b) (*Permitted disclosure*).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights of carrying out its obligations under or in connection with this guarantee. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.1 (*Confidentiality*); and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this guarantee.

9.2 **Announcements.** No party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this guarantee, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or any court or other authority of competent jurisdiction.

9.3 **Assignment.** The Council shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

9.4 **Further assurance.** Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this guarantee.

9.5 **Variation.** No variation of this guarantee shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.6 Notices

- (a) Any notice given to a party under or in connection with this guarantee shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address specified in the Contract
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second] Working Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 9.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 9.4 (*Notices*) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9.7 Entire agreement

- (a) This guarantee constitutes the entire Contract between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this guarantee. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this guarantee.

9.8 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this guarantee or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.9 Severance

- (a) If any provision or part-provision of this guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this guarantee.

- (b) If any provision or part-provision of this guarantee is deemed deleted under clause 9.9(a) (*Deemed deletion*) the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

9.10 Third party rights

- (a) This guarantee does not give rise to any rights under the Contracts (Rights of Third Parties) (Scotland) Act 2017 to enforce any term of this guarantee.

9.11 Counterparts. This guarantee may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

10. Governing law

This guarantee and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland.

11. Jurisdiction

Each party irrevocably agrees, for the sole benefit of the Council that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this guarantee or its subject matter or formation.

This Members Guarantee has been entered into on the date stated at the beginning of it.

Executed as deed by [NAME OF Guarantor] acting by [NAME OF DIRECTOR] a director, in the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

.....

[SIGNATURE OF DIRECTOR]

Director

PART 2: TERMS AND CONDITIONS FOR SERVICES**INDEX**

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1 DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Contract:

“Assigned Employees” means the employees of the Service Provider or any Sub-contractor of who are from time to time engaged in the performance of the Services;

“Breach” means any Breach of the obligations of the relevant Party (including fundamental Breach or Breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;

“Care Inspectorate” means Social Care and Social Work Improvement Scotland (SCSWIS), established under the Public Services Reform (Scotland) Act 2010, having its Head Office at Compass House, 11 Riverside Drive, Dundee, and being the successor to the Scottish Commission for the Regulation of Care (Care Commission);

“Confidential Information” means all Confidential Information which has been or which may hereafter be disclosed by the Council or its employees, officers, representatives, advisers or sub-contractors to the Service Provider or the Service Provider’s employees, officers, representatives, advisers or sub-contractors in connection with this Contract which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure, in any form or medium (whether disclosed orally, in writing, in the form of machine readable code or embodied in hardware or any other physical medium), including information relating to the business or prospective business plans or internal affairs of the Council or relating to any Council service;

“Contract Representative” means each of the representatives appointed by the Service Provider and the Council pursuant to clause 20.1;

“Disclosure” means a criminal record certificate or enhanced criminal record certificate issued by Disclosure Scotland under Part V of the Police Act 1997;

“Disclosure Information” means: (a) disclosure records disclosed under section 52, 53 or 54 of the PVG Act; and (b) any information in such a disclosure record which is obtained by virtue of section 51, 52, 53 or 54 of the PVG Act;

“Disclosure Scotland” means an agency of the Scottish Government that discharges the functions of Scottish Ministers under the Police Act 1997 and in particular provides disclosure of conviction information and manages the PVG Scheme on behalf of the Scottish Government, based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA;

“Individual” any natural person that is used, or is considered to be used, by the Service Provider to provide the Services (or any part thereof) on either a paid or unpaid basis and, for the avoidance of doubt, includes any person recruited (or considered for recruitment) directly by the Service Provider, by an employment or similar agency used by the Service Provider or by a Sub-contractor, and also includes the Service Provider where he/she is a natural person;

“Information Legislation” means the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004 and any subordinate legislation made under them from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“Intellectual Property Rights” means patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registrable or not in any country (including the United Kingdom);

"ITT Response" means the Service Provider's response to the invitation to tender issued by the Council in respect of its requirement for the Services, as detailed in Part 8 (ITT Response);

"Law" means any law, enactment, statute, proclamation, bye-law, directive, decision, court decree, regulation, rule, order, rule of court or delegated or subordinate legislation or mandatory guidance or code of practice, whether now or hereafter in effect;

"Materials" means all materials, including reports, documents, specifications or instructions, whether in writing, or on magnetic or other media or distributed electronically;

"Member" has the meaning set out in Appendix 1 of Part 1

"Members Guarantee" shall mean a guarantee from a Member or any New Member substantially in the form set out in Appendix 2 of Part 1

"New Member" shall mean any organisation that is admitted as a member to the Consortium.

"Outcomes" means the aims and objectives for a Supported Person identified in the social work assessment of the needs of the Supported Person as arranged and approved by the Council;

"Overseas Criminal Record Check" a criminal record certificate in respect of an Individual obtained from the police or judicial authority of the country in which the Individual resided or worked (except for the United Kingdom);

"Parties" means the Council and the Service Provider and "Party" means either one of them;

"Payment" means the amounts payable by the Council to the Service Provider for performance of the Services as set out in Part 7 (Payment and Invoicing);

"Personal Plan" has the meaning assigned to it by Regulation 5 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/110);

"Personnel" shall mean all employees, agents, officers and consultants of the Service Provider and/ or of any Sub-contractor engaged in the performance of the Service Provider's obligations under this Contract;

"Protected Persons" means persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act;

"PVG Act" means the Protection of Vulnerable Groups (PVG) (Scotland) Act 2007;

"PVG Scheme" means the scheme established under section 44 of the PVG Act managed by Disclosure Scotland for individuals undertaking Regulated Work;

"Quality Standards" means the standards set out in Part 4 (Quality Standards);

"Registered Person" persons registered with Disclosure Scotland under section 120 of the Police Act 1997;

"Regulated Work" is as defined in section 91 of the PVG Act;

"Regulatory Authority" means any of those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Service Provider;

"Re-transferring Employee Charges" means all liabilities, costs, expenses and outgoings in relation to each Re-transferring Employee including, but not limited to salaries, wages, bonus

(even if not due and payable at that time), accrued holiday pay, National Insurance Contributions, pension contributions, PAYE remittances and payments in respect of any other emoluments;

“Re-transfer Date” means the date or dates on which the contracts of employment of the Re-transferring Employees transfer from the Service Provider or any Sub-contractor to the Council or a Service Provider Replacement pursuant to the TUPE Regulations upon the cessation or partial cessation of provision of the Services by the Service Provider or any Sub-contractor;

“Re-transferring Employees” means those employees of the Service Provider or any Sub-contractor who transfer from the Service Provider or any Sub-contractor to the Council or a Service Provider Replacement pursuant to the TUPE Regulations upon the cessation or partial cessation of provision of the Services by the Service Provider or any Sub-contractor;

“Re-transferring Employee Liabilities” means any costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the Re-transferring Employees including negligence claims, unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to pension entitlement, unlawful deduction of wages and equal pay;

“Scheme Record” means the document defined in section 48 of the PVG Act;

“Services” means the Services to be supplied by the Service Provider to the Council under this Contract, as specified in Part 3 (Service Specification);

“Service Provider Replacement” means any successor to the Service Provider in the provision of the Services or Services similar to the Services (or part thereof) to the Council;

“Short Scheme Record” means a short scheme record as defined in section 53 of the PVG Act;

“Sub-contractor” any third party with whom the Service Provider enters into a contract in respect of the performance of the Services (or any part thereof) by that third party, including a contract for the provision by that third party to the Service Provider of facilities or services, such as agency staff, necessary for the provision of the Services and any third party with whom that third party enters into such a contract;

“Supported Person” and “Supported Persons” respectively mean those individuals receiving Services from the Service Provider pursuant to this Contract; “Transfer Assistance Period” means the period (or periods) commencing on the earlier of (i) the date falling three months before the end of the Term of this Contract; or (ii) the date when the Service Provider becomes aware that it is to cease providing the Services (in whole or in part) and ending, in either case, on the relevant Re-transfer Date;

“TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“Unauthorised Change of Control” means an event which has not been approved in advance by the Council which means that the person who controls the Service Provider ceases to do so, or another person acquires Control of the Service Provider, where “Control” means the power of a person to secure that the affairs of the Service Provider are conducted in accordance with the wishes of that person (i) by means of the holding of shares or the possession of voting power in or in relation to the Service Provider or any other entity; or (ii) by virtue of any powers conferred by the articles of association or any other document regulating the Service Provider or any other entity;

“Vetting Information” is as defined in section 49 of the PVG Act;

“Working Day” means a day other than a Saturday, Sunday or a day which constitutes a holiday for the majority of Council staff;

“2010 Act” means the Public Services Reform (Scotland) Act 2010; and

“2011 Regulations” means the Social Care Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/110).

1.2 In this Contract unless the context otherwise requires:

- 1.2.1 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;
- 1.2.2 headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 1.2.3 reference to the “Schedule” shall mean to the schedule forming part of this Contract and reference to a “Part” shall mean a part of the Schedule;
- 1.2.4 references to the singular include the plural and vice versa. References to any gender include all genders. References to a person include any individual, firm, unincorporated association or body corporate. References to “including” or “includes” shall be construed without limitation. References to a “clause” shall mean to a clause in this Part 2 (Terms and Conditions of Services). Reference to a “paragraph” shall mean to a paragraph in the Part (except for Part 2) in which it is referred. References to consent or approval being required is to consent or approval in writing which must be obtained before the relevant act is taken or event occurs.

1.3 In the event that there is any conflict between the terms and conditions of this Contract and it is unclear which is to take precedence then the provisions shall be interpreted so that they are given precedence in the following order:

- 1.3.1 this Contract (excluding the Schedule);
- 1.3.2 Part 1 (Special Terms and Conditions);
- 1.3.3 Part 2 (Terms and Conditions for Services);
- 1.3.4 the remaining Parts of the Schedule; and
- 1.3.5 any documents referred to in this Contract (as such documents are updated and amended from time to time).

2 SUPPLY OF SERVICES

- 2.1 In consideration of the Council’s agreement to pay the Payment to the Service Provider, the Service Provider shall supply the Services to the Council for the Term subject to and in accordance with the terms and conditions of this Contract.
- 2.2 The Service Provider shall during the Term maintain the organisational and technical ability and capacity to provide the Services in accordance with this Contract.
- 2.3 During the Term, the Service Provider shall perform, and shall procure that each of its Personnel performs, the Services:
 - 2.3.1 to good social work practice standard, meaning using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
 - 2.3.2 in compliance with the Quality Standards and any other standards relating to the Services set by any Regulatory Authority;

- 2.3.3 in accordance with the various policies and procedures (including those of the Council and any Regulatory Authority) referred to in this Contract; and
- 2.3.4 in accordance with the Law.
- 2.4 The Service Provider is responsible for:
 - ensuring that the Services meet the relevant Supported Persons' needs and Outcomes; and
 - 2.4.1 notifying the Council immediately in writing if it fails or has difficulties in carrying out or meeting the standards required of the Services in accordance with this Contract.
- 2.5 Time in relation to the on-going supply of the Services shall be of the essence. The Service Provider shall not be held in Breach of this obligation where such Breach arises directly as a result of any failure or delay by the Council in complying with its own obligations under this Contract.
- 2.6 If the Supported Person has difficulty in expressing his/her view, the Service Provider will ensure that he/she has access to sufficient and appropriate information to enable he/she to secure the Services of an advocate to represent him/her. The Service Provider is under no obligation to find such representatives, but will allow representatives to work with the Supported Person should this be his/her wish.
- 2.7 Where appropriate, the Service Provider will make every effort to notify the Supported Person or the Supported Person's representative whenever the usual carer cannot attend and advise who the replacement carer will be.
- 2.8 The Service Provider shall respond promptly to all complaints, oversights and omissions identified by the Council and shall immediately make good any Breach on its part at its own expense.
- 3 COUNCIL'S OBLIGATIONS**
- 3.1 The Council shall afford the Service Provider such access to information, records and other materials in its possession as may reasonably be required by the Service Provider to undertake the Services.
- 4 REGISTRATION (if appropriate)**
- 4.1 The Service Provider will ensure that it is registered with the Care Inspectorate (complying with all National Care Standards appropriate to the Services being provided as required by the 2010 Act) and with any other relevant Regulatory Authority during the Term.
- 4.2 The Service Provider will, on giving any notice in terms of Regulation 8 (notification of unfitness of manager) or Regulation 17 (appointment of manager) of the 2011 Regulations, immediately deliver a copy of such notice to the Council (for the attention of the Council's Contract Representative).
- 4.3 Where providing any statement in terms of Regulation 18 (complaints) of the 2011 Regulations, the Service Provider will immediately deliver a copy of such statement to the Council (for the attention of the Council's Contract Representative).
- 4.4 The Service Provider will notify the Council immediately if the Care Inspectorate issues any enforcement notice to the Service Provider, or serves any notice proposing to cancel the Service Provider's registration with the Care Inspectorate, or makes summary application to a Sheriff under Section 65 of the 2010 Act. Under these circumstances the Council may terminate this Contract with immediate effect by written notice to the Service Provider and without compensation or liability to the Service Provider.

- 4.5 The Service Provider will follow the Code of Practice for Employers of Social Service Workers and will also ensure that its Personnel will be appropriately registered with the Scottish Social Services Council.

5 PAYMENT FOR SERVICES

- 5.1 In consideration for providing the Services pursuant to this Contract, the Council shall pay to the Service Provider the Payment in accordance with the payment schedule set out in Part 7 (Payment and Invoicing).
- 5.2 The Council shall pay all sums properly due and payable to the Service Provider in accordance with clause 5.1 in cleared funds by no later than thirty days of receipt by the Council of a valid invoice from the Service Provider.
- 5.3 Unless otherwise agreed by the Parties in writing the Payment is inclusive of all costs, expenses and disbursements incurred by the Service Provider arising out of or in connection with the full and proper performance and completion of the Services.
- 5.4 If payment of any sum properly due by the Council to the Service Provider under this Contract is not made by the due date for payment then without prejudice to any other remedies competent to the Service Provider in terms of this Contract, the Service Provider may apply the available legislation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) and supplemented by the Late Payment of Commercial Debts (Scotland) Regulations 2002.
- 5.5 In making payment to the Service Provider, the Council shall be entitled to deduct or offset any sums lawfully due to be paid by the Service Provider to the Council whether under this Contract, or under any other contract between the Council and the Service Provider.
- 5.6 The Parties shall adhere to any procedure set out in Part 7 (Payment and Invoicing) in connection with variations to the Payment.

6 PERSONNEL

- 6.1 The Service Provider shall ensure that sufficient, competent and capable Personnel will be on duty at any given time to carry out the Service Provider's obligations in terms of this Contract and in compliance with the requirements of the appropriate Regulatory Authority and the Scottish Social Services Council, where applicable.
- 6.2 The Service Provider shall ensure that all Personnel assigned to undertake the Services will possess the skills and experience as deemed necessary for the proper performance of their role in providing the Services.
- 6.3 The Service Provider will ensure that, where appropriate, all Personnel will have access to Supported Persons' Personal Plans, induction, training, supervision and specific activity training to the satisfaction of the Council and as specified by the appropriate Regulatory Authority, where applicable.
- 6.4 The Service Provider will ensure that all Personnel are issued with a written code of conduct, which includes guidance on maintaining confidentiality and professional detachment.

7 CRIMINAL CHECKS

- 7.1 Where delivery of the Services requires any Individual to undertake Regulated Work, the Service Provider shall for the duration of the Term comply with all of the relevant requirements, including the establishment of and adherence to effective procedures, of the PVG Act.
- 7.2 The Service Provider shall ensure that all relevant Personnel have undergone adequate training in respect of the PVG Act (the level, content and regularity of such training shall be proportionate

to the person's role and responsibility with respect to the PVG Act), including, without prejudice to the generality of clause 7.1, the duty to make referrals in accordance with sections 2 and 3 of the PVG Act.

- 7.3 The Service Provider shall procure that all Individuals undertaking Regulated Work in connection with the delivery of the Services shall, prior to their commencing such Regulated Work, obtain the following from Disclosure Scotland:
 - 7.3.1 a Scheme Record in respect of the Individual for the type(s) of Regulated Work to be undertaken by him/her in the delivery of the Services; or
 - 7.3.2 where the Individual evidences existing membership of the PVG Scheme for the type(s) of Regulated Work to be undertaken by him/her in the delivery of the Services:
 - 7.3.2.1 a Short Scheme Record (where there is no Vetting Information in relation to the Individual); or
 - 7.3.2.2 a Scheme Record (where there exists Vetting Information in relation to the Individual).
- 7.4 The Service Provider shall procure that all Individuals are rechecked (by obtaining a Scheme Record or Short Scheme Record (as appropriate) in respect of the Individual) not less than every three years.
- 7.5 The Service Provider shall procure that all Individuals involved in the delivery of Services which fall outside of the scope of Regulated Work shall, prior to their commencing delivery of such Services, obtain the appropriate level of Disclosure from Disclosure Scotland and, in particular:
 - 7.5.1 the appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 and, for the avoidance of doubt, by reference to any regulations made under that Act and guidance issued by Disclosure Scotland; and
 - 7.5.2 such Disclosure shall be obtained not less than every three (3) years for each Individual.
- 7.6 The Service Provider shall comply with the following in respect of applications for a Scheme Record or a Short Scheme Record as referred to in clause 7.3 and applications for a Disclosure as referred to in clause 7.5:
 - 7.6.1 except in respect of the Individuals referred to in clause 7.6.2 and clause 7.6.3, the Service Provider shall either:
 - 7.6.1.1 be a Registered Person and countersign and submit the aforesaid applications to Disclosure Scotland itself; or
 - 7.6.1.2 use a third party Registered Person (known as an umbrella body) to countersign and submit the aforesaid applications to Disclosure Scotland on its behalf;
 - 7.6.2 in respect of Individuals employed or engaged by a Sub-contractor, the Service Provider shall procure that the Sub-contractor shall either:
 - 7.6.2.1 be a Registered Person and countersign and submit the aforesaid applications to Disclosure Scotland itself; or
 - 7.6.2.2 use a third party Registered Person (known as an umbrella body) to countersign and submit the aforesaid applications to Disclosure Scotland on its behalf; and
 - 7.6.3 where the Service Provider is an Individual, and if required by the Council, the Service Provider shall in respect of her/his own application permit the Council to arrange submission of the application to Disclosure Scotland.

- 7.7 Where the Contract requires any Individual to obtain a criminal conviction certificate as referred to in section 112 of the Police Act 1997 (a “Basic Disclosure”), the Service Provider shall procure that the Basic Disclosure is obtained prior to the Individual commencing delivery of the Services and not less than every three (3) years thereafter.
- 7.8 Where the Service Provider is required to procure in respect of an Individual a Scheme Record or Short Scheme Record in accordance with clause 7.3 or a Disclosure in accordance with clause 7.5, and the Individual has spent a continuous period of three calendar months or more residing or working outwith the United Kingdom within the period of five years prior to the Individual commencing delivery of the Services, the Service Provider shall procure that appropriate Overseas Criminal Record Checks are obtained in respect of such Individual prior to he/she commencing delivery of the Services.
- 7.9 The Service Provider shall procure that the contents of the Scheme Records or Short Scheme Records referred to in clause 7.3, the Disclosures referred to in clause 7.5, the Basic Disclosures referred to in clause 7.7 and the contents of the Overseas Criminal Record Checks referred to in clause 7.8 are used as part of the process to make recruitment and ongoing employment decisions in respect of Individuals and, where any of the aforesaid disclose that an Individual has convictions, reprimands, warnings, cautions or any other relevant information, the Service Provider shall procure that a risk assessment is conducted in respect of the Individual’s proposed or continued provision of the Services and that such risk assessment is applied in making appropriate arrangements to safeguard and protect the interests of all Protected Persons. The “Scotland Works for You” Guidance on evaluating the meaning of a person’s criminal record to a job or opportunity they have applied for can be found at mygov.scot.
- 7.10 The Service Provider shall procure that a record of the risk assessments referred to in clause 7.9 is kept and maintained and shall, on request by the Council, disclose that record to the Council, except that the Service Provider shall (acknowledging that it is an offence under Section 66 of the PVG Act for a party having access to Disclosure Information under sections 51, 52, 53 or 54 of the PVG Act to disclose it to any other person) ensure that no Disclosure Information is disclosed to the Council other than as permitted under the PVG Act.
- 7.11 The Service Provider shall not employ or engage any person in the provision of Regulated Work in connection with delivery of the Services who is placed under consideration for listing or is barred from carrying out Regulated Work.
- 7.12 In the event that the Service Provider is notified that a person employed or engaged in the provision of the Regulated Work in connection with delivery of the Services is placed under consideration for listing or becomes barred from carrying out Regulated Work, the Service Provider shall immediately remove that person from the provision of such Regulated Work.
- 7.13 In the event that the Service Provider offers Regulated Work in connection with delivery of the Services to a person who is under consideration for listing or barred from carrying out Regulated Work or fails to remove a person from such Regulated Work if they have been notified that they are under consideration for listing or barred from carrying out Regulated Work, this will be deemed a material Breach of the Service Provider entitling the Council to terminate this Contract with immediate effect by written notice to the Service Provider.
- 7.14 The Service Provider shall record and store information disclosed to it in connection with Disclosures and/or the PVG Scheme as detailed in the Code of Practice published by the Scottish Government under section 122 of Part V of the Police Act 1997 (as may be amended from time to time).
- 7.15 Before allowing any Sub-contractor to undertake Regulated Work in connection with provision of the Services, the Service Provider shall:

7.15.1 obtain the written consent of the Council to the aforesaid sub-contracting of the Services; and

7.15.2 enter into a written agreement with the Sub-contractor which gives effect to the terms set out in this clause 7 such that they apply to the Sub-contractor, and,

for the avoidance of doubt, the Service Provider shall remain fully liable for all acts or omissions of any Sub-contractor.

7.16 The Service Provider shall deliver to the Council on its request from time to time:

7.16.1 a written statement from the Service Provider (duly signed by the Service Provider) in terms that the Service Provider warrants to the Council that it has complied with clauses 7.3 – 7.9 inclusive; and

7.16.2 where a Sub-contractor undertakes Regulated Work in connection with delivery of the Services, a written statement from the Sub-contractor (duly signed by the Sub-contractor) confirming compliance with clauses 7.3 – 7.9 inclusive by the Sub-contractor in respect of any Individuals employed or engaged by it.

7.17 If alleged harmful conduct of a child, young person under the age of eighteen and/or vulnerable adult is witnessed by, or reported to, the Service Provider, and regardless of where the alleged harm has taken place, then the Service Provider will follow the policy and procedures given in, and have due regard for the principles of, providing the Services in accordance with the Grampian Interagency Policy and Procedure for the Support and Protection of Adults at risk or Harm, and the National Guidance for Child Protection in Scotland (2014), and any guidance issued by the North East of Scotland Child Protection Committee.

7.18 Should any Personnel be suspected of or accused of abuse or any other gross misconduct, the Service Provider will inform the Council and carry out an investigation in accordance with its own procedures. Where the Council suspects any Personnel of abuse or any other gross misconduct (and in such case it shall be in the Council's discretion, acting reasonably, as to what constitutes "gross misconduct"), the Service Provider shall also carry out such an investigation. The Council reserves the right to request that any such Personnel be removed from working with Supported Persons for the duration of the aforesaid investigation and any disciplinary process to follow thereon and the Service Provider shall ensure that the relevant Personnel is so removed from working on receiving such a request.

8 MATERIALS AND EQUIPMENT

8.1 Except in any case where the Council expressly agrees in writing otherwise, the Service Provider shall supply or make available all equipment, materials, or tools of whatever nature necessary for the proper performance of the Services, and the Service Provider shall ensure that such equipment, materials or premises are:

8.1.1 in good and safe condition;

8.1.2 in full working order;

8.1.3 fit for the purpose for which they are being used by the Service Provider or Supported Persons under the Contract; and

8.1.4 without prejudice to clauses 8.1.1-8.1.3 inclusive, conform at all times to all applicable Law.

8.2 Where the Council supplies specialist equipment to the Service Provider to be used by the Service Provider in the performance of the Services, the Council shall ensure that it provides the Service Provider with such information and instructions as is reasonably necessary for the Personnel to attend to the safe operation of the aforesaid equipment in accordance with the Supported Person's specific needs. The Service Provider shall ensure that those Personnel using the aforesaid equipment are issued, and comply, with such information and instructions.

- 8.3 The Service Provider shall reimburse the Council for any loss or damage to the equipment referred to in clause 8.2 (other than deterioration resulting from normal and proper use) caused by the Service Provider or any Personnel.
- 8.4 In performing the Services, the Service Provider shall at all times procure that all equipment and materials are used strictly in accordance with the relevant manufacturer's instructions.
- 8.5 The Service Provider shall, immediately on demand, fully indemnify the Council and keep the Council fully and effectively indemnified against all costs, claims, demands, expenses (including legal costs and disbursements on a full indemnity basis), losses (including direct and indirect losses and loss of profits), actions, proceedings and liabilities of whatsoever nature arising from or incurred by the Council in connection with a breach by the Service Provider of this clause 8, or arising from the negligence of the Service Provider in or in connection with the provision or use of any equipment, materials or premises in the performance of the Services.
- 8.6 All rights (including ownership and Intellectual Property Rights) in any Materials made available to the Service Provider by the Council shall remain owned by the Council but the Council hereby grants the Service Provider a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Service Provider to perform its obligations under the Contract.
- 8.7 To the extent that there are Intellectual Property Rights in any Materials which are provided by the Service Provider to the Council as part of the provision of the Services or otherwise in performance of the Contract, the Service Provider hereby grants to the Council a perpetual, royalty-free, non-exclusive and non-transferable licence to use such Intellectual Property Rights to allow it to use the Materials for all purposes contemplated or envisaged by the Contract.

For Medical Equipment Only (if applicable)

- 8.8 The Service Provider is responsible for ensuring that arrangements exist for the reporting of adverse incidents, the retaining of material evidence, the handling of contaminated items, the dissemination of safety advice and the control of risks relating to health and social care equipment (medical devices) in line with the information and guidance all as contained in Scottish Government Health Finance Directorate Letter CEL 43 (2009)¹ and any information and guidance updating, amending or replacing CEL 43 (2009), provided that such updated, amended or replacement guidance is published and publicly available on line, publicly displayed, or the content of it has been notified to the Service Provider by the Council.
- 8.9 In particular, but without prejudice to the generality of the provisions of clause 8.8, the Service Provider shall:
 - 8.9.1 procure that its Personnel are aware of the procedures for reporting adverse incidents, retaining material evidence, handling contaminated items and for implementing safety advice and the Service Provider shall procure that such procedures are implemented;
 - 8.9.2 monitor relevant websites for information on equipment safety and management issues e.g. MHRA^{2,3};
 - 8.9.3 monitor safety alerts and bulletins, and cascade within its own organisation;
 - 8.9.4 monitor internal cascade systems to ensure alerts are received, assessed and acted upon;
 - 8.9.5 discuss equipment safety issues with the Council; and
 - 8.9.6 promote equipment safety by education and training to Personnel.

9 TRANSPORTATION OF SUPPORTED PERSONS

- 9.1 If Supported Persons are transported in motor vehicles, whether those vehicles belong to the Service Provider, or the Supported Person, or Personnel, the Service Provider must ensure that vehicles used meet the needs of Supported Persons, and that it holds appropriate current and valid driving licences, insurances and MOT certificates in accordance with the Law. The Service Provider shall also ensure that such vehicles are equipped with appropriate passenger and driver restraints in accordance with the Law. The Service Provider will implement a system and procedure for appropriate vehicle safety inspections prior to each use. The Service Provider will supply to the Council promptly on the Council's request, copies any relevant documentation.

10 REGULATIONS

- 10.1 The Service Provider must at all times comply with all or any relevant legislation, regulations, standards and codes of practice in force from time to time throughout the Term.
- 10.2 The Service Provider will comply, and will procure that its Personnel comply, with the requirements of the Health and Safety at Work etc. Act 1974, its associated Regulations and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Personnel. The Service Provider shall carry out suitable risk assessments in respect of both the Services and each Supported Person and shall repeat these at appropriate intervals to enable compliance with the relevant legislation. The Service Provider shall exhibit details of said risk assessments to the Council promptly on the Council's request and shall retain them on file for at least the Term. The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council promptly on the Council's request.
- 10.3 The Service Provider will at all times have regard to the requirements of The Working Time Regulations 1998, particularly where Personnel are employed or engaged in multiple occupations, and without prejudice to its obligation to adhere to the Code of Practice for Employers of Social Service Workers, shall be responsible for ensuring that Personnel are competent in all respects to carry out the tasks they are required to perform in provision of the Services.
- 10.4 The Council is committed to preventing all forms of unlawful discrimination and to promoting equal opportunities and fostering good relations amongst all of its diverse communities in accordance with the Equality Act 2010. The Service Provider will ensure that Personnel receive appropriate equality training; that all work and duties are discharged in accordance with these same principles and will not unlawfully discriminate against Personnel, Supported Persons or the public for reasons relating to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation. For the avoidance of doubt, the Service Provider is responsible for complying with its own duties under the Equality Act 2010 to have regard to the matters referred to in section 149(1) of that Act when it is exercising public functions.
- 10.5 The Council is committed to promoting the Duty of Candour Procedure (Scotland) Regulations 2018. The Service Provider should at all times comply with the regulations by ensuring that Personnel are aware of the duty of candour procedure and receive relevant training and guidance on the duty of candour procedure requirements.

11 HUMAN RIGHTS

- 11.1 The Service Provider will in its implementation of this Contract comply with the requirements of the Human Rights Act 1998 and all secondary legislation made under the said 1998 Act as though the Service Provider were a public authority for the purposes of the said 1998 Act.
- 11.2 The Service Provider will use its best endeavours to ensure Personnel observe the terms of clause 11.1.

12 QUALITY ASSURANCE

- 12.1 The Service Provider shall be able to demonstrate to the satisfaction of the Council that it has in place management systems that enable self-monitoring and quality assurance of its performance in relation to this Contract. These systems should involve Supported Persons, and/or their representatives, where appropriate.

13 BUSINESS CONTINUITY

- 13.1 The Service Provider shall have adequate and sufficient contingency plans in place to ensure that the Services will be maintained in the event of any disruption (including disruption due to a Force Majeure Event) to the Service Provider's operations, and those of any Sub-contractor to the Service Provider, however caused. Such contingency plans will be made available to the Council promptly on the Council's request to inspect and to practically test at any reasonable time, and will be subject to regular updating and revision by the Service Provider.
- 13.2 The Service Provider shall co-operate with the Council in relation to any business continuity plans the Council deems it necessary to introduce in order to fulfil its statutory duty of care to individuals in need.

14 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006

- 14.1 If the Council considers that the TUPE Regulations may apply where it is anticipated that the Services or part thereof (or Services similar to the Services or part thereof) will begin to be carried out by the Council or by a Service Provider Replacement, following the cessation or partial cessation of the provision of the Services undertaken by the Service Provider then the following clauses 14.2 to 14.5 inclusive will apply.
- 14.2 During the Transfer Assistance Period, the Service Provider shall, at its own expense, provide the Council in writing with such information as the Council (acting reasonably) may request relating to the Assigned Employees at the time of such request, within such reasonable period as may be specified by the Council, including (but not restricted to):
- 14.2.1 the number of such Assigned Employees;
 - 14.2.2 the post and a description of the duties of each such Assigned Employee;
 - 14.2.3 the salary or wages and other remuneration paid to each such Assigned Employee;
 - 14.2.4 the date of birth of each such Assigned Employee;
 - 14.2.5 the length of service of each such Assigned Employee;
 - 14.2.6 information on which of the Assigned Employees are and have been involved in providing the Services, whether or not they spend all of their working time on the Services (and, if not, the percentage of their working time generally spent on the Services), what role(s) they carry out and any other information relating to the way the Assigned Employees carry out the Services as may reasonably be requested;
 - 14.2.7 the whole terms and conditions of any occupational pension scheme of which any such Assigned Employee is a member, together with the number of such Assigned Employees who are members of the scheme;
 - 14.2.8 details of any disciplinary procedure taken against any such Assigned Employee, or grievance procedure taken by any such Assigned Employee, within the two years before a request for such details;

14.2.9 details of any court or tribunal case, claim or action which:

- 14.2.9.1 is outstanding between the Service Provider and any such Assigned Employee;
- 14.2.9.2 has been brought against the Service Provider by any employee who was at the time an Assigned Employee, within the two years before a request for such information; and
- 14.2.9.3 the Service Provider has reasonable grounds to believe that any such Assigned Employee may bring, arising out of such Assigned Employee's employment with the Service Provider; and
- 14.2.9.4 such other information as may reasonably be required by the Council which is in the possession of the Service Provider at the time of the request or which can reasonably be obtained by the Service Provider from any other third party.

14.3 The Service Provider consents to the Council using the information obtained under clause 14.2 for its own costing purposes and disclosing it to prospective bidders for the provision to the Council of Services the same as or materially similar to the Services or any part thereof.

14.4 The Service Provider undertakes to ensure that the information provided under clause 14.2 is complete and accurate in all material respects.

14.5 All Re-transferring Employee Charges shall be apportioned on a time basis so that the part of the Re-transferring Employee Charges accruing in the period up to close of business on the day before the Re-transfer Date shall be borne and discharged by the Service Provider and the part of the Re-transferring Employee Charges accruing in the period commencing on the Re-transfer Date shall be borne and discharged by the Council or the relevant Service Provider Replacement.

15 CONFIDENTIALITY

15.1 Except to the extent set out in this clause 15 or where Disclosure is expressly permitted elsewhere in this Contract, the Service Provider shall treat the Confidential Information as confidential and safeguard it accordingly and shall not disclose the Confidential Information to any other person without the Council's prior written consent.

15.2 The Service Provider may disclose the Confidential Information to the Personnel who are directly involved in the provision of the Services and who need to know the information to enable the Service Provider to comply with its obligations under this Contract, and shall ensure that such Personnel are aware of the obligations as to confidentiality referred to in clause 15.1 and shall use its best endeavours to ensure that the Personnel comply with these obligations.

15.3 Clause 15.1 does not prohibit the Service Provider from disclosing Confidential Information (a) pursuant to an order of a court of competent jurisdiction; (b) to any person having a statutory or regulatory right to request and receive that Confidential Information; (c) which is already known to the Service Provider or Lawfully in its possession at the last date of signature of this Contract; or (d) which is already in the public domain other than as a result of its Disclosure by the Service Provider in Breach of any obligation of confidentiality owed to the Party to whom the information relates.

15.4 This clause 15 is subject to the provisions of clause 16 (Personal Data).

16 PERSONAL DATA

- 16.1 The Parties shall comply with the provisions of Part 6 (Personal Data).

17 WARRANTY

- 17.1 The Service Provider represents and warrants to the Council that, as at the Commencement Date, all written statements and representations in any written submissions made by the Service Provider as part of the procurement process in respect of this Contract, including in its ITT Response and any other documents submitted, remain true and accurate, except to the extent that such statements and representations have been superseded or varied by this Contract.

18 COMPLAINTS' PROCEDURE

- 18.1 The Service Provider must establish a complaints procedure from the Commencement Date whereby all complaints arising under this Contract in connection with the performance of the Services by the Service Provider ("**Complaints**") are recorded and investigated. The procedure shall be explicit about the rights of the persons making Complaints and the responsibilities of the Service Provider in investigating and responding to Complaints, including associated timescales. In particular the Service Provider shall maintain a written record of all Complaints and any action taken in respect of such Complaints. The Service Provider shall make this record available to the Council promptly on the Council's request.
- 18.2 The Service Provider shall use its best endeavours to make the complaints procedure referred to in clause 18.1 available in the best format suited to meet the needs of individual Supported Persons and shall use best endeavours to resolve Complaints to the satisfaction of the relevant Supported Person.

19 FREEDOM OF INFORMATION

- 19.1 The Service Provider acknowledges that the Council is subject to the requirements of the Information Legislation and the Service Provider undertakes to provide such assistance as the Council may reasonably require enabling the Council to comply with its information Disclosure obligations under the Information Legislation.
- 19.2 Decisions as to whether the Information Legislation requires the Disclosure of any information provided by the Service Provider or which relates in any way to the Service Provider or this Contract may be made by the Council without reference to the Service Provider but the Council will:
- 19.2.1 use reasonable endeavours to consult with the Service Provider in accordance with the relevant Information Legislation code of practice before disclosing or publishing any information under the Information Legislation which relates in any way to the Service Provider or this Contract; and
 - 19.2.2 have regard to any information of a confidential nature relating to the Service Provider or this Contract in making decisions about Disclosure of information under the Information Legislation.

20 CONTRACT MONITORING

- 20.1 Both Parties shall appoint a Contract Representative to be their representative for all purposes connected with the delivery of this Contract for the duration of the Term.
- 20.2 Each Party shall notify the other:
- 20.2.1 on the identity of the first appointed Contract Representative; and

20.2.2 immediately if there is a change in the identity of its Contract Representative.

- 20.3 The Service Provider shall comply with the performance monitoring arrangements referred to in Part 5 (Monitoring and Reporting) including providing such data and information as the Service Provider may be required to produce under this Contract
- 20.4 The Contract Representatives shall, at the option of the Council, meet to discuss with a view to resolving any performance issues in connection with this Contract which arise during the Term. Such meetings shall be held in accordance with Part 5 (Monitoring and Reporting).
- 20.5 The Service Provider will promptly inform the Council of any Care Inspectorate Inspection and grading result, and will invite the Social Care Contracts Manager at the Council to attend feedback sessions following Care Inspectorate inspections.
- 20.6 The Service Provider shall notify the Council immediately of any child or adult protection, child welfare or adult welfare allegations or concerns which it becomes aware of irrespective of the extent of the concerns, and shall furnish the Council with any information necessary to allow the Council to investigate fully any such concern or allegation, such Disclosure of information in these circumstances being necessary for the performance of the Council's statutory duties to safeguard adults and children.

21 RECORDS

- 21.1 The Service Provider is obliged to keep and maintain during the Term and for a period of six years after the date of termination or expiry (whichever is the earlier) of this Contract full and accurate records and accounts of the operation of this Contract, including the Services provided, and the amounts paid by the Council, in connection with them (the "Records").
- 21.2 The Records shall include the following, insofar that they relate to the provision of the Services:
 - 21.2.1 particulars of any complaints reported under this Contract and of the action taken as a result to resolve the complaint and to prevent its recurrence;
 - 21.2.2 records relating to the operation of the performance monitoring arrangements referred to in clause 20.3; and
 - 21.2.3 any other files, documents or other records which relate to delivery of this Contract or the management, administration, organisation or planning of them whether in writing or on magnetic or other media.
- 21.3 The Service Provider will in its implementation of this Contract comply with the requirements of the Public Records (Scotland) Act 2011 and all secondary legislation made under the said 2011 Act as though the Service Provider was a public authority for the purposes of the said 2011 Act.
- 21.4 The Service Provider shall, during the Term and for a period of six years after the date of termination or expiry (whichever is the earlier) of this Contract grant to the Council (including the Council's Contract Representative) and the Council's auditors, access to the Records and any additional relevant data or documentation relating to this Contract at the Service Provider's premises or provide copies of such as may be required by the Council or the Council's auditors and shall provide such reasonable assistance at all times to the Council or the Council's auditors as the Council or the Council's auditors may reasonably require in relation to the Records, all for the purposes of enabling the Council or the Council's auditors to carry out:
 - 21.4.1 an audit of the Service Provider's compliance with this Contract;
 - 21.4.2 an audit of all activities carried out and security precautions taken in connection with the performance of this Contract;
 - 21.4.3 an audit of the Council's discharge of its responsibilities and duties (in so far as relevant to this Contract); and

21.4.4 an examination of the Service Provider's accounts.

21.5 Without prejudice to clause 21.4, in the event of an investigation into suspected fraudulent activity or other impropriety by the Service Provider or its Personnel:

21.5.1 the Council and the Council's auditors may enter any premises of the Service Provider and access the Records, which shall be made available to them (whether they are held at such premises or otherwise) by the Service Provider; and

21.5.2 the Service Provider shall render all necessary assistance to the conduct of such investigation.

21.6 The Council will ensure that any representative of the Council who is given access to any premises or Records by the Service Provider in accordance with clauses 21.4 and 21.5 reduces the disruption to the Service Provider and the Service Provider's business to the extent reasonably practicable.

22 TERMINATION FOR CAUSE

22.1 If one or more of the following circumstances exist, the Service Provider shall be in material Breach of this Contract and the Council may terminate this Contract by serving written notice on the Service Provider with effect from the date specified in the notice:

22.1.1 if the Service Provider is in material Breach of this Contract and (if such Breach is remediable) fails to remedy that Breach within a reasonable period after being notified to do so by the Council; or

22.1.2 in the reasonable opinion of the Council, there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider which:

22.1.2.1 adversely impacts on the Service Provider's ability to supply the Services in terms of this Contract; or

22.1.2.2 could reasonably be expected to have an adverse impact on the Service Provider's ability to supply the Services in terms of this Contract;

22.1.3 if in the reasonable opinion of the Council the Service Provider's ITT Response or any other document or information submitted by or provided by the Service Provider during the procurement process in respect of this Contract is found to be deliberately misleading, erroneous or not factually correct in any material respect;

22.1.4 the Service Provider commits a material Breach of this Contract which is irremediable;

22.1.5 an Unauthorised Change of Control has occurred; or

22.1.6 if in terms of the Insolvency Act 1986 (the "**1986 Act**"), the Service Provider:

22.1.6.1 becomes bankrupt or is sequestrated, or makes a declaration or composition in satisfaction of the Service Provider's debts or arrangements with its creditors, or has a proposal in respect of its company for a voluntary arrangement for a declaration or composition of debts, or scheme of arrangement approved in accordance with the 1986 Act;

22.1.6.2 has an application made under the 1986 Act to the Court for the appointment of an administrative receiver;

22.1.6.3 has a winding-up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

22.1.6.4 has a liquidator or provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

22.1.6.5 has possession taken by, or on behalf of, the holders of any debentures secured by a floating charge in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding-up order; or

22.1.6.6 is unable to pay its debts (within the meaning of Section 123 of the 1986 Act).

22.2 Where the Council is terminating this Contract for a material Breach of this Contract it may rely on a single material Breach or on a number of Breaches or repeated Breaches that taken together constitute a material Breach.

23 TERMINATION FOR CONVENIENCE

23.1 Either Party shall be entitled, at its convenience, to terminate the Contract by serving not less than six months prior written notice on the other Party without need for legal proceedings or a court decision.

24 CONSEQUENCES OF TERMINATION OR EXPIRY

24.1 On the termination of this Contract for any reason, the Service Provider shall:

24.1.1 return to the Council any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising);

24.1.2 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Service Provider Replacement to conduct due diligence; and

24.1.3 cooperate with the Council's reasonable requests in relation to facilitating an orderly and efficient transfer of the performance of the Service Provider's obligations under the Contract to the Council or to the Service Provider Replacement.

25 PREVENTION OF CORRUPTION, COLLUSION and HUMAN EXPLOITATION

25.1 In this clause 25, "Prohibited Acts" means any of the following:

25.1.1 to offer, give or agree to give to any employee or servant of the Council any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of any contract with the Council, or for showing or not showing favour or disfavour to any person in relation to any contract with the Council; and/or

25.1.2 to enter into any contract with the Council in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before such contract is made particulars of any such commission and the terms and conditions of any such Contract for the Payment of it have been disclosed in writing to the Council.

25.2 The Service Provider shall not do (and warrants that in relation to this Contract it has not done) any of the Prohibited Acts.

25.3 The Council is entitled to terminate this Contract immediately on written notice to the Service Provider if the Service Provider or its Personnel:-

- 25.3.1 commits any of the Prohibited Acts;
- 25.3.2 commits any offence under the Bribery Act 2010 or any other Law relating to bribery or corruption with or without the knowledge of the Service Provider, in relation to this Contract or any other contract with the Council; or
- 25.3.3 Commits any offence under the Modern Slavery Act 2015 or any other Law relating to slavery or human exploitation with or without the knowledge of the Service Provider, in relation to this Contract or any other contract with the Council.

26 BLACKLISTING

- 26.1 The Service Provider must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Legislation (as such term is defined in Part 6 (Personal Data)) by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause 26 is a material Breach which shall entitle the Council to terminate the Contract with immediate effect.

27 LIMITATION OF LIABILITY

- 27.1 Each Party's liability to the other under this Contract shall be limited to the amounts stated in Part 3 (Service Specification), each to the extent permitted by Law.
- 27.2 If there is no limit of liability stated in Part 3 (Service Specification), then the Parties' liability shall be limited as follows:
 - 27.2.1 the maximum aggregate liability of a Party in relation to physical damage to property caused by that Party shall be £5,000,000; and
 - 27.2.2 the maximum aggregate liability of a Party in relation to this Contract (including any damage to property) shall be £10,000,000.
- 27.3 Subject to clauses 27.4 and 27.5, and except in respect of claims under clause 8.5 and Part 6 (Personal Data), in no event shall either Party be liable to the other for any:
 - 27.3.1 loss of profits;
 - 27.3.2 loss of business;
 - 27.3.3 loss of revenue;
 - 27.3.4 loss of savings (whether anticipated or otherwise); and/or
 - 27.3.5 any indirect, special or consequential loss or damage.
- 27.4 The following types of loss, damage, cost or expense arising from the Service Provider's Breach shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Council) be recoverable by the Council from the Service Provider:
 - 27.4.1 the additional operational and/or administrative costs and expenses arising from any material Breach of the Service Provider;
 - 27.4.2 the costs and expenses reasonably and properly incurred by the Council in procuring services similar to the Services on a temporary basis until the appointment of a successor to the Service Provider, but only to the extent that such costs and expenses exceed the charges that would have been payable (or a reasonable estimate of such charges, to the extent unknown) had the Contract not been terminated;

27.4.3 the cost and expenses reasonably and properly incurred by the Council in carrying out the tendering or reappointment process referred to in clause 27.4.2; and

27.4.4 any regulatory losses, fines, expenses or other losses arising from a breach by the Service Provider of any Laws.

27.5 Nothing in this Contract shall be construed to limit or exclude either Party's liability for:

27.5.1 death or personal injury caused by its negligence or that of its employees;

27.5.2 fraud or fraudulent misrepresentation by it or that of its employees; or

27.5.3 any other matter which, by Law, may not be excluded or limited.

28 INSURANCE

28.1 The Service Provider shall, for the duration of the Term, effect and maintain with a reputable insurance company adequate and appropriate insurance providing an adequate level of cover in respect of all risks of the Service Provider arising from performance of its obligations under this Contract. Without prejudice to the foregoing generality this will include public liability insurance cover to the level of Five million pounds sterling (£5,000,000) per claim and employers' liability insurance cover to the level of ten million pounds sterling (£10,000,000) per claim. The Service Provider will exhibit satisfactory evidence of such insurance cover, together with satisfactory evidence of Payment of the premia in respect of each insurance to the Council promptly on the Council's request.

28.2 The Service Provider shall for the duration of the Term effect and maintain valid, adequate and appropriate insurance to cover its Personnel for their activities in respect of all aspects of the Services, including without prejudice to the foregoing generality the administration of medicines.

29 FORCE MAJEURE

29.1 Neither Party will be considered in Breach of this Contract to the extent that the observance or performance of any such obligation is prevented or delayed by a Force Majeure Event. For the purposes of this clause 29, a "Force Majeure Event" is any act, event, omission, happening or non-happening which is both beyond the reasonable control of the Parties and is such that the Parties with the application of all due diligence and foresight could not prevent. Any act, event, omission, happening or non-happening will only be considered a Force Majeure Event if it is not attributable to the willful act, neglect or failure to take reasonable precautions of the affected Party, its servants, agents or employees.

29.2 If a Force Majeure Event occurs, the Party affected by such Force Majeure Event will notify the other Party of such occurrence as soon as possible and in any event within three days after becoming aware of same and shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

29.3 The Party affected by the Force Majeure Event shall only be released from its obligations under this Contract to the extent of, and for the duration of, the Force Majeure Event.

29.4 In the event of a Force Majeure Event affecting one Party lasting more than thirty days the other Party may by written notice immediately terminate this Contract.

30 VARIATION

30.1 Any variation to the terms and conditions of this Contract will be valid only if in writing and signed by both the Council and the Service Provider.

31 CONTINUATION OF TERMS

31.1 Save as otherwise expressly provided in this Contract:

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

31.1.2 any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract including clauses 1 (Definitions and Interpretation), 14 (Transfer of Undertakings (Protection of Employment) Regulations 2006), 15 (Confidentiality), 16 (Personal Data), 17 (Warranties), 19 (Freedom of Information), 21 (Records), 24 (Consequences of Termination or Expiry), 27 (Limitation of Liability), 30 (Variation), 31 (Continuation of Terms), 32 (Independence), 33 (Assignment and Sub-contracting), 34 (Resolution of Disputes) and Form of Agreement paragraph 6 (Law and Jurisdiction) shall remain in full force and effect notwithstanding termination of this Contract.

32 INDEPENDENCE

32.1 In carrying out its obligations under this Contract, the Service Provider agrees that it shall be acting as principal and not as an agent of the Council. The Service Provider shall not say or do anything that may lead any other person to believe that the Service Provider is acting as an agent of the Council.

33 ASSIGNATION AND SUB-CONTRACTING

33.1 Except to the extent expressly set out elsewhere in this Contract, neither the Council nor the Service Provider will assign or sub-contract any or all of their responsibilities under this Contract without the prior consent, in writing, of the other Party.

34 RESOLUTION OF DISPUTES

34.1 Where a dispute arises which is referred to the Dispute Resolution Procedure, the Parties will first seek to resolve any dispute by its escalation within the Parties' organisational structures.

34.2 There shall be two levels of escalation, and at each level each Party will ensure that an appropriate representative, matching the description below, is available for the purposes of the Dispute Resolution Procedure.

<u>Level</u>	<u>Representative</u>
First Level	person with managerial responsibility for overseeing this Contract.
Second Level	director or person at director level with senior managerial responsibility for the general contracting activities of the Party (and for the Council shall be the Head of Procurement or a nominee at that level),

34.2.1 An individual representing a Party at one level may not represent that Party at a higher level.

34.2.2 A meeting of the representatives at the first level shall take place as soon as possible after any dispute arises, and in any event within five (5) Working Days.

34.2.3 If a dispute is resolved at either level, the resolution shall be reduced to writing, without delay, and signed by both Parties. Once signed by both Parties, the resolution shall be binding on the Parties.

- 34.2.4 Unless the resolution of a dispute is reduced to writing and signed by both Parties, any discussions and negotiations connected with the dispute will be carried out without prejudice to the rights of the Parties in any future legal or other proceedings, and no such discussions and negotiations may be produced or relied upon in evidence in any such proceedings.
- 34.2.5 If a dispute has not been resolved, reduced to writing and signed by both Parties within five (5) Working Days of the first meeting at the first level, the dispute shall be referred to the second level, and the representatives at the second level shall meet within three (3) Working Days of the reference to that level. If not resolved, reduced to writing and signed by both Parties within twenty (20) Working Days of it arising, either Party may seek to resolve it as it sees fit.
- 34.3 Failure to resolve such dispute by way of mutual contract as per clause 34.1 and 34.2, then either Party may refer such dispute to an adjudicator for adjudication provided that if the Parties are unable to agree on a person to act as adjudicator then the adjudicator will be nominated at the request of either Party by the Chair or Vice Chair for the time being of Social Work Scotland.
- 34.4 The decision of an adjudicator properly appointed in accordance with this Contract will be binding on the Parties unless the Council and the Service Provider agree otherwise.
- 34.5 Neither Party shall raise proceedings in court relating to any dispute (other than proceedings seeking interim interdict or interim relief) unless the dispute has been escalated in accordance with this clause 34 and the dispute has not been resolved and the resolution recorded within twenty (20) Working Days of it arising.
- 35 NO PARTNERSHIP OR AGENCY**
- 35.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 36 THIRD PARTY RIGHTS**
- 36.1 No express third party right and no purported right is conferred by this Contract or any contract, deed or instrument entered into under or in connection with the Contract (Third Party Rights) (Scotland) Act 2017.

PART 3: SERVICE SPECIFICATION

1 Introduction

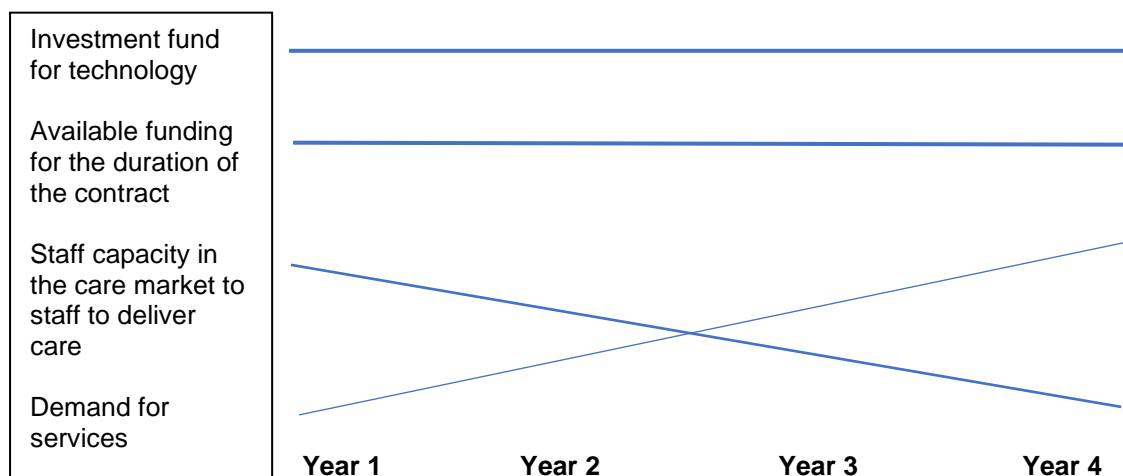
1.1 The purpose of this Part 3 is to provide the contractual statement of the Services required under this Contract.

1.2 The Aberdeen City Health and Social Care Partnership (“the Partnership”), is responsible for strategic commissioning and identifying and defining future service provision. Through its needs analysis work as part of the development of the strategic plan (2019-2022), the Partnership identified the following:

- We do not currently commission in a way which focuses on achieving outcomes. Our current process focusses on tasks to be delivered and an identified timeframe for doing this.
- Demand outstrips our available capacity.
- We have scoped out our use of technology and it is very low. We do not use an asset-based approach to the provision of care – thinking about what is available within the local community.
- Localities are the driving force behind integration. Our teams are not currently arranged within localities and therefore we minimise the opportunities for integrated working.
- There has been a level of market instability within Care at Home in particular. Market failure is one of our key strategic risks
- Our current arrangements do not foster a culture of collaboration.

1.3 To close the gaps that have been identified, the Partnership has decided to commission the delivery of care at home– to achieve the outcomes that we need to achieve for both organisations and individuals and is reflected in the service delivery model (figure 1)

Figure 1. Service delivery model for the contract



1.4 The outcome of the service delivery model is a **Service Specification** which is locality based, outcomes-focused, which removes the emphasis on time and task, and which gives the Service Provider the flexibility to work innovatively and in collaboration with statutory agencies within the localities .

2 Services

- 2.1 Services will be delivered to all adults (i.e. those over 16 years of age) deemed in need of Services regardless of primary care type. Commensurate with the Partnership's philosophy of outcomes-focussed care, Services delivered shall meet personal outcomes rather than outcomes associated with specific client groups. The Services will be focussed on step-up/step-down approaches to care to reflect the fact that Services are not static but are based on the needs of the individual at the time.
- 2.2 Services will be for all adults who meet the current eligibility criteria (and any future revisions) with a range of needs who require assistance through visiting support to live independently and to regain or regain their daily living skills through provision of personal care, personal support, housing support, or any other type of support deemed appropriate to meet identified outcomes.
- 2.3 The Service Provider shall adopt an enablement approach to service delivery: promoting self-help and independence; focusing on keeping Supported Persons resilient and maximising the Supported Persons skills; using family or other community support/assets; and preventing the need for higher level care whenever possible.
- 2.4 Services will be delivered to clients who live in north/central/south locality, 365 days per year, and at any time which will ensure that outcomes are met.
- 2.5 Services will be provided in the Supported Person's own home, in the community, or any other location depending on how the outcomes are to be met.

3 Assessment, referral and review process.

3.1 The pathway for referral is set out below

- The Supported Person enters the system through the locality single point of access (referrals can come from various sources: community, hospital, or any other source).
- The Supported Person will go through screening process to determine if they meet the eligibility criteria (if the Supported Person does not meet the eligibility criteria then they may be signposted elsewhere for other appropriate services).
- Once assessed (this initial assessment process will be coordinated by the care manager, but other parties will be able to contribute) as eligible for services and having an assessed need identified, the following will happen:
 - an indicative budget will be determined by care managers
 - discussion with the Supported Person to identify their outcomes and discussion about SDS options
 - support plan created describing the outcomes, the value allocated to achieving these and roughly how they will be met
- The fully costed support plan will go the Resource Allocation Panel where required (e.g. if it is over the £650 per week threshold). Any amendments would need to be reflected in the support plan.
- The budget amount and support plan will be finalised and where required, the overall budget amount will be split for charging purposes e.g. split between personal care and housing support
- The finalised budget amount (split into component parts where applicable) will be recorded on Carefirst (internal for ACC only).
- SDS Options: Option 1 - direct payment, option 2 – directing the available resource and option 3 – commissioned service. Under option 3 the Supported Person and the Service Provider will establish the way in which outcomes will be met, which should be in line with

the agreed Support Plan. Care Managers will liaise with the Service Provider and provide a copy of the support plan to the Service Provider.

- There will be an initial review at six weeks for new clients. In the future, it is envisaged that the Service Provider could instigate this six- week review, but in the immediate term this review will be instigated by care managers. Service delivery continues and there are a series of reviews as and when required throughout the length of contact with the Supported Person.
- If there are significant permanent changes to the way in which care is provided, then details of the change will be fed back by the Service Provider to the care manager. The care manager shall record these changes on care first. The Service Provider shall alert the care manager to changes at any time – not just through a review process.

4 Responsibilities of Service Provider.

4.1 The Service Provider shall undertake regular reviews, including a formal six-monthly review, of each Supported Person's needs to ensure that the care and support provided is meeting outcomes and is acceptable to the Supported Person.

4.2 The Service Provider is wholly responsible for ensuring that it has in place the necessary policies and procedures to operate the services in a safe manner which complies with all relevant legislation and ensures compliance with Care Inspectorate registration.

4.3 The Service Provider is wholly responsible for ensuring that all staff are suitably qualified to obtain registration and are registered with the SSSC and any other relevant professional body within the prescribed timescales.

4.4 The Service Provider is wholly responsible for ensuring that all staff receive training in the following topics: adult support and protection, enablement, moving and handling, infection control, food hygiene, dementia, continence care, and any other relevant topics specific to working with the Supported Person to achieve their outcomes.

4.5 The Service Provider will have policies for (but not limited to) training, support planning, medication management (in line with the Grampian Managing Medication in the Community), reporting in accordance with local and national policies (including but not limited to adult protection, Care Inspectorate, Mental Welfare Commission), equalities, confidentiality, complaints, customer feedback, and supporting the financial wellbeing of Supported Persons where relevant.

4.6 The Service Provider will give Supported Persons every possible choice in how to lead their lives, including the right to take personal risks, where such risks are consistent with the welfare of others. Risk assessments should be in place for all Supported Persons and individual cases may be discussed with the relevant health and social care professional or other relevant personnel.

4.7 The Provider will ensure that risk assessments are carried out in relation to the tasks being performed by Personnel and that Personnel have sufficient competence/experience to undertake these duties safely. Risk assessments will be included within Personal Plans.

4.8 The Service Provider shall report any concerns regarding potential harm to the Supported Person or harm by the Supported Person according to the Grampian Interagency Policy and procedure for the Support and Protection of Adults at Risk of Harm.

4.9 The Service Provider will immediately inform the Supported Person's representative (where appropriate) and the Care Manager if the Supported Person is absent without explanation.

4.10 The Service Provider will provide sufficient evidence to the Council promptly on the Council's request to establish that appropriate risk assessments have been carried out.

PART 4: QUALITY STANDARDS

4.1 The Services will be provided in accordance with all the relevant Health and Social Care and all will achieve the following headline outcomes for Health and Social Care Standards

- I am fully involved in all decisions about my care and support
- I experience high quality care and support that is right for me.
- I have confidence in the people who support and care for me.
- I have confidence in the organisation providing my care and support.
- I experience a high-quality environment if the organisation provides the premises

4.2 The Services will also be provided in accordance with the Codes of Practice for Social Service Workers and Employers, published by the Scottish Social Services Council and published on their website (www.sssc.uk.com)

4.3 Supported Persons will be treated with respect and the Services provided will be non-discriminatory in terms of the Supported Persons' abilities or disability, religious or philosophical beliefs, gender, sexual orientation, racial or ethnic grouping, marriage or civil partnership status, pregnancy or maternity status, residence or financial means.

4.4 All those in need have the same unique human value and rights as everyone else. The underlying principles which are of fundamental importance in applying a human rights-based approach to social care services are: participation, accountability, non-discrimination and equality, empowerment and legality.

Information about the following policies and strategies may be found on the **Council's** website www.aberdeencity.gov.uk:

- Adult protection – Grampian Interagency Policy and procedure for the Support and Protection of Adults at Risk of Harm
- Child Protection – National Guidance for Child Protection in Scotland (2014)
- Information management and security, including data protection
- Equality and diversity

4.5 Strategic Outcomes

The Health and Social Care Partnership strategic plan (2019-2022) sets out strategic priorities linked to a set of strategic outcomes:

1. People are able to look after and improve their own health and live in good health for longer
2. People including those with disabilities or long-term conditions or who are frail are able to live independently at home or in a homely setting
3. People who use health and social care services have positive experiences of those services and have their dignity respected
4. Health and social care services are centred on helping people to maintain or improve the quality of life of people who use those services
5. Health and social care services contribute to reducing health inequalities
6. People who provide unpaid care are supported to look after their own health, including any negative impact of their caring on their own health
7. People who use health and social care services are safe from harm
8. People who work in health and care services feel engaged with the work they do and are supported to improve
9. Effective resource use

Information about the Health and Social Care Partnership's strategic plan is available on the Council's web site www.aberdeencityhscp.scot

PART 5: MONITORING, REPORTING AND CONTRACT REVIEW

5.1 The Contract will be monitored in accordance with Aberdeen City Council Social Care Contract Management Framework, a copy of which is available on request from the Commissioning Procurement and Contracts Team. The Framework describes the process for allocating a contract monitoring level, carrying out an annual contract monitoring assessment and dealing with any contract compliance issues.

5.2 To inform the contract monitoring assessment, the Service Provider will submit the key performance indicator returns (table 1). In addition, to reflect the Partnership's philosophy of collaborative working and the Service Provider being a strategic partner, the monitoring framework will be further developed throughout the term of the Contract to develop ways of capturing qualitative data and evidence of outcomes being achieved.

Table 1 – quarterly key performance indicator performance return		
Core Indicators presented in a monthly management report	Question	Frequency
Staffing directly linked to service delivery of this contract	Number of new starts	Monthly
	Number of Leavers	Monthly
	Number of vacant posts	Monthly
	Staff sickness rate %	Monthly
Training	Has there been a change of manager in the reporting period	Monthly
	Have all new starts started/completed induction training	Monthly
	Staff completed mandatory and/or refresher training %	Monthly
Stats - relating to services delivered under this contract	Number of service users receiving services Profile of care delivered: % delivered by paid carer % delivered by technology enable care	Monthly
Complaints	Number upheld complaints from any source	Monthly
Service population. Agreed measure is 2% fluctuation up or down	Number of clients with fluctuation recorded	Monthly

Table 2. Specific indicators		
Specific Indicators	Question	Frequency of reporting
Training	Percentage of staff completed specified training, including refresher training (list	Quarterly

	specific training required in contract)	
Staffing (delivering care and support)	Can you confirm that you have a full staffing compliment as required in your contract	Quarterly
Measuring and evaluating outcomes for Supported Persons	To be developed in partnership with the providers. Potential to use a specific model e.g. life curve	To be determined
Reviews	Six monthly service user reviews carried out by the Provider	Quarterly
Significant Incident	How many significant incidents been reported to statutory bodies	Quarterly
Table 3 Community Benefits Plan	Target	Reporting
Fair Work Practices Including Scottish Living Wage		Quarterly
Work Experience (Placements) for looked after and care experienced young people. These placements, where possible, should lead onto the guarantee interview scheme for people who fit the person specification. Placements will be eight weeks in duration. Young people who have spent up to 8 weeks in a work experience opportunity can have their placement extended by up to 4 weeks where an employer makes an offer to take them on to an apprenticeship	Four placements each year.	Quarterly
Internships paid/unpaid	Four per year	Quarterly
Modern Apprenticeships- care https://www.sssc.uk.com/careers-and-education/modern-apprenticeships/	Two per year	Quarterly
SSSC Care Ambassadors – enrol four members of staff onto the scheme http://sssc.uk.com/your-career-in-care/information-for-career-advisers-and-schools/ambassadors-for-careers-in-care	Enrol four members of staff per year	Quarterly
Promoting fostering and adoption – distributing the Council's fostering & adoption material to staff and including information in payslips.	Promotion of publicity material in staff areas, discuss at least once per annum during a team meeting, place material in with pay slips at least once each year.	Annually
Work with Aberdeen City Council's Children services to promote employment and wider opportunities	Have the initial conversation with Children's Services as to how this could be	Annually

	achieved by the end of year one.	
Offer mentor opportunities to looked after / care experienced people	Have the initial conversation with Children's Services as to how this could be achieved by the end of year one.	Quarterly
Undertake to identify staff in "in work " poverty and refer to ACC employability team , email nolb@aberdeencity.gov.uk for signposting , access to funded training , support and debt management .	Have a plan developed as to how this will be achieved by the end of year one with referrals taking place in year two.	Quarterly
Case study from one of the above benefits.		Annually

5.3 Both organisations recognise that an outcome focussed model of delivery is a step into uncharted territory and therefore will require a strong collaboration between all parties. It is also recognised that we continue to live with COVID, and that whilst all hope that this will be a transient concern, there is currently no prospect of any respite. To reflect this, one of the agreed principles is regarding the regularity of reviewing the arrangement.

5.4 The current implementation group which meets on a weekly basis will naturally morph into a contract delivery group. The implementation group will continue with the current terms of reference and membership until the 1st November. At this point the terms of reference will be reviewed, and membership altered accordingly. This frequency of meetings will be reviewed but it is anticipated that it will be no less than on a fortnightly basis between the 1st November 2020 and the 30th April 2021. There will be the opportunity for this group to split to reflect the locality arrangements during this transitional period. The purpose of this group will be to address the day to day operationalization of the ambition set out in the contract.

5.5 It is anticipated that there will be a formal review group established from 1st November. The agreed scope of the review will incorporate the level of demand, the level and means of delivery and the financial trajectory. It is intended that this group will meet monthly between 1st November 2020 and 30th April 2021. The agenda setting will be done jointly between ACHSCP and GCC and each organisation will provide a co-chair of the meeting. It is anticipated that during these meetings there will be an opportunity not only to reflect on the past period of time, but also to work together to anticipate any key strategic or national directives and the implications of these on care at home delivery. The end of April 2021 will represent the end of this transitional period and there will be the opportunity for an Open Book meeting which is a transparent reflection on the transitional arrangements and progress made to date, which will include an open book exercise, considering the financial and activity burden associated with the contract delivery. Following this transitional period, it is anticipated that the formal review would move to a quarterly meeting with the same scope for consideration. Provision is made for extension to the transition period depending upon the severity of the pandemic to date, and its likely duration, if appropriate, at this point of review. A **proposed** timetable for the first year of the contract is in table 3. If this process works, then it will be replicated for the remaining years of the contract.

Table 3 Proposed timetable of progress meetings for first year of contract 1st November 2020 - 31 st October 2021
Q1 review meeting February 2021
Q2 review meeting May 2021
Q3 review meeting August 2021
Q4 review meeting November 2021
Annual review meeting December 2021

5.6 In line with the ambition for the contract (moving away from a time and task orientated provision), the demand for the individual locality arrangements will be expressed as the total number of people supported on the 1st of November 2020 which will be approximately 1,261. Part of the collaborative approach will include the timely and appropriate review of current care provision and attainment of outcomes through an enabling approach. This may result in a reduction in either the complexity or number of people in receipt of care at home. This information will form part of the regular review process. The baseline numbers are in table 4.

Table 4. Baseline clients (weekly)	
North	414
Central	408
South	439
TOTAL	1,261

5.7 Both ACC and GCC recognise that through an enabling approach, and through alternative means of provision of care, there will be a proportion of people whose level of complexity will reduce. Therefore, this will need to be taken into consideration when reviewing the total number of people receiving care i.e. not all people will move to a place where they do not require care, but the level of intervention may diminish.

5.8 Whilst it is recognised by both GCC and ACHSCP that there will be a natural fluctuation in the numbers of people requiring care, both are keen to recognise where for any reason there is a permanent fluctuation or variation. It is proposed that this would equate initially to a 2% fluctuation in the number of people (either way). Such a fluctuation would prompt a joint review of resource and funding requirements. The level of fluctuation will be reviewed at the end of the transitional period. Equally, whilst the financial arrangements stipulated within the specification will remain, any significant rise in expenditure will prompt a review e.g. in relation to Scottish Living Wage any significant percentage rise above previous years' levels (2019-2020 and 2020-21) , PPE costs (recognising that there is currently a process in place for reclaiming these costs) or exceptions related to the current COVID Pandemic.

5.9 The Service Provider will be required to have suitable software/case recording systems to provide evidence of care/support having been provided, progress with achieving agreed outcomes and to provide the relevant information which the Council needs for its statutory returns.

PART 6: PERSONAL DATA

1. DEFINITIONS

1.1 The definitions in this paragraph apply in this Part 6:

“Agreed Purposes” means the purposes set out in the appendix to this Part 6 and “Agreed Purpose” shall mean any one of them;

“Council Personal Data” means any Personal Data which the Council discloses to the Service Provider pursuant to paragraph 2.3 of this Part 6;

“Data Security Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;

“Data Controller” has the meaning given to “controller” as set down in the Data Protection Legislation;

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including (i) the General Data Protection Regulation (EU) 2016/679 (the “GDPR”); (ii) the Data Protection Act 2018; and (iii) all other Law concerning the processing of personal data and privacy, including the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003);

“Data Subject Request” means a written request by or on behalf of a Data Subject to exercise any of his/her rights conferred under the Data Protection Legislation;

“Disclose” means to disclose or transfer and includes permitting a person to access Personal Data or imparting that Personal Data orally or by demonstration including giving that person or arranging for that person to have access to that Personal Data in any manner and in any format whatsoever and “disclosure” will be interpreted accordingly;

“Personal Data”, “Process”, “Processes”, “Processing”, “Processor” and “Data Subject” have the same general meanings as set down in the Data Protection Legislation;

“Service Provider Personal Data” means any Personal Data which the Service Provider discloses to the Council pursuant to paragraph 2.3 of this Part 6; and

“Shared Personal Data” means Council Personal Data and Service Provider Personal Data.

2. SHARED PERSONAL DATA AND AGREED PURPOSES

2.1 This Part 6 sets out the framework for the sharing of Personal Data between the Parties as separate and independent (not joint) Data Controllers. It defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.

2.2 The Parties consider this data sharing initiative necessary to support the Agreed Purposes.

2.3 The Parties agree that the types of Personal Data which may be shared between the Parties during the Term (for the relevant Agreed Purposes), and the associated categories of Data Subjects, are as set out in the appendix to this Part 6.

2.4 The Parties agree that the Shared Personal Data:

- (a) must be proportionate, and not irrelevant, with regard to the relevant Agreed Purpose; and
- (b) shall be limited to the Personal Data described in the appendix to this Part 6.

2.5 The Service Provider shall not Process Council Personal Data, and the Council shall not Process Service Provider Personal Data, in a way that is incompatible with the relevant Agreed Purpose.

3. COMPLIANCE WITH DATA PROTECTION LAW

3.1 Each Party shall ensure compliance with the obligations incumbent on it as a Data Controller under the Data Protection Legislation.

3.2 Each Party has such valid registrations and paid such fees as are required by the Information Commissioner which covers the data sharing pursuant to this Part 6, unless an exemption applies.

4. REPRESENTATIVES

4.1 The Parties nominate representatives for the purposes of clause 5.1 of the Contract shall be the primary point of contact in all matters relating to this Part 6.

5. FAIR AND LAWFUL PROCESSING AND LEGAL BASIS

5.1 Each Party shall ensure that it Processes the Shared Personal Data fairly and lawfully in accordance with the Data Protection Legislation.

5.2 The Service Provider warrants to the Council that in relation to Service Provider Personal Data, disclosure of same by the Service Provider to the Council is justified on the relevant legal basis set out in the appendix to this Part 6.

5.3 The Council warrants to the Service Provider that in relation to Council Personal Data, disclosure of same by the Council to the Service Provider is justified on the relevant legal basis set out in the appendix to this Part 6.

5.4 The Service Provider shall, in respect of the Service Provider Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as required by Article 13 of the GDPR, including sufficient information about the disclosure of their Personal Data to the Council and the purpose of such disclosure to enable the Data Subjects to understand purpose and risks of such disclosure.

5.5 The Council shall, in respect of the Service Provider Personal Data, inform the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR.

5.6 The Council shall, in respect of the Council Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as required by Article 13 of the GDPR including sufficient information about the disclosure of their Personal Data to the Service Provider and the purpose of such disclosure to enable the Data Subjects to understand purpose and risks of such disclosure.

5.7 The Service Provider shall, in respect of the Council Personal Data, inform the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will Process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR.

5.8 To the extent that any Shared Personal Data is to be Processed by either Party on the basis of consent, the Party collecting that Shared Personal Data shall ensure that such consent is in a form which complies with the requirements of the Data Protection Legislation.

6. DATA QUALITY

6.1 The Council shall take all reasonable steps to ensure that the Council Personal Data is accurate on its transmission to the Service Provider and the Service Provider shall take all reasonable steps to ensure that the Service Provider Personal Data is accurate on its transmission to the Council.

6.2 The Council shall notify the Service Provider, and the Service Provider shall notify the Council, as soon as practicable if an error is discovered in Shared Personal Data which it has provided to the other Party, to ensure that the other Party is then able to correct its records.

7. SECURITY AND TRAINING

7.1 Each Party agrees to implement appropriate technical and organisational measures to:

(a) prevent:

- (i) unauthorised or unlawful Processing of the Shared Personal Data; and
- (ii) the accidental loss or destruction of, or damage to, the Shared Personal Data; and

(b) ensure a level of security appropriate to:

- (i) the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
- (ii) the nature of the Shared Personal Data to be protected.

7.2 It is the responsibility of each Party to ensure that its personnel required to access the Shared Personal Data are informed of the confidential nature of the Shared Personal Data and have undergone adequate training in the care, protection and handling of Personal Data in accordance with the appropriate technical and organisational measures referred to in paragraph 7.1 of this Part 6 and the Data Protection Legislation (the level, content and regularity of such training shall be proportionate to the person's role, responsibility and frequency with respect to their handling and Processing of the Shared Personal Data).

8. DATA SUBJECTS' RIGHTS

8.1 Where a Party receives a Data Subject Request relating to Shared Personal Data held by that Party, then that Party shall comply with all applicable Data Protection Legislation in respect of the Data Subject Request.

8.2 The Parties agree that the responsibility for complying with a Data Subject Request falls to the Party receiving the Data Subject Request in respect of the Shared Personal Data held by that Party.

8.3 Each Party shall have in place effective policies and procedures to ensure compliance with the Data Protection Legislation in the event of a Data Subject Request.

8.4 The Parties agree to provide such assistance as is reasonably required to each other to enable them to comply with Data Subject Requests and to respond to any other queries or complaints from Data Subjects.

9. DATA SECURITY BREACHES

9.1 Where a Data Security Breach occurs in respect of Shared Personal Data held by a Party that Party shall:

- (a) notify the other Party as soon as possible and, in any event, within twenty four (24) hours of identification of the Data Security Breach; and
- (b) be responsible for any required notification of that Data Security Breach to the Information Commissioner's Office.

9.2 The notification referred to in paragraph 9.1(a) of this Part 6 shall at least describe:

- (a) the nature of the Data Security Breach including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
- (b) the likely consequences of the Data Security Breach; and
- (c) the measures taken or proposed to be taken by the Party issuing the notice to address the Data Security Breach, including, where appropriate, measures to mitigate its possible adverse effects.

9.3 Each Party shall have in place effective policies and procedures to ensure compliance with the Data Protection Legislation in the event of a Data Security Breach.

9.4 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner.

10. TRANSFERS

10.1 Subject to paragraph 10.3 of this Part 6, the Service Provider shall not disclose Council Personal Data to any third party (including to its agents, sub-contractors and professional advisers) unless:

- (a) the Council has given its prior written approval for the disclosure in question; and/or
- (b) the disclosure is necessary by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Law.

10.2 Subject to paragraph 10.3 of this Part 6, the Council shall not disclose Service Provider Personal Data to any third party (including to its agents, sub-contractors and professional advisers) unless:

- (a) the Service Provider has given its prior written approval for the disclosure in question; and/or
- (b) the disclosure is necessary by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Law.

10.3 The Service Provider shall not disclose Council Personal Data, and the Council shall not disclose Service Provider Personal Data, outwith the EEA.

11. DATA RETENTION

11.1 Subject to paragraph 11.3 of this Part 6, the Service Provider shall not Process Council Personal Data for longer than is necessary to carry out the relevant Agreed Purposes.

11.2 Subject to paragraph 11.3 of this Part 6, the Council shall not Process Service Provider Personal Data for longer than is necessary to carry out the relevant Agreed Purposes.

11.3 The Parties may continue to retain Shared Personal Data in accordance with any statutory or professional retention periods application to them, as further detailed in the appendix to this Part 6.

12. REVIEW OF DATA SHARING AND CHANGES TO APPLICABLE LAW

12.1 The Parties shall review the effectiveness of the data sharing provisions in this Part 6 every twelve (12) months, having consideration to the aims and purposes set out in the appendix to this Part 6.

12.2 In case the applicable data protection and ancillary laws change in a way that this Part 6 is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that they will negotiate in good faith to review this Part 6 in light of the new legislation.

13. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE INFORMATION COMMISSIONER

13.1 In the event of a dispute or claim brought by a Data Subject or the Information Commissioner concerning the Processing of Shared Personal Data against either or both Parties, the Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

Appendix 1 to Part 6**Agreed Purposes, Types of Personal Data and Categories of Data Subject, Legal Grounds for Sharing Personal Data and Retention Periods**

Agreed Purpose (No)	Agreed Purpose (description)	Types of Personal Data and Categories of Data Subject	Legal Ground for Sharing Personal Data	Retention Period
1	<p>Permitted purposes are those activities requiring the sharing of data pursuant to the delivery of social care provision purchased under this agreement.</p> <p>The activities include operations undertaken in the performance of the contractual obligations that requires the collection, recording, organisation, storage, adaption or alteration, retrieval, consultation, use dissemination or otherwise making available alignment or combination restriction, erasure or destruction of data.</p>	<p>Personal data required includes service user identifying information that covers names, addresses, dates of birth, national insurance numbers, bank details, CHI numbers, email addresses, and Pen Profile and Personal Histories</p> <p>Such data as may be included in the information, records and other materials in the Council's possession as may reasonably be required by the service provider to undertake the Services; that is an identifier of the service user.</p> <p>The nature of the services will require the processing of Special Categories of Personal Data that may include:</p> <p>Racial or ethnic origin</p> <p>Religious beliefs</p> <p>Health data which may include but is not limited to physical and/or learning disabilities, substance misuse</p>	<p>Social Work (Scotland) Act 1968</p> <p>Public Bodies (Joint Working) Scotland Act 2014</p> <p>Human Rights Act 1998</p> <p>Data Protection Act 2018</p> <p>The Adult Support and Protection (Scotland) Act 2007</p>	<p>Each Data Controlling party will retain personal information in line with their own Data Retention policy/procedures. The retention period would not be shorter than six (6) years.</p>

		<p>and mental health problems</p> <p>Genetic data</p> <p>Sex life or sexual orientation</p> <p>The commission or alleged commission by them of any offence</p> <p>Any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings</p>		
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PART 7: PAYMENT AND INVOICING**1 GENERAL**

- 1.1 The value of the contract as of 1st November 2020 is £11,588,424.04 per annum across all three localities and is split accordingly:

Table 1. Total annual contract value	
North Locality	£4,097,027.62
South Locality	£3,829,427.94
Central Locality	£3,661,968.48
Total	£11,588,424.04

- 1.2 Invoices shall be paid on a four-weekly basis in advance with the first two, four weekly periods for year one being paid together.
- 1.3 Invoices shall include VAT (currently 20%).

2 INVOICING PROCESS

- 2.1 Unless otherwise agreed in writing with the Service Provider, the Service Provider shall invoice the Council for Services four weeks in advance.
- 2.2 The Council shall pay to the Service Provider the Payment referred to in an invoice validly submitted to the Council in accordance with paragraph 2.1 of this Part 7 within 30 days of the date of receipt by the Council of the said invoice.
- 2.3 Invoices should be sent to processing@aberdeencity.gov.uk
- 2.4 Aberdeen City Council provides a large number of services for local people, businesses and visitors to Aberdeen. When working with key suppliers who help to deliver these services the Council is committed to developing an efficient and unified approach. This is the driving force behind the Supplier Incentive Service (SIS). When suppliers sign up to the service they will become eligible to receive early payment of invoices amongst other benefits. Further information is available on the Council's web site: <https://www.aberdeencity.gov.uk/services/business-and-licensing/supplier-incentive-service>, and any providers of social care services interested in exploring this further, should contact the Contracts Manager in the first instance.

PART 8: ITT RESPONSE

“**ITT Response**” means the Service Provider’s response to the invitation to tender entitled The Provision of Care and Support Services and is the method statement for the Community Benefits Plan.

1 Community benefits

Our aims and objectives

We are committed to the achievement of community benefits, delivered via both consortium members and subcontractors, contributing to our overarching objectives of delivering improved outcomes for people in and around Aberdeen. Working hand-in-hand with our objectives to deliver improved outcomes for people in receipt of care, our approach to community benefits will support us in strengthening communities for the benefit of local people.

A community benefits plan would be created by the Granite Care Consortium operational director with the engagement of colleagues from relevant Council departments and other organisations, and subsequent management of community benefits will be the responsibility of the operational director. Consortium members and subcontractors will submit reports to the Operational Director/consortium for assimilation and reporting back to the H&SCP as per contract monitoring obligations.

We would seek early discussion with relevant AHSCP/Council colleagues regarding our approach to community benefits. We would wish to agree targets – based on a commitment to meet all the targets in 2.3 of the Community Benefits Project Plan document as a minimum and wherever possible exceeding and adding to these. We will agree linkage with relevant organisations/departments, discuss opportunities and potential that we may not have considered and also monitoring and reporting arrangements.

The table below outlines consortium members’ current commitments and achievements, and show achievement in some areas far in excess of the targets stated in 2.3; we will remain committed to delivering benefits at these levels and above.

Our members work across all three localities in Aberdeen and, where relevant, employment opportunities would be targeted in ‘community regeneration’ areas. This would be supported by building on the existing links with schools across the city and via community resources such as community centres, community flats and all other relevant connections. Many of our members also have relationships with schools across the three localities via flagship partnerships for the Developing the Young Workforce initiative, Youth Philanthropy Initiative, attending School Career Fairs and other initiatives, which will further support us in delivering against aims, objectives and targets.

Relationships with further education institutions are also well established by consortium members, with many placements being made in our organisations by students from NESCOL, RGU and the University of Aberdeen.

Several of our consortium members have accredited SVQ centres within their organisations, which supports the achievement of SVQs for the Social Care workforce, including the achievement of qualifications for young people.

Any subcontractor engaged by the Granite Care Consortium would be expected to support our aims and objectives and work in line with all the principles outlined in this response. Any subcontractor awarded more than £500,000 of work in any one year would also be expected to maintain targets and record and report their own achievement to contribute to directly contribute to the achievement of our aims.

2 Table 2. Specific Community Benefits

Benefit	Targets	Granite Care Consortium Plan
Fair Work Practices Including Scottish Living Wage	➤ Address as per guidance (3.2.1)	➤ See separate statement 3.2.1 <i>Fair working practices</i> below
Work Experience (Placements) for looked after and care experienced young people. These placements, where possible, should lead onto the guarantee interview scheme for people who fit the person specification. Placements will be eight weeks in duration. Young people who have spent up to 8 weeks in a work experience opportunity can have their placement extended by up to 4 weeks where an employer makes an offer to take them on to an apprenticeship.	➤ Four placements each year	<ul style="list-style-type: none"> ➤ Our consortium members value the contribution that young people make in the workplace and currently participate in various initiatives. For example, Cornerstone delivers Get into Social Care programmes in conjunction with The Prince's Trust with a programme planned in Aberdeen prior to the end of 2020 (timescales subject to COVID-19) ➤ We would work with relevant Council staff to build on existing initiatives and to achieve a minimum of four placements per year. ➤ Following completion of placements, guaranteed interviews will be provided for any young person meeting the person specification. We are experienced in providing similar schemes – for example, Aberdeen Cyrenians already operate a Guaranteed Interview Scheme for care-experienced young people. Our consortium structure will strengthen this, and young people completing a placement with one provider may benefit from a guaranteed interview with another provider where appropriate (e.g. if they better fit the person specification for a role with another consortium member).
Internships paid/unpaid	➤ Four per year	<ul style="list-style-type: none"> ➤ Various consortium members have close relationships with both RGU and NESCOL, with students undertaking placements throughout the year and we would anticipate easily exceeding this target. Across the consortium, many internships have been facilitated in Aberdeen in with VSA alone placing 50 students across their services in the past year, and our intention would be to build on this each year of the contract. ➤ Placements will continue to include students from Business Management/Marketing, Social Work and Social Care courses. We will draw on well-established relationships with schools, colleges and higher education establishments in the locality to publicise internships. Consortium members such as Archway also provide placements for nursing students.

<p>Modern Apprenticeships - care https://www.sssc.uk.com/careers-and-education/modern-apprenticeships/</p>	<p>➤ Two per year</p>	<p>➤ Various members operate MA programmes and we would anticipate easily exceeding this target. As examples (where applicable, reflecting delivery across all services throughout Scotland):</p> <ul style="list-style-type: none"> - VSA deliver 100 modern apprenticeships per year - In 2019/20, Inspire delivered 8 modern apprenticeships, all of whom are now either working towards their SVQ qualification or have completed it. In 2020/21, Inspire will deliver 14 modern apprenticeships. - Cornerstone were awarded 20 modern apprenticeship places last year and a further 12 this year. - Cyrenians have a modern apprenticeship in Corporate Services with plans to expand into Social Care modern apprenticeship delivery. <p>➤ We will therefore set a target of six modern apprenticeships per year in each locality as a direct result of this service.</p> <p>➤ Existing relationships with local schools will help us drive this commitment forward, and support will be provided by the relevant consortium member (supported by the Granite Consortium centralised HR working group as relevant) to ensure apprentices receive extensive support and communication; that they are supported to successfully complete the apprenticeship; and that clear pathways to full-time employment are provided.</p>
<p>SSSC Care Ambassadors – enrol four members of staff onto the scheme http://sssc.uk.com/your-career-in-care/information-for-career-advisers-and-schools/ambassadors-for-careers-in-care</p>	<p>➤ Enrol four members of staff per year</p>	<p>➤ Staff in all roles and at all levels across the whole consortium will be made aware of the SSSC Care Ambassadors scheme during induction, and this will continue to be discussed during supervisions and appraisals</p> <p>➤ We will provide encouragement to all staff irrespective of role to enrol as an ambassador and to positively participate in the scheme</p> <p>➤ Ongoing support and encouragement will be provided to ambassadors to attend and contribute to careers fairs, talks at schools and colleges and raising the profile of a career in care locally</p> <p>➤ We will enrol a minimum of four members of staff each year</p>
<p>Promoting fostering and adoption – distributing the Council's fostering & adoption material to staff and including information in pay slips.</p>	<p>➤ Promotion of publicity material in staff areas, discuss at least once per annum during a team</p>	<p>➤ We would engage with the relevant colleagues in the Council and agree how best to promote fostering and adoption via publicity material etc.</p> <p>➤ Our members utilise various communication methods e.g. team briefings, newsletters, pay slips, SharePoint and already publicise various council services e.g. Mental Wellbeing, Carers Services.</p>

	meeting, place material in with pay slips at least once each year.	<ul style="list-style-type: none"> ➤ Alongside Council colleagues, we would consider how best our members and subcontractors could support the annual Foster Care Fortnight in May, and we commit to using methods such as the above as well as inclusion for discussion at least one team meeting for each consortium member to promote the scheme ➤ Linking to our fair working practices commitments, staff will be made aware of their rights with respect to adoption leave, flexible working etc. as relevant to fostering and adoption
Work with Aberdeen City Council's Children services to promote employment and wider opportunities	Have the initial conversation with Children's Services as to how this could be achieved by the end of year one.	<ul style="list-style-type: none"> ➤ We would engage with Children's Services to agree how best to meet this target and we confirm that we would then work to meet the agreed target by the end of year one, with subsequent collaboration to define targets for subsequent years. However, we can build on existing relationships with consortium members. For example: <ul style="list-style-type: none"> - Consortium members such as VSA and Archway are engaged with ACC Children's Services team as part of the range of services currently provided in this area - Blackwood work with Barnardos to help young people get into care work - Paramount are involved with The Prince's Trust – Pathways to Health & Social Care Opportunity, which introduces young people to Social Care as a career - Cornerstone hold the Investors in Young People award and promote employment opportunities for young people via careers fairs, work tasters/training and more
Offer mentor opportunities to looked after / care experienced people	<ul style="list-style-type: none"> ➤ Have the initial conversation with Children's Services as to how this could be achieved by the end of year one. 	<ul style="list-style-type: none"> ➤ As with the above target, we would engage with Children's Services to agree how best to meet this target, but we can again build on existing relationships with consortium members: <ul style="list-style-type: none"> - VSA are engaged with ACC Children's Services team as part of the range of services currently provided in this area
Undertake to identify staff in "in-work" poverty and refer to ACC employability team, email nolb@aberdeencity.gov.uk for signposting , access to funded training , support and debt management .	<ul style="list-style-type: none"> ➤ Have a plan developed as to how this will be achieved by the end of year one with referrals taking place in year two. 	<ul style="list-style-type: none"> ➤ We would engage with the ACC Employability Team to agree a plan. We therefore commit to the development of a plan during year one and subsequent delivery of any defined targets in year two and beyond. This plan would build upon existing support offerings in place and/or publicised by consortium members: <ul style="list-style-type: none"> - Blackwood have a financial support service with Shelter which is available to staff;

		<ul style="list-style-type: none"> - Several other organisations support Credit Union membership
	➤	<p>Training and support will be coordinated for the management of each consortium member during year one of the contract to ensure their ability to identify staff in “in-work” poverty and to make appropriate and sensitive referrals to the ACC employability team in response to any instance of this being identified</p>
Case study from one of the above benefits.	➤	<p>Provide a short report on the success with any of the benefits above.</p> <p>Please see Appendix 3.1 Inspire Developing Young Workforce Case Study (below)</p>



Appendix 3.1 Inspire Developing Young Workforce Case study: Louise Lamont, assistant support manager at Inspire

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As part of our #DYWKeyWorkers campaign we spoke to Louise Lamont, assistant support manager at Inspire to ask her what her typical day looks like and gain insight into her career journey.

What attracted you to the industry you are in?

The hours suited me while I was studying at university.

How long have you been with the company and have you always worked as an assistant support manager?

I've been at Inspire for four years and worked as a support worker, relief worker, shift leader before becoming an assistant support manager.

Describe your day-to-day role

My current role is Assistant Support Manager. I help manage the project on a day to day basis, monitor finances and medication. I create the rota for 50+ members of staff. I ensure guidelines are followed in keeping with care inspectorate regulations and prepare for audits both internal and external.

What kind of training have you done?

Inspire has put me through all in house training required, such as first aid training and epilepsy training. I am also a modern apprentice and I'm working toward my SVQ level 3.

What skills have you learned?

I have had a lot of personal growth since joining Inspire. I have learned cooking skills, communication skills, and how to support adults with learning disabilities.

Have you completed any professional qualifications?

Currently in the process of doing SVQ level 3.

What skills are most important to you to do your job well?

Communication with both the people we support and the members of staff.

Was there anything about the job that surprised you?

How rewarding the job is. Job satisfaction is something I didn't think I would get in what started as a part time job.

Is there anything unusual about your job?

As a support worker, one day you can be partying at a disco and the next communicating with health professionals. No two days are ever the same, it's very exciting.

Do you get a lot of support from your company?

Inspire is very supportive and I know who to go to if I need any support.

What is your favourite part of the job?

The people we support.

Did you always want to pursue a career in this industry?

No never. I had zero intention of working in care and never thought about it as a career. I fell into care and ended up loving it.

What advice would you give young school leavers looking to start an apprenticeship?

To think of care as a profession. Give a job in care a chance, there are lots of different roles, from support workers to admin jobs. I'd recommend being as involved with the people we support as possible.

What is your career goal?

To continue working in care to some capacity. Hopefully being as involved with people we support/clients/service users as possible. Within six months I progressed to two senior roles so I hope to continue this.

How does it feel to be a key worker working on the frontline, supporting the country's fight against COVID-19?

I'm really proud.

I'm proud of all the people we support taking it in their stride and dealing with challenging changes. The team who I work with have been great at pulling together and the staff morale is great.

Tell us what makes you proud to be a key worker

Continuing to improve the lives of the people we support despite the current concerns and regulations with the pandemic.

Watch more [here](#).

3 3.2.1 Fair working practices

Our objectives and approach

Each provider in the Granite Care Consortium is committed to fair working practices. This is part of the shared values base that was integral to our decisions when composing the consortium.

We recognise the role of fair working practices in ensuring the fair treatment and wellbeing of staff themselves, but also the contribution that this makes to ensuring high-quality services. Staff who are valued and invested in will provide higher standards of service. Similarly, taking positive steps to motivate, reward and retain staff will ensure continuity and consistency in the service and, in turn, will contribute to market stability.

This response represents the shared approach to be adopted across all providers working in the Granite Care Consortium. It is also representative of existing approaches already implemented by consortium members, and all parties are already fully committed to the principles of fair working: examples are therefore provided throughout to demonstrate the ways in which the commitments are put into practice by providers within the consortium.

Adopting these values, principles and approaches will also be an expectation and a prerequisite for any potential subcontractor to deliver services via the Granite Care Consortium.

3.1 **A shared commitment**

We will support, value and invest in staff at all levels. Fair working practices will contribute to our ability to recruit high-quality staff with the right values, attitudes and underlying traits, and also to maintain low staff turnover which will contribute to continuity of care worker for each person we support and market stability for the service as a whole.

Via investment in training and development, including completion of SVQ qualifications, SSSC registration and Open Badges and ongoing personal development, we will maintain a workforce of staff who are decisive and confident in offering person-centred, outcomes-focused support.

The effectiveness of our approaches is evidenced by certifications and accreditations held by consortium members, such as:

Cornerstone

Investors in People Gold Award; Investors in Young People Good Practice Award; Investing in Volunteers; Volunteer Friendly Award; and Disability Confident Employer

VSA

Investors in People Gold Award

Penumbra

Recognised for Excellence Award; European Foundation for Quality Management; Mindful Employer; Disability Confident Employer

myCare Grampian

Disability Confident Employer

InspireDisability Confident Employer; Volunteer Friendly Award

**Bon Accord
Care**Investors in People Award; Investors in Young People Good Practice Award; Disability Confident Employer; Healthy Working Lives Gold Award; Mindful Employer; Carer Positive Organisation; Living Wage Employer.

**Blackwood
Homes and
Care**Investors In People Gold Award; Investors In Young People Gold Award; Healthy Working Lives Award; Disability Confident Employer; Technology Enabled Care Housing Charter; UKHA – Housing Award Outstanding Approach to Digital Inclusion; Scottish Care Service User Achievement Award/Learning & Development Champion Award; Herald Scottish Digital Business – Charity & Social Enterprise Award

3.2 ***Fair and equal pay policy***

All staff, regardless of role, will receive the real Living Wage as a minimum as defined by Living Wage Scotland. Our consortium includes a combination of providers that already have real Living Wage accreditation (e.g. Bon Accord Care and Aberdeen Cyrenians), those that are in the process of securing it or have made a commitment to do so (e.g. Penumbra and Cornerstone) and those that, while unaccredited, have nonetheless committed to rates of pay in line with the real Living Wage as a minimum for all care and support roles with ongoing increases in pay if this rate changes during the contract.

The consortium leadership team (CLT) will also produce an annual report on the consortium gender pay gap, publicly demonstrating our commitment to ensuring progressive approaches to pay gaps. Ongoing compliance with the requirements of the Equality Act 2010 in terms of equal pay will be monitored by each consortium member and reported to the CLT: this will also link to our stance on equality of opportunity, as outlined below.

3.3 ***Nurturing talent and fulfilling potential***

We will develop programmes, putting into our practice our strong commitment to nurturing young talent. As an example of the training capabilities and capacity of consortium members, providers such as Cornerstone, VSA, Inspire and Bon Accord Care are accredited SQA centres, with myCare Grampian having approval to become an accredited SQA centre; this will be progressed this year. We will offer Modern Apprenticeships, facilitated through partnership with local colleges, with support for apprentices to progress to full-time employment or provided with careers guidance and support. Consortium members are highly experienced in providing these opportunities across various services throughout Scotland. For example, Inspire was awarded eight funded modern apprentice places in 2019/2020 and 14 in 2020/21; Cornerstone was awarded 20 places last year and a further 12 this year. Further examples will include, as appropriate, work experience programmes for college students, such as 12-week programmes, incorporating shadowing and mentoring, with subsequent pathways into employment for participants who perform well. Initiatives will also include:

- Attendance at careers fairs
- Working with jobcentres and employability groups across Scotland to support people to find employment
- 'Get into Social Care' work tasters and training programmes

- Supporting local Colleges and Universities with HNC, HND and Social Work students, offering real-life experiences and learning
- Promotion of volunteering opportunities – e.g. providers such as Blackwood work with Project Scotland to provide volunteering opportunities across services.

As an example, Blackwood work with Barnardo's and The Prince's Trust, providing access to work for young people via provision of placements and subsequent guaranteed interviews. Two young people have successfully progressed to employment and are undertaking further training, including SVQs.

3.4 ***Equality of opportunity***

Our aim will be to develop a workforce which is representative of Scotland, Aberdeen and the specific communities in which services are delivered. In the first instance, we commit to ensure compliance with all the requirements of the Equality Act 2010 in terms of non-discrimination on the basis of protected characteristics that an individual shares.

Organisational policies and procedures for each consortium member including those for recruitment, training, learning and development, supervision, promotion, disciplinary action and more all specifically account for and respect all protected characteristics, with the operational director and consortium-wide functions such as a shared HR task group to help ensure effective application of these. The same requirements will be cascaded to subcontractors' management and policies.

Each provider in the consortium will invite applicants for all roles to complete equality monitoring forms with subsequent reporting to the CLT on equality information relevant to the workforce. Further actions will include:

- Ensuring all job listings are non-discriminatory in terms of language used, and using varied open recruitment channels to maximise opportunities for people from diverse walks of life to apply
- Pro forma evaluation sheets to ensure a fair, objective appraisal of candidates

Beyond ensuring compliance, we will also positively champion diversity. For example, providers such as Cornerstone already participate in the Disability Confident Employer scheme, with guaranteed interviews for anyone with a disability meeting minimum criteria, accommodating any adjustments for the applicant's interview. Previously, when people have had speech or language-related needs, an interpreter has been available to assist during the interview. Cornerstone have also provided computers with special screens for interviewees with sensory impairment, both at interview stage and then during their employment, while Penumbra proactively recruit those with lived experience of mental ill health. Consortium members such as Penumbra, Cornerstone, Blackwood, Inspire, myCare Grampian and Bon Accord Care are also accredited Disability Confident Employers, while all other providers in the consortium nonetheless support and uphold the principles of the scheme in practice even if they are not formally accredited.

Further schemes are in place to champion people's rights and equality of opportunity. For example, blackwood have a partnership with PATH (Positive Action in Housing) to provide traineeships for people from BAME groups.

3.5 ***Learning and development***

Commitments to learning and development will provide benefits for staff through our investment in their skills, qualifications, employability and futures. For the service itself, we are also committed to driving forward standards locally, and our commitment to training staff to a higher level will be at the centre of this drive.

As noted above, providers within our consortium are SQA-accredited and/or have SQA-approved training academies, resulting in access to over 200 courses including training to SVQ Level 3 and beyond, supported by in-house assessors and verifiers. As well as induction and mandatory training, this therefore includes onward progression, aligned to the individual's own personal development plan of which they are the owner. Training, including induction, is provided internally or sourced as required to enable staff to fulfil aspirations.

Opportunities for deputising and shadowing will also be made available, together contributing to succession plans. Emerging supervisory positions will be discussed with staff, providing pathways for staff to progress and be promoted; where appropriate, this will include exploring secondment opportunities for staff working within other consortium member organisations.

Uptake of the SSSC Open Badges will be promoted and by encouraging and enabling staff to achieve these, we will contribute to a higher standard of learning and development across the local workforce. We will also build on work to date by consortium members and would be keen to trial and explore the implementation of a training passport locally.

3.6 ***Stability of employment***

No exploitative employment practices will be used, and providers within the consortium meet all the requirements set out in the Scottish Government's Fair Work Framework as a requisite to their involvement. For example, providers within our consortium do not use zero hours' contracts for care and support workers unless specifically requested by the staff member (e.g. for relief staff who opt into a zero-hours contract due to the benefits of additional flexibility or an ability to work alongside other commitments such as further education). Staff will always be made aware of their right to move on to permanent employment contracts if preferred.

3.7 ***Employment practices including flexible working***

We recognise our responsibilities under the Flexible Working Regulations 2014. All providers in the consortium operate in full compliance with the regulations and are receptive to requests for flexi-time, career breaks, compressed hours, job sharing and contracts that facilitate a chosen work-life balance. The offer of flexible working is promoted both in terms of benefits to the staff member, and also to embed additional flexibility to meet the needs of people we support (e.g. in response to change; business continuity events).

Further, the CLT will provide ongoing monitoring of the terms and conditions of employment across the consortium to ensure that each member organisation continues to offer good terms to staff employed to this service, taking into account not only flexible working but also annual leave, access to employer-supported volunteering and other rights, to ensure that all providers remain employers of choice in their communities, strengthening market stability in the process. This may be supported if appropriate by benchmarking through the providers forum.

Consortium-wide, all staff will also be paid for their full shifts, not just times when they are delivering care. This means that travel time, as well as travel expenses, will always be paid in full, and this is again an expectation placed on any potential subcontractor working via the consortium.

3.8 ***Progressive workforce engagement***

Progressive workforce engagement will be promoted by each consortium member. For example, VSA, Penumbra and Blackwood have voluntary recognition agreements with Unite, and Cornerstone has a voluntary recognition agreement with Unison. Staff working for any provider in the consortium will be made aware of their rights and will be encouraged to join a union.

Processes are in place to ensure that, regardless of union affiliation, staff are engaged and involved in making decisions. Feedback will be actively sought from staff through various mechanisms for business improvement purposes, including team meetings, one-to-one discussions, staff surveys, supervisions and more. For example, Blackwood's staff engagement champions ensure effective consultation on major decisions such as business strategy.

3.9 ***Staff support***

Employee assistance programmes offered by consortium members such as Cornerstone, Penumbra, VSA and Blackwood enable access to practical and impartial help and support with financial, legal, domestic and family issues, as well as mental health. Staff at all levels will also benefit from supervision sessions at least quarterly and appraisals at least annually, ensuring that each individual is supported in their role.

Workplace health and wellbeing will also be encouraged, building on existing initiative from providers such as Inspire who provide subsidised gym membership, employee counselling and in-house mental health first aiders. Similarly, Blackwood have mental health first aiders and employee counselling services. As an example of a further approach currently employed by a consortium member, Cornerstone has Health and Wellbeing Champions via a scheme administered through its staff engagement forums, supporting effective signposting when people are in need of support.

Comprehensive health and safety support is available across the consortium via each provider's own processes and structure, with one example being Blackwood's HR team and H&S advisor providing high-quality health and safety support to their staff, with H&S performance reported through KPIs to their senior management team and board.