

Date: 2016

- (1) Velindre NHS Trust
- (2) [Provider]

National Collaborative Framework

for

Younger Adults (18 - 64 years) in Mental Health and Learning Disabilities Care Homes & Care Homes with Nursing for NHS and Local Authorities in Wales



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THIS AGREEMENT IS MADE ON THE [•] DAY OF [•] 2016

BETWEEN:

- (1) **Velindre NHS Trust** whose principal place of business is at Unit 2 Charnwood Court, Parc Nantgarw, Nantgarw, Cardiff CF15 7QZ (the "Trust"); and
- (2) **[Name]** (company number: [•]) whose registered address is [•] (the "Provider").

BACKGROUND

- (A) The Provider submitted a tender on [date].
- (B) On the basis of the Provider's tender, the Trust selected the Provider to enter a framework agreement to provide Services to the Commissioners on a call-off basis in respect of the Provider's Lots in accordance with this Framework Agreement.
- (C) This Framework Agreement sets out the ordering procedure for Services which may be required by the Commissioners, the main terms and conditions for any Placement Agreement which the Commissioners may conclude, and the obligations of the Provider during and after the term of this Framework Agreement.
- (D) This agreement is a framework only. There is no obligation on the Commissioners to award any orders under this Framework Agreement during its Term.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:

1:1 Equivalent Care	the amount of time in units of one hour (or part thereof), calculated by means of a formula, to determine the direct care and support contact time provided to a Resident on the basis of one member of Staff to one Resident;
Adult Safeguarding	The process by which vulnerable adults are protected from abuse, as described under Part 7 of the Social Care and Well-being Act 2014.
Affiliate	in relation to a party, a person who is, from time to time, a subsidiary or holding company of that party, or is a subsidiary of that party's holding company;
Applicable Terms	the terms and conditions in Schedule 3;
Approval	the prior written approval of the Trust or the

	Commissioner as applicable;
Audit	an audit carried out pursuant to Clause 16 of the Framework Agreement and Clause 3 of the Applicable Terms;
Auditor	any agent or auditor appointed from time to time by (i) the Trust or (ii) the Welsh Ministers, or (iii) the Wales Audit Office or (iv) any Commissioner;
Authorised Officer	a person designated as such by the Commissioner from time to time to act as the representative of the Commissioner for all purposes connected with the Placement Agreement, including any authorised representative of such person;
Care Co-Ordinator and / or Case Manager	a person, NHS or Local Authority employee responsible for planning, managing or coordinating of a Residents care;
Care and Support Plan	a plan for the purposes of achieving the outcomes which the provision of the Services to the Resident are designed to achieve, and such Care and Support Plan will (where applicable) be pursuant to the Code of Practice to Parts 2 and 3 of the Mental Health (Wales) Measure 2010;
Care and Support Plan Reviews	the meeting held between Provider, Resident and Local Care Team from time to time for the purpose of evaluating the effectiveness of the Services provided and to document changes in the needs of the Resident;
Care Home	premises (whether owned or controlled by the Provider or a third party) registered under a single registration number with the applicable regulator to provide all or part of the Services;
Care and / or Clinical Record	contemporaneous electronic or paper information recorded by Staff for the purpose of managing a Resident's care;
Care Setting	a designated area within a Care Home whether a separate building, floor, annex, room or similar where care services are provided to Residents, and such services may differ by reference to (i) Staff presence, dedicated Staff skills, experience and training, or (ii) the environment of care, including (but not limited to) pictographic communication boards, kitchen setup or similar;

CEDR	the Centre for Effective Dispute Resolution;
Commissioner	(i) any Local Health Board within Wales as defined in the National Health Service (Wales) Act 2006 or (ii) any Local Authority within Wales as defined in the Local Government (Wales) Act 1994 or any successor body exercising its or their functions, and "Commissioners" shall be construed accordingly;
Commissioning Assurance and Performance System or CCAPS	Care the informatics system used by Commissioners to contract and performance manage the Services Framework Providers pursuant to this Framework;
Commencement Date	1 October 2016;
Complaint	any formal complaint raised by any Commissioner in relation to the performance of the Framework Agreement or any Placement Agreement in accordance with Clause 36;
Conditions Precedent	the conditions precedent to service delivery referred to in Clause 2.2 and set out in Schedule 8;
Confidential Information	(1) all information (including all oral and visual information, and all information recorded in writing or electronically, or in any other medium or by any other method) disclosed to, or obtained by, one Party from the other Party or a third party acting on that other Party's behalf and which is of a confidential or commercially sensitive nature (as would be determined by a reasonable person) (2) all "personal data" or "sensitive personal data" (as both are defined in the DPA) and (3) all data relating to Residents, staff and business affairs of the Trust or the Commissioner;
Consent	(a) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of the Services; and (b) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Framework Agreement or any Placement Agreement or for the provision by the Provider of the Services in accordance with this Framework Agreement or any Placement Agreement, including any

registration with the Regulator;

Contract Manager	a person designated as such by the Provider from time to time as notified in writing to the Commissioner to act as the duly authorised representative of the Provider for all purposes connected with the Placement Agreement insofar as it relates to the Commissioner, including any authorised representative of such person;
Convictions	other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975 / 1023) or any replacement or amendment to that Order);
DPA	the Data Protection Act 1998 including all subordinate legislation made under that Act, any guidance and / or codes of practice issued from time to time by the Information Commissioner or relevant Government department, and any relevant rulings from time to time of the Information Commissioner or of the Courts of England and Wales relating to the DPA;
Electronic Trading System(s)	an electronic data interchange system and / or internet based web application and / or other application with such message standards and protocols as the Trust or the Commissioner may specify from time to time;
Equality Impact Assessment	a published process for narrowing the health inequalities that exist in Wales between people from different ethnic backgrounds, people with disabilities, men and women (including transgender people), people with different sexual orientations, people in different age groups, people with different religions or beliefs and people from differing social and economic groups;
Equipment	anything save for the Provider's premises, and the Staff that the Provider may use in the delivery of the Services (including, without limitation, vehicles);
Environmental Regulations	Information the Environmental Information Regulations 2004 together with any guidance and / or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;

Exit Assistance	the services provided by the Provider to facilitate the orderly transition of the Services to the Commissioner or a Replacement Provider;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Force Majeure	war, civil war, terrorism, riot or civil commotion and acts of government under emergency powers;
Framework Agreement	this framework agreement and all Schedules to this framework agreement and "Framework" shall be construed accordingly;
Framework Agreement Variation Procedure	the procedure set out in Schedule 9;
Framework Lots	the lots referred to in Schedule 1 Part 1;
Fraud	any offence under any law in respect of fraud in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament, the Trust or the Commissioner;
Good Practice	the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced Provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Framework Agreement or any Placement Agreement, including in accordance with any codes of practice or Guidance published by the Trust or the Commissioner, the Welsh Government, the Department of Health or otherwise;
Guidance	any guidance issued or updated by the Welsh Ministers, the Department of Health or Ministry of Justice, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, Care and Social Services Inspectorate Wales , the Care Quality Commission and / or any other regulator or competent body from time to time which applies to the provision of the Services;

Health Board	any Local Health Board within Wales as defined in the National Health Service (Wales) Act 2006, or any successor body exercising its or their functions;
Information	has the meaning given under Section 84 of the FOIA;
Initial Term	a period of four (4) years commencing on the Commencement Date;
Intellectual Property Rights	patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
Law	<p>(a) any Act of Parliament, Act or Measure of the Welsh Ministers or any other statute, proclamation, order, regulation, legislation (whether primary or subordinate) or other law which applies to the performance of this Framework Agreement or any Placement Agreement or to the provision of the Services;</p> <p>(b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(c) any NHS Requirement, applicable code of practice, national minimum standard, Guidance, direction or determination with which the Trust or the Commissioner is bound to comply to the extent that the same are published and publicly available or the existence or the contents of them have been notified to the Provider by the Trust; and</p> <p>(d) any Local Authority Requirement applicable code of practice, national minimum standard, guidance, direction or determination with which the Trust or the Commissioner is bound to comply to the extent that the same are published and publicly available or the existence or the contents of them have been notified to the Provider by the Trust; and</p> <p>(e) any applicable judgment of a relevant court of law which is a binding precedent,</p> <p>in each case in force from time to time in England and</p>

Wales or in Wales;

Level 1 or Level 2 Performance Issue; and Level 1 or Level 2 Notice has the meaning set out in Schedule 7 (*Quality Assurance Improvement System*);

Local Authority Requirements in relation to the Services, all mandatory Local Authority requirements and any similar official requests, requirements and Local Authority Service standards and recommendations having similar status for the time being in force, which either (a) are published and publicly available (whether on the Welsh Government's website, or the website of another competent authority or otherwise) or (b) are made known to the Provider by the Trust, the Commissioner, the Welsh Government, or otherwise;

Local Care Team one or more designated individuals employed directly by or working for or on behalf of the Commissioners commissioning Services from a Provider pursuant to this Framework Agreement;

Material Default (1) any material breach on the part of the Provider of this Framework Agreement or of a Placement Agreement; (2) any negligence or any reckless act or any other wrongful act or omission on the part of the Provider or of any Staff of the Provider; (3) any failure to provide Services in accordance with this Framework Agreement or any Placement Agreement or Law in respect of any Resident; (4) any other breach of Law;

Month a calendar month;

National Minimum Standards the National Minimum Standards for Care Homes for Younger Adults made by the Minister for Health and Social Services of the Welsh Assembly Government under the powers conferred by section 23(1) of the Care Standards Act 2000;

NHS Requirements means, in relation to the Services, all mandatory National Health Service requirements and any similar official requests, requirements and National Health Service standards and recommendations having similar status for the time being in force, which either (a) are published and publicly available (whether on the Welsh Government's website, the Department of Health website, on the website of another competent authority or otherwise) or (b) are made known to the Provider by the Trust, the Commissioner, the Welsh Government,

	the Department of Health or otherwise;
Placement Procedure	the placement procedure for the Commissioner to request the provision of Services from the Provider as set out in Schedule 2 Part 2;
Placement Agreement	an agreement between the Provider and the Commissioner for the provision of Services in respect of a Resident executed by the Parties thereto in accordance with Clause 3 in the form set out in Schedule 5;
Party	(as the context so requires) the Trust, the relevant Commissioner or the Provider;
Policies	the policies, rules and procedures of the Trust or the Commissioner as notified to the Provider from time to time;
PQQ Response	i) the response submitted by the Provider to the pre-qualification questionnaire issued by the Trust on 5 February 2016, and ii) the information submitted by the Provider on 26 February in relation to its financial and economic standing;
Pricing	the pricing as set out in Schedule 4;
Provider's Lots	the lot or lots to which the Provider has been appointed under this Framework Agreement as set out in Schedule 1 Part 2;
Regulator	(i) the Care Quality Commission or (ii) the Care and Social Services Inspectorate Wales (as the case may be) and any successor body or bodies from time to time, as appropriate;
Replacement Provider	any service provider engaged to replace the Provider or any sub-contractor of the Provider;
Resident Care Outcomes or RCO	the measurement or indicators of the Provider's performance in relation to delivery of the Services as set out in Schedule 7 (<i>Quality Assurance Improvement System</i>);
Resident	a Resident, service user or client of the Commissioner who is referred or presented to the Provider or otherwise receives Services under or pursuant to this Framework Agreement;

Restricted Person	any person who has a material interest in the production of tobacco products or alcoholic beverages;
Serious Untoward Incident	an incident or accident or near-miss where a Resident, member of Staff, or member of the public suffers serious injury, major permanent harm or unexpected death in the Care Setting or where the actions of the Provider are likely to be of significant public concern;
Service Payment	the price payable by the Commissioner in consideration of the Provider's provision of Services under a Placement Agreement in accordance with this Framework Agreement;
Services	the services to be provided and managed by the Provider for the Commissioner as described in Schedule 2 Part 1;
Services Framework Providers	the Providers appointed as Services Framework Providers under this Framework Agreement;
Social Care	the provision of social work, personal care, protection or social support services to adults in need or at risk, or adults with needs arising from illness, disability, old age or poverty in line with the Social Services and Well-being (Wales) Act 2014;
Specification	the Commissioner's requirement for the Services as set out in Schedule 2 as amended from time to time in accordance with the terms of this Framework Agreement;
Staff	all persons employed by the Provider together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement or any Placement Agreement;
Step in	has the meaning set out in Clause 15.2.2 of the Applicable Terms;
Step-in Event	where: <ul style="list-style-type: none"> (a) the Commissioner, acting reasonably, considers that a breach by the Provider of any obligation under this Framework Agreement: <ul style="list-style-type: none"> (i) may create an immediate and serious threat to the health or safety of any Residents, Staff

or persons present at the Care Homes; or

(ii) may result in a material interruption in the provision of the Services; or

(b) other than as described in Sub-Clause (a) above, the Commissioner considers that in any event there are circumstances that constitute an emergency or create a risk of the circumstances in paragraphs (a) (i) and (ii) above occurring;

Tender	the tender submitted by the Provider to the Trust on [date];
Term	the Initial Term, any extension thereof pursuant to Clause 2.4 and any period during which Exit Assistance is provided to the Trust and / or the Commissioners (as the case may be);
Transferring Employee	any employee of the Provider who, as a consequence of TUPE, may transfer or will transfer to a Replacement Provider or the Commissioner;
Trust	Velindre NHS Trust or any successor body exercising its functions;
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;
Urgent Non-Core Care or UNCC	any urgent unplanned intervention required for the Resident resulting in the Provider incurring costs;
VAT	Value Added Tax;
Welsh Language Obligations	the obligations of the Trust and the Commissioner in respect of the use of the Welsh language, whether under any Law, under any Welsh language scheme made under the Welsh Language Act 1993, under any Welsh language standards which apply to the Trust or the Commissioner under the Welsh Language (Wales) Measure 2011 (whether or not a compliance notice has been given to the Trust or the Commissioner) or any specific obligations in respect of the use of the Welsh language in connection with the delivery of Services to Residents which are notified to the Provider from time to time by the Trust or the Commissioner;
Working Day	a day other than a weekend or public holiday in Wales between the hours of 8.30am and 5.30pm;

1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.2 words importing the masculine include the feminine and the neuter;

1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

1.2.7 references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;

1.2.8 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;

1.2.9 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and

1.2.10 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

2 TERM OF FRAMEWORK AGREEMENT

2.1 This Framework Agreement shall take effect on the Commencement Date.

2.2 The Provider may only commence delivery of Services under this Framework Agreement when (1) the Conditions Precedent have been satisfied and (2) a Placement Agreement has been entered into in respect of such Services.

2.3 Subject to Clause 2.4, the Framework Agreement shall (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) terminate at the end of the Initial Term.

2.4 The Trust may at its total discretion elect to extend the Initial Term of this Framework Agreement by up to an additional four years in two year tranches.

3 SCOPE OF FRAMEWORK AGREEMENT

3.1 This Framework Agreement governs the relationship between the Trust and the Provider in respect of the provision of the Services by the Provider to the Commissioners and sets out:

3.1.1 in Schedule 5, the template form of Placement Agreement to be entered into by the Provider and the Commissioner; and

3.1.2 in Schedule 3, the Applicable Terms that are deemed incorporated into each Placement Agreement; and

3.1.3 in Clause 3.3 of this Framework Agreement and Schedule 2, Part 2 the procedure for the Commissioner to request the provision of Services from the Provider under separate Placement Agreements.

3.2 The Commissioner may at its absolute discretion and from time to time order Services from the Provider in accordance with the Placement Procedure during the Term.

3.3 A Placement Agreement shall not enter into force, be legally binding or have any other effect unless:

3.3.1 the Placement Agreement contains the information required by the template Placement Agreement at Schedule 5;

3.3.2 the Placement Agreement has been signed by the authorised representatives of both Parties to it; and

3.3.3 as at the date the Placement Agreement is signed, this Framework Agreement has not terminated.

3.4 Each Placement Agreement :

3.4.1 forms a separate contract between its signatories; and

3.4.2 shall incorporate the Applicable Terms.

3.5 The Provider acknowledges that there is no obligation on the Commissioner to purchase any Services from the Provider during the Term.

3.6 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Trust or the Commissioner in respect of the total quantities or values of the Services to be ordered by the Commissioner pursuant to this Framework Agreement and the Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

3.7 The Provider agrees that it shall not in its dealings with the Trust or the Commissioner relating to the delivery of Services, impose, rely upon or attempt to impose or rely upon any other

contractual terms other than the Applicable Terms. The Provider waives any right it might otherwise have to rely on any term endorsed upon or contained in any documents of the Provider that is inconsistent with the Applicable Terms.

4 PROVIDER'S APPOINTMENT

The Trust appoints the Provider as a potential Provider of the Services referred to in the Provider's Lots and the Provider shall be eligible to be considered for the provision of such Services by the Commissioner during the Term.

5 NON-EXCLUSIVITY

The Provider acknowledges that, in entering into this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Trust or the Commissioner for Services from the Provider and that the Trust and the Commissioner are at all times entitled to enter into other contracts and arrangements with other Providers for the provision of any or all services which are the same as or similar to the Services.

6 WARRANTIES AND REPRESENTATIONS

6.1 The Provider warrants and represents to the Trust and the Commissioner that:

- 6.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of any other company) to enter into and to perform its obligations under this Framework Agreement;
- 6.1.2 this Framework Agreement is executed by a duly authorised representative of the Provider;
- 6.1.3 all information, statements and representations contained in the Tender and the PQQ Response (including statements made in relation to the categories referred to in Regulations 72 of the Public Contracts Regulations 2015 (as amended)) for the Services are and will remain true, accurate and not misleading and it will promptly advise the Trust of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 6.1.4 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;
- 6.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Placement Agreement which may be entered into with the Commissioner;

- 6.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Placement Agreement which may be entered into with the Commissioner; and
- 6.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.

7 PREVENTION OF CORRUPTION AND BRIBERY

7.1 The Provider must:

- 7.1.1 without prejudice to its other obligations to comply with Laws, comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
- 7.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 7.1.3 comply with any of the Trust's ethics, anti-bribery and anti-corruption policies in each case as the Trust may update them from time to time ("**Relevant Policies**");
- 7.1.4 have and shall maintain in place throughout the Term its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 7.1.2, and will enforce them where appropriate;
- 7.1.5 immediately notify the Trust if a foreign public official becomes an officer or employee of the Provider or acquires a direct or indirect interest in the Provider (and the Provider warrants that it has no foreign public officials as officers, employees or direct or indirect owners as at the Commencement Date);
- 7.1.6 ensure that all persons associated with the Provider or other persons who are performing Services in connection with this Framework Agreement comply with this Clause 7.1; and
- 7.1.7 within three (3) Months of the Commencement Date, and annually thereafter, certify to the Trust in writing signed by an officer of the Provider, compliance with this Clause 7.1 by the Provider and all persons associated with it and all other persons for whom the Provider is responsible under Clause 7.1.6. The Provider shall provide such supporting evidence of compliance as the Trust may reasonably request.

7.2 Breach of this Clause 7 shall be deemed a Material Default of this Framework Agreement which is not capable of remedy.

- 7.3 For the purpose of this Clause 7, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this Clause 7, a person associated with the Provider includes but is not limited to any sub-contractor of the Provider.
- 7.4 The Provider must reimburse the Trust and / or the Commissioner (as appropriate) in respect of any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by the Trust and / or the Commissioner (as the case may be) (including such losses, liabilities, damages, costs and expenses arising from the termination of this Framework Agreement where termination results from a breach of this Clause), or awarded against the Trust and / or the Commissioner (as the case may be) as a result of any breach of this Clause 7 by the Provider.

8 CONFLICTS OF INTEREST

- 8.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Trust) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Trust and / or the Commissioners under the provisions of this Framework Agreement or any Placement Agreement.
- 8.2 The Provider shall promptly notify and provide full particulars to the Trust if such conflict referred to in Clause 8.1 above arises or is anticipated to arise.
- 8.3 The Trust reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Provider and / or to take such other steps it deems necessary where, in the reasonable opinion of the Trust, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Trust or the Commissioner under the provisions of this Framework Agreement or any Placement Agreement. The actions of the Trust pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Trust or the Commissioner.
- 8.4 This Clause shall apply during the Term and for a period of two (2) years after its termination or expiry.

9 SAFEGUARD AGAINST FRAUD

- 9.1 The Provider shall safeguard the Trust and the Commissioner's funding of the Framework Agreement and any Placement Agreement against Fraud generally and, in particular, Fraud on the part of the Provider or its Staff. The Provider shall notify the Trust and the Commissioner immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 9.2 If the Provider or its Staff commits Fraud, the Trust may terminate the Framework Agreement and the Commissioner may terminate any Placement Agreement and recover from the Provider the amount of any direct loss suffered by the Trust and / or the Commissioner (as the case may be) resulting from the termination.

10 EQUALITY ACT

10.1 The Provider acknowledges and agrees that the Trust and the Commissioner are subject to the public sector equality duty set out in section 149 of the Equality Act 2010 ("**2010 Act**").

10.2 The Provider must, in respect of its performance of this Framework Agreement, comply with section 149 of the 2010 Act and warrants and undertakes to have due regard in its performance of this Framework Agreement to:

10.2.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the 2010 Act;

10.2.2 advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the 2010 Act) and persons who do not share it;

10.2.3 foster good relations between persons who share a relevant protected characteristic (as defined in the 2010 Act) and persons who do not share it,

and for the avoidance of doubt this obligation shall apply irrespective of whether the Provider is a public authority for the purposes of such section of the 2010 Act.

10.3 Without prejudice to Clause 10.2, the Provider shall:

10.3.1 comply with the Trust's and the Commissioner's instructions and directions and any policies and codes of practice issued by it from time to time in relation to the 2010 Act; and

10.3.2 promptly notify and keep the Trust and the Commissioner informed (with full supporting details if requested) of all complaints and investigations in relation to the 2010 Act.

10.4 The Provider shall provide to the Trust and / or the Commissioner (as the case may be) such information as the Trust and / or the Commissioner (as the case may be) may reasonably require to:

10.4.1 monitor the equality of access to the Services; and

10.4.2 fulfil its obligations under the Law; and

10.4.3 monitor equality of opportunity in employment.

10.5 The Provider shall undertake Equality Impact Assessments in accordance with the Law.

11 CALL-OFF CONTRACT PERFORMANCE

11.1 The Provider shall perform all Placement Agreements entered into with the Commissioner in accordance with:

11.1.1 the requirements of this Framework Agreement; and

11.1.2 the terms and conditions of such Placement Agreements.

11.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Placement Agreement, the terms and conditions of the Framework Agreement shall prevail.

12 PRICES FOR SERVICES

12.1 The prices offered by the Provider for Placement Agreements to the Commissioner for Services shall be the prices listed in Schedule 4.

12.2 If requested to do so by the Trust and / or the Commissioner, the Provider shall use the Electronic Trading System to facilitate, inter alia, Placement Procedures, the provision of pricing information, invoicing, together with the exchange of such other information relating to this Framework Agreement as the Trust and / or the Commissioner (as the case may be) may reasonably require from time to time.

13 STATUTORY REQUIREMENTS

The Provider shall be responsible for obtaining all Consents required in relation to the performance of this Framework Agreement.

14 INFORMATION REQUIREMENTS

14.1 The Provider shall provide the information specified in this Clause 14 and in Schedule 6 (*Information Requirements*) in a timely manner and in any event within the applicable time period set out in Schedule 6, and shall ensure its accuracy and completeness.

14.2 The Provider shall provide the information specified in this Clause 14 and in Schedule 6 (*Information Requirements*) through use of the Commissioning Care Assurance and Performance System or in any other format as may be prescribed by the Trust from time to time.

14.3 The Trust may from time to time notify the Provider of what further information it may reasonably require in order to monitor the Provider's performance under this Framework Agreement, and in particular the Provider's compliance with the Specification, and the Provider shall supply such information as soon as reasonably practicable.

14.4 The Provider shall implement any new information requirements as they are adopted across the Trust from time to time between it and the Trust and the provisions of this Clause 14 shall apply to them.

15 PERFORMANCE MONITORING AND REPORTING

15.1 The provisions of Schedule 7 (*Quality Assurance Improvement System*) shall apply.

15.2 The Trust shall be entitled to audit the Provider's compliance with Schedule 7.

16 RECORDS AND AUDIT ACCESS

16.1 The Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this

Framework Agreement including the Services provided under it, the Placement Agreements entered into with the Commissioner and the amounts paid by the Commissioner.

- 16.2 The Provider shall keep the records and accounts referred to in Clause 16.1 above in accordance with good accountancy practice.
- 16.3 The Provider shall afford the Trust and / or the Commissioner and / or the Auditor such access to such records and accounts as may be required from time to time.
- 16.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of six (6) years after expiry of the Term to the Trust, the Auditor and the Commissioner (as required).
- 16.5 The Trust and the Commissioner shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Placement Agreements, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Trust and / or the Commissioner.
- 16.6 The Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
 - 16.6.1 all information requested by the Auditor within the scope of the Audit;
 - 16.6.2 reasonable access to sites controlled and to Equipment used by the Provider in the provision of the Services; and
 - 16.6.3 access to the Staff.
- 16.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 16, unless the Audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Trust and / or the Commissioner (as the case may be) for the Trust's or the Commissioner's reasonable costs incurred in relation to the Audit.
- 16.8 The Trust reserves the right, at its sole discretion, to undertake financial due diligence in relation to the Provider's financial and economic standing and / or credit rating from time to time.
- 16.9 In the event the Trust (acting reasonably) determines, at its sole discretion, that the financial and economic standing and / or the credit rating of the Provider are such that it adversely impacts, or is likely to adversely impact, on the Provider's ability to supply Services under this Framework Agreement, then the Provider shall, at the Trust's request, use its best endeavours, to obtain a parent company guarantee and / or such other guarantees of financial liability as the Trust may require.
- 16.10 Without prejudice to this Clause 16, the Provider shall permit or procure permission for the Trust's or the Commissioner's Framework Performance Management Team , (as defined in Schedule 7) access, without prior notice, to any Care Setting, premises, facilities, Staff, policies and Clinical / Care Records and other documentation reasonably required by the Trust to audit

and review the Provider's compliance with its obligations under this Framework Agreement (the " Framework Performance Management Team Audit"). Where prior notice of a Framework Performance Management Team Audit is given the Provider must make available a senior manager or clinician to assist and coordinate the same.

- 16.11 The Trust and the Commissioner reserve the right, at their discretion, to invite a third party to participate in the audit process including, but not limited to, carers, Resident representatives, Community Health Council representatives and NHS Wales representatives.

17 RESIDENT CARE RECORDS

- 17.1 The Provider shall create, maintain, store and retain Care Records for all Residents in accordance with the Law and Policies.
- 17.2 The Provider shall retain Care Records for such periods of time as are permitted and as may be required by Law.
- 17.3 The Provider shall use the Care Records solely for the execution of the Provider's obligations under this Framework Agreement.

18 CONFIDENTIALITY

- 18.1 In respect of any Confidential Information it may receive from the other Party (the "Discloser") and subject always to the remainder of this Clause 18 each Party (the "Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 18.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Framework Agreement; and
- 18.1.2 the provisions of this Clause 18 shall not apply to any Confidential Information which:
- 18.1.2.1 is in or enters the public domain other than by breach of the Framework Agreement or other act or omissions of the Recipient; or
- 18.1.2.2 is obtained by a third party who is lawfully authorised to disclose such information; or
- 18.1.2.3 is authorised for release by the prior written consent of the Discloser; or
- 18.1.2.4 is required to be disclosed to ensure the compliance of the Trust and / or the Commissioner with FOIA or the Environmental Information Regulations.
- 18.2 Nothing in this Clause 18 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Provider is the Recipient, to the Provider's immediate or ultimate holding company provided that the Provider procures that such holding company undertakes directly with the Discloser that it will comply with this Clause 18 as if any reference to the Provider in this Clause 18 were a reference to such holding company.

18.3 The Provider agrees that:

18.3.1 without prejudice to the generality of Clause 18.2 the provisions of this Clause 18 are subject to the respective obligations and commitments of the Trust and the Commissioner under the FOIA, the Environmental Information Regulations and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively);

18.3.2 the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Trust or the Commissioner (as applicable); and

18.3.3 where the Trust or the Commissioner is managing a request as referred to in Clause 18.3.2, the Provider must co-operate with the Trust or the Commissioner, (as applicable), and must respond within five (5) Working Days of any request by the Trust or the Commissioner for assistance in determining how to respond to a request for disclosure.

18.4 The Provider must and must procure that its Staff must:

18.4.1 transfer any request for information, as defined under section 8 of the FOIA, to the Trust or the Commissioner (as applicable), as soon as practicable after receipt and in any event within five (5) Working Days of receiving a request for information;

18.4.2 provide the Trust or the Commissioner (as applicable) with a copy of all information in its possession or power in the form that the Trust or the Commissioner (as applicable) requires within five (5) Working Days (or such other period as the Trust may specify) of the Trust or the Commissioner requesting that information; and

18.4.3 provide all necessary assistance as reasonably requested by the Trust or the Commissioner to enable the Trust or the Commissioner (as applicable) to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

18.5 The Trust or the Commissioner may consult the Provider in relation to any request for disclosure of the Provider's Confidential Information in accordance with applicable guidance.

18.6 This Clause 18 shall remain in force without limit in time.

19 DATA PROTECTION

19.1 This Clause 19 sets out the respective roles and obligations of the parties in respect of the processing of Personal Data under this Agreement. In this Clause 19, the terms Personal Data, Data Controller, Data Processor and processing shall bear the meanings as defined in the DPA.

19.2 This Clause 19 shall remain in force without limit in time.

Roles of the Parties

- 19.3 The Provider acknowledges that for the purposes of the DPA, the Trust and the Commissioner are each a Data Controller in respect of the Personal Data processed under this Agreement.
- 19.4 Where the Provider is processing Personal Data solely on behalf of the Trust and the Commissioner, the Provider will be a Data Processor and must comply with all of the provisions of this Clause 19 except Clause 19.11.
- 19.5 To the extent that the Provider processes any Personal Data as a Data Controller, the Provider, the Trust and the Commissioner shall be joint Data Controllers and the Provider must comply with all the provisions of this Clause 19 except Clause 19.10.

Provisions relating to all processing of Personal Data by the Provider

- 19.6 The Provider must indemnify and keep indemnified the Trust and the Commissioner against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Trust and the Commissioner respectively, as a result of any claim made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the Provider's unauthorised processing, unlawful processing, destruction of and / or damage to any Personal Data processed by the Provider.
- 19.7 The Provider must assist the Trust and the Commissioner to comply with the DPA. This includes the Provider providing the Trust and the Commissioner with all assistance as may be required in complying with subject access requests served on the Trust and the Commissioner under Section 7 of the DPA and the disclosure by the Provider of any Personal Data in relation to such requests.
- 19.8 If the Provider receives Personal Data from a Commissioner as part of the call-off procedure set out in this Agreement, but that Commissioner does not go on to commission the Service from the Provider, the Provider must promptly, and in any event within five (5) days of notification by the Commissioner that no such Service will be commissioned, delete all copies of such Personal Data in the possession of the Provider.
- 19.9 The Provider must be able to demonstrate to the Commissioner, if requested to do so, that it has complied with the obligation at Clause 19.8.

The Provider as a Data Processor

- 19.10 Whenever the Provider is processing Personal Data as a Data Processor, the Provider must comply with the obligations placed on the Trust and the Commissioner by the seventh data protection principle (the "Seventh Principle") set out in the DPA, namely:
- 19.10.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Trust and the Commissioner by the Seventh Principle;
- 19.10.2 only to process Personal Data for and on behalf of the Trust and the Commissioner, in accordance with the instructions of the Trust and the Commissioner and for the purpose of performing the Services in accordance with the Placement Agreement;

19.10.3 not transfer any Personal Data obtained pursuant to the Provider's provision of the Services outside the European Economic Area (without the prior written consent of the Commissioner); and

19.10.4 to allow the Trust and the Commissioner to audit the Provider's compliance with the requirements of this Clause 19 on reasonable notice and / or to provide the Trust and the Commissioner with evidence of its compliance with the obligations set out in this Clause 19.

The Provider as a Data Controller

19.11 Whenever the Provider is processing Personal Data as a Data Controller, the Provider must at all times:

19.11.1 comply with its obligations under the DPA;

19.11.2 maintain an up to date notification with the Information Commissioner;

19.11.3 not transfer any Personal Data obtained pursuant to the Provider's provision of the Services outside the European Economic Area without the prior written consent of the Commissioner; and

19.11.4 maintain appropriate technical and organisational security measures in order to comply with its obligations under the Seventh Principle.

20 PUBLICITY

20.1 Unless otherwise directed by the Trust, the Provider shall not make any press announcements or publicise this Framework Agreement in any way without the Trust's prior written consent.

20.2 The Trust and the Commissioner shall be entitled to publicise this Framework Agreement.

20.3 The Provider shall not do anything which may damage the reputation of the Trust or the Commissioner or bring the Trust or the Commissioner into disrepute.

21 TERMINATION

Termination on Default

21.1 The Trust may terminate this Framework Agreement by serving written notice on the Provider with effect from the date specified in such notice:

21.1.1 where the Provider commits a Material Default and:

21.1.1.1 the Provider has not remedied the Material Default to the satisfaction of the Trust within twenty (20) Working Days, or such other period as may be specified by the Trust, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

21.1.1.2 the Material Default is not, in the reasonable opinion of the Trust, capable of remedy; or

- 21.1.2 where the Commissioner terminates a Placement Agreement awarded to the Provider under this Framework Agreement as a consequence of a Material Default by the Provider; or
- 21.1.3 the Provider is prevented, or will be prevented, from providing a Service due to the suspension, restriction or variation of any Consent; or
- 21.1.4 the Provider fails to obtain any Consent, loses any Consent or has any Consent varied or restricted the effect of which might reasonably be considered to have a material adverse effect on the provision of the Services; or
- 21.1.5 the Provider repeatedly breaches any of the terms of this Framework Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Framework Agreement; or
- 21.1.6 where 4 or more Level 1 Notices or Level 1 Performance Issues result within any rolling twelve (12) Month period; or
- 21.1.7 where 3 or more Level 2 Notices or Level 2 Performance Issues result within any rolling twelve (12) Month period; or
- 21.1.8 where any combination of two or more Level 1 and / or Level 2 Performance Issues result within any rolling twelve (12) Month period.

Termination on Financial Standing

- 21.2 The Trust may terminate this Framework Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Trust), there is a material detrimental change in the financial standing and / or the credit rating of the Provider which adversely impacts, or is likely adversely to impact, on the Provider's ability to supply Services under this Framework Agreement.

Termination on Insolvency and Change of Control

- 21.3 The Trust may terminate this Framework Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:
 - 21.3.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 21.3.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 21.3.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

- 21.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 21.3.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 21.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - 21.3.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 21.3.8 any event similar to those listed in Clause 21.3.1 to Clause 21.3.7 occurs under the law of any other jurisdiction.
- 21.4 The Provider shall notify the Trust immediately if the Provider undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 ("**Change of Control**"). The Trust may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:
- 21.4.1 being notified that a Change of Control has occurred; or
 - 21.4.2 where no notification has been made, the date that the Trust becomes aware of the Change of Control,
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 21.5 The Trust may terminate this Framework Agreement by giving notice in writing to the Provider with immediate effect if a Restricted Person holds five (5) per cent or more of the total value of any shares in the Provider or any of its Affiliates.

Termination by the Trust

- 21.6 The Trust shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three (3) Months written notice to the Provider.

22 SUSPENSION OF PROVIDER'S APPOINTMENT

- 22.1 Without prejudice to the Trust's rights to terminate the Framework Agreement in accordance with Clause 21 above, the Trust may suspend the Provider's appointment to supply Services to the Commissioner in any or all Provider's Lots by giving notice in writing to the Provider:
- 22.1.1 if a right to terminate this Framework Agreement arises in accordance with Clause 21;
- or

- 22.1.2 pursuant to Schedule 7 (*Quality Assurance Improvement System*); the Provider is subject to either (i) a Level 1 or Level 2 Notice or (ii) where a Level 1 or Level 2 Performance Issue has arisen; or
- 22.1.3 the Trust reasonably considers that a breach by the Provider of any obligation under this Framework Agreement:
- 22.1.3.1 may create an immediate and serious threat to the health or safety of any Resident; or
- 22.1.3.2 may result in a material interruption in the provision of any one or more of the Services.
- 22.2 If the Trust provides notice to the Provider in accordance with this Clause 22, the Provider's appointment shall be suspended for the period set out in the notice or such other period as shall be notified to the Provider by the Trust in writing from time to time.

23 CONSEQUENCES OF TERMINATION AND EXPIRY

- 23.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as may be required under this Clause 23.
- 23.2 Termination or expiry of the Framework Agreement shall not cause any Placement Agreements to terminate automatically. For the avoidance of doubt, all Placement Agreements shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 23.3 Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Provider shall return to the Trust and the Commissioner (as appropriate) any data and Confidential Information belonging to the Trust or the Commissioner (as applicable) in the Provider's possession, power or control, either in its then current format or in a format nominated by the Trust or the Commissioner (as appropriate), together with any other information and all copies thereof owned by the Trust or the Commissioner.
- 23.4 The Trust and the Commissioner shall be entitled to require and to have access to data or information arising from the provision of the Services from the Provider.
- 23.5 The Provider shall for a reasonable period before (during any applicable notice period) and after such termination or expiry:
- 23.5.1 co-operate fully with the Trust and the Commissioner and any successor Provider of the Services, or such part of the Services that have been terminated in order to ensure continuity and a smooth transfer of the Services, or such part of the Services and to avoid any inconvenience or any risk to the health and safety of Residents or members of the public and to that end the Provider may agree with the Trust and the Commissioner, and where appropriate with any successor Provider, a transition plan;

- 23.5.2 promptly render all reasonable assistance and information to the extent necessary to effect an orderly assumption of the Services or such part of the Services by a successor Provider;
- 23.5.3 in so far as it is in the power of the Provider to do so, use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Provider and any third party which relate to or are associated with the Services or such part of the Services which have been terminated, and
- 23.5.4 use all reasonable endeavours to minimise any inconvenience caused to or likely to be caused to Residents or prospective Residents as a result of the expiry or termination of this Framework Agreement or part of the Services.
- 23.6 The Provider shall cease to accept any Resident placements or referrals that require any expired or terminated Service or part of a Service, and subject to any appropriate arrangements made under Clause 23.5.1, the Provider shall immediately cease its treatment of Residents requiring the terminated or expired Services or arrange for their transfer or discharge as soon as is practicable in accordance with Good Practice and the Law.
- 23.7 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of any Party accrued under this Framework Agreement prior to termination or expiry.
- 23.8 Clauses which expressly or by implication are intended to survive termination shall continue in full force and effect.

24 LIABILITY

The Provider shall fully indemnify and keep indemnified the Trust and the Commissioner in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Framework Agreement and each Placement Agreement including in respect of any death or personal injury, loss of or damage to property, financial or other loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

25 INTELLECTUAL PROPERTY

The Provider agrees to indemnify and keep fully indemnified the Trust and the Commissioner against any costs, claims, proceedings, expenses and demands arising in respect of any allegation or claim that any of the Services supplied under this Framework Agreement constitutes or may be alleged to constitute an infringement of any person's Intellectual Property Rights or an infringement of any other legal or equitable right of any person.

26 INSURANCE

- 26.1 The Provider undertakes to take out and maintain policies of insurance with a reputable insurance company against liability which the Provider may incur to the Trust or to the Staff or

to any other person in connection with this Framework Agreement and each Placement Agreement; as follows:

- 26.1.1 Employer's Liability: in the sum of not less than five million pounds (£5,000,000) or such statutory minimum as is required from time to time in the UK (whichever is greater) per event or series of events arising from the same set of circumstances; and
 - 26.1.2 Public Liability: in the sum of not less than five million pounds (£5,000,000) per event or series of events arising from the same set of circumstances; and
 - 26.1.3 Professional Indemnity, malpractice, treatment risk or similar appropriate indemnity arrangements in relation to the provision or non-provision of the Services (or any other services under this Framework Agreement) which may result in a clinical or professional negligence claim: in the sum of not less than five million pounds (£5,000,000) per event or series of events arising from the same set of circumstances or such higher limit as the Trust may reasonably require from time to time.
- 26.2 The Provider must, should the Trust request it to do so from time to time, produce to the Trust a certified copy of the policy of any such insurance, the premium receipt and / or insurance certificate, or other appropriate evidence, such as a broker's letter of confirmation.
- 26.3 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under this Framework Agreement.
- 26.4 The Provider shall maintain the insurances referred to in Clause 26.1 for a minimum of six (6) years following the expiration or earlier termination of this Framework Agreement.

27 TRANSFER AND SUB-CONTRACTING

- 27.1 This Framework Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Trust.
- 27.2 The Provider shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement without the previous consent in writing of the Trust.
- 27.3 The Trust shall be entitled to:
- 27.3.1 assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to the Commissioner; or
 - 27.3.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Trust,

provided that such assignment, novation or disposal shall not increase the burden of the Provider's obligations under the Framework Agreement. The Provider shall join in any novation under this Clause.

28 DENIAL OF PARTNERSHIP

This Framework Agreement shall not operate so as to create a partnership, joint venture or relationship of employment or of principal and agent of any kind between the Parties.

29 RIGHTS OF THIRD PARTIES

The Commissioner(s) can enforce the terms of this Framework Agreement which are not reserved to the Trust. Subject thereto a person who is not party to this Framework Agreement ("**Third Party**") has no right to enforce any term of this Framework Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of the Commissioner(s) or any Third Party.

30 VARIATION TO THE FRAMEWORK AGREEMENT

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 9.

31 WAIVER

Save where and to the extent expressly stated in this Framework Agreement, no failure to exercise and no delay in exercising on the part of any Party any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude the enforcement of any other right, power or privilege herein be taken or held to be a waiver of the provision itself. Any waiver must be in writing to be effective.

32 SEVERABILITY

If any part of this Framework Agreement is found by a court of competent jurisdiction to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of the Framework Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law. If any provision or part-provision of this Framework Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

33 FORCE MAJEURE

No Party shall be in breach of this Framework Agreement, nor liable for any failure or delay in performance of any obligation under this Framework Agreement to the extent arising from or attributable to Force Majeure.

34 ENTIRE AGREEMENT

34.1 This Framework Agreement constitutes the entire agreement and understanding of the Parties and supersedes (and renders null and void) any previous agreement or understanding between the Parties relating to the subject matters of this Framework Agreement.

34.2 The Parties acknowledge and agree that in entering into this Framework Agreement they do not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in this Framework Agreement.

34.3 Nothing in this Clause shall operate to exclude any liability for Fraud.

35 NOTICES

35.1 All notices which are required to be given under this Framework Agreement must be in writing and sent to:

35.1.1 in the case of the Trust, Mr Nicholas Craig Cowley, NHS Wales Shared Services Partnership, 4th Floor, Companies House, Crown Way, Cardiff. CF14 3UB;

35.1.2 in the case of a Commissioner, the Chief Executive of that Commissioner (or such other Authorised Officer of the Commissioner as that Commissioner may designate from time to time) or such person as may be identified in the relevant Placement Agreement; and

35.1.3 in the case of the Provider [•]

35.2 Any such notice may be delivered personally, by e-mail, by first class pre-paid letter or recorded delivery, or by commercial courier and shall be deemed to have been received:

35.2.1 if delivered personally, at the time of delivery;

35.2.2 if sent by e-mail, at the time sent;

35.2.3 if sent by first class pre-paid letter or recorded delivery, at 9.00 am on the second Working Day after the date of mailing; or

35.2.4 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

35.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action which shall be governed by rules of court.

36 COMPLAINTS HANDLING AND RESOLUTION

36.1 The Provider shall notify the Trust of any Complaint made by the Commissioner within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint.

36.2 Without prejudice to any rights and remedies that a complainant may have at law, including under this Framework Agreement or a Placement Agreement, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Framework Agreement or a Placement Agreement, the Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

36.3 Within two (2) Working Days of a request by the Trust, the Provider shall provide full details of a Complaint to the Trust, including details of steps taken to its resolution.

37 DISPUTE RESOLUTION

37.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to persons identified in Clause 35 above.

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

37.3 If the dispute cannot be resolved by the Parties pursuant to Clause 37.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 37.5 unless:

37.3.1 the Trust (or the Commissioner if applicable) considers that the dispute is not suitable for resolution by mediation; or

37.3.2 the Provider does not agree to mediation.

37.4 The obligations of the Parties under this Framework Agreement shall not be suspended, cease or be delayed by the referral of a dispute to mediation and the Provider and its Staff shall comply fully with the requirements of this Framework Agreement at all times.

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

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

37.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;

37.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

37.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

37.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and

37.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

38 WELSH LANGUAGE OBLIGATIONS

The Provider warrants that it will not supply the Services in breach of the Welsh Language Obligations, nor in such a way as to render the Trust or the Commissioner in breach of its Welsh Language Obligations.

39 COSTS AND EXPENSES

The Parties shall be responsible for paying their own costs and expenses incurred in connection with the negotiation, preparation and execution of this Framework Agreement.

40 LAW AND JURISDICTION

40.1 This Framework Agreement shall be construed as being made in Wales and in accordance with and governed by the Laws of England and Wales, as they are applied in Wales.

40.2 The Parties irrevocably agree to submit to the exclusive jurisdiction of the Courts of England and Wales sitting in Cardiff (save in the case of the Trust or the Health Boards only where the Welsh Ministers direct that the High Court in London (or elsewhere) should have jurisdiction).

41 COMMUNITY BENEFITS

The Provider shall use reasonable endeavours to deliver the community benefits detailed in Schedule 10.

42 FINANCIAL GUARANTEE

The Provider must, within 5 days of the Commencement Date , deliver to the Trust the deed of guarantee set out in Schedule 11, duly executed by the Guarantor (as defined in Schedule 11) and in full force and effect.

SIGNED by or on behalf of the Parties on the date which first appears in this Framework Agreement

Schedule 2 Specification

Part 1 Services

The provision of the Services will be subject always to the National Minimum Standards.

In the event of any conflict or inconsistency between the National Minimum Standards and the Services, then, for the purposes of performance monitoring of the Provider's delivery of Services under this Framework Agreement pursuant to Schedule 7 (Quality Improvement Assurance System) the Services shall prevail.

PART 1A: FRAMEWORK LOT – SERVICES SPECIFIC

- 1 In respect of Services provided in relation to Framework Lots CS-1 to CS-9
 - 1.1 Pre admission assessment
 - 1.2 Resident transportation on discharge
 - 1.3 Language interpreter, translator, signing (including but not limited to Care and Support Plan reviews, community activities, 1:1 Equivalent Care)
 - 1.4 Hotel services (inclusive but not limited to all food, catering products and services, cleaning products and services, bedding, towels, laundry services and products)
 - 1.5 All prescribed medication
 - 1.6 All treatments and interventions related to physical care or ill health
 - 1.7 Access to primary care health services (including but not limited to GP, opticians, dentist, podiatry, speech and language therapist, immunisation, annual health checks)
 - 1.8 Leisure or social activities delivered within the Care Home
 - 1.9 An adequate and safe level and skill mix of Staff to ensure the needs of the Residents are met
 - 1.10 General support provided by Staff to Residents and the facilitation of social / group activities within and outside of the Care Home
- 2 In respect of Services provided in relation to Framework Lots CS-4 to CS-9:
 - 2.1 a minimum 21 hours of 1:1 Equivalent Care for each Resident at Care Input Tariff Staff Level 1 (by reference to Table 2 of Schedule 4), including (but not limited to):
 - 2.1.1 all escort activities outside of the Care Home (including but not limited to leisure, shopping, education, social, home visits, primary care access, hospital or out-patient appointments, elective or non-elective hospital admissions)
 - 2.1.2 support within and outside of the Care Home that promotes independence (including, but not limited to assisted personal hygiene, cooking, laundry, gardening, cleaning)

- 2.1.3 all pharmacological / psychological / psychosocial / therapeutic / supportive / well-being programmes, interventions, treatments and therapies

PART 1B: FRAMEWORK LOT – SERVICES GENERIC

In respect of Services provided in relation to Framework Lots CS-1 to CS-9

1 THE PROVIDER SUPPORTED THE RESIDENT TO BE SAFE

The Provider must ensure that:

- 1.1 at all times there is a single identified Staff member with overall responsibility for the Care Home who has the authority and capability to arrange for additional Staff if required, either independently or through an on-call manager
- 1.2 at least once per week the number of Staff and skill mix providing the Services is reviewed to ensure all Residents' needs can be met with due regard to risk and complexity. Any restrictions, potential restrictions or perceived restrictions on choice, freedom, services or facilities are subject to appropriate legal processes or guidance including, but not limited to Guardianship (in accordance with Mental Health Act 1983 Code of Practice for Wales), the Mental Health Act 1983 (as amended), the Mental Capacity Act 2005 (including the Deprivation of Liberties Safeguards 2009).
- 1.3 staff are able to raise any concerns on quality of the services they provide without prejudicing their current employment and are informed of the rights and duty of whistleblowing during induction and on an annual basis.
- 1.4 staff must be trained at induction and refreshed annually in safeguarding and demonstrate competency in understanding various types of potential abuse (Including, but not limited to, physical, sexual, psychological, neglect / omission, institutional, financial / material, discriminatory)
- 1.5 staff demonstrate an understanding of relevant guidance and Code of Practices including but not limited to Guardianship (in accordance with Mental Health Act 1983 Code of Practice for Wales), the Mental Health Act 1983 (as amended), the Mental Capacity Act 2005 (including the Deprivation of Liberties Safeguards 2009) and the Social Services & Well Being (Wales) Act 2014),
- 1.6 non-permanent (bank, agency, casual) Staff must be provided with an induction to the Care Home and to each Resident, work alongside permanent Staff; and be appropriately trained, qualified and experienced to meet the Residents' needs prior to delivering any support
- 1.7 Residents live in an environment that is free from bullying, harassment and discrimination and any other form of abuse (in line with legislation and Good Practice) and that there are processes in place to eradicate bullying / exploitation between Residents, manage Residents who are bullying / exploiting other Residents; and provide emotional support for Residents who have been subject to bullying / exploitation; and provide education and information to Residents to recognise if they are being subjected to bullying and harassment

- 1.8 records will be kept of any incidents involving de-escalation and physical intervention used with Residents and the use of physical interventions will be clearly recorded and reviewed in line with good practice, professional standards and national and local guidance.
- 1.9 physical interventions, time outs and intensive support are used as interventions of last resort after, whenever possible, de-escalation techniques and positive behavioural support interventions have been attempted; and in line with Good Practice, professional standards and national and local guidance; and with due consideration of the self-respect, dignity, privacy, cultural values and individual needs of the Residents.
- 1.10 observations of a Resident at risk of self-injury, violence or neglect are undertaken in a manner that is unobtrusive but safe, in a manner which is meaningful, supportive and therapeutic for the Residents; and for the minimum period necessary.
- 1.11 on or before the commencement of Services to the Resident, the rationale for undertaking non-general observations of the Resident are clearly documented and discussed with the Resident, carers and Local Care Team.
- 1.12 staff induction will include (but will not be limited to): appropriate behaviour and conduct of Staff; caring with dignity, respect and compassion; person centred care and how to provide active support ('*doing with, not for*'); skills in communication, active listening and responding; recognising the deteriorating Resident / responding to change outcome focused practice; raising issues and concerns about care; how to respond to problems and dilemmas

2 THE PROVIDER SUPPORTED THE RESIDENT TO FEEL AT HOME

The Provider must ensure that:

- 2.1 all information given, or available to the Resident is in clear and non-technical language and in appropriate formats (for example easy read, leaflets, video) and that, the Residents must be given assistance by Staff to understand the information if necessary
- 2.2 Residents can keep and control their money and personal belongings, unless individual circumstances mean that specific legal arrangements disallow this.
- 2.3 Residents have unrestricted 24 hour access to the Care Home and grounds subject to best interests and risk assessment (that takes account of all the Residents in the Care Home, visitors have access to the Care Home subject to risk assessment and individual and collective service user consent.
- 2.4 subject to risk assessment, the Resident is enabled and supported to participate in all household activities and they promote independence, individual choice and freedom of movement, subject to restrictions agreed in the Care and Support Plan, they are developed and reviewed by the Residents; and they are clearly explained to the Resident on admission and at regular intervals.
- 2.5 the Resident is enabled to plan, prepare and serve meals and to choose a variety of meals, which are enjoyable and nutritionally beneficial with due regard to risk, privacy and best interests

- 2.6 the Resident has access to telephone facilities and a computer with internet facilities,
- 2.7 digital inclusion is promoted by providing training and information on the use of phones, computers and other practical everyday technology to Residents
- 2.8 the Care Home has a model of care in place which promotes a positive and hopeful culture, encourages the adoption of positive work behaviour and attitudes by Staff, promotes decreasing dependence and increasing independence, recognises and encourages interdependence between Resident, Staff, community and Local Care Team; and accords to the principles of the Social Services and Well-being (Wales) Act 2014
- 2.9 for Residents and carers, there is clear and accessible information available on the process for making suggestions, compliments and comments about the Providers' Staff and Services, Staff support them to understand their rights to express dissatisfaction; and they are enabled to access advocacy to support them to comment or complain about services and the Provider must maintain a record of all consultations
- 2.10 the Residents' needs in respect of the Equality Act 2010 (specifically, the Residents' needs in relation to race, disability, gender, sexual orientation, age, relationships and family life, religion or belief, gender identity, pregnancy and maternity) are identified and addressed
- 2.11 its current 'Q' ranking, as determined in accordance with Schedule 7, in respect of each Care Setting or Care Setting group (as the case may be) is clearly displayed at the entrance to each of those Care Settings at such location, in such form, and includes such content as the Trust may require from time to time.

3 THE PROVIDER SUPPORTED THE RESIDENT AND THE RESIDENTS COMMUNITY TO VALUE EACH OTHER

The Provider must ensure that:

- 3.1 Residents are enabled and supported to maintain, learn and use practical life skills that enable and encourage them to function independently (including but not limited to social skills, self-advocacy, personal safety money skills, laundry, cooking, accessing services and using transport)
- 3.2 Residents have access to, and are supported to participate in a range of meaningful and culturally appropriate activities for the Resident both within and outside of the Care Home; and a range of culturally diverse activities
- 3.3 activities support or address the Residents' individual strengths, needs, preferences and aspirations wherever possible and reasonably practicable.
- 3.4 they support the Residents' and communities' interdependence by enabling and encouraging paid employment, voluntary work, community participation and mutual learning opportunities

4 THE PROVIDER SUPPORTED THE RESIDENT TO BE HEALTHY

The Provider must ensure that:

- 4.1 Residents have access to information on healthy lifestyles (including but not limited to diet, exercise, smoking cessation, alcohol / drug misuse) which raises awareness and supports them to make informed choices about their own health and well being
- 4.2 information and support on maintaining a balanced diet is provided to the Residents and the consumption of food with low nutritional value is discouraged;
- 4.3 on occasion of the failure either to provide for, or for the Resident to not attend, participate or agree to undertake any identified Physical or Health and Well Being intervention, the rationale for this is clearly documented.
- 4.4 access to exercise facilities and equipment and personalised exercise programmes both in the Care Home and community are enabled and encouraged for each Resident with due regard to space, ability, health and risk

5 THE PROVIDER SUPPORTED THE RESIDENT TO RECOVER AND STAY WELL

The Provider must ensure that:

- 5.1 all Residents' needs can be met through the range of interventions in place (including but not limited to: psychological therapies, psychosocial therapies, therapeutic interventions, supportive sessions and well-being programmes), the appropriate number of Staff hours and skill mix and through appropriate Staff qualifications, experience, training and approach.
- 5.2 all individualised prescribed medication is available and offered as prescribed to the Residents, the minimum required to achieve the identified clinical outcome(s); and reviewed as directed by a qualified practitioner or whenever necessary through change of presentation or circumstance.
- 5.3 on occasion of the failure to provide, or for the Resident to accept or receive any individualised prescribed medication, the rationale for this is clearly documented.

6 THE PROVIDER SUPPORTED THE RESIDENT TO PROGRESS AND MOVE ON

The Provider must ensure that:

- 6.1 Care and Support Plan(s) are in place and current, set out all the Residents' physical health, mental health, emotional wellbeing, social and intellectual needs, each need has a corresponding positive outcome(s) documented, describes the timescales and interventions and activities to be provided by Staff in the Care Home to achieve the outcome(s), records any needs which will remain unmet during the duration of the Care and Support Plan; and be developed in accordance with, Good Practice, professional standards and national and local guidance and the Law
- 6.2 the Resident is appropriately supported to take as much responsibility for developing the Care and Support Plan(s) as they are able, co-production of the Care and Support Plan(s) by the Resident, family, carers, advocate and Local Care Team are clearly documented; and the Care and Support Plan(s) is developed and composed from the perspective of the Resident
- 6.3 the Provider must ensure that Care and Support Plan(s) are reviewed and updated at a minimum of every three (3) months with the Resident and any unmet needs are clearly documented and communicated to Commissioners. Furthermore, the care/support plans are

reviewed at least annually with the Local Care Team (and involving family, friends and advocates as agreed with the Resident) via the Care and Support planning meeting; and whenever necessary through change of presentation or circumstance.

- 6.4 Residents have a member of Staff who is identified as their key worker, who will communicate with them, be familiar with their history and needs, understand their racial and, or cultural heritage, act as an advocate by reporting and documenting from the Residents' perspective; and be available to discuss the Residents' needs with them at reasonable times
- 6.5 all Care and / or Clinical Record are available, accurate, complete, verified, understandable and contemporaneous in accordance with best practice, professional standards and national and local guidance; and Residents are supported to access their Care and / or Clinical Record if they request to do so subject to their best interests and a risk assessment.

7 PART 1C: OPERATIONAL AND IT REQUIREMENTS

- 7.1 The Provider must ensure that it has, or has access to, appropriate information technology capability to include, as a minimum: (i) a scanner and (ii) a PC, laptop, tablet or similar whose functionality provides for full internet access operating via Internet Explorer 9 or such other browser version as may be required by the Trust from time to time.
- 7.2 The Provider must, within five (5) days of the Commencement Date confirm to the Trust:
 - 7.2.1 its acceptance of the CCAPS terms of use.
 - 7.2.2 the identity of one person (the "Identified Person") within the Providers organisation who shall be responsible for all data protection and information governance arrangements arising from, or in connection with this Framework Agreement and the use of the CCAPS in particular.
- 7.3 Staff must complete training appropriate to their approved role and responsibilities by such date as may be determined by the Trust (acting reasonably). The completion of such training shall be a condition precedent of the Providers' access to, and use of the CCAPS and commencement of delivery of Services under this Framework Agreement.
- 7.4 The Provider may use the NHS Wales secure file sharing portal system to send Confidential Information to the Commissioner. The Provider shall comply at all times with the NHS Wales secure file sharing portal system User Guide, as may be amended from time to time.

Part 2
Resident Placement Procedure

The Commissioner shall order Services in accordance with the following 'CAARE' placement procedure (such procedure shall at the Commissioner's discretion, but not necessarily, be undertaken in sequential order):

- 1 C - Care Home / Setting appraisal undertaken by the Commissioner responsible for placement to determine (i) under which Framework Lot the Resident's care requirement falls and (ii) the Care Home / Setting the Resident should be placed.
- 2 A - Availability of beds in Care Homes / Settings within the required Framework Lot and within pre-agreed radius, for example - 10 mile of a postcode significant to a Resident.
- 3 A - Assurance rating – in the order of the Care Home with the highest Quality Assurance Rating first (by reference to Schedule 7).
- 4 R - Ranking by price – in the order of lowest composite price* Care Home / Setting first.
- 5 *composite price = 'Core Care Package Price' + (if applicable) 'Non-Core Additional Care Hours' price (by reference to Table 1 and Table 2 of Schedule 4).
- 6 E - Essential care requirements as agreed by the Commissioner in co-operation with the Resident's Local Care Team to make an informed choice, for example, single sex Care Home, social needs and Resident mix.

Subject always to the Commissioner being satisfied that the Provider identified (in accordance with the placement procedure set out above) can meet all applicable care, geographical and social needs required to aid the Resident's care and recovery; and as to the availability of appropriate care infrastructure required to aid the Resident's care and recovery.

Following the Commissioner undertaking the procedure set out above, the applicable Provider shall undertake an assessment of the Resident within a mutually agreed time period and either notify the Commissioner:

- (i) that it is not able to provide the requested Services together with the reasons; or
- (ii) that it is able to provide the requested Services in which case the Provider must provide such information as the Commissioner may require to complete a draft Resident Placement Agreement (see Schedule 5).

In preparing the draft Resident Placement Agreement the Commissioner shall calculate the Service Payment by reference to the agreed charges for the Services set out in Schedule 4 (*Pricing*).

Residents who attain the age of 65 years whilst receiving Services will continue to receive such Services in accordance with the terms of this Framework Agreement subject always to the discretion of the Commissioner.

Schedule 3

Applicable terms

1 TERM OF PLACEMENT AGREEMENT

Each Placement Agreement shall come into force on the date it is executed by its Parties in accordance with Clause 2 of the Framework Agreement or such later date as is specified in the Placement Agreement and shall continue until the expiry of the term set out in the Placement Agreement, unless terminated early in accordance with these Applicable Terms or by Law.

2 SERVICES

2.1 The Provider shall supply the Services in accordance with:

2.1.1 these Applicable Terms and any express terms set out in the Placement Agreement;

2.1.2 the Specification as set out in Schedule 2 (*Specification*) of the Framework Agreement;

2.1.3 reasonable skill and care and in accordance with any quality assurance standards as set out in Schedule 7 (*Quality Assurance Improvement System*) of the Framework Agreement;

2.1.4 the Law and Guidance;

2.1.5 Good Practice; and

2.1.6 the Policies.

2.2 The Provider shall provide the Services from the date specified in the Placement Agreement or, if no date is specified, from the date such Placement Agreement comes into force in accordance with Clause 1.

2.3 Any variations sought by the Provider to the Services provided under the Placement Agreement must be made only in accordance with Clause 4.

2.4 Except where required by Law, the Provider shall not be required to provide or to continue to provide Services to Residents who in the reasonable professional opinion of the Provider are unsuitable to receive the relevant Service, for as long as such unsuitability remains.

2.5 Where the Provider proposes not to provide Services or to discontinue provision of Services in respect of any Resident under Clause 2.4 the Provider shall give the Commissioner sufficient prior notice and shall liaise with the Commissioner to resolve the issue of the provision of the relevant care to the Resident in a way that minimises any disruption to the Resident's care, provided that nothing in this Clause shall entitle the Provider not to provide or to discontinue provision of the Services in cases where to do so would be contrary to Law.

2.6 Where, pursuant to Clause 2.5 the Provider and the Commissioner cannot agree on the continued provision of the relevant care to a Resident, the Provider shall notify the Commissioner that it will discontinue the provision of Services to that Resident, and the

Commissioner shall use reasonable endeavours, as soon as reasonably practicable, to procure alternative services for that Resident.

- 2.7 The Provider undertakes, warrants and represents to the Commissioner that:
- 2.7.1 it has full right, power and authority to enter into the Placement Agreement and to provide the Services to the Commissioner;
 - 2.7.2 its entry into and performance of the Placement Agreement will not cause it to be in breach of any obligations to a third party;
 - 2.7.3 there is no litigation to which the Provider is a party which would prevent the Provider's performance of its obligations under the Placement Agreement;
 - 2.7.4 it is of sound financial standing and the Provider is not aware of any circumstances (other than any circumstances that may be disclosed in the auditor's report on the accounts) which will materially adversely affect that financial standing in the future;
 - 2.7.5 it has obtained and complied with and will maintain all applicable Consents required for it to provide the Services and that in its provision of the Services it will comply with all applicable Laws;
 - 2.7.6 it will make sure that, when complying with its obligations under the Placement Agreement, it minimises any interference with the activities of the Commissioner, its members, employees or agents; and
 - 2.7.7 it will consult with the Commissioner as often as may be reasonably necessary for it to provide the Services in accordance with the Placement Agreement.
- 2.8 The Provider further undertakes, warrants and represents that the receipt of the Services by the Commissioner shall not infringe the Intellectual Property Rights or other proprietary or equitable rights of any third party.
- 2.9 The Provider shall ensure that the Commissioner is kept advised at all times of any increases and / or decreases in bed capacity within the Provider's Lots and the Care Homes.

3 PAYMENT

- 3.1 The Commissioner shall pay the Provider the Service Payments in accordance with the provisions of Schedule 4 (*Pricing*) of the Framework Agreement. Unless specified to the contrary or agreed in writing by the Parties:
- 3.1.1 the Service Payments are the only amounts payable by the Commissioner under the Placement Agreement;
 - 3.1.2 save where specified to the contrary in the Placement Agreement, all costs, charges and expenses which relate to performance of the Provider's obligations under the Placement Agreement and the provision of the Services will be borne by the Provider from the Service Payments. The fact that a provision does not state that the Provider must perform the obligations "at no additional charge" will not be taken as implying that the Provider may charge extra for complying with the obligation; and

- 3.1.3 the Service Payments are fixed and are not subject to any increase or indexation save to the extent set out in Schedule 4 (*Pricing*) of the Framework Agreement.
- 3.2 The Commissioner believes (and the Provider has confirmed) that the provision of the Services do not constitute a supply subject to VAT. To the extent that the Services will be subject to VAT, the Commissioner will pay such tax, subject to production of a valid VAT invoice for the same.
- 3.3 In consideration of the Provider's performance of the Services in strict accordance with the Placement Agreement the Commissioner shall pay sums due under the Placement Agreement to the Provider within thirty (30) days of receiving the Provider's valid invoice for the same. The Provider shall invoice the Commissioner in accordance with the provisions of Schedule 4 (*Pricing*) of the Framework Agreement.
- 3.4 If the Commissioner fails to pay any undisputed sums due properly invoiced under the Placement Agreement, the Provider shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Provider acknowledges that this amounts to a substantial remedy for the late payment of any sums due.
- 3.5 The Commissioner has a duty to account for the disbursement of public funds. The Provider therefore agrees:
- 3.5.1 to keep proper records in respect of all payments made to it pursuant to the Placement Agreement and to allow inspection of such records at all reasonable times and by prior appointment by the Authorised Officer for the sole purpose of verifying the Provider's contractual fulfilment of its obligations and the amounts due to the Provider under the Placement Agreement;
- 3.5.2 to make available such facilities and give such assistance as the Commissioner may reasonably request in respect of such Audit (including providing such copies or extracts of its records as the Commissioner may reasonably request);
- 3.5.3 to afford the Authorised Officer reasonable access to such information, documents, records and data as may be relevant to the Provider's performance under the Placement Agreement provided that the Provider may require the Authorised Officers to enter into a confidentiality agreement (reasonably acceptable to the Commissioner) prior to any such Audit; and
- 3.5.4 to maintain and keep secure all financial records, accounts and documents in its possession, custody or control and which relate to the Placement Agreement for a period of six (6) years from the end of the financial year in which the last payment is made by the Commissioner under the terms of the Placement Agreement.
- 3.6 If requested by the Commissioner, the Provider shall use the Electronic Trading System to facilitate, inter alia, the Placement Procedure, the provision of pricing information and invoicing, together with the exchange of such other information relating to this Placement Agreement as the Commissioner may reasonably require from time to time.

4 VARIATION OF SERVICES PROVIDED UNDER A PLACEMENT AGREEMENT

- 4.1 Subject always to the provisions of this Clause 4, the Provider may request a variation to the Services provided under a Placement Agreement provided that such variation does not amount to a material change to the Services. Such a change is hereinafter called a "**Variation**".
- 4.2 The Provider may request a Variation by completing and sending the Variation form attached at Appendix 1 (the "**Variation Form**") to the Commissioner giving sufficient information for the Commissioner to assess the extent of the Variation and any additional cost that may be incurred.
- 4.3 In the event that the Commissioner does not agree the Variation to the Services or, where applicable, a change to the Service Payment, the Provider will continue to perform its obligations under the Placement Agreement without the Variation.
- 4.4 The Commissioner may at any time propose to the Provider a Variation to the Services provided under a Placement Agreement by completing and sending a Variation Form to the Provider and the Provider shall not unreasonably withhold or delay its consent to such Variation.
- 4.5 If the Parties agree the Variation and any variation in the Service Payments, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Placement Agreement.

5 EMPLOYEES

- 5.1 The Provider must be entirely responsible for the employment or engagement and the conditions of service of its Staff employed or otherwise engaged in the provision of the Services.
- 5.2 The Provider must employ or engage sufficient Staff to ensure that all of the Services are provided at all times and in all respects in compliance with Clause 2.1. This must include, but not be limited to, the Provider providing a sufficient reserve of trained and competent Staff to provide the Services during staff holidays or absence due to sickness or voluntary absence.
- 5.3 In relation to the Services, the Provider must employ or engage only such persons as are careful, skilled and experienced in the duties required of them, and must ensure that every such person is properly and sufficiently trained and instructed (at the Provider's expense) and carries out the Services with regard to:
- 5.3.1 the task or tasks that person has to perform;
 - 5.3.2 all relevant provisions of the Placement Agreement and the Specification;
 - 5.3.3 all applicable Law, and all relevant Policies, rules, procedures and standards of the Commissioner (including any discrimination and equal opportunities policies);
 - 5.3.4 the need for those working in a health service environment to observe the highest standards of hygiene, customer care, courtesy and consideration; and

- 5.3.5 the need to keep confidential all information howsoever acquired whether relating to the Commissioner and its business, or relating to Residents, including but not limited to Resident identity, clinical conditions and treatment.
- 5.4 The Provider must ensure that the Staff:
- 5.4.1 if applicable, are registered with the appropriate professional regulatory body;
 - 5.4.2 possess the appropriate qualifications, experience, skills and competencies to perform the duties required of them and be appropriately supervised, managerially and professionally;
 - 5.4.3 are covered by the Provider's indemnity arrangements (as identified and to the extent set out in Clause 13 (Insurance)) for the provision of the Services;
- 5.5 The Commissioner reserves the right to reject Staff whom it considers to be unsuitable for the duties proposed. Where Staff are rejected, the Provider must supply alternative Staff.
- 5.6 The Provider shall immediately provide to the Commissioner any information in respect of any member of Staff registered with the Regulator that the Commissioner reasonably requests,
- 5.7 The Provider must:
- 5.7.1 ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate in the employment or engagement of Staff for the purpose of providing the Services. The Provider must take all reasonable steps (at its own expense) to ensure that all Staff used in the provision of the Services do not unlawfully discriminate; and
 - 5.7.2 in the management of its affairs and the development of its equality and diversity policies, the Provider must co-operate with the Commissioner in respect of the Commissioner's obligations to comply with statutory equality duties. The Provider must take such steps as the Commissioner considers appropriate to promote equality and diversity, including (but not limited to) race equality, equality of opportunity for disabled people, gender (including gender reassignment) equality, and equality relating to religion and belief, sexual orientation, pregnancy and maternity, marriage and civil partnership and age in the provision of the Services.
- 5.8 The Provider shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Placement Agreement to have access to or come into contact with children or other vulnerable persons and / or have access to or come into contact with persons receiving health care services:
- 5.8.1 are questioned concerning their Convictions; and
 - 5.8.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and / or the Policies before the Provider engages the potential staff or persons in the provision of the Services.

- 5.9 The Provider shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Provider's cost and expense.
- 5.10 The Provider shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Commissioner's prior written consent if:
- 5.10.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.8.1;
 - 5.10.2 the person is found to have any Convictions following receipt of standard and / or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.8.2; or
 - 5.10.3 the person fails to obtain standard and / or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Provider in accordance with Clause 5.9.
- 5.11 In addition to the requirements of Clause 5.8 to Clause 5.10, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Provider:
- 5.11.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
 - 5.11.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
 - 5.11.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to Residents or any other person.
- 5.12 The Provider shall ensure that the Commissioner is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Provider or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to Residents or any other person. The Provider shall only be entitled to continue to engage or employ such member of Staff with the Commissioner's written consent and with such safeguards being put in place as the Commissioner may reasonably request. Should the Commissioner withhold consent the Provider shall remove such member of Staff from the provision of the Services forthwith.
- 5.13 The Provider shall ensure that the Commissioner is kept advised at all times of any member of Staff whose employment with the Commissioner has been suspended or terminated.
- 5.14 The Provider shall immediately provide to the Commissioner any information that the Commissioner reasonably requests to enable the Commissioner to satisfy itself that the obligations set out in Clause 5.6 to Clause 5.11 have been met.

- 5.15 The Commissioner may at any time request that the Provider remove and replace any member of Staff from the provision of the Services, provided always that the Commissioner will act reasonably in making such a request. Prior to making any such request the Commissioner shall raise with the Provider the Commissioner's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Commissioner shall be under no obligation to have such prior discussion should the Commissioner have concerns regarding Resident safety.
- 5.16 The Provider must procure that the Commissioner is kept advised at all times of any:
- 5.16.1 disciplinary incident relating to the Staff involving Residents, visitors, or the Commissioner's staff or property; and
- 5.16.2 incidents of serious misconduct involving the Staff.
- 5.17 Subject to its obligations under the Equality Act 2010 relating to disability discrimination, the Provider must not employ or engage in or about the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially place the health of the Commissioner's staff, Residents or visitors at risk. In all such cases, the Provider is required to notify the Authorised Officer of each member of Staff so affected.
- 5.18 It is the joint responsibility of the Provider and its Staff to ensure that the Staff supplied to carry out the Services have not worked excessive hours which could prejudice the standards of service. In accordance with the Working Time Regulations 1998 (as amended) it is the responsibility of the Provider to keep records of hours worked for the Staff.

6 CONTROL AND SUPERVISION OF STAFF

- 6.1 The Provider must make available a Contract Manager to ensure the efficient provision of the specified Services. Duties of the Contract Manager include meeting with the Authorised Officer (at such intervals as the Authorised Officer may determine from time to time) to review, inter alia, contract performance and fulfilment. Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Provider.
- 6.2 Once appointed, the Provider must forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Contract Manager (and of any subsequent appointment) and the date from which their appointment is effective. Until notice of a subsequent appointment shall have been given the Commissioner shall be entitled to treat as Contract Manager the person last notified to the Authorised Officer as being the Contract Manager.
- 6.3 The Provider must ensure that the Contract Manager, or a competent deputy who is duly authorised to act on his behalf, is available to the Commissioner at all times when any Staff are engaged in the provision of any of the Services.
- 6.4 The Contract Manager or his deputy must consult with the Authorised Officer and such other of the Commissioner's own supervisory staff as may from time to time be specified by the Authorised Officer as often as may reasonably be necessary for the efficient provision of the Services in accordance with the Placement Agreement.

- 6.5 The Provider must comply, and must ensure that its Staff comply with, the requirements of relevant Health and Safety and other relevant Law, including regulations and codes of practice issued thereunder.

7 RE-TENDERING AND HANDOVER

- 7.1 On the termination or expiration of the Placement Agreement (in part or otherwise), the identity of the Provider of the Services (or any part of the Services) may change resulting in a transfer of the Services in whole or in part ("**Service Transfer**"). If a Service Transfer is a relevant transfer for the purposes of TUPE then, in such event, the Commissioner or a Replacement Provider may inherit liabilities in respect of the Transferring Employees. Accordingly if TUPE applies on a Service Transfer the provisions in Clauses 7 and 8 shall apply.
- 7.2 Within twenty one (21) days of being so requested by the Commissioner, the Provider must provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Commissioner to issue invitations to tender for the future provision of services equivalent to all or part of the Services, including but not limited to all employee liability information identified in Regulation 11 of TUPE.
- 7.3 Where, in the opinion of the Commissioner, TUPE is likely to apply on the termination or expiration of the Placement Agreement, the information to be provided by the Provider under Clause 7.2 must include, as applicable, accurate information relating to the Staff who would be likely to transfer to the Commissioner or any Replacement Provider under TUPE, including in particular:
- 7.3.1 the number of Staff who would be likely to transfer, including their names (to the extent lawful to provide the same), a breakdown of the work they carry out including details of the work they perform, the amount of time they spend carrying out the Services and details of any other duties they carry out and the locations of such work;
 - 7.3.2 their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment;
 - 7.3.3 the general terms and conditions applicable to them, including (where applicable) any Whitley Council provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements, additional employment benefits and any other particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996;
 - 7.3.4 information of any disciplinary or grievance procedure taken against or by the Staff within the previous two (2) years;
 - 7.3.5 information of any court or tribunal case, claim or action brought by the Staff against the Provider within the previous two (2) years and where the Provider has reasonable grounds to believe that they may bring any court or tribunal case, claim or action

against the Commissioner or Replacement Provider arising out of their employment or engagement with the Provider any information in respect of it; and

- 7.3.6 details of whether they are employees, workers, self-employed, contractors (including sub-contractors) or consultants, servants, suppliers, agency workers or otherwise.
- 7.4 At least fourteen (14) days before the date of the Service Transfer, the Provider shall prepare and provide to the Commissioner and / or, at the direction of the Commissioner, to the Replacement Provider, the Provider's final list of Staff in accordance with Clauses 7.2 and 7.3, which shall be complete and accurate in all material respects. The Provider's final list of Staff shall identify which of the Staff named are Transferring Employees.
- 7.5 The Provider must indemnify in full and keep indemnified the Commissioner against any claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Commissioner or any Replacement Provider including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to any deficiency or inaccuracy in information, which the Provider is required to provide under Clauses 7.2, 7.3 and 7.4.
- 7.6 The Provider must co-operate fully with the Commissioner and the Replacement Provider during and following any re-procurement exercise in respect of services equivalent to all or part of the Services. This co-operation, during the setting up operations period of the Replacement Provider, must extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
- 7.7 Within ten (10) Working Days of being so requested by the Commissioner, the Provider must transfer to the Commissioner, or any person designated by the Commissioner, free of charge, all data, recordings, documentation, planning and drawings held and utilised in the provision of the Services. The transfer must be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Commissioner.

8 TUPE

- 8.1 The Provider will be responsible for the payment of all salaries, benefits, bonuses, PAYE liabilities and pension contributions in accordance with Staff terms and conditions of employment or engagement (whether contractual or otherwise) in respect of the period during which Staff are employed or engaged by the Provider.
- 8.2 The Provider must indemnify in full and keep indemnified the Commissioner (and any Replacement Provider upon exit) against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Commissioner or any Replacement Provider including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 8.2.1 any breach of Clause 8.1;
- 8.2.2 any breaches of the contract of employment, terms and conditions, any Law, obligation or policy applicable to, or any collective agreement in respect of any Transferring Employee;

- 8.2.3 any claims made by a Transferring Employee against the Commissioner (or a Replacement Provider upon exit) at any time for breach of contract, Law, policy or any such collective agreement relating to their employment or engagement, including but not limited to any claims relating to pay, unfair dismissal, statutory or contractual redundancy pay, discrimination on the grounds of a "protected characteristic" as set out in the Equality Act 2010, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment or engagement by the Provider;
- 8.2.4 any claim arising out of the provision of, or proposal by the Provider to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the date of the Service Transfer;
- 8.2.5 any statement communicated to or action done by the Provider or in respect of any Transferring Employee on or before the date of the Service Transfer regarding the Service Transfer which has not been agreed in advance with the Commissioner in writing,

provided that any breaches referred to in Clause 8.2 result from any act, fault or omission of the Provider prior to the date of the Service Transfer and while such persons were employed or engaged by the Provider.

- 8.3 The Provider shall also indemnify in full and keep indemnified the Commissioner and any Replacement Provider (on exit) in respect of any claims arising from any act or omission of the Provider in relation to any other member of Staff or any other person at any time employed or engaged by the Provider who is not a Transferring Employee during any period whether before, on or after the date of the Service Transfer.
- 8.4 Except with the prior written consent of the Commissioner, the Provider must not, after the Commissioner has served notice of the termination of the Placement Agreement or after the Trust has served notice of termination of the Framework Agreement or after the Provider shall have otherwise become aware of the proposed termination of the Placement Agreement, the Framework Agreement or the provision by it of the Services:
 - 8.4.1 materially increase the total number of Staff;
 - 8.4.2 vary any terms and conditions of employment of any member of Staff or any policy or collective agreement applicable to any member of Staff then assigned by the Provider to the provisions of the Services (provided always that this provision shall not affect the right of the Provider to give effect to any pre-existing contractual obligation to any such person);
 - 8.4.3 remove or replace any particular member of Staff so assigned (unless upon the resignation of such person in which case the Provider must replace such person with another person of similar skills, qualifications and experience);
 - 8.4.4 increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed with the Commissioner; or

- 8.4.5 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any Staff.
- 8.5 If the Provider ceases to provide all or any of the Services, and all or any of the Services (or services equivalent to the Services) are transferred to a Replacement Provider or the Commissioner in circumstances where TUPE applies, the Provider agrees that subject to an employee's right to object pursuant to Regulation 4(7) of TUPE, the Provider must:
- 8.5.1 use reasonable endeavours to ensure there is a smooth transition in respect of the transfer of any Transferring Employee and that any Transferring Employee can become an employee of the Replacement Provider or the Commissioner on the date of the Service Transfer;
- 8.5.2 without prejudice to the foregoing, in respect of the Service Transfer comply with its obligations to inform and consult pursuant to regulations 13 and 14 of TUPE;
- 8.5.3 indemnify in full and keep indemnified the Commissioner and / or any Replacement Provider against any claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Commissioner or any Replacement Provider including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 8.5.3.1 the termination of employment of any Staff or any other person employed or engaged or formerly employed or engaged by the Provider other than the Transferring Employees where the employment or engagement of such person is alleged or deemed to have transferred to the Commissioner or Replacement Provider pursuant to TUPE; and
- 8.5.3.2 any act or omission of the Provider in relation to its obligations under regulation 11 of TUPE, or in respect of an award of compensation under regulation 12 of TUPE except to the extent that the liability arises from the Commissioner or Replacement Provider's failure to comply with regulation 11 of TUPE.
- 8.6 The Provider, the Commissioner and any Replacement Provider shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.
- 8.7 Whilst the Parties consider that it is unlikely that TUPE will apply in relation to the commencement of supply of the Services or to the termination of the supply of the Services under the Placement Agreement or the Framework Agreement, the Parties agree nevertheless that each possible transfer situation will be dealt with by the Parties in accordance with the Cabinet Office Statement of Practice: Staff Transfers in the Public Sector (Jan 2000, revised November 2007), as amended, replaced or supplemented from time to time including, for the avoidance of doubt, the schedule "A Fair Deal for Staff Pensions" as amended, replaced or supplemented from time to time (the "**Statement of Practice**") unless the Statement of Practice is withdrawn. The Parties will comply with and discharge all obligations placed upon them by the Statement of Practice. For the avoidance of doubt, the Parties agree to negotiate in good faith in order to enter into all further agreements necessary to ensure that the Commissioner

can impose upon the Replacement Provider requirements as set out in the Statement of Practice.

9 PERFORMANCE MONITORING AND REPORTING

9.1 The provisions of Schedule 7 (*Quality Assurance Improvement System*) of the Framework Agreement shall apply.

9.2 The Commissioner shall be entitled to Audit the Provider's compliance with Schedule 7.

10 CONFIDENTIALITY

10.1 In respect of any Confidential Information it may receive from the other Party (the "**Discloser**") and subject always to the remainder of this Clause 10 each Party (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

10.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Placement Agreement; and

10.1.2 the provisions of this Clause 10 shall not apply to any Confidential Information which:

10.1.2.1 is in or enters the public domain other than by breach of the Placement Agreement or other act or omissions of the Recipient;

10.1.2.2 is obtained by a third party who is lawfully authorised to disclose such information; or

10.1.2.3 is authorised for release by the prior written consent of the Discloser; or

10.1.2.4 is required to be disclosed to ensure the compliance of the Commissioner with FOIA or the Environmental Information Regulations.

10.2 Nothing in this Clause 10 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law or, where the Provider is the Recipient, to the Provider's immediate or ultimate holding company provided that the Provider procures that such holding company undertakes directly with the Discloser that it will comply with this Clause 10 as if any reference to the Provider in this Clause 10 were a reference to such holding company.

10.3 The Provider agrees that:

10.3.1 without prejudice to the generality of Clause 10.2 the provisions of this Clause 10 are subject to the respective obligations and commitments of the Commissioner under the FOIA, the Environmental Information Regulations and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under sections 45 and 46 of the FOIA respectively);

- 10.3.2 subject to Clause 10.3.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Commissioner; and
- 10.3.3 where the Commissioner is managing a request as referred to in Clause 10.3.2, the Provider must co-operate with the Commissioner and must respond within five (5) Working Days of any request by it for assistance in determining how to respond to a request for disclosure.
- 10.4 The Provider must and must procure that its Staff must:
- 10.4.1 transfer any request for information, as defined under section 8 of the FOIA, to the Commissioner as soon as practicable after receipt and in any event within five (5) Working Days of receiving a request for information;
- 10.4.2 provide the Commissioner with a copy of all information in its possession or power in the form that the Commissioner requires within five (5) Working Days (or such other period as the Commissioner may specify) of the Commissioner requesting that information; and
- 10.4.3 provide all necessary assistance as reasonably requested by the Commissioner to enable the Commissioner to respond to a request for information within the time for compliance set out in section 10 of the FOIA.
- 10.5 The Commissioner may consult the Provider in relation to any request for disclosure of the Provider's Confidential Information in accordance with applicable Guidance.
- 10.6 This Clause 10 shall remain in force without limit in time.

11 DATA PROTECTION

- 11.1 This Clause 11 sets out the respective roles and obligations of the parties in respect of the processing of Personal Data under this Agreement. In this Clause 11, the terms **Personal Data**, **Data Controller**, **Data Processor** and processing shall bear the meanings as defined in the DPA.
- 11.2 This Clause 11 shall remain in force without limit in time.

Roles of the Parties

- 11.3 The Provider acknowledges that for the purposes of the DPA, the Trust and the Commissioner are each a Data Controller in respect of the Personal Data processed under this Agreement.
- 11.4 Where the Provider is processing Personal Data solely on behalf of the Trust and the Commissioner, the Provider will be a Data Processor and must comply with all of the provisions of this Clause 11 except Clause 11.9.
- 11.5 To the extent that the Provider processes any Personal Data as a Data Controller, the Provider, the Trust and the Commissioner shall be joint Data Controllers and the Provider must comply with all the provisions of this Clause 11 except Clause 11.8.

Provisions relating to all processing of Personal Data by the Provider

- 11.6 The Provider must indemnify and keep indemnified the Trust and the Commissioner against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Trust and the Commissioner respectively, as a result of any claim made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the Provider's unauthorised processing, unlawful processing, destruction of and / or damage to any Personal Data processed by the Provider.
- 11.7 The Provider must assist the Trust and the Commissioner to comply with the DPA. This includes the Provider providing the Trust and the Commissioner with all assistance as may be required in complying with subject access requests served on the Trust and the Commissioner under Section 7 of the DPA and the disclosure by the Provider of any Personal Data in relation to such requests.

The Provider as a Data Processor

- 11.8 Whenever the Provider is processing Personal Data as a Data Processor, the Provider must comply with the obligations placed on the Trust and the Commissioner by the seventh data protection principle (the "**Seventh Principle**") set out in the DPA, namely:
- 11.8.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Trust and the Commissioner by the Seventh Principle;
- 11.8.2 only to process Personal Data for and on behalf of the Trust and the Commissioner, in accordance with the instructions of the Trust and the Commissioner and for the purpose of performing the Services in accordance with the Placement Agreement;
- 11.8.3 not transfer any Personal Data obtained pursuant to the Provider's provision of the Services outside the European Economic Area without the prior written consent of the Commissioner; and
- 11.8.4 to allow the Trust and the Commissioner to audit the Provider's compliance with the requirements of this Clause 11 on reasonable notice and / or to provide the Trust and the Commissioner with evidence of its compliance with the obligations set out in this Clause 11.

The Provider as a Data Controller

- 11.9 Whenever the Provider is processing Personal Data as a Data Controller, the Provider must at all times:
- 11.9.1 comply with its obligations under the DPA;
- 11.9.2 maintain an up to date notification with the Information Commissioner;
- 11.9.3 not transfer any Personal Data obtained pursuant to the Provider's provision of the Services outside the European Economic Area without the prior written consent of the Data Controllers; and

11.9.4 maintain appropriate technical and organisational security measures in order to comply with its obligations under the Seventh Principle.

12 PREVENTION OF CORRUPTION AND BRIBERY

12.1 The Provider must:

12.1.1 without prejudice to its other obligations to comply with Laws, comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

12.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

12.1.3 comply with any of the Commissioner's or the Trust's ethics, anti-bribery and anti-corruption policies in each case as the Commissioner or the Trust (as applicable) may update them from time to time ("**Relevant Policies**");

12.1.4 have and shall maintain in place throughout the Term its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 12.1.2, and will enforce them where appropriate;

12.1.5 immediately notify the Commissioner if a foreign public official becomes an officer or employee of the Provider or acquires a direct or indirect interest in the Provider (and the Provider warrants that it has no foreign public officials as officers, employees or direct or indirect owners as at the Commencement Date);

12.1.6 ensure that all persons associated with the Provider and the Provider's Staff who are performing Services in connection with the Placement Agreement comply with this Clause; and

12.1.7 within three (3) Months of the Commencement Date, and annually thereafter, certify to the Commissioner in writing signed by an officer of the Provider, compliance with this Clause 12.1 by the Provider and the Provider's Staff under Clause 12.1.6. The Provider shall provide such supporting evidence of compliance as the Commissioner may reasonably request.

12.2 Breach of this Clause 12 shall be deemed a Material Default of the Placement Agreement which is not capable of remedy.

12.3 For the purpose of this Clause 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 12, a person associated with the Provider includes but is not limited to the Staff.

12.4 The Provider must reimburse the Commissioner in respect of any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by the Commissioner (including such losses, liabilities, damages, costs and expenses arising from the termination of the Placement Agreement where termination results from a breach of this Clause), or awarded against the Commissioner as a result of any breach of this Clause 12 by the Provider.

13 INSURANCE

13.1 The Provider undertakes to take out and maintain the following policies of insurance with a reputable insurance company against liability which the Provider may incur to the Commissioner or to the Staff or to any other person in connection with each Placement Agreement as follows:

13.1.1 Employer's Liability: in the sum of not less than five million pounds (£5,000,000) or such statutory minimum as is required from time to time in the UK (whichever is greater) per event or series of events arising from the same set of circumstances; and

13.1.2 Public Liability: in the sum of not less than five million pounds (£5,000,000) per event or series of events arising from the same set of circumstances; and

13.1.3 Professional Indemnity, malpractice, treatment risk or similar appropriate indemnity arrangements in relation to the provision or non-provision of the Services (or any other services under this Framework Agreement) which may result in a clinical or professional negligence claim: in the sum of not less than five million pounds (£5,000,000) per event or series of events arising from the same set of circumstances or such higher limit as the Trust may reasonably require from time to time.

13.2 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Placement Agreement.

13.3 The Provider shall maintain the insurances referred to in Clause 13.1 for a minimum of six (6) years following the expiration or earlier termination of the Placement Agreement.

14 TRANSFER AND SUB-CONTRACTING

14.1 The Placement Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Placement Agreement or any part thereof without the previous consent in writing of the Commissioner.

14.2 The Provider shall not be entitled to sub-contract any of its rights or obligations under this Placement Agreement without the previous consent in writing of the Commissioner.

14.3 The Commissioner shall be entitled to:

14.3.1 assign, novate or otherwise dispose of its rights and obligations under the Placement Agreement or any part thereof to any Commissioner; or

14.3.2 novate the Placement Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Commissioner,

14.3.3 provided that such assignment, novation or disposal shall not increase the burden of the Provider's obligations under the Placement Agreement. The Provider shall join in any novation under this Clause.

15 STEP IN

15.1 The Commissioner has a statutory duty to provide appropriate and satisfactory care to its Residents and the Provider acknowledges the importance of the Services in that context. Without prejudice to any other right or remedy of the Commissioner, if a Step-In Event occurs, the Commissioner shall have the remedies set out in this Clause 15.

15.2 If a Step-in Event occurs the Commissioner shall be entitled to:

15.2.1 require the Provider to develop and implement a work-around solution to limit the effects of the Step-in Event, the cost of doing so to be borne by the Provider where the Step-in Event arises as a result of breach by the Provider of any provision of this Placement Agreement or negligence / breach of statutory duty by the Provider (paragraph (a) of the definition of "Step-In Event") and to be borne equally by the Parties where the Step-in Event arises out of an event as defined in paragraph (b) of the definition of "Step-In Event" or of Force Majeure; and / or

15.2.2 suspend, in whole or in part, the Provider's performance of the terms of the Placement Agreement and assume the performance of the Provider's obligations under the Placement Agreement itself or through another Provider ("Step In") and (where the Step-In Event arises as a result of Provider breach (paragraph (a) of the definition of "**Step-In Event**"), the Provider must indemnify the Commissioner in respect of all losses, costs, damages or expenses incurred by the Commissioner in accordance with the provisions of this Clause 15.2.2.

15.3 If the Commissioner takes action pursuant to Clause 15.2.2 above (where the Step-In Event arises as a result of Provider breach (paragraph (a) of the definition of "Step-In Event")) and the breach constituting a Step-In Event continues for more than thirty (30) days, the Commissioner shall be entitled to terminate this Agreement by reason of Provider default forthwith by notice to the Provider.

15.4 If the Commissioner takes action pursuant to Clause 15.2.2 above for any reason other than Provider breach, and the circumstances constituting a Step-in Event continue for more than thirty (30) days, the Commissioner shall be entitled to terminate this Agreement in accordance with the provisions of Clause 33 of the Framework Agreement (Force Majeure).

16 TERMINATION

Termination on Default

16.1 The Commissioner may terminate the Placement Agreement by serving written notice on the Provider with effect from the date specified in such notice:

16.1.1 where the Provider commits a Material Default and:

- 16.1.1.1 the Provider has not remedied the Material Default to the satisfaction of the Commissioner within twenty (20) Working Days, or such other period as may be specified by the Commissioner, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
- 16.1.1.2 the Material Default is not, in the reasonable opinion of the Commissioner, capable of remedy; or
- 16.1.2 the Provider fails to obtain any Consent, loses any Consent, or has any Consent varied or restricted the effect of which might reasonably be considered to have a material adverse effect on the provision of the Services; or
- 16.1.3 the Commissioner reasonably considers that a breach by the Provider of any obligation under the Placement Agreement:
 - 16.1.3.1 may create an immediate and serious threat to the health or safety of any Resident; or
 - 16.1.3.2 may result in a material interruption in the provision of any one or more of the Services to any Resident.

Termination on Financial Standing

- 16.2 The Commissioner may terminate the Placement Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Commissioner), there is a material detrimental change in the financial standing and / or the credit rating of the Provider which adversely impacts, or is likely adversely to impact, on the Provider's ability to supply Services under the Placement Agreement.

Termination on Insolvency and Change of Control

- 16.3 The Commissioner may terminate the Placement Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:
 - 16.3.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 16.3.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 16.3.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
 - 16.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

- 16.3.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 16.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - 16.3.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 16.3.8 any event similar to those listed in Clause 16.3.1 to Clause 16.3.7 occurs under the law of any other jurisdiction.
- 16.4 The Provider shall notify the Commissioner immediately if the Provider undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 ("**Change of Control**"). The Commissioner may terminate the Placement Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:
- 16.4.1 being notified that a Change of Control has occurred; or
 - 16.4.2 where no notification has been made, the date that the Commissioner becomes aware of the Change of Control;
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 16.5 The Commissioner may terminate the Placement Agreement by giving notice in writing to the Provider with immediate effect if a Restricted Person holds five (5) per cent or more of the total value of any shares in the Provider or any of its Affiliates or associate companies.

Termination by the Commissioner

- 16.6 The Commissioner may terminate the Placement Agreement by giving written notice to the Provider with immediate effect if the Framework Agreement is terminated for any reason whatsoever.
- 16.7 The Commissioner shall have the right to terminate the Placement Agreement, or to terminate the provision of any part of the Placement Agreement at any time by giving fourteen (14) days' written notice to the Provider.

17 CONSEQUENCES OF TERMINATION AND EXPIRY

- 17.1 Notwithstanding the service of a notice to terminate the Placement Agreement, the Provider shall continue to fulfil its obligations under the Placement Agreement until the date of expiry or termination of the Placement Agreement or such other date as may be required under this Clause 17.
- 17.2 Termination or expiry of the Placement Agreement shall not cause any other Placement Agreements or the Framework Agreement to terminate automatically. For the avoidance of

doubt, all other Placement Agreements shall remain in force unless and until they are terminated or expire in accordance with their own terms.

- 17.3 Within thirty (30) Working Days of the date of termination or expiry of the Placement Agreement, the Provider shall return to the Commissioner any data and Confidential Information belonging to the Commissioner in the Provider's possession, power or control, either in its then current format or in a format nominated by the Commissioner, together with any other information and all copies thereof owned by the Commissioner.
- 17.4 The Commissioner shall be entitled to require and to have access to data or information arising from the provision of the Services from the Provider.
- 17.5 The Provider must do all things reasonably necessary to effect an orderly handover of the Services to the Commissioner or a replacement Provider.
- 17.6 Notwithstanding the generality of Clause 17.5 above, the Provider shall for a reasonable period before (during any applicable notice period) and after such termination or expiry:
- 17.6.1 co-operate fully with the Commissioner and any successor Provider of the Services, or such part of the Services that have been terminated in order to ensure continuity and a smooth transfer of the Services, or such part of the Services and to avoid any inconvenience or any risk to the health and safety of the Resident / s or members of the public and to that end the Provider may agree with the Commissioner, and where appropriate with any successor Provider, a transition plan;
 - 17.6.2 promptly render all reasonable assistance and information to the extent necessary to effect an orderly assumption of the Services or such part of the Services by a successor Provider;
 - 17.6.3 in so far as it is in the power of the Provider to do so, use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Provider and any third party which relate to or are associated with the Services or such part of the Services which have been terminated; and
 - 17.6.4 use all reasonable endeavours to minimise any inconvenience caused to or likely to be caused to the Resident / s as a result of the expiry or termination of the Placement Agreement or part of the Services.
- 17.7 Termination or expiry of the Placement Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Placement Agreement prior to termination or expiry.
- 17.8 Clauses which expressly or by implication are intended to survive termination shall continue in full force and effect.

18 LIABILITY

The Provider shall fully indemnify and keep indemnified the Commissioner and the Trust in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any

other liabilities whatsoever arising out of, in respect of or in connection with the Placement Agreement including in respect of any death or personal injury, loss of or damage to property, financial or other loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

19 INTELLECTUAL PROPERTY

The Provider agrees to indemnify and keep fully indemnified the Commissioner and the Trust against any costs, claims, proceedings, expenses and demands arising in respect of any allegation or claim that any of the Services supplied under this Placement Agreement constitutes or may be alleged to constitute an infringement of any person's Intellectual Property Rights or an infringement of any other legal or equitable right of any person.

20 ENTIRE AGREEMENT

20.1 The Placement Agreement constitutes the entire agreement and understanding of the Parties and supersedes (and renders null and void) any previous agreement or understanding between the Parties relating to the subject matters of the Placement Agreement.

20.2 Each of the Parties acknowledges and agrees that in entering into the Placement Agreement it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in the Placement Agreement.

20.3 Nothing in this Clause 20 shall operate to exclude any liability for Fraud.

21 RIGHTS OF THIRD PARTIES

Any Commissioner can enforce the terms of this Placement Agreement which are not reserved to the Commissioner. Subject thereto a person who is not a party to this Placement Agreement ("**Third Party**") has no right to enforce any term of this Placement Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the parties rescind this Placement Agreement or vary any of its terms in accordance with the relevant provisions of this Placement Agreement, such rescission or variation will not require the consent of any Third Party.

22 NOTICES

22.1 All notices which are required to be given under the Placement Agreement must be in writing and sent to:

22.1.1 in the case of the Commissioner, such person as may be identified in the Placement Agreement; and

22.1.2 in the case of the Provider, such person as may be identified in the relevant Placement Agreement.

22.2 Any such notice may be delivered personally, by e-mail, by first class pre-paid letter or recorded delivery, or by commercial courier and shall be deemed to have been received:

- 22.2.1 if delivered personally, at the time of delivery; or
 - 22.2.2 if sent by e-mail, at the time sent; or
 - 22.2.3 if sent by first class pre-paid letter or recorded delivery, at 9.00am on the second Working Day after the date of mailing; or
 - 22.2.4 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 22.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action which shall be governed by rules of court.

23 DISPUTE RESOLUTION

- 23.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Placement Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to persons identified in Clause 22 above.
- 23.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act or other interim or mandatory relief.
- 23.3 If the dispute cannot be resolved by the Parties pursuant to Clause 23.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 23.5 unless:
- 23.3.1 the Commissioner considers that the dispute is not suitable for resolution by mediation; or
 - 23.3.2 the Provider does not agree to mediation.
- 23.4 The obligations of the Parties under the Placement Agreement shall not be suspended, cease or be delayed by the referral of a dispute to mediation and the Provider and its Staff shall comply fully with the requirements of the Placement Agreement at all times.
- 23.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 23.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to CEDR to appoint a Mediator;
 - 23.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;

- 23.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 23.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 23.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Placement Agreement without the prior written consent of both Parties; and
- 23.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

24 GENERAL

- 24.1 The following clauses in the Framework Agreement shall be deemed to be incorporated in the Placement Agreement as if set out here, except that all references to "Framework Agreement" in such clauses shall be deemed to references to the Placement Agreement all references to "party" shall be deemed to be references to a party to the Placement Agreement:
 - 24.1.1 Clause 1 (Interpretation)
 - 24.1.2 Clause 13 (Statutory Requirements)
 - 24.1.3 Clause 28 (Denial Of Partnership)
 - 24.1.4 Clause 30 (Variation to the Framework Agreement)
 - 24.1.5 Clause 31 (Waiver)
 - 24.1.6 Clause 32 (Severability)
 - 24.1.7 Clause 33 (Force Majeure)
 - 24.1.8 Clause 38 (Welsh Language Obligations)
 - 24.1.9 Clause 39 (Costs and Expenses)
 - 24.1.10 Clause 40 (Law and Jurisdiction)

**Appendix 1
Variation form**

Resident: [name / DOB]

Placement Agreement Reference number: [•]

Variation Form No: [•]

BETWEEN:

[•] ("**the Commissioner**"), and

[•] ("**the Provider**")

- 1 The Services are varied as follows: [list details of the Variation]
- 2 The Service Payments are varied as follows:[set out details of Service Payments]
- 3 Words and expressions in this Variation shall have the meanings given to them in the Placement Agreement.
- 4 The Placement Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Commissioner

Signature

Date

Name in Capitals

Address

Authorised to sign for and on behalf of the Provider

Signature

Date

Name in Capitals

Address

Schedule 4 Pricing

- 1 The Service Payments will be calculated on a per Resident basis by reference to the prices set out in:
 - table 1 of this Schedule 4 (*Core Care Package Weekly Price per Resident*), plus (if applicable)
 - table 2 of this Schedule 4 (*Care Input Tariff for Non-Core Additional Care Hours*)
- 2 Prices will be fixed from the Commencement Date until 1 April 2017, when the Provider may, at its discretion, maintain its prices or revise its prices downwards.
- 3 Thereafter, prices will be fixed until 1 October 2017; when the Provider may, at its discretion, maintain its prices or revise its prices downwards.
- 4 Thereafter, prices will be fixed until 1 April 2018; when the Provider may, maintain its prices or revise its prices upwards or downwards (subject to such appropriate price indexation mechanism as the Trust determines).
- 5 The Trust will on or before each of the dates referred to in paragraphs 2, 3 and 4 above undertake a refresh of the Framework Agreement (the "**Refresh**").
- 6 The Refresh will provide for, inter alia, (i) providers of services similar to the Services to apply for appointment onto the Framework Agreement and (ii) current Services Framework Providers to apply for appointment onto the Framework Agreement in relation to different Framework Lots to those onto which they are currently appointed. The Trust will undertake a pre - qualification exercise to ensure all potential and current Services Framework Providers satisfy its minimum (i) technical and professional capability requirements and (ii) financial and economic standards (in place from time to time). The Trust may, at its sole discretion, revise the scope, nature and form of the Refresh in whole or in part.
- 7 In addition, the Trust may, at its sole discretion, undertake similar price revisions and additional Refreshes (as set out above) for the remaining duration of the Framework Agreement.
- 8 The Provider's prevailing prices will apply to all Residents receiving Services to the effect that, if as consequence of the pricing revision or Refresh (pursuant to this Schedule 4) the Provider's prices for the Services are revised, the revised prices will apply to both Residents already receiving Services and prospective Residents.
- 9 If the Provider seeks to revise its prices (pursuant to this Schedule 4) the pricing proposal must be submitted in such form as the Trust requires.
- 10 Without prejudice to its right of Audit, the Trust reserves the right to audit any revised pricing proposed (pursuant to this Schedule 4) or seek clarification and request such further information from the Provider as the Trust reasonably requires to ensure, inter alia, that such revised pricing (as may be proposed):
 - 10.1 allows for sustainable provision of Services;

- 10.2 does not give rise to any adverse impact (potential or otherwise) to the scope, standard or quality of the Services received by Residents; and
- 10.3 may be compared, challenged and potentially capped (at the discretion) of the Trust through the use of relevant price indexations applied to cost headings (and associated values submitted by Providers).

TABLE 1 – CORE CARE PACKAGE WEEKLY PRICE PER RESIDENT

Care Home	Care Setting	Unique Identifier	CS 1	CS 2	CS 3	CS 4	CS 5	CS 6	CS 7	CS 8	CS 9

- 11 The 'Core Care Package Weekly Price' per Resident relating to each Framework Lot (referred to in Table 1 above) is inclusive of all cost elements of the Services referred to in Schedule 2 Part 1A and / or Part1B (as the case may be) but expressly excludes costs incurred by the Provider in relation to Resident holidays undertaken pursuant to National Minimum Standard number 14.4.

TABLE 2 – CARE INPUT TARIFF FOR NON-CORE ADDITIONAL CARE HOURS

Care Input Staffing Level	Care Input Tariff - £ per hour
Staff Level 1	
Staff Level 2	
Staff Level 3	
Staff Level 4	

Care Input Staffing Level	On Cost % Per Hour
Staff Level 1	
Staff Level 2	
Staff Level 3	
Staff Level 4	

- 12 The Commissioner will, by reference to Table 2 above, calculate the cost associated with the provision of 'Non-Core Additional Care Hours' to the Resident (if any).

Urgent Non-Core Care

- 13 Costs incurred by the Provider for the provision of UNCC to a Resident must be agreed with the Commissioner within one (1) working day of the same occurring. The price for any UNCC provision will be calculated by reference to the 'Care Input Staffing Level' and the corresponding 'Care Input Tariff' set out in Table 2 above.

Additional Services

- 14 Prices for the provision of services to Residents which are outside of the scope and contemplation of the Services set out in Schedule 2 Part 1, including (but not limited to) cost incurred by the Provider in respect of Resident holidays undertaken pursuant to National Minimum Standard number 14.4, shall be agreed between the Commissioner and Provider from time to time on an 'as required' Resident by Resident basis.

15 INVOICING PROCEDURE

- 15.1 The Provider shall at the end of each Month, invoice the Commissioner for Services provided by the Provider in that Month. Such invoice shall be rendered on the Provider's own invoice form clearly marked with all appropriate references together with a detailed breakdown of the Services supplied including (but not limited to)

- 15.1.1 The Care Home and / or Care Setting, for each Resident, such as their unique NHS number and the Resident Placement Agreement reference and as separate line items:

15.1.1.1 the applicable 'Core Care Package Weekly Price' by reference to Table 1 of this Schedule 4 (weekly or pro-rata for the month);

15.1.1.2 any 'Non-Core Additional Care Hours' provided (in excess of the 21 hours of 1:1 Equivalent Care at Staff Level 1 included in the above Core Care Package Weekly Price), by reference to the applicable Care Input Staffing Level and corresponding Care Input Tariff per Table 2 of this Schedule 4.

15.1.1.3 any UNCC provided by reference to the applicable Care Input Staffing Level and corresponding Care Input Tariff per Table 2 of this Schedule 4.

15.1.1.4 any additional services provided, (identified and referenced to the agreement made with the respective Commissioner) as referred to in paragraph 14 above.

All invoices rendered by the Provider must be supported by such additional documentation as may be required by the Commissioner. Failure to provide such information will entitle the Commissioner to delay or decline payment of invoices rendered until such information is provided.

Schedule 5
Form of resident placement agreement

THIS PLACEMENT AGREEMENT IS DATED [INSERT DATE] AND MADE BETWEEN:

- (i) [•] incorporated and registered in England and Wales with company number [•] whose registered office is at [•] (the "**Provider**"); and
- (ii) [**name of Commissioner**] whose principal place of business is at [•] (the "**Commissioner**").

Care Home: [•]

Provider Resident ID: [•]

In relation to: [Insert Resident Number]

Framework Lot Reference: Lot [number]: [lot description]

BACKGROUND

- (E) The Trust and the Provider have entered into a framework agreement dated [date] (the "**Framework Agreement**") allowing the Commissioner to request services from the Provider.
- (F) In connection with the Framework Agreement, the Commissioner requests certain services to be provided by the Provider, and the Provider agrees to provide such services to the Commissioner in accordance with this Placement Agreement.

The parties agree that:

1 STRUCTURE

- 1.1 Unless otherwise defined in this Placement Agreement, terms used in this Placement Agreement shall have the meaning given to them in the Framework Agreement.
- 1.2 The Applicable Terms set out in Schedule 3 of the Framework Agreement are incorporated into and form part of this Placement Agreement, as varied and amended by the other provisions of this Placement Agreement. The Provider agrees that it shall provide the Services in accordance with the Applicable Terms and as further set out in this Placement Agreement.

2 TERM

- 2.1 This Placement Agreement shall commence on [date] and, unless terminated earlier in accordance with the Applicable Terms, shall continue until [date].

3 SERVICES

- 3.1 The Provider shall provide the Services to the Commissioner from [date].
- 3.2 The Provider shall provide the Services at the following Care Setting: [insert details].

4 CHARGES AND PAYMENT

4.1 The Service Payments for the Services shall be £[insert sum] weekly together with such additional payments due to the Provider for costs properly incurred in providing the Services to the Commissioner in accordance with Applicable Terms.

5 ADDITIONAL SERVICES

5.1 [insert details or *NOT APPLICABLE*]

6 NOTICES

6.1 All notices which are required to be given under this Placement Agreement for the purposes of Clause 22 of the Applicable Terms must be in writing and sent to:

- in the case of the Commissioner, [*insert name and address*]; and
- in the case of the Provider, [*insert name and address*].

Signed by (*Print Name*):

for and on behalf of
The Commissioner
Date:

Authorised Signatory

Signed by (*Print Name*):

for and on behalf of
[Provider]
Date:

Director

Schedule 6

Information requirements

The Provider shall (in such format, and at such times, as may be prescribed by the Trust from time to time) supply to the Trust and the Commissioner:

- 1 On an annual basis:
 - 1.1 A satisfaction survey from Residents, Commissioners and the Local Care Team, including the methodology behind, results of and any subsequent corrective actions arising from this survey. The survey must address the following questions
 - 1.1.1 the percentage of Residents who felt that they were treated with dignity and respect by the Staff
 - 1.1.2 overall satisfaction with the Provider's services
 - 1.1.3 percentage of Residents who agree with the statement 'My carer and I were given all the information we needed'
 - 1.2 Equality report outlining equality and protected characteristics data on Residents and specific examples of how the Provider has met the duties under the Equality Act 2010 as a third party Provider.
 - 1.3 Number of Staff prosecutions related to incidents of violence and aggression against Residents.
- 2 A report detailing the community benefits delivered pursuant to Clause 42 and Schedule 10 of this Framework Agreement.
- 3 On a 3 Monthly basis:
 - 3.1 A report detailing a Provider's performance against the Resident Care Outcomes (RCOs); and
 - 3.2 A report detailing the status of each Resident within the designated pathway stages and the length of time within that stage.
- 4 On a Monthly basis:
 - 4.1 a report detailing any incidents which includes; incident code, date and time of incident, location of incident, whether the incident was investigated, an unique Provider incident reference number, and whether a report is available on request;
 - 4.2 a report detailing any safeguarding concerns which includes; date concern occurred, date concern reported, name and contact details of person reported to, date confirmed as a safeguarding incident, Provider report reference number and whether a report is available upon request;
 - 4.3 a report detailing complaints which includes; NHS Wales complaint code / sub code, Provider complaint reference number, date complaint received from Resident, carer or Staff, date complaint reported to the Care Co-ordinator / Commissioner, name of Commissioner and

- Social Care employee reported to, whether the complaint has been resolved and the date of response to the complainant;
- 4.4 a report detailing Care and Support Plans Reviews which include; date of Care and Support Plan review and the attendance by Care Co-ordinator and other representative from NHS Wales / Local Authority and date of the next Care and Support Plan review meeting;
- 5 Within 10 Working Days (of request):
- 5.1 reports of investigations / actions arising or any other information that the Trust may reasonably require (without prejudice to any of the Trust's rights under this Framework Agreement) from Serious Untoward Incidents.
- 6 Within 5 Working Days (of request):
- 6.1 any of the Provider's policies, and (without prejudice to any of the Trust's rights under this Framework Agreement) any other information that the Trust may reasonably require from time to time relating to the provision of the Services.
- 7 Within 1 Working Day (of request):
- 7.1 copies of any Care Records relating to the provision of the Services.
- 8 By the next Working Day (of its occurrence):
- 8.1 notification of any severe or critical Serious Untoward Incident; and
- 8.2 notification of unconfirmed or confirmed Adult Safeguarding incident which includes; potential Adult Safeguarding date, potential Adult Safeguarding report date, details of safeguarding team reported to, Provider reference, status (confirmed or unconfirmed), details of any available report and contact number..
- 8.3 Notification of any voluntary or mandatory embargo, censure, complaint, remedial action plan, regulatory breach or non-compliance which the Provider is subject to or which has been imposed upon the Provider (as the case may be) emanating from:
- 8.3.1 Welsh Government or the Department of Health; or
- 8.3.2 any commissioning body, local authority or statutory health body in England or Wales;
or
- 8.3.3 any regulatory body including (but not limited to) the Care and Social Services Inspectorate Wales or the Care Quality Commission.
- 9 Promptly, and in any event no later than the next Working Day (of its occurrence):
- 9.1 any fact, matter or circumstance which results or is likely to result in a material detrimental change in the financial and economic standing and / or the credit rating of the Provider and / or which adversely impacts, or is likely adversely to impact, on the Provider's ability to supply Services under this Framework Agreement.

Schedule 7
Quality assurance improvement system

1 BACKGROUND

- 1.1 From the Commencement Date, quality assurance, performance and contract management of Providers will be undertaken by a team (the "Framework Performance Management Team") for an on behalf of the Trust and the Commissioners.
- 1.2 The objectives of the quality assurance, performance and contract management include:
- 1.2.1 consistent Resident placement processes;
 - 1.2.2 consistent assurance processes;
 - 1.2.3 consistent pricing mechanisms; and
 - 1.2.4 consistent reporting requirements.
- 1.3 The Framework Performance Management Team will utilise the quality assurance improvement system ("QAIS") to monitor performance, Resident Care Outcomes (RCOs) and collect data and such other information as the Trust and / or the Commissioner may require from time to time.
- 1.4 The purpose of the QAIS is to monitor and thereby assure Commissioners that services are being provided in safe and high quality environments that promote rehabilitation and recovery, using pharmacological, psychological and therapeutic interventions that are evidence-based and effective, whilst ensuring value for money.
- 1.5 The Framework Performance Management Team will utilise the NHS Wales secure file sharing portal system (or other electronic / web based system) to enable the sharing of sensitive information such as person identifiable information and commercially sensitive information and ensures this data cannot be intercepted, corrupted or misplaced.
- 1.6 Providers who are appointed onto the Framework Agreement will be advised prior to the Commencement Date of the details of the Framework Performance Management Team and the precise nature of their quality assurance, performance and contract management roles and functions.
- 1.7 The Trust and the Commissioners reserve the right, at their discretion, to share with any other third parties any information or details arising out of or relating to the Providers' provision of the Services, including but not limited to, performance management information and the outcomes of performance monitoring undertaken by the QAIS.

2 PERFORMANCE MANAGEMENT

- 2.1 The Trust and the Commissioner reserve the right to undertake an assessment of the Provider's performance of the Services from time to time. The Provider must agree to such assessment being undertaken. Failure by the Provider to agree to such assessment shall be deemed a Material Default.

- 2.2 Where a Provider is not providing Services under the Framework Agreement the Trust and the Commissioner reserve the right to request the Provider to undertake and make available, on 3 Months' notice, a self- assessment against the Specification. The self-assessment will be of such nature, content and format as the Trust and the Commissioner determines from time to time (acting reasonably).
- 2.3 Notwithstanding Clause 2.2 above, if an assessment against the Specification has been undertaken by the Framework Performance Management Team, the Trust and the Commissioner reserve the right to request the Provider to undertake and make available on an annual basis, a self-assessment against the Specification. The self-assessment will be of such nature, content and format as the Trust and the Commissioner determines from time to time (acting reasonably).
- 2.4 The Parties shall, from time to time, meet to discuss the subject matter of the Provider's performance of the Services at a time and place to be determined by the Trust or the Commissioner (acting reasonably).

3 QUALITY ASSURANCE RATING SYSTEM (QARS)

- 3.1 The Trust has developed a methodology of ranking Providers by applying a quality assurance rating system ("QARS") - designated by the letter "Q", which is to be used as part of the Placement Procedure (described in Schedule 2 Part 2).
- 3.2 Each Provider's Care Home will be awarded three (3) Qs as at the Commencement Date.
- 3.3 The Trust expect Providers to maintain a 3Q rating for the duration of the Framework Agreement.
- 3.4 The QARS will be applied to each registered Care Home.

Meeting the Service Specification

4 PERFORMANCE ASSESSMENT

- 4.1 Without prejudice to any other rights or remedies available to the Trust and / or the Commissioners, if the Provider fails to meet the Specification or provide accurate and complete information as specified in Clause 14 of the Framework Agreement and Schedule 6 (*Information Requirements*) it will constitute a Level 1 Performance Issue.
- 4.2 If the Provider fails to meet any part of the Specification and in the Trust's or the Commissioners' opinion such failure has resulted in, or has the potential to result in, harm, threat of harm, neglect or has the potential to result in the impairment of, or an avoidable deterioration in, the safety, physical or mental health of a Resident it will constitute a Level 2 Performance Issue.
- 4.3 The consequences of Level 1 or 2 Performance Issues arising are set out in paragraph 5 below.

Improving the Care of the Resident

- 4.4 Table A in this Schedule 7 (below) details:

- 4.4.1 the Resident Care Outcome (RCO) and reference number (column 1);
 - 4.4.2 a description of the performance targets applicable to each RCO (column 2);
 - 4.4.3 the points allocated for meeting the performance target / s applicable to each RCO (column 3).
- 4.5 The three (3) monthly score ("Score") attained by the Provider will be calculated on the basis of the aggregate number of points achieved in respect of each Resident.
- 4.6 The Provider must attain a Score of 6 points in relation to each Resident.
- 4.7 If the Provider meets the performance targets set out in column 2 of Table A it will register 1 point in respect the applicable RCO.
- 4.8 If the Provider fails to meet any of the performance targets set out in column 2 of Table A it will register 0 (nil) points in respect of the applicable RCO.
- 4.9 A Level 1 Performance Issue will arise where the Provider only attains a Score of 5 points in relation to any Resident for the applicable Month.
- 4.10 A Level 2 Performance Issue will arise where the Provider only attains a Score of:
- 4.10.1 4 points or fewer in relation to any Resident for the applicable Month; or
 - 4.10.2 0 (nil) points in respect of the same RCO on two consecutive Months in relation to the same Resident.

5 CONSEQUENCES OF A LEVEL 1 AND LEVEL 2 PERFORMANCE ISSUE

- 5.1 The Trust shall notify the Provider of any Level 1 or Level 2 Performance Issue within 15 Working Days of being aware of such an issue.
- 5.2 The Provider must resolve any Level 1 or Level 2 Performance Issue to the Trust's and / or the Commissioner's (as the case may be) satisfaction, within (i) 20 Working Days of being notified of such an issue by the Trust and / or the Commissioner (as the case may be) or (ii) such other period as the Trust and / or the Commissioner (as the case may be) may determine. If the Level 1 or Level 2 performance issue is resolved to the Trust's and / or Commissioner's satisfaction within 20 Working Days of notification the Care Home Q rating will remain unchanged.
- 5.3 If a Level 1 Performance Issue has not been resolved pursuant to paragraph 5.2 of this Schedule, the Trust may, at their discretion:
- 5.3.1 deduct 1 Q from the Provider's QARS rating; and
 - 5.3.2 issue a Level 1 improvement notice ("Level 1 Notice"), in which case paragraph 6 below shall apply; and / or
 - 5.3.3 suspend the Provider's appointment to supply the Services under the Framework Agreement pursuant to Clause 22.1.2; and / or

- 5.3.4 subject to Clause 21 terminate the Provider's appointment under the Framework Agreement.
- 5.4 If a Level 2 Performance Issue has not been addressed pursuant to paragraph 5.2 of this Schedule, the Trust may, at their discretion:
 - 5.4.1 deduct 2 Qs from the Provider's QARS rating; and
 - 5.4.2 issue a Level 2 improvement notice ("Level 2 Notice"), in which case paragraph 6 below shall apply; and / or
 - 5.4.3 suspend the Provider's appointment to supply the Services under the Framework Agreement pursuant to Clause 22.1.2; and / or
 - 5.4.4 subject to Clause 21 terminate the Provider's appointment under the Framework Agreement.
- 5.5 The Q deduction will take effect on the date that the Level 1 or Level 2 Notice is sent by the Trust to the Provider.

6 REMEDIAL ACTION - LEVEL 1 AND LEVEL 2 NOTICES

- 6.1 The Provider must undertake the improvement actions set out in the Level 1 or Level 2 Notice (the "Actions") as the case may be.
- 6.2 The Actions must be implemented to the satisfaction of the Trust and / or the Commissioner (as applicable) within (i) three (3) Months of the date of the Level 1 or Level 2 Notice (as applicable), or (ii) such other period as the Provider and the Trust and / or the Commissioner (as applicable) may agree to.
- 6.3 The Trust and / or Commissioners (as the case may be) will review the Provider's progress in meeting the Actions at such intervals as it considers necessary.
- 6.4 The Provider must, on request, provide a written report to the Trust or the Commissioner (as applicable) detailing progress made in respect of the Actions in advance of any review meeting.
- 6.5 The Trust and / or Commissioners (as the case may be) shall undertake an assessment of the Actions within such period as the Trust or the Commissioner (as applicable) may determine at its discretion, and will notify the Provider of the outcome of the assessment within fifteen (15) Working Days from its conclusion.
- 6.6 If the Trust and / or Commissioners (as the case may be) determines, at its discretion, that the Actions have been satisfactorily implemented the Trust will (i) permit the Provider to restore the provision of the suspended Services by issuing a notice to that effect to the Provider and (ii) restore the Provider's Q rating from the date of notification.
- 6.7 If within three (3) Months (or such other period as agreed to pursuant to paragraph 6.2) of the date of the Level 1 or 2 Level Notice (as applicable) the Trust and / or the Commissioner (as the case may be) determines, at its discretion, that the Actions have not been satisfactorily implemented it may:

6.7.1 issue a further Level 1 or 2 Level Notice (in which case paragraphs 6.1 - 6.7 shall apply; and / or

6.7.2 (in the case of the Trust only) suspend or terminate the Provider's appointment pursuant to Clause 21 and 22 of the Framework Agreement.

7 RCO REPORTING

7.1 Each three (3) Months and for the duration of the Framework Agreement, the Provider must :

7.1.1 measure and record the RCOs set out in Table A;

7.1.2 submit a report (the "RCO Report") to the Trust detailing the Provider's performance against the RCOs in such format as may be prescribed by the Trust.

7.2 The Provider must submit each RCO Report to the Trust as soon as practicable and in any event within ten (10) Working Days of the end of the 3rd Month to which it relates.

7.3 The Provider warrants to the Trust that each RCO Report will be accurate in all material respects.

7.4 The Trust and the Commissioner may, at their discretion, carry out an assessment of the Provider's performance against the RCOs set out in Table A from time to time over the Term.

8 VARIATION OF RESIDENT CARE OUTCOMES

8.1 At any time, the Trust may, at its discretion, add to, reduce or vary the RCOs set out in Table A.

8.2 The Trust will provide three (3) Months' written notice to the Provider of any change to the RCOs, with such change to take effect following expiration of the three (3) Months' notice period.

TABLE A

Resident Care Outcome	Performance Measures	Points
RCO – 1 The Provider supported the Resident to be safe	(a) The Provider reported all incidents, complaints and Safeguarding incidents related to the Resident, to the Trust within the required time scales using the Trust's Care Assurance Performance System or any other system as required	1 = both performance measures have been achieved 0 = one or more performance measures have not been achieved
	(b) The Provider duly recorded and investigated all incidents and complaints relating to the Resident, any failings or findings from these investigations were or are being addressed and this information was shared with the Resident if requested and appropriate.	
RCO – 2 The Provider supported the Resident to feel at home	(a) The Resident's environment of care was clean at all times and a weekly inspection of the environment's cleanliness was undertaken.	1 = both performance measures have been achieved 0 = one or more performance measures have not
	(b) The Resident's environment of care, including furniture and decor, was in a good state of repair, and maintenance was undertaken on a maximum three monthly basis.	

		been achieved
RCO – 3 The Provider supported the Resident and the Resident's community to value each other	(a) The Resident was supported to access social, cultural and leisure activities along with educational and vocational resources	1 = both performance measures have been achieved 0 = one or more performance measures have not been achieved
	(b) No less than once in every three months, the Resident was engaged to understand if their community activities were building on their strengths, were productive and met their needs and interests and that this engagement was clearly documented	
RCO – 4 The Provider supported the Resident to be healthy	(a) All the Resident's identified primary and secondary physical health care needs were addressed in a timely manner and that all identified physical health care and / or health and well-being interventions were undertaken in accordance with the Care and Support Plan(s)	1 = both performance measures have been achieved 0 = one or more performance measures have not been achieved
	(b) The reasons for any failure by the Provider to provide, or for the Resident to attend and / or participate in, any identified physical health intervention has been clearly documented.	
RCO – 5 The Provider supported the Resident to recover and stay well	(a) The Resident was in possession of a co-produced Care and Support Plan(s) and all identified interventions have been undertaken in accordance such Care and Support Plan(s).	1 = both performance measures have been achieved 0 = one or more performance measures have not been achieved
	(b) No less than once in every three months the Resident was engaged to review their Care and Support Plan(s) to ensure their needs were met and that any unmet needs were clearly documented and communicated to the Trust.	
RCO – 6 The Provider supported the Resident to progress and move on	(a) An adequate and safe level and skill mix of Staff has been established at all times for each Care Setting to ensure the Resident 's needs are met	1 = both performance measures have been achieved 0 = one or more performance measures have not been achieved
	(b) The Resident's agreed planned activity is based on decreasing dependence and increasing independence in accordance with the Social Services & Well-being (Wales) Act 2014	

Schedule 8
Conditions precedent

- 1 It shall be a condition precedent to commencement of the delivery of the Services that the Provider is fit and appropriately authorised to deliver the Services, and as evidence of this the Provider shall deliver to the Trust on or prior to the commencement of Services the following Conditions Precedent documents, or where appropriate copies of them:
 - 1.1 the Regulator's registration of the Provider's lawful capacity to provide the Services in respect of the Provider's Lots pursuant to this Framework Agreement;
 - 1.2 any Consents required for the provision of the Services by the Provider; and
 - 1.3 confirmation that the Provider has in place all appropriate insurance arrangements (acceptable to the Trust) required under this Framework Agreement.
- 2 In addition, the Provider must deliver to the Trust the deed of guarantee set out in Schedule 11, duly executed by the Guarantor and in full force and effect.

Schedule 9
Framework agreement variation procedure

1 PROCEDURE FOR PROPOSING A VARIATION

- 1.1 Except where paragraph 3 applies, the Trust may propose a variation using the procedure contained in this paragraph 1.
- 1.2 In order to propose a variation, the Trust shall serve each Services Framework Provider with written notice of the proposal to vary the Framework Agreement ("**Notice of Variation**").
- 1.3 The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each Services Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing are necessary and shall require each Services Framework Provider to notify the Trust within seven (7) Working Days of any proposed changes to the prices set out in its Pricing.
- 1.4 Where the Trust does not receive any notification of proposed changes to Services Framework Providers' Pricing within the timescales detailed in paragraph 1.3, the Trust may then serve each Services Framework Provider with a written agreement detailing the variation to be signed and returned by each Services Framework Provider within seven (7) days of receipt.
- 1.5 Upon receipt of a signed agreement from each Services Framework Provider, the Trust shall notify all Services Framework Providers in writing of the commencement date of the variation.

2 CHANGES TO THE PRICING

- 2.1 Where a Services Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing, the Trust may require further evidence from the Services Framework Provider that any additional costs to the Services Framework Provider will be kept to a minimum.
- 2.2 The Trust may require the Services Framework Provider to meet and discuss any proposed changes to the Pricing that would result from a variation.
- 2.3 Where a change to a Services Framework Provider's Pricing is agreed by the Trust, the Trust shall notify its acceptance of the change to the Services Framework Provider in writing.
- 2.4 In the event that the Trust and the Services Framework Provider cannot agree to the changes to the Pricing , the Trust may:
- 2.4.1 withdraw the variation; or
- 2.4.2 propose an amendment to the variation.

3 VARIATIONS WHICH ARE NOT PERMITTED

- 3.1 The Trust may not propose any variation which is in contravention of any Law.

Schedule 10
Community benefits

[NOT USED]

Schedule 11
Guarantee

Date:

(1) [Guarantor]

(2) Velindre NHS Trust

Deed of Guarantee



Blake Morgan
One Central Square
Cardiff
CF10 1FS
Ref: 215110.344

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THIS DEED ("DEED OF GUARANTEE") IS MADE THIS DAY OF 2016

BETWEEN:

- (1) [GUARANTOR] (company number: [XXX]) whose registered address [XXXX] (the "Guarantor"), and
- (2) Velindre NHS Trust whose principal place of business is at Unit 2 Charnwood Court, Parc Nantgarw, Nantgarw, Cardiff, CF15 7QZ which expression includes its successors and assigns including any successor in the exercise of its functions) (the "Trust").

BACKGROUND:

- (G) On 1 October 2016, [Provider] (company number: [xxx]) whose registered address is [xxxxx] (the "Provider"), entered into an agreement with the Trust for the provision of services to adults (18 - 64 years) in mental health and learning disabilities care homes & care homes with nursing (the "Framework Agreement").
- (H) The Trust has requested the Guarantor to guarantee the due performance of services provided by the Provider pursuant to the Framework Agreement in accordance with the terms of this Deed of Guarantee.

OPERATIVE PROVISIONS

In consideration of the Trust entering into the Framework Agreement with the Provider the Guarantor hereby agrees with the Trust with effect from 1 October 2016 as follows:

1 INTERPRETATION

- 1.1 In this Agreement, unless the context indicates a contrary intention:
 - 1.1.1 words suggesting the singular include the plural and vice versa;
 - 1.1.2 words suggesting any gender include any other gender;
 - 1.1.3 references to a person include a company, corporation, and unincorporated or incorporated association or statutory authority;
 - 1.1.4 headings used for clauses, paragraphs, subparagraphs, Schedules, Annexes and the table of contents are for ease of reference only and will not affect the interpretation of this Deed of Guarantee;
 - 1.1.5 references to any agreement or instrument are to that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - 1.1.6 use of the words 'includes' or 'including' means without limitation, unless the contrary intention appears;
 - 1.1.7 a reference to any 'body' is:

- 1.1.7.1 if that body is replaced by another organisation, deemed to refer to that organisation; and
- 1.1.7.2 if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes or objects as that body;
- 1.1.8 references to statutes shall be to (i) such statutes as amended, replaced or supplemented; (ii) any regulations made under such statutes; and (iii) UK statutes; and
- 1.1.9 references to "subsidiary" or "holding company" shall have the meanings ascribed to them by the Companies Act 2006.

2 THE GUARANTEE

- 2.1 If the Provider fails or has failed to fully and punctually perform its obligations under the Framework Agreement or commits or has committed any breach of its obligations under the Framework Agreement, the Guarantor, irrecoverably and unconditionally, undertakes that, upon demand by the Trust, it shall:
 - 2.1.1 indemnify and keep the Trust indemnified against all losses, damages, claims, demands, actions, proceedings, liabilities, costs and expenses (including, but not limited to, any court costs and legal fees) which may be incurred by the Trust arising out of all and any such failures or breaches; and
 - 2.1.2 as a separate, independent and unconditional obligation and as primary obligor of payments and performance, be responsible for and hereby guarantee to the Trust the due performance by the Provider of the Provider's obligations under the Framework Agreement;
 - 2.1.3 as a separate, independent and unconditional obligation and as primary obligor of payment and performance, fully, punctually and specifically perform the Provider's obligations under the Framework Agreement or procure the performance by any subsidiary or holding company of the Guarantor (or a subsidiary of such holding company). The Guarantor shall perform, fulfil and observe all terms, warranties and representations in the Framework Agreement as if the said terms, warranties and representations were directly entered into by the Guarantor and the Trust; and
 - 2.1.4 as a separate, independent and unconditional obligation and as primary obligor of payment and performance, pay to the Trust in the currency in which the same falls due for payment, all monies and liabilities which are now, or at any time in the future become due, owing or incurred by the Provider to or in favour of the Trust under or in connection with the Framework Agreement.
- 2.2 The Guarantor as a separate and independent obligation covenants with the Trust that if the Provider goes into liquidation and the liquidator disclaims the Framework Agreement the liability of the Guarantor under this Deed of Guarantee shall remain in full force and effect for any claims, demands, losses, damages, costs and expenses suffered or incurred by the Trust as a result of such liquidation or the related termination of the Framework Agreement.

3 ENFORCEMENT

- 3.1 Any demand under this Deed of Guarantee shall be in writing, addressed to the Guarantor at the address specified in Clause 15 or such other address as the Guarantor has from time to time notified to the Trust as being an address for the receipt of such demands in accordance with Clause 15, and shall be accompanied by a statement identifying the nature of the claim by the Trust. Each such demand and statement shall be copied to the Provider at its registered office or such other address as the Provider has from time to time notified to the Trust as being an address for the receipt of such demands. The Guarantor shall be liable under this Deed of Guarantee only if, upon the expiry of ten (10) days after the date of any such demand, the same shall not have been fully discharged by the Provider.
- 3.2 Nothing in this Deed of Guarantee shall grant to the Trust any right of action against the Guarantor unless the Trust has given all requisite notices of default, if any, to the Provider pursuant to the Framework Agreement and all applicable remedy periods, if any, for the Provider to remedy such default(s) have expired.
- 3.3 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Provider and the Trust without the assent of the Guarantor or by any amendment to or termination of the Framework Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Trust in relation thereto and, except as provided below, the Guarantor hereby expressly consents to any and all such arrangements, amendments, terminations, forbearances, or indulgence. If the Guarantor is called upon to perform, fulfil and observe any or all of the terms of the Framework Agreement, it shall do so on the basis of the terms and conditions of the Framework Agreement.

4 OBLIGATIONS OF GUARANTOR

- 4.1 The obligations of the Guarantor under this Deed of Guarantee are those of primary obligor and such obligations exist irrespective of any total or partial invalidity, illegality or unenforceability of the Framework Agreement. The Trust shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Provider or the Guarantor or any third party in any Court, or to make or file any claim in a bankruptcy or liquidation of the Provider or any third party, or to take any action whatsoever against the Provider or the Guarantor or any third party, provided always that the Trust shall only seek to enforce the obligations of the Guarantor under this Deed of Guarantee when it is satisfied at its sole discretion that the Provider is unable or unwilling to perform its obligations under the Framework Agreement or is unable or unwilling to remedy any breach of its obligations under the Framework Agreement.

5 GUARANTOR'S WARRANTIES AND REPRESENTATIONS

- 5.1 The Guarantor warrants and represents that it is duly registered and validly existing under the laws of England and Wales, has the capacity to sue and be sued in its own name, has all power and authority to enter into and perform (or co-ordinate the performance of) the obligations contemplated by this Deed of Guarantee and that this Deed of Guarantee constitutes its legal, valid and binding obligation and is enforceable against the Guarantor in accordance with its terms.

5.2 The Guarantor further warrants and represents that, by entering into this Deed of Guarantee, the Guarantor will not breach its bye-laws, any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject or any other deeds or arrangements subsisting at the date of this Deed of Guarantee, nor will it enter into any deed or arrangement which will limit its ability to perform its obligations under this Deed of Guarantee.

6 CLAIMS OF THE GUARANTOR AGAINST THE PROVIDER

6.1 Until the obligations and liabilities of the Provider under the Framework Agreement have been performed, paid or discharged in full, and the Guarantor released from this Deed of Guarantee, the Guarantor will not by virtue of any payment or performance or by any other means or on any other grounds, except with the prior written consent of the Trust or as provided below:

6.1.1 make or enforce any claim (whether by way of set-off, counterclaim or otherwise) or right against the Provider or prove in competition with the Trust, whether in respect of any payment or performance hereunder by the Guarantor or otherwise; or

6.1.2 be entitled to claim or have the benefit of, any set-off, counterclaim or proof against, or dividend paid on a winding-up or composition with creditors by the Provider; or

6.1.3 be entitled to claim or otherwise obtain the benefit (by way of subrogation or otherwise) of any security or guarantee or indemnity at any time held by the Trust for or in respect of any of the obligations of the Provider under the Framework Agreement; or

6.1.4 claim or enforce any right of contribution against any co-surety.

6.2 If the Guarantor shall have any right of proof or claim in the winding-up, voluntary arrangement, receivership or administration of the Provider which does not derive from any performance or payment made hereunder, the Guarantor shall (except where the Trust shall otherwise require) exercise that right, or claim on behalf of the Trust and hold any dividend or other money received in respect thereof upon trust for the Trust to the extent of such liability or in like manner hold upon trust any money which it may receive or recover from any co-surety by virtue of any rights of contribution.

6.3 If, while the Guarantor remains liable to the Trust hereunder, any monies or other property or assets shall be received or recovered by the Guarantor in breach of any provisions of this Clause, such monies or other property or assets shall be held upon trust to pay or transfer the same to the Trust to the extent of such liability.

7 SET-OFF

7.1 Without prejudice to and in addition to any other remedy of set-off which the Trust may have, at any time after a demand hereunder or if at the relevant time the obligations and liabilities of the Provider under the Framework Agreement shall not have been performed, paid or otherwise discharged, the Trust shall be entitled, without prior notice to the Guarantor, to set off the liability of the Guarantor hereunder against any monies in whatsoever currency standing to the credit of the Guarantor.

8 AMENDMENTS TO OBLIGATIONS UNDER THE FRAMEWORK AGREEMENT

- 8.1 The liabilities or obligations of the Guarantor under this Deed of Guarantee shall remain in effect and shall not be diminished or impaired, notwithstanding:
- 8.1.1 any withdrawal of any demand (including the commencement and continuance of any legal proceedings) by the Trust for payment or performance by the Provider of any of the obligations under the Framework Agreement or for payment thereof under this Deed of Guarantee;
 - 8.1.2 any amendment, extension, modification discharge, compromise, consent, variation, or waiver, express or implied, of any obligation under the Framework Agreement or of any documents relating thereto;
 - 8.1.3 any release of any security, under this Deed of Guarantee, by the Trust;
 - 8.1.4 any grant of time or indulgence, by the Trust, towards the obligations of the Provider under the Framework Agreement.
 - 8.1.5 any compromise by the Trust of any obligations under the Framework Agreement or this Deed of Guarantee and any other guarantee in respect thereof;
 - 8.1.6 any invalidity or unenforceability of the Framework Agreement, in whole or in part, against the Provider (except that this provision shall not be a waiver of any of the Provider's claims under the Framework Agreement); or
 - 8.1.7 the winding-up, amalgamation, reconstruction or reorganisation or any change of constitution or name of the Provider or the Guarantor (or the commencement of any of the foregoing).

9 CONTINUING SECURITY

- 9.1 The Deed of Guarantee is irrevocable and absolute and shall be a continuing security for payment and performance of all the obligations owing to the Trust and, accordingly, it shall:
- 9.1.1 not be discharged by any partial performance (except to the extent of such partial performance) by the Provider of its obligations under the Framework Agreement; and
 - 9.1.2 extend to cover the unperformed part of the obligations of the Provider from time to time under the Framework Agreement.
- 9.2 Except as set out in Clause 3 above, when pursuing its rights and remedies under this Deed of Guarantee against the Guarantor, the Trust may, but shall be under no obligation to, pursue such rights and remedies as it may have against the Provider, unless all of the obligations owing to the Trust shall have been satisfied by payment in full. Any failure by the Trust to pursue any rights or remedies, or to collect any amounts from the Provider, shall not relieve the Guarantor from its obligations under this Deed of Guarantee.

10 ASSIGNMENT

- 10.1 Subject to Clause 11.2, this Deed of Guarantee shall remain in full force and effect and be binding upon the Guarantor and the successors and assigns of such Guarantor, and shall benefit the Trust and the respective successors, transferees and assignees of the Trust (to the extent that the obligations have been transferred and are owing to such successor, transferee or assignee in accordance with the Framework Agreement), until all the obligations owing to the Trust and the obligations of the Guarantor under this Deed of Guarantee with respect therein shall have been satisfied by payment and performance in full.
- 10.2 A Guarantor may, subject to obtaining the Trust's prior written consent (such consent not to be unreasonably withheld or delayed) merge with another entity or sell all or substantially all of its assets to another entity if the successor entity delivers to the Trust a written instrument unconditionally assuming and agreeing to perform all of such Guarantor's obligations under this Deed of Guarantee. The Trust reserves the right to:
- 10.2.1 request details of the financial standing of such successor entity; and
- 10.2.2 to withhold its consent to the proposed sale or merger to such successor entity, if the Trust considers that the successor entity is not of an equivalent or superior financial standing to that of the Guarantor.

11 DISCHARGE TO BE CONDITIONAL

- 11.1 Any release, discharge or settlement between the Guarantor and the Trust in connection with this Deed of Guarantee shall be conditional upon no right, security, disposition or payment to the Trust by the Guarantor or any other person being void, set aside or ordered to be refunded under any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.
- 11.2 If any such right, security, disposition or payment is void or at any time so set aside or ordered to be refunded, the Trust shall be entitled subsequently to enforce this Deed of Guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such right, security, disposition or payment had not been made.

12 PAYMENT FREE OF DEDUCTION

- 12.1 The Guarantor shall pay all monies due under this Deed of Guarantee free and clear of and without deduction for or on account of either any set-off or counterclaim or any and all present or future taxes, levies, charges, fees, deductions or withholdings. If any sums payable hereunder shall be or become subject to any such deduction or withholding, the amount of such payments shall be increased so that the net amount received by the Trust shall equal the amount which, but for the deduction or withholding, would have been received by the Trust under this Deed of Guarantee.

13 SEVERANCE

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the

remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14 ENTIRE AGREEMENT

14.1 This Deed of Guarantee is made pursuant to Clause 42 of the Framework Agreement and supersedes all prior agreements, arrangements and undertakings between the parties other than the Framework Agreement, and constitutes, with the Framework Agreement, the entire agreement between the parties relating to the subject matter of the Framework Agreement and this Deed of Guarantee. No addition to or modification of any provision of this Deed of Guarantee shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

15 NOTICES

15.1 Form, contents and Delivery: Any demand, notice or other communication to be given or made in writing under this Agreement will be deemed to have been duly given or made as follows:

15.1.1 if sent by prepaid first class post on the second working day after the date of posting;
or

15.1.2 if delivered by hand upon delivery at the address provided for in this Agreement; or

15.1.3 if sent by facsimile on the day of transmission provided that a confirmatory copy is sent by pre-paid first class post on the same working day that the facsimile is transmitted.

Provided however that if it is delivered by hand or sent by facsimile on a day which is not a Working Day or after 4.00 p.m. on a working day it will instead be deemed to have been given or made on the next working day.

15.2 Any such demand notice or other communication must be addressed to and sent to the recipient at:

The Trust:

Mr Nicholas Craig Cowley,
NHS Wales Shared Services Partnership,
4th Floor,
Companies House,
Crown Way,
Cardiff,
CF14 3UB

The Guarantor:

[xxxx]

or at such other address or fax number as may from time to time be notified in writing by the Parties as being the address for Services provided that in the case of a company it may instead (at the option of the sender) be addressed to the registered office for the time being.

16 NO WAIVER; CUMULATIVE REMEDIES

16.1 None of the terms or provisions of this Deed of Guarantee may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Guarantor and the Trust.

16.2 The Trust shall not by any act (except by a written instrument pursuant to Clause 16.1) or by any delay, indulgence or omission be deemed to have waived any right or remedy hereunder. No failure to exercise, nor any delay in exercising on the part of the Trust, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege under this Deed of Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. A waiver by the Trust of any right or remedy on any occasion shall not be construed as a bar to any right or remedy which the Trust would otherwise have on any future occasion.

17 COUNTERPARTS

17.1 This Deed of Guarantee may be executed in more than one counterpart each of which shall be deemed to constitute an original.

18 EXCLUSION OF THIRD PARTY RIGHTS

18.1 A person who is not a party to this Deed of Guarantee shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce its terms.

19 DISPUTES

19.1 Any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration. It is agreed that:

19.1.1 the tribunal shall consist of one arbitrator who is to be a practising Barrister of at least 10 years' call practising in the field of commercial disputes;

19.1.2 in default of the parties' agreement as to the arbitrator the appointing authority shall be the Chartered Institute of Arbitrators in London;

19.1.3 the seat of the arbitration shall be Cardiff, Wales; and

19.1.4 the language of the arbitration shall be English.

20 LAW AND JURISDICTION

20.1 This Deed of Guarantee shall be construed as being made in Wales and in accordance with and governed by the Laws of England and Wales, as they are applied in Wales.

20.2 Each party to this Deed of Guarantee irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales sitting in Cardiff.

IN WITNESS whereof this Deed of Guarantee is signed on the date first shown above.

Executed as a DEED for and on behalf
of [Guarantor]

.....
Authorised Signatory

.....
Name

.....
Position

In the presence of:-

.....

Name.....

Address.....

.....

Occupation

Executed as a DEED for and on behalf
of Velindre NHS Trust

.....
Authorised Signatory

.....
Name

.....
Position

In the presence of:-

.....

Name.....

Address.....

.....

Occupation