

SCHEDULE 5
CALL-OFF AGREEMENT

THIS CALL-OFF AGREEMENT is made this day of 2017

BETWEEN

(1) **[CLINICAL COMMISSIONING GROUP]** of (the “CCG”) and

(2) (company registration number) whose registered address is (“Provider”).

WHEREAS:

- (1) On the Commencement Date the Council entered into a Contract with the Provider for the provision of Services (“the Services) for Home Based Care and Support Services (“the Contract”).
- (2) The Contract includes provision for the CCGs (as defined in the Contract) to enter into agreements with the Provider on the terms and conditions of the Contract so that such CCG’s can Call-Off the Services provided by the Provider under the Contract, (“the Call-Off Agreements”)
- (3) This agreement is a Call-Off Agreement for the purposes of the Contract.
- (4) The Council and the Provider have further agreed that in the case of an Individual (as defined in the Contract) requiring Services the CCG which is responsible for that Individual may procure the provision of the Services through a Purchase Order/Support Plan with the Provider on the terms and conditions in the Contract and subject to the provisions contained therein and any amendments or variations agreed in this Call-Off Agreement.

IT IS HEREBY AGREED:

1. CONTRACTUAL OBLIGATIONS

1.1 This Call-Off Agreement is supplemental to the Contract. Any terms which are not separately defined herein shall be construed in accordance with the definitions set out in the Contract.

1.2 Except where otherwise stated, references to Clauses, Appendices and Schedules are to clauses of and schedules to this Call-Off Agreement.

- 1.3 The Provider shall provide the Services to Individuals specified by the CCG and shall be bound by the rights and obligations of the Provider in accordance with the terms and conditions set out in the Contract subject to the variations detailed in Appendix 1 hereto as if the CCG were named as the Council throughout.
- 1.4 This Call-Off Agreement shall last for the Contract Period (as defined in the Contract) and, unless the provisions of Clause 4 below apply or there is a variation detailed in Appendix 1, shall end when the Contract ends or is terminated in accordance with the terms of the Contract.
- 1.5 The CCG shall pay the Provider for the Services at the same Contract Rates (as defined in the Contract) and shall be payable from time to time in consideration of the Provider providing the Services. Such payment shall be made in accordance with the terms and conditions set out in the Contract and the CCG shall accept and be bound by the rights and obligations of the Council insofar as these relate to Individuals for whom the CCG is responsible in the Contract subject to the Variations detailed in Appendix 1 hereto as if it were the Council.
- 1.6 The CCG and the Provider agree that the terms and conditions set out in the Contract shall be varied as set out in Clause 7 below and attached as Appendix 1 hereto. For the avoidance of doubt, these variations shall apply only to the CCG entering into this Call-Off Agreement and shall not apply to any other arrangements set up under the Contract between the Council and the Provider.
- 1.6 The charges to the CCG by the Provider for the delivery of the Services and payments made by the CCG shall be in accordance with the provisions of the Contract.

2. VARIATIONS BETWEEN THE COUNCIL AND THE PROVIDER

- 2.1 Any variation to the Contract made between the Council and the Provider shall subject to the provisions of Clause 2.2 below automatically amend this Call-Off Agreement from the date of that variation as though the Provider and the CCG had agreed such amendment themselves. The Provider shall notify the CCG within two (2) working days from the date of any amendments proposed to be made to the Contract.
- 2.2 The CCG shall be entitled to consider such variations proposed to the Contract and in the event it is not prepared to accept such variations it shall notify the Provider within twenty-one (21) days of receipt of notification of the proposed variation and may terminate this Call-Off Agreement.

3. THE COUNCIL'S INDEMNITY

- 3.1 The Parties acknowledge and agree to fully indemnify the Council against all actions, claims, costs, expenses and damages brought against or suffered by the Council arising out of this Call-Off Agreement except where such actions, claims,

costs, expenses and damages are brought against or suffered by the Council due to the negligence of the Council.

3.2 The Parties agree and acknowledge that where the Council is found liable for any actions, claims, costs, expenses and damages brought against or suffered by it that arise in part due to negligence, default, fraud, or breach of contract by either of the Parties in respect of the operation of this Call-Off Agreement and the Contract between the Parties only, then the Parties shall fully indemnify the Council in respect of that part of the actions, claims, costs, expenses and damages for which they caused or are responsible for.

4. TERMINATION OF THE CONTRACT BY THE COUNCIL

4.1 Where the Council terminates the Contract and the Provider and the CCG agree the Provider shall continue to provide the Services to the CCG then the following provisions shall apply:

4.1.1 the Provider and the CCG shall indemnify the Council against any liability arising after the date of the termination of the Contract in respect of the Services provided by the Provider to the CCG under this Call-Off Agreement or any subsequent contracted agreement between the Parties;

4.1.2 unless the CCG and the Provider shall agree otherwise the terms of the Contract in place at the date of the termination by the Council of the Contract shall continue to have full force and effect between the CCG and the Provider as though the CCG were the Council until the expiry of the Contract Period as specified in the Contract as if the Council had not terminated it unless earlier termination has occurred in accordance with the provisions of the Call-Off Agreement or the Contract;

4.1.3 the Parties agree that the Contract Rate payable by the CCG at the date of the termination of the Contract by the Council shall continue to apply until the CCG and the Provider shall agree any variation to the same.

5. TERMINATION OF THIS CALL-OFF AGREEMENT

5.1 In the event that either Party wish to terminate this Call-Off Agreement the provisions in the Contract relating to termination shall apply and (subject to the provisions of Clause 4 above) when the Contract ends this Call-Off Agreement shall automatically terminate.

5.2 In the event of the Contract being terminated in accordance with Clause 5.1 above the Parties shall, in particular but not limited to, ensure the provisions relating to the handover of an Individual Care Package (as defined in the Contract) are followed and that the Individual's needs are fully met at all times.

6. ASSIGNMENT AND SUB-CONTRACTING

- 6.1 The Provider shall not assign or sub-contract any of its rights or obligations under this Call-off Agreement to any other person without the prior written consent of the CCG acting in its sole discretion.
- 6.2 The Parties hereto agree that NHS Surrey Downs Clinical Commissioning Group (SD CCG) shall be the operational lead for the CCGs for the delivery of the Contract and shall, on behalf of the CCGs, enter into the Support Plans/Purchase Orders for the Individuals (as defined in the Contract) and the operation and management of this Call-Off Agreement and the Contract on a day to day basis.
- 6.3 In the event that any of the CCGs shall cease to exist during the Contract Period due to any re-organisation of the CCGs, then any Support Plans/Purchase Orders issued by or relating to the CCGs together with the Contract and Call-Off Agreement shall automatically transfer to the new statutory body which shall take over the CCG's functions and the provisions of the Contract and this Call-Off Agreement and any Support Plans/Purchase Orders in place shall continue to have full force and effect.

7. THE APPENDICES AND THE SPECIAL CONDITIONS

- 7.1 The name and contact and other details of the CCG and other terms which will apply specifically to this Call-Off Agreement made between the Parties hereto are as set out in the Appendix 1.
- 7.2 The Parties agree that for the purposes of this Call-Off Agreement only the terms of the Contract shall be varied in accordance with the Special Conditions (if any) set out in the Appendix 1.

8. INSURANCE AND INDEMNITY

Notwithstanding and independently of the Provider's obligations under the Contract if the Provider shall not have the healthcare extension to their public liability insurance as specified in Clause 12 of the Contract then the Provider shall at all times and at its own expense effect and maintain at all times insurance with reputable insurers or underwriters approved by the CCG and shall insure and indemnify against its criminal negligence liability of at least £10,000,000 in respect of any one occurrence or series of occurrences arising out of one event.

9. GENERAL PROVISIONS

- 9.1 This Call-Off Agreement shall be governed and construed in accordance with English Law.

9.2 No person who is not a party to this Call-Off Agreement shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

9.3 This Call-Off Agreement and the Contract shall constitute the entire agreement between the parties in respect of the subject matter hereto.

IN WITNESS whereof the Parties have executed this Call-Off Agreement as a Deed the day and year first before written:

For and on behalf of the [CCG]

Signed by:

Executed as a Deed by **[PROVIDER]**

acting by:

First Director.....

and

Second Director/Company Secretary.....

APPENDIX 1

1. Name of CCG:
Address of CCG:
Contact Details for Authorised Officer:

2. Services Commencement Date:

3. Special Conditions: