

**TERMS AND CONDITIONS TO BE INCORPORATED INTO THE  
CONTRACT FOR THE PROVISION OF OLDER ADULTS RESIDENTIAL AND  
NURSING CARE SERVICE**

between

**LANCASHIRE COUNTY COUNCIL**

and

**[NAME OF SERVICE PROVIDER]**

[Draft dated 22 July 2022: next review due by 31 March 2023]



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## **SCHEDULES**

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**THIS AGREEMENT** is dated on the date specified by the Care Portal record confirmation for the Care and Support Plan (as issued to the Service Provider and the Service User) and/or any Service User Placement Agreement for the Placement(s) of the specified Service User(s)

(and for the avoidance of doubt where there is any inconsistency on the date specified by the Care Portal record confirmation and any Service User Placement Agreement then the Care Portal record confirmation shall prevail in accordance with clause 1.13 (Definitions and Interpretation))

## **PARTIES**

- (1) **LANCASHIRE COUNTY COUNCIL** of PO Box 100, County Hall, Fishergate, Preston, Lancashire PR1 0LD (**Authority**); and
- (2) **[NAME OF SERVICE PROVIDER]** incorporated and registered in England and Wales with company number **[COMPANY NUMBER]** whose registered office is at **[ADDRESS]** trading as **[TRADING NAME]** and which is registered by the CQC at **CQC [Location-ID]** (**Service Provider**),

each a "**party**" and together the "**parties**".

## **BACKGROUND**

- (A) The Authority has a requirement for the provision of residential home care for older people.
- (B) The Authority selected the Service Provider to provide these Services and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this agreement.
- (C) The Authority will be responsible for the Assessment, the proposing of each Placement and review of those Service Users requiring the Services provided pursuant to this agreement.
- (D) The Authority will propose Placements to the Service Provider for the level of support as stated in the Service User's Assessment and LA Support Plan.
- (E) A copy of the Service User's Assessment and the Service User's LA Support Plan will be sent to the Service Provider. In this agreement the Service Provider prepares its bespoke Care and Support Plan for the Service User based on the Service User's LA Support Plan.

- (F) Nothing in this agreement shall be taken as implying that the Authority is purchasing NHS Funded Nursing Care but the parties acknowledge that the Services covered by this agreement may be provided as part of a package where the Service Provider is also providing NHS Funded Nursing Care for the Service User on behalf of a third party.
- (G) The Authorised Officer will (where the Service User or Representative request it) arrange for a Service User Placement Agreement (an agreement for any Placement) to be signed by the Authority, the selected service provider (which may be the Service Provider), the Service User or their Representative and any other third parties, as appropriate and, if practicable, prior to the commencement of the Placement.
- (H) These terms and conditions forming part of the contract between the Authority and the Service Provider for a Placement for a specified Service User (or Placements for specified Service Users) do not contain pricing information for specified Service User(s). Each Placement for a Service User shall be awarded to an eligible service provider who shall be paid the Care Fees calculated using the LCC Care Rates set out in the records shown on the Care Portal through the Authority's Oracle-based electronic payment system (or any similar successor system implemented by the Authority) and/or a Service User Placement Agreement (and for the avoidance of doubt where there is any inconsistency on the date specified by the Care Portal record confirmation and the Service User Placement Agreement then the Care Portal record confirmation shall prevail in accordance with clause 1.13 (Definitions and Interpretation)). The Authority may wish to introduce an "Oracle Fusion Individual Finance Agreement" (or similar arrangement) to be made between the Authority and/or Service Provider and/or Service User for a Placement which, with the Service User's Care and Support Plan and these terms and conditions, may help document the nature of the Placement, the Services applicable to the Service User and describing the responsibilities for their funding.
- (I) These terms and conditions forming part of the contract between the Authority and the Service Provider shall be incorporated by reference into the contract for a Placement for a Service User through the Care Portal and/or Oracle-based electronic payment system (or any similar successor system implemented by the Authority).
- (J) These terms and conditions do not explicitly address the impact of the COVID-19 coronavirus or any similar epidemic or pandemic notified by the World Health Organization. The Authority shall retain absolute discretion to amend its funding regime (including the provision of targeted grant funding) should there be material adverse effect on the costs of delivery of Services by the Service Provider (or other service providers) caused by such epidemic or pandemic events.
- (K) These terms and conditions do not explicitly address the impact of the United Kingdom's exit from the European Union.

**NOW IT IS AGREED THAT:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause 1 apply in this agreement.

**2014 Regulations:** the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (SI 2014/2936).

**Accessible Information Standard:** the Accessible Information Standard (DCB1605) published in August 2017 implemented under section 250 of the Health and Social Care Act 2012.

**Achieved Service Levels:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 2 (Service Levels)).

**Additional Care Fees:** the fees paid by the Authority to the Service Provider for the Additional Care Services (provided that Additional Care Fees shall only be payable by the Authority to the extent that such Additional Care Services have been approved in writing by the Authority's Social Worker allocated to the Service User and where the cost of Additional Care Services is to be apportioned between the Authority and the NHS by agreement, for example if there is a Complex Package of Care, then the Authority shall be liable for payment of the fees to the Service Provider and shall be reimbursed by an NHS Body for the NHS proportion of the fees)).

**Additional Care Services:** additional care facilities, goods and/or services supplied outside the Specification by the Service Provider to the Service User in respect of which the Service Provider shall be additionally reimbursed by the Authority in accordance with Schedule 4 (Charges and payment).

**Additional SU Services:** the additional non-care facilities, goods and/or services supplied outside the Specification on request of the Service User and including without limitation examples of such items set out in Appendix 1 to Schedule 4 (Charges and payment) in respect of which the Service Provider shall be additionally reimbursed by the Service User.

**agreement:** these terms and conditions including any schedules and/or appendices and, in particular, the Specification (which are available at the Authority's website at [info@lancashire.gov.uk](mailto:info@lancashire.gov.uk)) (as amended or re-issued from time to time) forming part of the contract between the Authority and the Service Provider (and provided that the remaining part of the contract is formed by the Service Provider's response to any Authority proposal for a Placement as completed by the parties' agreement of the Care and Support Plan lodged through the Care Portal, financial arrangements for the Service User(s) confirmed through the Oracle-based electronic payment system (or any similar successor system implemented by the Authority) and the completion by the Service Provider of the Contract Acceptance Form and/or Service User Placement Agreement (except where the parties agree to conduct a traditional contract completion for a simple contract made between the Authority and Service Provider under hand (subject to clause 57 (Counterparts) whether through "wet ink" hard copy signatories or authenticated electronic signatories))).

**APL:** the Authority's accredited providers' list.

**Applicable Fees:** (subject to the provisions of Schedule 7 (Out of area) for "out of area" arrangements) the total fees paid by the Authority to the Service Provider for residential care provided to the Service User for both Services and Additional Care Services (comprising both an amount equal to the LCC Care Rates (and any additional agreed amount at the Authority's discretion in respect of the Services) and an amount for Additional Care Fees (as the case may be) (provided always that the Service User needs are assessed by a Social Worker in an LA Support Plan, the Authority and Service Provider agree the Care and Support Plan for the Service User which may, but does not have to, include an element of nursing care assessment funded by the NHS as NHS Funded Nursing Care and where determined by the Care and Support Plan the appropriate LCC Care Rates apply such that by way of example any dementia care in the Care and Support Plan attracts an associated residential dementia fee rate set out in the LCC Care Rates where Service User dementia care is provided at a Care Home with a CQC dementia specialisation).

**Applicable Laws:** any statutes, statutory instruments or other legislative provisions (including, without limitation any successor, replacement or amendment statute, statutory instrument or other legislative provision) governing or otherwise relevant to the provision of the Services.

**AQuA:** the Advancing Quality Alliance.

**ASC Practitioner:** the person nominated by the Authority to act generally in relation to the Authority's responsibilities towards the Service User and to arrange the provision of Services relevant to the Assessment or (as appropriate) an employee of the Authority who is responsible for assessing Service User needs and arranging



services to meet those needs as recorded in the LA Support Plan and Care and Support Plan.

**Assessment:** a written assessment carried out by the Authority or other party as determined by the Authorised Officer in relation to a Service User's individual needs for residential care and Nursing Care (and which precedes a corresponding Financial Assessment as described in Schedule 4 (Charges and Payment)).

**Associated Company:** any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

**Authorised Officer:** the Authorised Representative of the Authority.

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in Schedule 5 (Contract management).

**Authority Assets:** any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services (including, but not limited to, aids and adaptations for use by Service Users).

**Authority's Premises:** (where relevant) the premises identified and notified by the Authority to the Service Provider from time to time and which are to be made available for use by the Service Provider for the provision of the Services on the terms set out in this agreement.

**Best Value:** the duty imposed on the Authority by section 3 of the Local Government Act 1999 in relation to the Services.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Business Continuity Management or BCM:** all the assessed risks that might affect the Service Provider's ability to deliver the Services and how the Services can be maintained, regardless of the cause of the disruption.

**Business Continuity Plan:** a plan referred to in clause 10.1 (Business continuity) which sets out the detailed procedures and processes to be followed and actions to be taken if there is a critical failure or disruption of the Services.

**Capacity Tracker:** the Authority's on-line monitoring tool as part of a joint NHS and local authority initiative for tracking bed capacity at a Home.

**Capacity Tracker System:** is defined in clause 6.2 (Supply of Services).

**Care and Support Plan:** the person-centred care and support plan made by the Service Provider in conjunction with the Service User and Authority which identifies the Service User's individual support needs and how these needs are to be met in a way which is acceptable to the Service User, reviewed and updated by the Service Provider on a continual basis and as may be amended in accordance with this agreement (and for the avoidance of doubt this is the "care and support plan" referred to in the Specification and is different to the Authority's LA Support Plan).

**Care and Support Plan Review:** the process of reviewing the Care and Support Plan as set out in clause 11 (Care and Support Plan Review and variation of the Services).

**Care Certificate:** a certificate developed jointly by Skills for Care, Health Education England and Skills for Health recognising an agreed set of standards (including fifteen (15) minimum standards to be covered as part of a robust induction programme) that define the knowledge, skills and behaviours expected of specific job roles in the health and social care sectors.

**Care Charge:** the amount charged per week by the Service Provider for residential care facilities and Services (and any Additional Care Services) provided to the Service User at the Home which shall be satisfied by the payment to the Service Provider of the Care Fees.

**Care Fees:** the fees paid to the Service Provider in response to the Care Charge being a combination of any of:

- (a) the Applicable Fees paid by the Authority;
- (b) a First Party Contribution paid by the Authority (where the Authority is then reimbursed by the Service User in accordance with the terms of a First Party Agreement); and/or
- (c) any Third Party Contribution paid by the Authority (where the Authority is then reimbursed by a Third Party in accordance with the terms of a Third Party Agreement),

(and which may also include a Service User Assessed Contribution paid by the Authority (where the Authority is then reimbursed by the Service User within thirty

(30) Working Days following the issue of a valid VAT invoice by the Authority to the Service User or their Representative)) and where the Nursing Care Fee for any NHS Funded Nursing Care provided to the Service User at the Home shall be paid directly to the Service Provider by an NHS Body and shall not be included in the calculation of the Care Fees.

**Care Home:** a residential care home for older people (which may be the Home referred to in this agreement).

**Care Portal:** the Authority's care portal electronic system which shall be accessible to the Service Provider and which is capable of showing the Authority's allocated sums for the provision of Services and the Service Provider's confirmation of Services provided to Service Users every twenty-eight (28) Working Days as set out in paragraph 5.1 of Schedule 4 (Charges and payment).

**Carer:** anyone who provides unpaid care to an adult or adults aged eighteen (18) years or over because of physical or mental ill health, sensory impairment, substance misuse, a long term condition, learning disability or illness/problems associated with getting older (for example frailty or dementia).

**Catastrophic Failure:** any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

**CCG:** clinical commissioning group.

**Change:** any change to this agreement including to any of the Services.

**Change Control Procedure:** the procedure for changing this agreement, as set out in Schedule 6 (Change control).

**Charges:** the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4 (Charges and payment).

**Claim:** is defined in clause 31.3 (Indemnities).

**Commencement Date:** shall mean the date on which the Service Provider commences provision of the Services as specified by the Care Portal record confirmation (as issued to the Service Provider and the Service User) and/or Service User Placement Agreement for the Placement(s) of the specified Service User(s) (and for the avoidance of doubt where there is any inconsistency on the date specified by

the Care Portal record confirmation and any Service User Placement Agreement then the Care Portal record confirmation shall prevail in accordance with clause 1.13 (Definitions and Interpretation)).

**Commercially Sensitive Information:** the information listed in Schedule 9 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Service Provider significant commercial disadvantage or material financial loss.

**Complaint:** any formal complaint raised by the Authority, Service Users, Carers, Representatives and Service Provider's Personnel in relation to the Service Provider's performance under this agreement (or raised by the Service Provider in relation to the Authority's performance under this agreement).

**Complaints Procedure:** is defined in clause 27.1 (Complaints).

**Complex Package of Care or CPOC:** a package of care where a Service User's needs have been assessed jointly by the NHS and the Authority and where agreement has been reached between both organisations in relation to the funding and management arrangements of a package of care to meet the assessed health and social care needs (where the Service User is deemed not eligible for NHS Funded CHC following consideration of NHS Funded CHC and the Service User has healthcare needs which are over and above what the Authority can lawfully provide and which cannot be met by existing local NHS services (e.g. District Nurses, Dietitian, SALT, Physio, OT, CMHT etc)).

**Contingency Plan:** the Service Provider's contingency plan to respond to interruption or failure of the Services and disruption caused to Service Users.

**Consistent Failure:** shall have the meaning set out in Part 1 (Service Levels) of Schedule 2 (Service Levels).

**Contract Acceptance Form:** the Service Provider's formal offer, submitted electronically to the Authority, to provide the Services for the Service User which also includes administrative information to be used by the parties.

**Contract Year:** a period of twelve (12) months, commencing on 1 April each year except in the First Contract Year or Final Contract Year.

**CPI or Consumer Price Index:** the index published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the

index, such other index as the parties may agree, or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure.

**CPLI:** care package line item.

**CQC:** the Care Quality Commission or any successor body.

**Crown:** the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

**Crown Body:** any department, office or agency of the Crown.

**Data Processor:** shall have the same meaning as set out in the GDPR.

**Data Protection Legislation:** the retained European Union law version of the GDPR brought within English law and any applicable national implementing laws as amended from time to time, the DPA to the extent it relates to the processing of personal data and privacy, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Default Notice:** is defined in clause 9.1 (Failure to comply with agreement).

**Deferred Payments Scheme:** the Authority's scheme for agreeing with the Service User a deferred payment of the Service User Assessed Contribution and/or First Party Contribution and/or Third Party Contribution (where a Service User has been assessed to pay the full cost of their Placement, but cannot afford to pay the full weekly charge because most of their capital is tied up in their property so the Service User is assessed to pay a weekly contribution towards their care and the Authority pays the difference between the gross cost and the Service User Assessed Contribution and/or First Party Contribution and/or Third Party Contribution which is the deferred payment).

**Deprivation of Liberty Safeguards or DoLS:** the procedures set out in the Mental Capacity Act 2005 to ensure that any care restricting a person's liberty is appropriate and in their best interests.

**Deputy Home Manager:** the Service Provider's deputy home manager named on the Contract Acceptance Form or as notified by the Service Provider to the Authority.

**Dispute Resolution Procedure:** the procedure set out in clause 29 (Dispute resolution).

**DPA:** the Data Protection Act 2018.

**Environmental Information Regulations or EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Essential Standards of Quality and Safety:** the standards produced by the CQC under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (SI 2010/781) as may be revised from time to time.

**Extremism:** vocal or active opposition to fundamental British values including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs including calls for the death of members of the armed forces whether in the United Kingdom or overseas.

**Final Contract Year:** the period commencing on the Commencement Date and ending on the immediately following 31 March.

**Financial Assessment:** the Authority's financial assessment of the Service User to establish the Service User Assessed Contribution.

**First Contract Year:** the period commencing on 1 April immediately preceding the last day of the Term and ending on that day.

**First Party:** the Service User, who has signed a First Party Agreement with the Authority to make a contribution to the total Care Fees for the Service User at the Home.

**First Party Agreement:** the agreement made between the Authority and the Service User for the payment by the Service User of the First Party Contribution in substantially the form set out in Appendix 2 to Schedule 4 (Charges and payment).

**First Party Contribution:** the sum payable by the Service User to the Authority as set out in the First Party Agreement in respect of the cost of enhanced facilities and Services where the Service User chooses a Placement which is more expensive than that which the Authority would normally pay as a result of the Service User's Financial Assessment, such First Party Contribution being relevant in only these limited circumstances:

- (a) it is during the first twelve (12) weeks of the Placement where the Service User owns their own home (and the home is not sold during that period) although a Third Party must complete a Third Party Agreement in respect of a Third Party Contribution to apply from week thirteen (13): in the first twelve (12) weeks then the Service User may still need to contribute towards the Care Charge based on the Service User's capital and income but not including the Service User's home value;
- (b) the Service User has been accepted onto the Authority's Deferred Payments Scheme where the Authority temporarily pays the Care Charge and collects from the Service User a weekly contribution based on the Service User's financial assessment (and the Authority shall regularly review the equity in the Service User's property on a regular basis provided that a Third Party may be required if the equity is insufficient); or
- (c) where accommodation is provided under section 117 of the Mental Health Act 1983 for mental health aftercare.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the 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:** any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

**Fraud:** any offence under the laws of the United Kingdom creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts or defrauding or attempting to defraud or conspiring to defraud the Authority.

**GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679).

**Good Industry Practice:** that degree of skill, care, prudence, foresight and operating practice for the safe provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (as well as its servants, agents and sub-contractors) engaged in the same type of business as that of the Service Provider.

**Home:** the establishment referred to in this agreement where the Service Provider provides the Services (and all references to Home(s) and Care Home(s) in this agreement shall be interpreted as having this meaning).

**Home Manager:** the Service Provider's home manager named on the Contract Acceptance Form or as notified by the Service Provider to the Authority.

**IIP:** is defined in clause 15.2(a) (Quality assurance).

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** the period commencing on the Commencement Date and ending at midnight on the date five (5) years later.

**Intellectual Property:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**ISO:** is defined in clause 15.2(a) (Quality assurance).

**Key Performance Indicators:** (where applicable) the key performance indicators agreed by the parties for the Service Provider's performance in providing the Services which are set out at Part 3 (Key Performance Indicators) of Schedule 2 (Service Levels) (including minimum levels of acceptable performance and target levels) including meeting or exceeding national performance indicators that relate to the Department of Health Adult Social Care Outcomes Framework (ASCOF) as set out in paragraph 2.7 of the Specification and which shall be self-monitored and reported by



the Service Provider and monitored by the Authority (including by the use of the On-Line Monitoring Tool).

**Key Personnel:** those personnel identified in Schedule 5 (Contract management) for the roles attributed to such personnel, as modified pursuant to clause 21 (Key Personnel).

**LA Support Plan:** the support plan for the Service User prepared by the Authority's Social Workers.

**LCC Care Rates:** the Authority's residential care weekly rates that the Authority is willing to pay for residential care, published annually on the Authority's website on or about 1 April each year following approval by the Authority's Cabinet to apply from 1 April in that year for the following twelve (12) months, being the maximum amounts payable by the Authority to any eligible service provider for residential care the same as or similar to the Services (and which informs the Service Provider's calculation of its Care Charge and the Authority's payment for Services as part of the Applicable Fees) as described in paragraph 12 of Schedule 4 (Charges and payment).

**Long Stay Placement:** a Placement which is for the Term (being the Initial Term and any extensions to the Initial Term or Term pursuant to clause 3 (Extending the Initial Term)).

**Management Reports:** the reports to be prepared and presented by the Service Provider in accordance with clause 25 (Reporting and meetings) and Schedule 5 (Contract management) to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

**Material Breach:** a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from (a) a substantial portion of this agreement or (b) any of the obligations set out in clauses 2.6 (Term), 4.2(a) (Consents, Service Provider's warranty and due diligence), 4.2(e) (Consents, Service Provider's warranty and due diligence), 5.6 (Financial viability and Home closure), 9.2 (Failure to comply with agreement), 33.3(Insurance), paragraph 2.3 of Part 3 of Schedule 2 (Service Levels) and paragraphs 4.4, 4.6, 4.8 or 4.10 and 10.3 of Schedule 4 (Charges and payment) or a failure by the Service Provider to use the On-Line Monitoring Tool to self-report its performance of the Services against the criteria prescribed from time to time by the Authority, over the Term (and in deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding).

**Mental Capacity Act 2005 Code of Practice:** the code of practice (as issued by the Lord Chancellor on 23 April 2007 in accordance with sections 42 and 43 of the Mental Capacity Act 2005) giving guidance for decisions made under the Mental Capacity Act 2005.

**National Living Wage:** the national minimum wage calculated on an hourly basis for staff aged twenty-three (23) years or over pursuant to the National Minimum Wage Act 1998.

**National Minimum Wage:** the national minimum wage calculated on an hourly basis for staff aged under twenty-three (23) years pursuant to the National Minimum Wage Act 1998.

**Necessary Consents:** all Registrations, approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

**NHS:** the National Health Service.

**NHS Body:** any statutory organisation created pursuant to the National Health Service Act 1977, National Health Service Act 2006, Health and Social Care Act 2012 or other legislation governing the operation of the National Health Service.

**NHS Funded CHC:** a package of ongoing continuing healthcare that is arranged and funded solely by the NHS where the Service User has been assessed and found to have a primary health need.

**NHS Funded Nursing Care:** nursing care provided by a registered nurse as defined by section 22 of the Care Act 2014 which is funded by the NHS to Care Homes with nursing to support the provision of nursing care by a registered nurse (which since 2007 has been based on a single band rate).

**NICE:** the National Institute for Health and Care Excellence.

**Nursing Care:** the nursing care described in the Care and Support Plan provided by a registered nurse as defined by section 49(2) of the Health and Social Care Act 2001.

**Nursing Care Fee:** the fees paid by an NHS Body to the Service Provider for the nursing care component of Home fees (not being the Care Fees) by paying a flat rate directly to the Service Provider towards the cost of NHS Funded Nursing Care for the Service User at the Home.

**On-line Monitoring Tool:** the Authority's system for on-line monitoring of the Service Provider's performance including against the Key Performance Indicators.

**Payment Plan:** the plan for payment of the Charges as set out in Schedule 4 (Charges and payment).

**Personal Care:** Services other than Nursing Care.

**Personal Care Fee:** the maximum price per week payable by the Authority to the Service Provider for each Service User in return for providing the Services (other than Nursing Care) as set out in this agreement.

**Personal Data:** shall have the same meaning as set out in the GDPR.

**Personal Expenses Allowance:** the amount payable to the Service User for their personal use in accordance with sections 14, 17 and 34 to 36 of the Care Act 2014 being an agreed amount of money that is not to be recognised as being part of the Care Fees but is instead the Service User's money that may (but need not be) administered together with the Service User's related financial items by the Service Provider in accordance with paragraph 5.30 of the Specification where instructed by the Service User.

**Placement:** the referral by the Authority of an individual Service User to become a resident of the Home and the acceptance of such referral by the Service Provider in accordance with the terms of this agreement (as either a Long Stay Placement or a Short Stay Placement).

**Policies:** shall mean the Authority's policies listed in Part 1 (Authority Policies) of Schedule 3 (Policies), as amended from time to time.

**Professional Codes of Conduct:** the codes of conduct for social workers issued by or on behalf of Social Work England from time to time (as indicated at the date of this agreement by guidance at <https://www.socialworkengland.org.uk/standards/standards-guidance/professional-standards-guidance/#about>).

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this agreement or any other agreement with the Authority; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

**Provider:** the Service Provider.

**QPIP:** the Authority's quality, performance and improvement planning process whose terms of reference are as set out in paragraph 1.3 of Appendix 2 (QPIP) to the Specification.

**Radicalisation:** the process by which a person comes to support Terrorism and forms of Extremism leading to Terrorism.

**RDB:** is defined in clause 15.2(c) (Quality assurance).

**Records:** the Services records, books of account, financial details (including but not limited to the breakdown of the Personal Care Fee in respect of each Service User and any records relating to the provision of funding by the Authority), correspondence and other documents relating to the Services to be maintained, produced and/or reviewed by the Service Provider in accordance with this agreement.

**Registrations:** the registration with the Information Commissioner (as defined in the Data Protection Legislation) and CQC together with all and any other registration, licence, permit or consent required by statute, statutory instrument or by any central

or local government or other public authority which is necessary for the performance of the Services or where such registration, licence, permit or consent is in the reasonable opinion of the Authorised Officer deemed necessary.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulatory Bodies:** those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies (including the CQC) which, (whether under statute, rules, regulations, codes of practice or otherwise) are entitled to regulate, investigate or influence the matters dealt with in this agreement or any other affairs of the Authority or Service Provider or any body that has authority to issue standards or recommendations with which the Service Provider must comply.

**Relevant Transfer:** a relevant transfer for the purposes of TUPE.

**Remediation Notice:** a notice served by the Authority in accordance with clause 40.1(a) (Termination for breach).

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider.

**Replacement Service Provider:** any third party supplier of Replacement Services appointed by the Authority from time to time.

**Representative:** an advocate, Carer relative or friend of the Service User who is concerned with and/or involved in the care of the Service User.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

**Service Credits:** the sums attributable to a Service Failure as specified in Part 2 (Service Credits) of Schedule 2 (Service Levels).

**Service Failure:** a failure by the Service Provider to provide the Services in accordance with any individual Service Level.

**Service Levels:** the service levels to which the Services are to be provided, as set out in Part 1 (Service Levels) of Schedule 2 (Service Levels).

**Service Provider Party:** the Service Provider's agents and contractors, including each Sub-Contractor.

**Service Provider's Personnel:** all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors (of any tier) who are engaged in the provision of the Services from time to time (whether on a permanent, temporary or session basis or supplied to the Service Provider by an employment business) and the Service Provider (where the Service Provider is a natural person) or any director member of the Service Provider actively engaged in the provision of the Services (where the Service Provider is a company or an unincorporated association of natural persons) and anyone working with or for the Service Provider in a voluntary or training capacity.

**Service User:** a person who has been assessed by the Authority as requiring the Services and referred to and accepted for a Placement by the Service Provider (including whether they are (a) self-funded without referral via the Authority or an NHS body or alternatively (b) are a full cost payer with referral via the Authority but have sufficient assets to justify their full payment of Care Fees to meet the Care Charges levied by the Service Provider for Services without recourse to other funds).

**Service User Assessed Contribution:** the amount for which the Service User is liable to pay towards the total Care Fees as calculated by the Authority following the Service User's Financial Assessment (which the Authority shall pay to the Service Provider to satisfy the Care Charge made by the Service Provider for the Service User's Placement at the Home and where the Authority is then reimbursed by the Service User within thirty (30) Working Days following the issue of a valid VAT invoice by the Authority to the Service User or their Representative).

**Service User Placement Agreement or SUPA:** an agreement in substantially the form of Schedule 12 (SUPA) made between the Service User (or their Representative), any relevant third parties concerning the Financial Assessment, the Authority and Service Provider documenting the Service User's Placement which shall include the Care and Support Plan and CPLI.

**Services:** the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in the Specification.

**Short Stay Placement:** a Placement (including respite breaks for Carers) which is not a Long Stay Placement.

**Social Value Policy:** the Authority's social value policy set out or referred to in Part 1 (Authority Policies) of Schedule 3 (Policies).

**Social Worker:** an Authority social worker allocated as a resource in support of a Service User.

**Specification:** the outcome-based specification set out in Schedule 1 (Specification).

**Sub-Contract:** any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or service providers that enter into a Sub-Contract with the Service Provider.

**Supplier Incentive Scheme:** the Authority's programme to improve its pay to purchase processes to enable the Service Provider to benefit from the early payment of their invoices in return for a small rebate of the Care Fees.

**Term:** the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3 (Extending the Initial Term); or
- (b) the earlier termination of this agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this agreement.

**Termination Payment Default:** is defined in Schedule 4 (Charges and payment).

**Terrorism:** is as defined in the Terrorism Act 2000 which, in summary, defines terrorism as an action that endangers or causes serious violence to a person or people, causes serious damage to property or seriously interferes with or disrupts an electronic system where the use or threat must be designed to influence the government or to intimidate the public and is made for the purpose of advancing a political, religious or ideological cause.

**Third Party:** any person, body or organisation (including the Authority in its absolute discretion), other than the Service User, who has signed a Third Party

Agreement with the Authority (or where the Authority is itself the Third Party, the Authority has agreed) to make a Third Party Contribution to the total Care Fees for the Service User at the Home.

**Third Party Agreement:** the commitment made by the Authority or the agreement between the Authority and a Third Party in substantially the form set out in Appendix 5 to Schedule 4 (Charges and payment) for the payment by the Third Party (or the Authority as a Third Party) of the Third Party Contribution.

**Third Party Contribution:** the sum committed by the Authority (where the Authority is a Third Party) or payable by a Third Party to the Authority as set out in the Third Party Agreement (as amended from time to time depending on the Service Provider's calculation of its Care Charge for the Service User's Placement at the Home) in respect of the cost of enhanced facilities and Services where the Service User chooses a Placement which is more expensive than that which the Authority would normally pay as a result of the Service User's Financial Assessment.

**Trial Period:** is defined in clause 2.2 (Term).

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**Working Day:** any calendar day (and not excluding any public holidays in England and Wales).

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.



- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes e-mail but not faxes.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement. References to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of this agreement, the Care and Support Plan, the Contract Acceptance Form, any Service User Placement Agreement and any other contract document (whether held on the Care Portal or otherwise) which may form the contract between the Authority and the Service Provider for the provision of Services to the Service User such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of this agreement;
  - (b) the Care and Support Plan;
  - (c) any contract document held on the Care Portal (including the Contract Acceptance Form but excluding any Service User Placement Agreement);
  - (d) any other contract document not held on the Care Portal (excluding any Service User Placement Agreement); and
  - (e) any Service User Placement Agreement.
- 1.14 Where there is any conflict or inconsistency between the provisions of this agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) (where relevant for "out of area" Placements) Schedule 7 (Out of area) to this agreement;
  - (b) the clauses of this agreement;

(c) the Specification; and

(d) the remaining schedules to this agreement.

- 1.15 The Service Provider shall operate the Services under this agreement (including the Specification) rather than under the Service Provider's own standard terms and conditions (as may be amended). In the event of conflict between this agreement and the Service Provider's own standard terms and conditions (as may be amended), this agreement shall prevail.

## COMMENCEMENT AND DURATION

### 2. TERM

- 2.1 Subject to this clause 2, this agreement shall take effect on the Commencement Date and (except for any Short Stay Placement) any Long Stay Placement shall continue for the Term.
- 2.2 The first four (4) weeks of any Long Stay Placement shall be regarded as a trial period (the **Trial Period**) during which the Authority and Service Provider shall assess the extent to which the Placement is satisfactory. The Authority may, in agreement with the Service Provider, extend the Trial Period after consultation with the Service User.
- 2.3 During the Trial Period the parties shall examine whether the provision of the Services by the Service Provider adequately meets the Service User's needs. Where a party considers that the Service User's needs are not adequately met they shall advise any other party of this as soon as possible.
- 2.4 Where a party considers that the Service User's needs are not being adequately met by the Services then clause 7.7 (Principal Obligations for the Services) shall apply and a party may commence a Care and Support Plan Review. The Service Provider shall notify the Authority as soon as reasonably practicable if it considers that the Service User's needs are not being adequately met (or alternatively that the arrangements are excessive in practice and should be varied).
- 2.5 During the Trial Period this agreement may be terminated in accordance with clause 41.1(a) (Termination on notice).
- 2.6 Where the Service User or their Representative requests it a Service User Placement Agreement shall be entered into by the Authority, the Service Provider and Service User in respect of each Placement as soon as reasonably practicable (ideally upon admission of a Service User into a Home, whether for a Short Stay Placement, Trial

Period or Long Stay Placement but in any event within twenty-eight (28) Working Days of admission) in substantially the form set out at Schedule 12 (SUPA). Any self-funded Service User or their Representative may still request completion of a Service User Placement Agreement. Failure by the Service Provider to enter into a Service User Placement Agreement after such a request shall be a Material Breach and the Authority may terminate this agreement pursuant to the provisions of clause 40.1 (Termination for breach) of this agreement. For the avoidance of doubt the terms and conditions of a Service User Placement Agreement take priority over any Service Provider's own terms and conditions which it may have incorporated into a separate bi-partite agreement between the Service Provider and the Service User. Subject to clause 1.13 (Definitions and interpretation), where there is any conflict, inconsistency or ambiguity between this agreement and any Service User Placement Agreement (as may be amended), this agreement shall prevail.

### **3. EXTENDING THE INITIAL TERM**

3.1 The Authority may in its absolute discretion extend this agreement and any Long Stay Placement (effectively the Long Stay Placement being a long term arrangement where the Home is to become the Service User's main residence) beyond the Initial Term by a further period or periods each of five (5) years up to a maximum of twenty (20) years in addition to the Initial Term (the **Extension Period**) except where:

- (a) for any Short Stay Placement;
- (b) subject to clause 2.2 (Term) in respect of Trial Periods for any Long Stay Placement; or
- (c) the Service User notifies the Service Provider at least one (1) month before the expiry date of the Initial Term or the relevant Extension Period that they do not wish to extend the Placement (in which case the Service Provider shall notify the Authority as soon as reasonably practicable),

and if the Authority wishes to extend this agreement, it shall give the Service Provider at least three (3) months' written notice of such intention before the expiry of the Initial Term or Extension Period but any extension is conditional on any notification by the Service User under clause 3.1(c).

3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.

3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 44 (Consequences of termination) shall apply.

3.4 If the Authority does extend the Initial Term, then it shall do so on the same terms and conditions as set out in this agreement.

#### **4. CONSENTS, SERVICE PROVIDER'S WARRANTY AND DUE DILIGENCE**

4.1 (Notwithstanding the Service Provider's requirement to comply with the CQC's registration requirements pursuant to clause 4.2) the Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

#### 4.2

- (a) The Service Provider shall maintain at all times throughout the term of this agreement registration with the CQC for the regulated activities relevant to the Services (for example "Personal care" and/or "Accommodation for persons who require nursing or personal care") and must specify a nominated office for the purposes of delivering the Services under this agreement. Failure to comply with this requirement will amount to a Material Breach and the Authority may terminate this agreement pursuant to the provisions of clause 40.1 (Termination for breach) of this agreement.
- (b) If at any time the Service Provider wishes to change its nominated office through the "add and/or remove location(s)" procedure with the CQC, the Service Provider must have received approval from the CQC in the form of a notice of decision to confirm the change before delivering Services from its chosen location.
- (c) If at any time the Service Provider wishes to change its nominated office by virtue of a complete change of business and location address outside of the CQC's "add and/or remove location(s)" regime but will be continuing to provide the Services to the same Service Users as it originally did, the Service Provider must have received approval from the CQC in the form of an updated certificate before delivering Services from its new location.
- (d) Further to clauses 4.2(a) to 4.2(c) above, for any periods of time the new location is not rated by the CQC, the Authority is at liberty to carry out reasonable further and additional inspections.
- (e) If, at any time during the Term, the Service Provider is inspected by the CQC and receives an overall rating by the CQC of "inadequate" or "requires improvement" or an "inadequate" rating against any one of the CQC's five (5) key questions for the nominated office out of which the Service Provider is operating, for the purposes of delivering Services under this agreement (or equivalent by any successor body or system of evaluation), the Service Provider shall inform the Authority immediately and, within a timeframe to be stipulated by the Authority, share an improvement plan with the

Authority. If the Authority is not satisfied with the Service Provider's response, this shall amount to a Material Breach and the Authority may terminate this agreement pursuant to the provisions of clause 40.1 (Termination for breach) of this agreement and/or the Authority may suspend the referral of Placements to the Service Provider.

#### 4.3

- (a) The Service Provider must obtain and maintain all Registrations throughout the Term.
- (b) The Service Provider shall notify the Authority of all of the Registrations and promptly provide such evidence of all Registrations and/or application for Registrations as the Authority shall reasonably request.
- (c) In the event of termination, revocation, refusal or suspension of any Registrations or variation in or attachment of conditions to Registrations, the Authority may terminate this agreement and/or any Placement forthwith by notice in writing to the Service Provider. The Service Provider shall notify the Authority immediately if any such event or other event affecting Registrations occurs.

4.4 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in accordance with the requirements of the Services.

4.5 The Service Provider acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) it has received all information requested by it from the Authority pursuant to clause 4.5(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.5(b);

- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this agreement in reliance on its own due diligence.

4.6 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Service Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.7 The Service Provider:

- (a) warrants that its Service Provider policies listed in Part 2 (Service Provider Policies) of Schedule 3 (Policies), which the Service Provider shall comply with in providing the Services, meet or exceed the requirements of the Authority's Policies listed in Part 1 (Authority Policies) of Schedule 3 (Policies); and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.

4.8 The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with clause 4.7(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.9 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **5. FINANCIAL VIABILITY AND HOME CLOSURE**

5.1 The Service Provider shall provide on request and at its own cost such information of a financial nature as the Authority may reasonably require to assess the financial

viability of the Service Provider. This will usually take the form of a declaration of solvency and declaration that the business remains a going concern from the Service Provider's bankers or accountants. The Authority shall treat the information in confidence and use it only for the purpose of assessing the financial viability of the Service Provider and/or its ability to discharge or continue to discharge its obligations under this agreement. The Service Provider shall also provide at its own cost and upon the Authority's request:

- (a) evidence of financial resources and the level of turnover sufficient to enable it to continue to perform its obligations under this agreement;
- (b) a copy of the Service Provider's latest audited accounts;
- (c) any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the Authority; and
- (d) any additional evidence to support payments made under this agreement as the Authority shall reasonably require.

5.2 Failure to comply with the provisions of clause 5.1 shall entitle the Authority to withhold payment of the Applicable Fees to the Service Provider until the information is provided (and should an insolvency event affect the Service Provider whilst the Authority is withholding payment the Authority shall be entitled to set off any costs of finding alternative service provision for the Service User against the withheld sums).

5.3 The Service Provider shall:

- (a) notify the Authority immediately if it reasonably anticipates that its financial situation is such that it is unlikely to be able to sustain the performance of the Services within any period of six (6) months from notification; and
- (b) without prejudice to any right or remedy of the Authority in the event of the Service Provider making a notification in accordance with clause 5.3(a) above the parties will consult with each other with respect to the Service Provider's financial situation.

5.4 The Service Provider shall provide the Authority with not less than three (3) months' notice of its intention to close the Home during the Term (except where the Service Provider is subject to an insolvency event where the Service Provider must give as much notice as is reasonably practicable) and shall:

- (a) communicate the Home closure decision to the Authority as soon as reasonably practicable after the Service Provider's board of directors have approved it and informed their external financiers, any relevant Regulatory Body and Service Provider's Personnel (but before the Service Provider informs the Service Users and/or their Representatives);

- (b) actively engage with the Authority to provide support for Service Users and Service Provider's Personnel through a viable and credible re-housing and/or re-location programme;
- (c) produce to the Authority for their retention (initially as a contingency measure on behalf of itself, any Regulatory Body and particularly in accordance with any NHS England guidelines) any Service User records which have been maintained or held by the Service Provider;
- (d) where the Authority provides resource to the Service Provider (or to the Service Users at the Home) at Service Provider request (or at the request of a Regulatory Body including the CQC) as part of a transitional arrangement pending Home closure the Authority is entitled to be paid by the Service Provider for its provision of Authority staff and resources on the agreed terms and/or rates within thirty (30) Working Days of the Authority's issue of an undisputed valid VAT invoice;
- (e) clause 38.6 (Records) shall apply; and
- (f) clause 41.6 (Termination on notice) shall apply.

5.5 Notwithstanding clause 13.1(f) (Service standards) the Service Provider shall comply with the CQC's "Market Oversight" provider guidance as reproduced below:

- (a) "How does Market Oversight work? We collect and monitor information about a provider's finances and quality. We use this to assess the level of risk to the provider's financial sustainability. We have designed a model, working with providers and other stakeholders, which shows the actions we will take and the consequences for the provider if risks increase. This covers risk from very low to significant levels to where we assess that business failure is likely.
- (b) What does the Market Oversight model look like? The model is made up of 6 stages:
  - (i) Stage 1 – Entry to the Scheme: The provider has satisfied the entry criteria.
  - (ii) Stage 2 – Regular monitoring: We start to collect information about the provider's business context and financial information, such as quarterly accounts. We will do this on a routine basis where risks remain low.
  - (iii) Stage 3 – Further risk analysis: We conduct more analysis to explore in more depth issues we have found and to check whether risks may be increasing and what the provider plans to do about this.
  - (iv) Stage 4 – Provider engagement on risk: This stage is reached where we have not been able to get conclusive evidence of a provider's sustainability at previous stages in the model through looking only at data. We will seek more information about the future business strategy and plans for development of the business in a sustainable



way. We will also speak with other stakeholders in the business to understand their intentions and how or whether they plan to continue to support the business in the future.

- (v) Stage 5 – Regulatory action & engagement: At this stage, risks will have increased significantly over previous stages and we will have real concerns about the provider’s financial sustainability. We will use a broader range of tools and methods than previously to get more information about a provider’s intentions and ability to reduce risk. We will engage more with the provider at this stage than at previous stages.
- (vi) Stage 6 – Formal Notification to Local Authorities: This is the final stage. It indicates the highest level of risk. This is where we consider that business failure is likely and that the provider is unlikely to be able to continue to provide one or more services. We will notify local authorities in the areas likely to be affected so that they can consider drawing up or putting into effect contingency plans to support people using those care services which might be affected and to help ensure that they continue to receive care."

5.6 A notification pursuant to clause 5.5(b)(vi) shall be an irremediable Material Breach and the Authority may terminate this agreement pursuant to the provisions of clause 40.1 (Termination for breach) of this agreement.

## **THE SERVICES**

### **6. SUPPLY OF SERVICES**

- 6.1 The Service Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement. Where a Placement is located outside the Authority's administrative area (known as "out of area" or "out of county") then the terms and conditions of Schedule 7 (Out of area) shall apply (and in the case of any discrepancy between the Specification main body and Schedule 7 (Out of area) then in respect of "out of area" Placements then Schedule 7 (Out of area) shall take precedence).
- 6.2 The Service Provider acknowledges and accepts that the Authority is implementing an electronic data system which uses a Capacity Tracker and On-line Monitoring Tool (together the **Capacity Tracker System**) to complement the Authority's existing payment system. The Service Provider shall co-operate with the implementation of a Capacity Tracker System and shall provide any and all information required by the Authority in the format the Authority requires in order to facilitate the implementation and operation of the Capacity Tracker System (including for the regular provision of updated bed/vacancy completion data by the Service Provider to the Authority to assist the Authority with sourcing Service User placements). The

Service Provider shall bear its own costs for interface and ongoing maintenance of any Service Provider systems to complement the Capacity Tracker System or any future introduction of new, replacement or amended referral systems by the Authority.

- 6.3 The Service Provider agrees it shall use the Capacity Tracker System as required by the Authority and the use of the Capacity Tracker System shall be in accordance with the rules for use given to the Service Provider by the Authority from time to time. Without limitation to the foregoing, the Service Provider shall comply with any and all requirements relating to the use of the Capacity Tracker System as set out in guidance provided to the Service Provider from time to time. Insofar as the guidance regulates the method or form of delivery of information to the Authority, as required in accordance with this agreement, the Service Provider shall be deemed not to have complied with the relevant obligation if it has not complied fully with such guidance.
- 6.4 The Authority wishes to move towards an increasing use of electronic communication with its service providers and will work with and co-operate with the Service Provider to achieve this aim.
- 6.5 The Service Provider may from time to time be expected to provide data sourced from the use of any IT equipment utilised as part of supporting a patient-centred delivery of service e.g. Care Home Connect (iPads). Any such tools will meet Data Protection Legislation requirements and be appropriately protected/secured in respect of cyber-security.
- 6.6 The Service Provider shall comply with the requirements of paragraphs 5.6.8 and 5.7.3 of the Specification (where "The Provider will facilitate where appropriate access to digital systems, assistive technologies/telehealth equipment in order to improve the functional ability of Service Users with long term conditions and support them to manage their condition and promote independence. Where telemedicine is in commissioned the Provider must engage with the service.") and in addition procure that through the provision of 4G (ultimately 5G) mobile phone network coverage and/or broadband connection with wi-fi coverage throughout the Home (which shall not be Additional Services to be paid for by any Service User) there shall be the capability to:
- (a) deliver reliable, secure video consultations and/or video conversations in all rooms (and in particular those rooms used by any Service User); and
  - (b) actively engage with remote monitoring, use of sensors and participate in remote video consultations.
- 6.7 The Service Provider shall operate active, secure e-mail accounts conforming to the DCB1596 standard (for example @nhs.net).

6.8 Except where required by Applicable Laws, the Service Provider shall not be required to provide Services to any Service User:

- (a) who, in the reasonable professional opinion of the Service Provider, is unsuitable to receive the relevant Services, for as long as such unsuitability remains;
- (b) who displays abusive, violent or threatening behaviour unacceptable to the Service Provider (acting reasonably and taking into account the mental health of that Service User);
- (c) in that Service User's care setting or circumstances (as applicable) where that environment poses a level of risk to the Service Provider's Personnel engaged in the delivery of the relevant Services that the Service Provider reasonably considers to be unacceptable; or
- (d) where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.

6.9 Except where required by Applicable Laws, the Service Provider shall not be required to continue to provide Services to any Service User where clause 40.5(b) (Termination for breach) or clause 40.5(c) (Termination for breach) apply.

6.10 If the Service Provider proposes not to provide or to stop providing Services to any Service User under clause 6.8 or clause 6.9 then the Service Provider shall act reasonably in proposing a timetable for the removal of the Service User which must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and:

- (a) where reasonably possible, the Service Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect and the reasons for it (confirming that explanation in writing within two (2) Working Days);
- (b) the Service Provider must tell the Service User of the right to challenge the Service Provider's decision through the Service Provider's Complaints Procedure and how to do so; and
- (c) the Service Provider must inform the Authority in writing without delay and wherever possible in advance of taking such action,

provided that nothing in this clause 6.10 entitles the Service Provider not to provide or to stop providing the Services where to do so would be contrary to the Applicable Laws.

- 6.11 The Service Provider shall check to ensure that any Service User moving from another Care Home to the Home does not take up residence until any notice period has expired at the Service User's previous Care Home.
- 6.12 The Service Provider must comply with any "Transfer of and Discharge from Care Protocols" agreed by the parties from time to time and which at the Commencement Date is as referenced or set out in Part 1 (Authority Policies) of Schedule 3 (Policies).

## **7. PRINCIPAL OBLIGATIONS FOR THE SERVICES**

- 7.1 The Authority and Service Provider shall at all times act in good faith towards each other.
- 7.2 The Service Provider must co-operate fully and liaise appropriately with:
- (a) the Authority;
  - (b) any third party provider who the Service User may be transferred to or from the Service Provider;
  - (c) any third party provider which may be providing care to the Service User at the same time as the Service Provider's Personnel provision of the relevant Services to the Service User; and
  - (d) primary and secondary health services and social care services, in order to:
    - (i) ensure that a consistently high standard of care for the Service User is maintained at all times;
    - (ii) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one (1) provider; and
    - (iii) achieve a continuation of the Services that avoids inconvenience to, or risk to, the health and safety of Service Users, Service Provider's Personnel, the Authority or members of the public.

- 7.3 The Service Provider shall engage, liaise and communicate with the Service Users, their Carers and Representative in an open and clear manner in accordance with Applicable Laws, Good Industry Practice and their human rights.
- 7.4 As soon as reasonably practicable following any reasonable request from the Authority, the Service Provider must provide evidence to the Authority of the involvement of the Service User, Carers and Service Provider's Personnel in the development of Services.
- 7.5 The Service Provider must manage the activity (meaning any levels of clinical services and/or Service User flows set out in the Specification) in accordance with any activity planning assumptions and any caseloads as set out in the Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of activity for the Services. The Service Provider shall provide the Authority (particularly the Authority's "Care Navigation Service" and any of the Authority's nominees) with vacancy information through the Capacity Tracker System, On-line Monitoring Tool and such other systems as the Authority may reasonably require.
- 7.6 The Service Provider is authorised to provide Services only to those Service Users whose needs have been identified through the Assessment and in respect of which all relevant information has been lodged on the Care Portal and/or a Service User Placement Agreement has been completed for a Placement by the parties, any Service User or their Representative and any other relevant parties. The Service Provider shall procure that any Service User shall (whether contained in any Service User Placement Agreement or otherwise) complete a document acknowledging any Home rules or Home code of conduct and the Service Provider shall provide confirmation to the Authority as soon as reasonably practicable.
- 7.7 The Service Provider shall ensure that the Authority is kept promptly informed of any significant changes affecting the health or well-being of a Service User. In the event that a Service User's care needs increase or decrease the Service Provider shall notify the Authorised Officer as soon as reasonably practicable for re-assessment of the Service User's needs by a Care and Support Plan Review in accordance with clause 11 (Care and Support Plan Review and Variation of the Services) and:
- (a) until the Service User's needs have been re-assessed by the Authorised Officer by a Care and Support Plan Review and the Service Provider is instructed by the Authorised Officer, the Service Provider is authorised to adjust temporarily the Services as the Service Provider reasonably considers appropriate in order to meet the needs of the Service User;
  - (b) the Service Provider shall not permanently change the Services provided to Service Users without the Authority's prior written consent from the Authorised Officer;

(c) (notwithstanding paragraph 5.25.3 of the Specification) any requests for additional "one to one" care and Additional Care Fees for Additional Care Services for any Service User under a Care and Support Plan Review shall:

- (i) recognise and comply with any applicable Policies;
- (ii) be accompanied by a template information summary in substantially the form set out in Schedule 13 (One to One Form) section titled "Enhanced Observations Request Form" completed by or on behalf of the Service Provider;
- (iii) where the nature of the Additional Care Services are Nursing Care funded in whole or in part by an NHS Body as a Nursing Care Fee (or otherwise) the Authority shall not be liable itself to make any such payment unless it is put in funds by the NHS Body with budgetary control and approval for such Nursing Care;
- (iv) where the nature of the Additional Care Services are funded other than by a Service User or the NHS then the Authority may fund additional "one to one" care for a defined period until a further Care and Support Plan Review may be carried out within a period of three (3) months to assess the suitability and effectiveness of such Additional Care Services,

provided that any approved payment of Additional Care Fees shall be backdated to the date on which the Service User received the Additional Care Services in accordance with the Care and Support Plan.

7.8 The Service Provider shall ensure that where a Service User is required to attend a planned medical appointment or hospital on an emergency basis then (unless otherwise agreed with the Service User following a risk assessment) the Service User is to be escorted by an appropriate person at the Service Provider's cost until the Service User is accepted into the care of the relevant NHS or private medical care professional (and for the avoidance of doubt the escorting responsibility includes waiting with the Service User until their appointment or emergency care commences).

7.9 If required as part of this agreement or where it becomes necessary for provision of the Services or in the interests of the Service User's welfare, the Service Provider shall, at no additional cost to the Authority (except where the Authority elects in its absolute discretion to make a mileage payment at a specified rate and notifies the Service Provider accordingly), provide transport for the Service User. Safe operating procedures shall be put in place for assisting the Service User to use this transport including the provision of passenger assistance if necessary.

7.10 Where the Service Provider provides Services which include transporting Service Users, the Service Provider shall ensure that its Service Provider's Personnel providing transport have current motor vehicle insurance which includes provision for use of the vehicle in connection with their business, trade or employment, In addition,

the Service Provider shall ensure that Service Provider's Personnel providing transport must have a full, valid driving licence. The Service Provider shall take all reasonable steps to ensure that any vehicle used for transporting Service Users complies with Applicable Laws, the manufacturer's recommendations, licensing requirements and, where appropriate, a valid MoT certificate.

7.11 The Service Provider shall ensure that any room provided for the Service User at the Home is suitable to meet the health needs of the Service User and accommodate any care equipment required to meet those needs.

7.12 The Service Provider and Authority may not allow any person to occupy or otherwise use the accommodation in a Home allocated to a Service User during any temporary absence of the Service User without the written agreement of all parties and:

(a) if such written agreement is given and the accommodation is occupied then the Authority will not be expected to pay for the accommodation more than once and payment will be made only for the temporary placement; and

(b) in the event that a Service User that is temporarily absent from the Home for any reason and that period of absence is not detailed in the Care and Support Plan the following provisions shall apply (unless otherwise agreed between the Authority and the Service Provider):

(i) the element of the Care Fees which relates to one-to-one support and individual specific costs shall cease immediately; and

(ii) (after cessation of the element of the Care Fees for one-to-one support and individual specific costs) for the first week of absence the Authority shall pay seventy-five per cent (75%) of the remaining Care Fees. For the period from the end of the first week and for the next five (5) weeks (up to the end of a six (6) week period) the Authority shall pay fifty per cent (50%) of the remaining Care Fees. After the six (6) week period has elapsed the Authority shall not be liable to pay any remaining Care Fees in respect of the absent Service User and either the Authority or Service Provider may request a Care and Support Plan Review during the period of absence and where the Care and Support Plan Review recommends it the Authority may elect to terminate the Placement in accordance with clauses 41.1 (Termination on notice), 41.3 (Termination on notice) or 41.4 (Termination on notice) and the Service Provider may elect to terminate the Placement in accordance with clause 41.5 (Termination on notice).

7.13 Following the allocation of the Service User to the allotted room accommodation within the Home the Service Provider shall not move the Service User to any other accommodation within the Home or any other home without the prior consent of the Service User or their Representative, except for temporary movement for the

purposes of decoration or other maintenance which shall only be carried out following consultation with the Service User or their Representative. There will be no adjustments made to sums paid for any Service User who is moved on a temporary basis.

- 7.14 The Service Provider shall assist any Service User who wishes to make arrangements for a holiday provided that costs incurred will be the responsibility of the Service User and/or their family or Representative. The Authority shall continue to pay the Applicable Fees to the Service Provider for the first fourteen (14) Working Days absence of a Service User on holiday in any calendar year where the Service Provider confirms such absence to the Authority. Any further payments beyond fourteen (14) Working Days shall be in the Authority's absolute discretion on a case by case basis. Any unpaid period of holiday of more than fourteen (14) Working Days must have prior agreement from the Authority.
- 7.15 No Service User shall be required or requested by the Service Provider to sign any agreement, consent forms, disclaimer notices or acceptance notices which in any way conflict with the provisions of this agreement or which affect their statutory rights.
- 7.16 The Service Provider must promptly notify the Authorised Officer of any changes in control or responsibility of the Service Provider including:
- (a) relating to the changes in owner or senior management of the Home;
  - (b) if the Service Provider intends to sell the Home;
  - (c) (notwithstanding clause 5 (Financial Viability and Home Closure) if the Service Provider is considering closing the Home for any reason; or
  - (d) if the Service Provider is considering deregistering nursing services with the CQC (such that the Service Provider would be unable to accept Placements sought by the Authority requiring Nursing Care).
- 7.17 The Service Provider shall ensure that Service Users and/or their Representatives are informed of any reports or notices issued by the CQC relating to the Home.
- 7.18 The Service Provider shall notify the Authority as soon as reasonably practicable following becoming aware of a change in circumstances concerning the Service User's eligibility for Authority financial support.



## **8. CONFLICT OF INTEREST**

- 8.1 The Service Provider shall take all reasonable steps to ensure that neither it nor any Service Provider's Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Service Provider or Service Provider's Personnel and the duties owed to the Authority or Service User under the provisions of this agreement. The Service Provider shall promptly notify the Authority, providing full particulars, if any such conflict arises or is reasonably foreseeable.
- 8.2 The Service Provider agrees and undertakes that it shall not, and shall ensure that the Service Provider's Personnel or agents or any associated business of the Service Provider do not:
- (a) enter into any financial transaction whatsoever with a Service User or their Representative (except where expressly permitted under any other provisions of this agreement) including:
    - (i) the borrowing or lending of monies or property; or
    - (ii) purchasing any property or personal effects owned by the Service User, whether owned jointly or in their own right, from the Service User or any third party acting on behalf of the Service User;
  - (b) accept any gifts from a Service User or their Representative (it being acceptable to receive small token gifts from the Service User where refusal would particularly offend provided such gifts are properly recorded and reported to the Service Provider);
  - (c) sell anything to, borrow anything from or exchange anything with a Service User or their Representative. The reference to the words sell, borrow or exchange in the preceding sentence shall include any attempt to sell, borrow or exchange;
  - (d) use retail loyalty cards and special offers for their own benefit;
  - (e) act as witness to any legal documents (including, but not limited to, the will of a Service User);
  - (f) act as appointees to the Service User (except with the Authority's prior written consent); or
  - (g) act as executors to the Service User's will.

8.3 The Service Provider must publish, maintain and operate a Service User consent policy which complies with Good Industry Practice and Applicable Laws.

## **9. FAILURE TO COMPLY WITH AGREEMENT**

9.1 In the event that the Service Provider does not comply with the provisions of clause 6.1 (Supply of Services) in any way (and subject to the issue of a Remediation Notice following a material breach (including but not limited to a Material Breach) in accordance with clause 40.1(a) (Termination for breach)), the Authority may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a **Default Notice**).

9.2 For the avoidance of doubt, where the Service Provider is in material breach (including but not limited to a Material Breach) of its obligations under this agreement the Authority may issue a Remediation Notice. Where the Authority issues a Default Notice for Service Provider breach of its obligations it may, in addition to applying a Service Credit to the Service Provider, also require the Service Provider to provide a rectification plan to the Authority as soon as reasonably practicable (and in any event within seven (7) Working Days of the issue of the Default Notice) describing how the Service Provider proposes to improve its performance of the Services so as not to repeat the breach which led to the issue of the Default Notice. Where the Authority agrees the terms of the rectification plan with the Service Provider such rectification plan shall be implemented as soon as reasonably practicable. Failure by the Service Provider to provide such a rectification plan or failure to implement the agreed rectification plan (whether by agreement or following determination) shall be a Material Breach of this agreement. If the Service Provider's rectification plan includes the Authority providing resource to the Service Provider the Authority is entitled to be paid by the Service Provider for its provision of Authority staff and resources on the agreed terms and/or rates within thirty (30) Working Days of the Authority's issue of an undisputed valid VAT invoice.

9.3 Without prejudice to the Service Provider's obligations to continue to perform its obligations under this agreement, the Service Provider shall serve written notice to the Authorised Officer within fourteen (14) Working Days of it becoming aware of any relevant anticipated industrial action which directly causes it or may cause it to be unable to comply with all or a material part of its obligations under this agreement. Such initial notice shall give sufficient details to identify:

- (a) the expected start date;
- (b) anticipated duration; and
- (c) the number of Service Users likely to be affected and any associated risks followed by details of how these risks will be addressed.

## 10. BUSINESS CONTINUITY

10.1 The Service Provider will have and maintain to the reasonable satisfaction of the Authorised Officer a properly documented system of Business Continuity Management or BCM including a plan (the **Business Continuity Plan**) which must be based on:

- (a) a risk analysis which should be reviewed by the Service Provider on an ongoing basis and not less than once every twelve (12) months;
- (b) a strategy that embeds BCM within the Service Provider's organisation and highlights the process to be followed for ensuring continuity of the Services to the Service User and supply from critical suppliers;
- (c) plans which detail:
  - (i) the trigger points for initiating the Business Continuity Plan;
  - (ii) procedures and processes to be followed;
  - (iii) the roles and responsibilities of all Service Provider's Personnel, BCM manager(s) and officer(s);
  - (iv) contact details of all Service Provider's Personnel and other parties with roles and responsibilities in the continuity of Services provision;
  - (v) details of co-ordination plans and information sharing protocols with other service providers;
  - (vi) actions to be taken; and
  - (vii) processes to test plans and train Service Provider's Personnel in the Business Continuity Plan, not less than once in every twelve (12) month period.

10.2 The Service Provider shall, if requested, provide the Authority with a copy of its Business Continuity Plan and other relevant documentation (such as a business impact analysis and/or risk assessments). Whilst the Authority may discuss improvements and remedial measures that may be made to the Business Continuity Plan the Authority does not accept any liability in respect of deficiencies within the

policies and procedures adopted by the Service Provider in respect of Business Continuity Management.

10.3 The Authority may require the Service Provider to undertake additional tests of the Business Continuity Plan(s) in circumstances where:

- (a) there have been substantial changes to the Services;
- (b) there has been a change in underlying business processes; or
- (c) there is an increased likelihood of an event happening which would necessitate the implementation of the Business Continuity Plan.

10.4 The Authority reserves the right to attend any Business Continuity Plan test undertaken by the Service Provider.

10.5 The Service Provider shall provide the Authority with its Contingency Plan and other relevant documentation, such as risk assessments. On the Commencement Date and provide a revised Contingency Plan on each anniversary of the Commencement Date. Whilst the Authority may discuss improvements and remedial measures that may be made to the Contingency Plan the Authority does not accept any liability in respect of deficiencies within the policies and procedures adopted by the Service Provider in respect of contingency planning.

10.6 The Service Provider shall comply with its Contingency Plan unless otherwise approved in writing by the Authority (such approval not to be unreasonably withheld or delayed).

## **11. CARE AND SUPPORT PLAN REVIEW AND VARIATION OF THE SERVICES**

11.1 A Care and Support Plan Review for a Long Stay Placement will take place within twenty-eight (28) Working Days of the expiry of the Trial Period and not less than once every twelve (12) months thereafter. Where the Service User was admitted to the Home prior to the Commencement Date, a Care and Support Plan Review shall be undertaken within twelve (12) months and not less than once every twelve (12) months thereafter.

11.2 The Authority may require a Care and Support Plan Review at any time during the Term. The Service Provider may request the Authority commence a Care and Support Plan Review at any time during the Term and shall advise the Authority where it reasonably believes the Service User's needs have changed and a further Assessment is required.

- 11.3 A Care and Support Plan Review shall be commenced by the Authority inviting:
- (a) the Service User or their duly authorised Representative;
  - (b) the ASC Practitioner or such other person approved by the Authority;
  - (c) the Service Provider or its representative; and
  - (d) any other relevant professionals,
- to a meeting to consider the Service User's needs and whether these have changed since they were last assessed.
- 11.4 The parties shall use all reasonable endeavours to ensure that their relevant staff attend each Care and Support Plan Review.
- 11.5 The Authority shall document each Care and Support Plan Review and provide copies to the attendees.
- 11.6 Where a Care and Support Plan Review demonstrates a significant change in the Service User's needs or the Service User's circumstances the Authority may vary the Care and Support Plan and the Services and such a variation shall be recorded in writing and executed by the parties.
- 11.7 Where the Service Provider considers a variation in accordance with clause 6 (Supply of Services) would result in a change to the cost of providing the Services the Service Provider may submit to the Authority a proposal for a revised price for the Services together with all evidence reasonably required by the Authority to substantiate the revised price.
- 11.8 The Authority may accept the Service Provider's revised price, reject the Service Provider's revised price or propose an alternative price. Where the Authority does not accept the Service Provider's revised price the parties shall negotiate in good faith to agree a revised price. Where agreement is not reached within twenty-eight (28) Working Days either party may initiate the procedure set out at clause 29 (Dispute resolution).
- 11.9 Any revised price agreed by the parties shall be deemed to be the Applicable Fees from the date the variation of the Care and Support Plan takes effect.

## **12. SERVICE LEVELS**

- 12.1 Where any Service is stated in Schedule 2 (Service Levels) to be subject to a specific Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.

- 12.2 As existing Services are varied and new Services are added, Service Levels for the same will be determined, agreed by the parties and included within Schedule 2 (Service Levels).
- 12.3 The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 25 (Reporting and meetings).
- 12.4 In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the Authority may have, the provisions of clause 19 (Service Credits) shall apply.

### **13. SERVICE STANDARDS**

- 13.1 Without prejudice to clause 12 (Service Levels), the Service Provider warrants that it shall provide the Services, or procure that they are provided:
- (a) in all respects to meet or exceed the Authority's requirements set out in the Specification, including but not limited to:
    - (i) the Person Centred Outcomes set out in Section 5 of the Specification;
    - (ii) the Framework for Enhanced Health in Care Homes;
    - (iii) the requirements of the Lancashire Safeguarding Adults Board (in addition to their policies referred to at clause 13.1(e)(ii) below); and
    - (iv) any other quality requirements set by the Authority, the relevant CCG or any other professional body or Regulatory Body,and where there is any discrepancy or ambiguity between the Authority's requirements set out in the Specification then the Person Centred Outcomes set out in Section 5 of the Specification shall take precedence;
  - (b) in accordance with the LA Support Plan and the Care and Support Plan (and where there is any discrepancy or ambiguity the Care and Support Plan shall take precedence);
  - (c) in all respects in accordance with Good Industry Practice;
  - (d) diligently and with all skill and care as can be reasonably expected of an appropriately qualified and competent provider or contractor experienced in performing the same services and will perform the Services at all times in compliance with the Authority's requirements set out in this agreement;
  - (e) in all respects in accordance with:

- (i) the Authority's Policies as set out in Part 1 (Authority Policies) of Schedule 3 (Policies) (provided that the Service Provider may, where clause 4.7(a) (Consents, Service Provider's warranty and due diligence) applies, comply instead with its own Service Provider policies as set out in Part 2 (Service Provider Policies) of Schedule 3 (Policies) from time to time if their content at least meets or exceeds that of the corresponding Authority's Policies (or in the absence of any such comparator Authority Policies is assessed by the Authority as satisfactory) in each such case as agreed with the Authority's Authorised Officer (acting reasonably following review and ratification of the relevant Service Provider policy by the Authority)); and
  - (ii) the Lancashire Safeguarding Adults Board policies (and where there is any discrepancy or ambiguity the Authority's Policies shall take precedence);
- (f) in compliance with the registration and regulatory compliance guidance of the CQC (including its "Market Oversight" guidance) and any other Regulatory Body (but the Services shall not exceed the "Type of Service" and "Specialism/Services" registered with the CQC);
  - (g) in response, where applicable, to all requirements, recommendations and enforcement actions issued from time by the CQC or any other Regulatory Body or the LocalHealthWatch (a statutory service monitoring tool);
  - (h) considering and responding to the recommendation arising from any audit, death, serious incident report or patient safety incident report;
  - (i) in compliance with any recommendation made from time to time contained in guidance and appraisals issued by NICE or AQuA; and
  - (j) in observance and in compliance with all Applicable Laws (including but not limited to all Acts, Regulations, Orders and rules of law, codes of practice, statutory guidance or other requirement of relevant government departments or governmental agencies relating to the Services) from time to time.

## 13.2

- (a) Notwithstanding clause 13.1(j), the Service Provider shall, and shall ensure that its Service Provider's Personnel shall, comply with the provisions of the Mental Capacity Act 2005 and the guidance contained within the Mental

Capacity Act 2005 Code of Practice as amended or superseded from time to time.

- (b) The Service Provider shall at no point deprive a Service User of his/her liberty without having the necessary authorisation in place. The Service Provider shall ensure that its Service Provider's Personnel shall comply with the provisions relating to Deprivation of Liberty Safeguard including, but without limitation section 4A, Schedule A1 of the Deprivation of Liberty Safeguards Code of Practice and any subsequent code issued to accompany the Mental Capacity Act 2005 as amended or superseded from time to time.
- (c) The Service Provider shall in its role as Managing Authority make application(s) for Standard Authorisation to the Supervisory Body for the Administrative Area.
- (d) The terms **Managing Authority**, **Supervisory Body** and **Standard Authorisation** within this clause 13.2 are as defined in the Mental Capacity Act 2005 and the Codes of Practices related to it.
- (e) Where arrangements for the care of a Service User amount to a deprivation of their liberty, the Service Provider must take all reasonable steps to comply with the current legal requirements in relation to such deprivation (which is otherwise a breach of the Service User's human rights). This includes seeking appropriate legal authorisation of the arrangements amounting to a deprivation, which must be in the Service User's best interests and the least restrictive arrangements possible.

### 13.3

- (a) The Service Provider must immediately inform the Authorised Officer in the event of absence of the Service User from the Home. The Service Provider shall inform the Authorised Officer within twenty-four (24) hours in the event of the Service User being admitted to hospital, remaining in hospital for more than four (4) weeks or being discharged from hospital or following the death of a Service User (with such notification of a Service User death copied to the CQC).
- (b) Upon the Service User's return to the Home following an unplanned period of absence and/or in event of a change in needs a review of the Care and Support Plan shall be carried out by the Service Provider (and following such temporary absence any calculation of Care Fees payable in accordance with clause 7.12(b)(ii) (Principal Obligations for the Services) shall be superseded by a new Care and Support Plan).



- 13.4 The Service Provider shall use, as appropriate, first class quality materials, skills and workmanship of their respective kinds and undertakes that the design, workmanship and materials used will be fit to achieve the purpose for which the Services are required either as specified by the Authority expressly in this agreement or as may be implied from this agreement and the Service Provider further acknowledges that in performing the Services the Authority is reliant at all times on the Service Provider's skill and judgement.
- 13.5 Without limiting the general obligation set out in clause 13.1(j), the Service Provider shall (and shall procure that the Service Provider's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Authority reasonably requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998;
  - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (including, but not limited to, the Equality Act 2010 and whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment or otherwise;
  - (c) at all times comply with and support the Authority (at no cost to the Authority) in meeting the Authority's equalities objectives reproduced below:
    - (i) "Corporate Management Team has agreed updated equality objectives for Lancashire County Council, which will now go to Cabinet for approval;
    - (ii) public sector bodies have a duty to consider how their policies and decisions affect people with protected characteristics such as race, religion, gender, sexuality etc. and we must publish objectives at least every four (4) years;
    - (iii) the updated objectives align to the corporate strategy and aim to demonstrate how equalities should run as a thread throughout our activities, as opposed to being a tick-box exercise. They also form a fundamental part of our value to be respectful; and
    - (iv) Corporate Management Team also agreed to develop a "light-touch" mechanism to evidence achievement;" and
  - (d) (acknowledging that the Authority has obligations under the Human Rights Act 1998) not do anything to cause any infringement by the Authority of its obligations under this legislation or any other human rights legislation (and where the Service Provider is itself a public authority as defined by the

Human Rights Act 1998, it shall comply with, and ensure compliance by its Service Provider's Personnel with this legislation and any other human rights legislation).

#### **14. HEALTH AND SAFETY**

- 14.1 The Service Provider shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of this agreement. The Service Provider shall ensure that the care setting environment for delivery of the Services to the Service User is fit for purpose and meets all Applicable Laws (including but not limited to those relating to the safe provision of utilities and to the timely completion of any scheduled inspections and consequential rectification work following such inspections meeting Good Industry Practice).
- 14.2 While on the Authority's Premises, the Service Provider shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises. The Authority shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Service Provider in the performance of their obligations under this agreement.
- 14.3 The Service Provider shall carry out health and safety risk assessments in respect of the provision of the Services as and when necessary (including to ascertain if the physical environment is safe and fit for purpose for Service Users and Service Provider's Personnel). In the event that any part of the Services is provided in an environment outside the direct control of the Service Provider then the Service Provider shall carry out a risk assessment of the environment to ensure its suitability.
- 14.4 The Service Provider shall, in relation to the environment in which the Services shall be provided, ensure that risks have been reduced to the lowest level practicable. The Authority notes that the Service Provider should be particularly focussed on the risk of fire (whether electrical fire, risk of explosion or due to Service User emollient creams or otherwise).
- 14.5 The Service Provider shall notify the Authority immediately in the event of any incident occurring in the performance of this agreement on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 14.6 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to staff and other persons working on the Authority's Premises in the performance of this agreement.

14.7 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

14.8 The Service Provider acknowledges that the Authority is subject to the requirements of the Civil Contingencies Act 2004 and the Service Provider shall assist and co-operate with the Authority to enable the Authority to maintain services in the event of major emergencies. Where a service is contracted out, or is dependent on external suppliers, it is still the responsibility of the service provider to ensure continuity and the Authority requires service providers to have continuity arrangements. The Service Provider must provide the Authority with up to date contact details for their nominated person(s) who will be available for contact during an emergency at all times of day and night.

## **15. QUALITY ASSURANCE**

15.1 The Authority does not currently operate its own quality assurance/accreditation scheme in respect of Care Homes for people within the administrative boundary of the Authority. If the Authority introduces its own quality assurance/accreditation through the Change Control Procedure the Service Provider shall comply with its terms.

15.2 The Authority encourages the Service Provider to participate in and qualify for a current award from one or more of the following:

- (a) Investors in People (**IIP**);
- (b) ISO 9000/9002 (**ISO**); and
- (c) Service Residential and Domiciliary Care Benchmarking (**RDB**) Star Rating (relevant service user category).

15.3 Where relevant, the Service Provider must supply written evidence of any IIP, ISO or RDB (or similar or equivalent) award. This shall be in the form of:

- (a) a clearly legible photocopied certificate; and/or
- (b) a letter on the official headed notepaper of the accrediting body to confirm that the Service Provider has met, or continues to meet (subsequent to re-accreditation), the ISO, RDB or IIP (or similar or equivalent) standards.

15.4 It shall be the responsibility of the Service Provider to ensure that written proof of each such award is supplied to the Authority in the manner described at clause 15.3.

Failure to provide evidence of current and future eligibility will result in the Authority assuming the lapse of the award(s) in accordance with the following:

- (a) IIP – three (3) years from the date of award or last re-accreditation supplied to the Authority by the Service Provider;
- (b) ISO – based on the lapse date stated on the certificate; and
- (c) RDB Star Rating – one (1) year from the original date of award.

15.5 Should the Service Provider cease to hold any awards specified in clauses 15.2(a), 15.2(b) or 15.2(c) (or any which are similar or equivalent) it shall immediately inform the Authority in writing of the same.

15.6 Any false or misleading reference by the Service Provider to awards specified in clauses 15.2(a), 15.2(b) or 15.2(c) (or any which are similar or equivalent) (e.g. publicity relating to a lapsed or fictitious membership), save for that which is inadvertent or unavoidable, shall be deemed to be a Material Breach and the Authority may terminate this agreement pursuant to the provisions of clause 40.1 (Termination for breach) of this agreement.

15.7 The Authority shall indicate on its public list of all registered Care Homes within the Authority's administrative area those Service Providers who hold current awards specified in clauses 15.2(a), 15.2(b) or 15.2(c) (or any which are similar or equivalent) The list shall be updated by the Authority every six (6) months.

## **16. AUTHORITY'S PREMISES AND ASSETS**

16.1 The Authority shall, subject to clause 14 (Health and safety) and clause 22 (Other personnel used to provide the Services), provide the Service Provider (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Service Provider reasonably requires for the purposes only of properly providing the Services.

16.2 Subject to the requirements of clause 44 (Consequences of termination), in the event of the expiry or termination of this agreement, the Authority shall on reasonable notice provide the Service Provider with such access as the Service Provider reasonably requires to the Authority's Premises to remove any of the Service Provider's equipment. All such equipment shall be promptly and safely removed by the Service Provider.

16.3 The Service Provider shall ensure that:

- (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and the Service Provider shall comply and co-operate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;
- (b) only those of the Service Provider's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so; and
- (c) any Authority Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from the Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative.

16.4 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or the Service Provider's Personnel (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Service Provider as a debt.

16.5 The Service Provider shall notify the Authority immediately on becoming aware of any damage caused by the Service Provider or the Service Provider's Personnel to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.

16.6 Within the Authority's administrative area there are arrangements in place for the provision of some loan store equipment for the Services from the Authority. These arrangements are available from the Authority on request by the Service Provider. The Service Provider shall co-operate with the Authority, provide adequate training for Service Provider's Personnel and Service Users (where appropriate) on the safe and proper use of such equipment, facilitate the provision of equipment issued to any Service Users and arrange for its retrieval on completion of the loan.

**17. NOT USED**

**18. PAYMENT**

18.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Care Fees for which it is liable (being the Applicable Fees and any First Party Contribution or Third Party Contribution) to the Service Provider in accordance with this clause 18 and any provisions set out in Schedule 4 (Charges and payment).

- 18.2 Unless otherwise stated, the Care Fees are inclusive of all costs and expenses which may be incurred by the Service Provider in carrying out its obligations hereunder and no additional charges will be payable by the Authority unless agreed in advance by the parties.
- 18.3 Appendix 3 of Schedule 4 (Charges and payment) summarises at very high level the commissioning processes for the Placement of a Service User concerning Assessment, Financial Assessment and payment provisions of an agreement.
- 18.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 29 (Dispute resolution). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) Working Days after resolution of the dispute between the parties.
- 18.5 Subject to clause 18.4, interest shall be payable on the late payment of any undisputed Care Fees properly payable under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 18.6 The Care Fees for which the Authority is liable (being the Applicable Fees and any First Party Contribution or Third Party Contribution) are stated exclusive of VAT, which (where applicable) shall be added at the prevailing rate as applicable and paid by the Authority pursuant to the terms of any VAT self-billing agreement made between the Authority and the Service Provider. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.
- 18.7 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for the longer of twelve (12) years from the end of the Contract Year to which the records relate or the period required by the relevant NHS records management policy applying from time to time.
- 18.8 Where the Service Provider enters into a Sub-Contract with a supplier or Sub-Contractor for the purpose of performing this agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) Working Days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

- 18.9 The Authority may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authority.
- 18.10 Should the Service Provider choose to appoint a factoring company (which shall also include an invoice management agency), assign its outstanding debt to the factoring company and obtain the Authority's prior written consent pursuant to clause 30.1 (Sub-contracting, assignment and Change of Control) the Authority shall only liaise or discuss payments with such factoring company and all communications regarding outstanding payments shall be made between the Authority and such factoring company provided that until such time as the factoring company notifies the Authority that the Service Provider's engagement of the factoring company has ceased:
- (a) all invoices from the Service Provider's factoring company issued to the Authority shall clearly state that the debt is factored; and
  - (b) payment by the Authority shall be made direct to the factoring company instead of the Service Provider.
- 18.11 Unless otherwise agreed, payment shall only be made by the Authority to the Service Provider (including of the Care Fees) in Sterling by way of bank credit transfer to an account whose details have been notified in advance in writing by the Service Provider to the Authority (which may be updated from time to time by the Service Provider's notice in writing to the Authority).
- 18.12 Late payment of the Care Fees by the Authority does not permit the Service Provider to delay or suspend the Services.
- 18.13 If applicable, where the Service Provider is a consortium of service providers operating to provide the Services, payments of Care Fees will be made to the lead service provider only. The lead service provider is then responsible for administering payments to the remainder of the Service Provider consortium.
- 18.14 Any overcharges shall be deducted by the Authority from the next payment of Care Fees made to the Service Provider. Any overpayment of monies to the Service Provider in respect of provision of the Services will be returned to the Authority on request. Where any sum of money shall be recoverable from or payable by the Service Provider as an overpayment, the same may be deducted by the Authority from any sum then due or which at any time thereafter may become due to the Service Provider under this agreement or any other agreement with the Service Provider in accordance with clause 18.9.

## **19. SERVICE CREDITS**

- 19.1 If the Service Provider fails to provide the Services in accordance with any individual Service Level, the Service Provider shall pay to the Authority the Service Credit set out in Part 2 (Service Credits) of Schedule 2 (Service Levels).
- 19.2 The parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Authority as liquidated damages for administration and is not a penalty.

## **20. SUSPENSION**

20.1 Without prejudice to the Authority's rights to terminate this agreement in accordance with clause 40 (Termination for breach) below, the Authority may suspend in whole or part the Service Provider's right to provide Services under any Placement (and at the Authorised Officer's sole discretion suspend any and all Placements arranged at the Home and any other Service Provider Care Home with the Service Provider by the Authority (in each case where permitted by the corresponding agreements between the parties for each such Placement)) by giving notice in writing to the Service Provider where:

- (a) a right for the Authority to terminate this agreement for Service Provider breach arises in accordance with clause 40 (Termination for breach);
- (b) an investigation into the Service Provider, the Home, the Service Provider's Personnel or the Services is being undertaken by a purchaser of services equivalent to or similar to the Services, a Regulatory Body or a third party which the Authority deems is relevant to the Services;
- (c) an investigation, following receipt of a Complaint, is commenced by the Authority;
- (d) an investigation is being commenced by the police or coroner into the Service Provider, the Home, the Service Provider's Personnel or any conduct within the Home;
- (e) a suspected or actual material breach of the Service Provider's obligations under this agreement coming to the attention of the Authority;
- (f) a Remediation Notice is issued;
- (g) there is a breach of clause 5.1 (Financial viability and Home closure);



- (h) concerns are raised in relation to safeguarding of a Service User by any relevant person or body which the Authorised Officer, acting reasonably following preliminary investigation, considers are justifiable, legitimate and not vexatious;
- (i) the Authority reasonably considers that a breach by the Service Provider of any obligation under this agreement:
  - (i) may create an immediate and serious threat to the health and safety of any Service User; or
  - (ii) may result in a material interruption in the provision of the Services;
- (j) the Authority, acting reasonably, considers that the circumstances constitute an emergency (which may include an event of Force Majeure) affecting provision of the Services; or
- (k) the Service Provider is prevented, or will be prevented, from providing the Services due to the termination, suspension, restriction or variation of any Necessary Consent.

20.2 Where, in accordance with any of the reasons for suspension set out in clause 20.1, the Authority considers the Service Provider's performance of the Services (at a Home level rather than for each individual Service User's Placement level) is not appropriate for delivery of the Services:

- (a) the Authority may decide to suspend Placements at the Home to safeguard Service Users (to be determined at the Authorised Officer's sole discretion). This decision may be made on the advice of and/or following discussions with and considering evidence provided by other commissioning authorities (including National Health Service organisations) and Regulatory Bodies (including the CQC);
- (b) where a decision is made to suspend Placements at the Home the Service Provider will be notified of the decision by the Authorised Officer in writing;
- (c) the Service Provider's appointment shall be suspended with immediate effect for the period set out in the Authorised Officer's notice or such other period notified to the Service Provider by the Authority in writing from time to time. The suspension continues until the Service Provider demonstrates to the reasonable satisfaction of the Authority that it is able to and shall perform the suspended Services to the required standard as required by the

Specification. The Authority shall, where applicable, promptly notify the CQC and/or any relevant Regulatory Body of the suspension;

- (d) following the Authority's decision to suspend Placements at the Home the parties shall discuss the Service Provider's proposals to improve its performance and capability to deliver the Services and to ensure safety of Service Users which the Authority may reasonably require, including:
  - (i) attending meetings with multi-agency professionals to address quality concerns and seek Service Provider assurances;
  - (ii) implementing any initial QPIP quality improvement exercise or process which complies with any Service Provider current award of a quality assurance system under clause 15 (Quality assurance) of this agreement;
  - (iii) provision by the Service Provider of a formal rectification plan and associated monitoring regime and performance targets to evidence improvement; and
  - (iv) attending formal Level 1 or Level 2 QPIP meetings to discuss Service Provider performance;
  
- (e) where Placements are suspended, the Service Provider will produce the formal rectification plan to be approved by the Authorised Officer and be advised of the action required before the suspension is lifted and further Placements can be made at the Home. Monitoring of the Service Provider's obligations under this agreement will take place to ensure that the actions are being taken in accordance with the formal rectification plan;
  
- (f) the Authority will not recommence making Placements to the Service Provider until:
  - (i) the Authorised Officer is satisfied that the quality of care has improved to an acceptable standard in line with any requirements of this agreement, the CQC, Good Industry Practice and Professional Codes of Conduct; and
  - (ii) a contract monitoring exercise (after any formal rectification plan has concluded) has been undertaken by the Authority which determines that the Service Provider complies with the Authority's requirements for the Services and the Authorised Officer determines (acting reasonably) that Placements can recommence. The Authorised Officer may decide to recommence making Placements on a phased basis to ensure that any improvements that have been made to the Service by the Service Provider will be sustained,

provided that the Authority may also from time to time determine that, in its absolute discretion, a Home, or prospective home, is not appropriate for delivery of the Services and may by notice to the Service Provider exclude the Home or prospective home from the scope of this agreement. Such an exclusion may be revoked by a further notice to the Service Provider from the Authority.

20.3 In the event of any material breach (including but not limited to a Material Breach) by the Service Provider of its obligations under this agreement relating to a specific Service User (or Service Users) the Authority may, without terminating this agreement, withdraw the Service User(s) from the Home and make arrangements for suitable alternative accommodation and service provision for the Service User(s) until such time as, in the Authority's opinion, the material breach has been remedied and the Service Provider is able to recommence provision of the Services fully in accordance with this agreement. The Authority shall cease to be liable for payment, under this agreement, of the Personal Care Fee and any Nursing Care Fee in respect of the period of the material breach and the Service Provider shall pay to the Authority any additional costs of providing such suitable alternative accommodation and services.

20.4 During the suspension of Services the Service Provider shall not be entitled to claim or receive any payment for the suspended Services except in respect of all or part of the suspended Services:

- (a) where delivery took place before the date on which the relevant suspension took effect; and/or
- (b) which the Service Provider continues to deliver during the period of suspension with the Authority's prior written consent,

and (subject to clause 9 (Failure to comply with agreement)) the Authority shall not be liable to the Service Provider for any losses, loss of income or damages suffered by the Service Provider as a consequence of any period of suspension.

20.5 The parties shall use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Services.

20.6 Should the circumstances giving rise to the suspension of the Services be of such a nature that the Authority considers that other Service Users and their Representatives should be informed of the suspension and the reasons for the suspension then the Authority may notify the Service Provider and in its sole discretion provide such information to other Service Users and their Representatives as the Authority may reasonably determine is required.

- 20.7 Except where suspension occurs by reason of a Force Majeure event the Service Provider shall indemnify the Authority in respect of any losses reasonably and properly incurred by the Authority in respect of that suspension (including losses incurred in commissioning services in substitution for the suspended Services).
- 20.8 Following suspension of Services the Service Provider must at the reasonable request of the Authority and for a reasonable period:
- (a) co-operate fully with the Authority and any successor service provider of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
  - (b) at the cost of the Service Provider:
    - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Services by an alternative successor service provider (which may require the Service Provider to write and agree a transition plan with the Authority and successor service provider);
    - (ii) implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability of the relevant Services; and
    - (iii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Service Provider in the provision of the suspended Services.
- 20.9 If it is determined that the Authority acted unreasonably in suspending the Services, the Authority shall indemnify the Service Provider in respect of any losses directly and reasonably incurred by the Service Provider in respect of that suspension.
- 20.10 During any suspension of the Services provided, the Service Provider shall nevertheless use its reasonable endeavours to mitigate and minimise the extent of its impact on the delivery of the Services.
- 20.11 To avoid doubt, during, or as a result of, any such suspension the Service Provider shall be entitled to payment for any Services it continues to provide (but shall not be entitled to payment for any part of the Services it fails to provide).

## **STAFF**

## **21. KEY PERSONNEL**

- 21.1 Each party shall appoint the persons named as such in Schedule 5 (Contract management) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 21.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- (a) reasonably requested to do so by the Authority;
  - (b) the person is on long-term sick leave or has died;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's reasonable satisfaction;
  - (d) the person resigns from their employment with the Service Provider; or
  - (e) the Service Provider obtains the prior written consent of the Authority.
- 21.3 The Service Provider shall inform the Authority of the identity and background of any replacements for any of their Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 21.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than twenty (20) Working Days (or such other reasonable period as may be agreed between the parties). Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Authority becoming aware of the role becoming vacant.
- 21.5 The Authority may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be

unsatisfactory for any reason which has a material impact on such person's responsibilities.

- 21.6 If the Service Provider replaces the Key Personnel as a consequence of this clause 21, the cost of effecting such replacement shall be borne by the Service Provider.
- 21.7 The Service Provider will notify the Authority of any changes of management within the Home and will provide name and contact details, including work e-mail address, of the new Home Manager and/or Deputy Home Manager within a seven (7) Working Day period of the individual commencing employment.
- 21.8 Should the Home Manager or Deputy Home Manager be absent from the Home for an extended period e.g. sickness absence and this absence is not related to general human relations statutory provisions or holidays etc. the Service Provider shall notify the Authority within seven (7) Working Days of the absence and provide details of appropriate cover arrangements.

## **22. OTHER PERSONNEL USED TO PROVIDE THE SERVICES**

- 22.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged and Service Provider's Personnel training is to include, but not be limited to:
    - (i) organisation induction;
    - (ii) Care Certificate;
    - (iii) health and safety;
    - (iv) moving and handling;
    - (v) end of life;
    - (vi) dignity and respect;
    - (vii) fire evacuation procedures;
    - (viii) first aid;
    - (ix) safeguarding (including whistleblowing);
    - (x) deprivation of liberty and Mental Capacity Act 2005 awareness;
    - (xi) dementia;
    - (xii) medication;
    - (xiii) infection control;

- (xiv) food hygiene;
  - (xv) information governance; and
  - (xvi) other specialist training is available and delivered where appropriate;
- (b) there is an adequate number of Service Provider's Personnel to provide the Services properly and in appropriate numbers and ratio for the effective delivery of care in respect of registered number of places associated with the Home setting;
  - (c) (unless otherwise agreed with the Authority) staff positions within the Home should include Home Manager, Deputy Home Manager and/or senior carers, nursing staff (if appropriate), carers, cook/kitchen staff, domestics/cleaners, handymen/gardeners and administration staff;
  - (d) only those people who are authorised by the Service Provider (having regard to any authorisation procedure agreed in writing between the parties, in the event that such exists) are involved in providing the Services;
  - (e) all of the Service Provider's Personnel comply with all of the Authority's Policies including those that apply to persons who are allowed access to the applicable Authority's Premises; and
  - (f) volunteers or trainees shall not perform the Services without being accompanied and supervised by other Service Provider's Personnel who are neither volunteers nor trainees.

22.2 The Authority may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

22.3 (Subject to clause 21 (Key Personnel) in respect of Key Personnel), the Service Provider shall replace any of the Service Provider's Personnel, not being Key Personnel, who the Authority reasonably decides to have failed to carry out their duties with reasonable skill and care. Following the removal of any of such Service Provider's Personnel for any reason, the Service Provider shall ensure such person(s) is or are replaced promptly with another person(s) with the necessary training and skills to meet the requirements of the Services.

22.4 The Service Provider shall maintain up to date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on reasonable request at reasonable times, provide reasonable information to the Authority on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has

the right to provide these records in compliance with the applicable Data Protection Legislation.

- 22.5 The Service Provider shall use its best endeavours to ensure continuity of Service Provider's Personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.
- 22.6 The Service Provider shall not treat a person less favourably than another on grounds of trade union membership or trade union activities, in contravention of The Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010/493) and, in particular, the Service Provider shall not:
- (a) compile, supply, sell or use a Prohibited List (as defined in The Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010/493));
  - (b) refuse employment to a job applicant, to dismiss an employee, or to subject an employee to any other detriment for a reason related to a Prohibited List; or
  - (c) engage with an employment agency which refuses to provide its services to an individual for a reason related to a Prohibited List.
- 22.7 The Service Provider shall, on request, provide to the Authority such written evidence as the Authority reasonably requires that the Service Provider has not breached clause 22.6 above.
- 22.8 In the event that the Service Provider employs non-permanent agency staff at the Home, or from time to time employs such agency staff, the Service Provider shall be responsible for ensuring that all appropriate checks have been made in relation to such agency staff and their suitability to work in the care setting and that, where possible, continuity is maintained in respect of utilising the same personnel at the Home. It shall be the Service Provider's responsibility to ensure that agency staff are inducted into the care setting as appropriate.
- 22.9 Without prejudice to any other provision of this agreement, the Service Provider shall:
- (a) ensure that none of the Service Provider's Personnel and Sub-Contractors' employees engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than the applicable National Living Wage or National Minimum Wage (unless otherwise directed by the Authority);
  - (b) ensure that none of its Service Provider's Personnel and Sub-Contractors' employees engaged in the provision of the Services is paid less than the



amount to which they are entitled in their respective contracts of employment;

- (c) provide to the Authority such information concerning the application of the National Living Wage or National Minimum Wage as the Authority or its nominees may reasonably require from time to time;
- (d) disseminate on behalf of the Authority to the Service Provider's Personnel and Sub-Contractors' employees engaged in the provision of the Services such questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires; and
- (e) co-operate and provide all reasonable assistance in monitoring the effect of the National Living Wage or National Minimum Wage on the quality of Services provided under this agreement.

22.10 Any breach by the Service Provider of the provisions of clause 22.9 shall be treated as a default capable of remedy but shall not be a material breach (including a Material Breach).

### **23. SAFEGUARDING VULNERABLE ADULTS**

23.1 The parties acknowledge that, in the event that the Service Provider in the delivery of the Services is a Regulated Activity Provider, then the Service Provider shall have ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

23.2 The Service Provider shall ensure that all individuals engaged as Service Provider's Personnel in the provision of the Services are:

- (a) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list; and
- (b) the Service Provider shall monitor the level and validity of the checks under this clause 23.2 for each such individual member of Service Provider's Personnel.

23.3 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

- 23.4 The Service Provider shall immediately notify the Authority of any information that the Authority reasonably requests to enable it to be satisfied that the obligations of this clause 23 have been met.
- 23.5 The Service Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.
- 23.6 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to a Service User.

## **24. TUPE**

- 24.1 The parties agree that where there is an inwards Relevant Transfer between the Authority and Service Provider (or an outwards Relevant Transfer between the Service Provider and the Authority) the provisions of Schedule 8 (TUPE) (in substantially the form shown but as may be amended by agreement of the parties) shall apply to any Relevant Transfer of staff under this agreement.
- 24.2 Where clause 24.1 does not apply the Service Provider shall indemnify the Authority against any claim howsoever arising from the application of TUPE (including where the Home is sold and there is a Relevant Transfer from the Service Provider to a Replacement Service Provider). The Service Provider shall not alter any terms and conditions upon which any of its Service Provider's Personnel are engaged as employees during the final six (6) months of the Term and shall indemnify the Authority (and any Replacement Service Provider) against any losses, costs, damages, expenses or claims resulting from any such alteration of terms and conditions.

## **CONTRACT MANAGEMENT**

### **25. REPORTING AND MEETINGS**

- 25.1 The Service Provider shall:
- (a) contribute to and provide attendees with appropriate experience and seniority for meetings arranged by the Authority for:
    - (i) safeguarding;
    - (ii) "Safeguarding Adults Review" action planning;
    - (iii) multi-agency response/lessons learned meetings; and

- (iv) contract, quality and service review meetings;
- (b) participate in programmes, protocols, systems and mechanisms for:
  - (i) quality assurance;
  - (ii) QPIP;
  - (iii) service provider forum; and
  - (iv) safeguarding champions;
- (c) (subject to the provisions of clause 34 (Freedom of information)) respond in a timely manner to Authority requests for information for:
  - (i) monitoring returns; and
  - (ii) any other reasonable Authority general requests for information where the Service Provider shall be fully engaged and committed to provision of sufficiently detailed and accurate response(s),

where timely means a response from the Service Provider within two (2) Working Days of receipt of the Authority's request (unless the Authority specifies a longer period) and failure is a breach of this agreement which attracts a Default Notice but is not a material breach (including a Material Breach); and
- (d) make available following the Authority's reasonable prior request on reasonable prior notice any Service Provider's Personnel and Service Users to complete any Authority's "Home Quality & Compliance Visit Assessment Form" (or equivalent as may be introduced by the Authority from time to time).

25.2 The Service Provider shall deliver the Services at all times having regard to the Authority's approach to social value set out in the Authority's Social Value Policy. The Service Provider shall maintain and keep up to date records in line with the Authority's Social Value Policy as required by the Authority. As a minimum the Service Provider shall be required, at the request of the Authority, to provide a summary report detailing progress and measurable benefits of the proposals contained in the Service Provider's delivery of the Services. The summary report shall include but not be limited to:

- (a) a summary of the actions taken to create employment opportunities for people in the area where the Service Provider is delivering the Services;
- (b) data relating to the numbers and percentage of the Service Provider's Personnel who live within the Lancashire area (excluding within the areas of the unitary authorities of Blackpool and Blackburn with Darwen);
- (c) a summary of the actions taken to create opportunities for the Service Provider's Personnel to develop professionally including the numbers and

percentage of the Service Provider's Personnel achieving Level 5 Diploma in Leadership for Health and Social Care and Children and Young People's Services, Care Certificate for the Service Provider's Personnel new to health and social care or Level 2 Diploma in Health and Social Care; and

- (d) a summary of the actions taken to tackle social isolation and raise the living standards of local residents and build the capacity and sustainability of the voluntary and community sector.

## **26. MONITORING**

- 26.1 The Authority may monitor the performance of the Services by the Service Provider. The Service Provider shall comply with the Authority's monitoring requirements under the Specification and the Capacity Tracker System in accordance with clause 6 (Supply of Services).
- 26.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 26.1 at no additional charge to the Authority.
- 26.3 The Authority will exercise its rights under this clause 26 and clause 37 (Audit and whistleblowing) in order to monitor whether the Services are being performed in accordance with this agreement.
- 26.4 The Service Provider must maintain in good working order an e-mail system which is accessible at all times and is administered in accordance with clause 35 (Data protection).
- 26.5 The Service Provider shall at all times co-operate with the Authority's monitoring and evaluation processes. The Service Provider shall allow the Authority access to the Home at all times, whether announced or unannounced.
- 26.6 The Service Provider shall at all times allow the Authorised Officer access to the Home for the purpose of interviewing Service Provider's Personnel in connection with the carrying out of all parts of the Services. The Authorised Officer has the power to investigate any matters relating to the provision of the Services.
- 26.7 The Service Provider shall carry out Service User experience surveys and any other surveys reasonably requested by the Authority in relation to the Services. The Service Provider shall co-operate with any surveys that the Authority may, acting reasonably, carry out or as may otherwise be required by the Authority. The format, frequency and reporting of such surveys shall be as determined by the Authority. Service User

experience survey results shall be used as part of any Key Performance Indicators monitoring regime.

## **27. COMPLAINTS**

- 27.1 The Service Provider shall, on the Commencement Date, have a written Complaints procedure in place that complies in all respects with any Applicable Laws from time to time in force (the **Complaints Procedure**) and any reasonable requirements of the Authority. A primary objective of the Complaints Procedure shall be that the Service User's voice, or that of their Representative, is paramount and that the Complaints Procedure is responsive to all Service User-driven Complaints. The Service Provider shall ensure that Service Users, Carers, Representatives and Service Provider's Personnel are fully informed of the Complaints Procedure existence.
- 27.2 The Service Provider shall ensure that all Service Users, their relatives, advisors and/or advocates (as appropriate) and any Representative are aware of and have access to and have had explained to them the Complaints Procedure.
- 27.3 The Service Provider shall ensure that it has in place arrangements for receiving and acting on Complaints that comply in all respects with the 2014 Regulations and any other Applicable Laws from time to time in force.
- 27.4 The Service Provider should send the Authority's complaints team a copy of any Complaint response in relation to any Complaint received concerning a Service User who receives a directly commissioned Authority service. The pro-forma available as part of the Authority's complaints policy and which at the Commencement Date is as referenced or set out in Part 1 (Authority Policies) of Schedule 3 (Policies) should be completed and submitted to: [complaintsandfeedback@lancashire.gov.uk](mailto:complaintsandfeedback@lancashire.gov.uk)
- 27.5 If complainants approach the Authority directly, and the Service Provider has already responded to the Complaint, the Service Provider should supply the Authority with existing Complaints correspondence on request within five (5) Working Days. If the Complaint has not already been considered by the Service Provider, and the Authority requests an investigation, the Service Provider should respond, complying with regulation 16 of the 2014 Regulations. If the Authority decides to investigate the Complaint directly, the Service Provider should co-operate fully with any Complaints investigation initiated by the Authority.
- 27.6 The Service Provider shall ensure that it has an effective system in place for recording all compliments received regarding the Services.
- 27.7 In addition to complying with regulation 16 of the 2014 Regulations, for the duration of the Term the Service Provider shall for monitoring purposes operate equivalent arrangements for reporting Complaints and compliments received regarding the

Services to the Authority. This includes an obligation as part of the Service Levels requirement to provide the Authority's contracts management team every six (6) months from the Commencement Date with the number of Complaints and the number responded to within twenty-eight (28) Working Days as well as the number of compliments received.

- 27.8 The Service Provider shall maintain comprehensive records of all Complaints made and compliments received, including all associated correspondence, and shall maintain such records for the longer of twelve (12) years from the end of the Contract Year to which the records relate or the period required by the relevant NHS records management policy applying from time to time.
- 27.9 If, as a result of a Complaints investigation, the Authority is fined by a Regulatory Body or has to write off charges, waive debt or offer a financial remedy the Authority reserves the right to claim back any losses incurred where it can be demonstrated that the Service Provider's acts or omissions caused the Complaint.
- 27.10 The Complaints Procedure must be easy to access, understand and initiate. The Service Provider shall keep a record of each Complaint and its particulars including:
- (a) the names of the person making the Complaint;
  - (b) the date of receipt of the Complaint;
  - (c) the nature of the Complaint;
  - (d) the nature of any action or investigation carried out;
  - (e) the outcome of such investigation and any remedial action which may have been taken; and
  - (f) the reasons for not taking any action at all (if applicable).
- 27.11 The Service Provider shall make provision in relation to the following matters, which it shall make all Service Users, Carers, Representatives and Service Provider's Personnel aware of:
- (a) the stages of the Complaints Procedure including how to make a Complaint, who they make the Complaint to, the appeals process and how it works;
  - (b) target time limits for processing Complaints and reporting progress to complainants;

- (c) the complainant's right to seek advocacy and how the Service Provider would assist them in this process; and
  - (d) the complainant's right to contact the Authority in relation to any matter concerning or connected with the Service by making appropriate reference to the Authority's statutory complaints procedure.
- 27.12 The Service Provider must also make available to Service Users the "Complaints, Comments and Compliments Procedures of the Authority" as amended or superseded from time to time and which at the Commencement Date is as referenced or set out in Part 1 (Authority Policies) of Schedule 3 (Policies).
- 27.13 The Service Provider shall notify the Authority of any Complaint made in connection with the Service Provider's delivery of the Services within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Service Provider's plans to resolve such Complaint. The Service Provider shall provide a quarterly summary of Complaints received and their resolution plans and outcomes at the end of every three (3) month period following the Commencement Date.
- 27.14 The Service Provider will ensure that the Authority is notified as soon as possible if the Service Provider receives a notice in accordance with the Health and Social Care Act 2008 from the CQC. A copy of the notice must be forwarded to the Authorised Officer on the same Working Day as notification is received from the CQC.
- 27.15 The Service Provider must also notify the Authority of any incidents that occur in the Home that are notified to the CQC. Notifications must be made to the Authorised Officer on the same Working Day as notification is sent to the CQC.
- 27.16 The Service Provider shall ensure that the Service User is aware of their right to contact the CQC or other Regulatory Bodies and also the Commission for Local Administration (for the Local Government Ombudsman).
- 27.17 In the event of a Complaint being made to the Commission for Local Administration concerning a matter which is the responsibility of the Service Provider under this agreement, the Service Provider shall co-operate fully with any investigations of the Commission for Local Administration.
- 27.18 In the event of a finding of maladministration causing injustice against the Authority by the Commission for Local Administration as a result of the default of the Service Provider in the performance of their duties under this agreement, the Authority shall be entitled to recover from the Service Provider any payments made by the Authority to a complainant as a result of such finding.

27.19 The Service Provider must carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Authority in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in clause 26.7 (Monitoring) or as otherwise agreed between the parties in writing from time to time.

## **28. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT**

28.1 Subject to clause 11 (Care and Support Plan Review and variation of the Services), any requirement for a Change shall be subject to the Change Control Procedure.

28.2 The Service Provider acknowledges that (in addition to Changes requested by the Authority) that where the Service Provider has sought clarification from the Authority concerning delivery of the Services that the Authority shall use its reasonable endeavours to respond to the Service Provider in sufficient detail as soon as reasonably practicable.

28.3 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. The Service Provider acknowledges that the Authority is not obliged to implement such proposed improvements to the Services and the Authority shall only vary the Charges in its absolute discretion or where required by Applicable Laws.

28.4 The Authority is subject to requirements imposed on local authorities by legislation to achieve Best Value. The concept of Best Value is essentially concerned with the provision and maintenance of service standards that have been established in consultation with local taxpayers and service users. In addition, there is a requirement for services to continuously improve. The Service Provider shall co-operate with the Authority with the introduction and implementation of any requirements imposed on the Authority in connection with Best Value and shall comply with the reasonable instructions of the Authorised Officer in respect thereof.

28.5 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 28.3 and/or clause 4 (Consents, Service Provider's warranty and due diligence) shall be addressed by the parties using the Change Control Procedure.

## **29. DISPUTE RESOLUTION**

29.1 Either party may call an extraordinary meeting of the parties by service of not less than seven (7) Working Days' written notice (or such other period as may be agreed in writing) and each party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the



Authority (if any) shall attend all extraordinary meetings called in accordance with this clause 29.1.

- 29.2 The attendees for the relevant extraordinary meeting arranged under clause 29.1 to discuss any dispute shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the Service Provider's Managing Director or the Authority's nominated representative (or other senior officers of the parties as may be appropriate and agreed from time to time) who shall co-operate in good faith to resolve the dispute as amicably as possible within fourteen (14) Working Days of service of such notice. If the parties' officers referred to in this clause 29.2 fail to resolve the dispute in the allotted time, then the parties shall, within that period and on the written request of either party, enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven (7) Working Days of receipt of such request, appointed, at the request of either party, by the Centre for Effective Dispute Resolution or such other similar body as is agreed.
- 29.3 The parties shall then submit to the supervision of the mediation by the Centre for Effective Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 29.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly, all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until twenty-one (21) Working Days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 29.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 29.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 29.7 While the Dispute Resolution Procedure referred to in this clause 29 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties'

payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

### **30. SUB-CONTRACTING, ASSIGNMENT AND CHANGE OF CONTROL**

30.1 Subject to clause 30.3 and clause 30.4:

- (a) neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party; and
- (b) neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority (including as to the terms of the proposed Sub-Contract), such consent not to be unreasonably withheld but where the Authority may reasonably withhold consent if:
  - (i) the Authority considers that the proposed Sub-Contractor presents an unacceptable financial, reputational, health, safety, environmental or quality risk to the Authority (including where a sub-contracting arrangement within a group company structure interposes a company with no or limited experience in the delivery of services similar to the Services);
  - (ii) the terms of any Sub-Contract:
    - (A) do not allow the Service Provider to provide the Services;
    - (B) (in the reasonable opinion of the Authorised Officer) do not sufficiently reflect the terms and conditions within this agreement;
    - (C) do not meet the Authority's reasonable requirements;
    - (D) contain cash flow, payment terms or costs associated with the termination of the Sub-Contract which are unacceptable to the Authorised Officer; or
    - (E) contain a risk apportionment which is significantly different to the risk apportionment under this agreement.

30.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under this agreement notwithstanding the appointment of any Sub-

Contractor and be responsible for the acts, omissions and neglects of its Sub-Contractors;

- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

30.3 If the Service Provider wishes to enter into a factoring arrangement with a factoring company then before payment by the Authority of any more sums for Care Fees the Service Provider shall first request prior written consent from the Authority pursuant to clause 30.1 and provide the Authority with:

- (a) a copy of the factoring agreement proposed to be entered into between the Service Provider and the factoring company;
- (b) confirmation of the dates from when payments should be made by the Authority to the factoring company; and
- (c) confirmation of the detail which is required to be submitted on confirmations of factored Care Fees.

30.4

- (a) The Authority shall be entitled to novate this agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority. The Service Provider shall be liable for the Authority's reasonably and properly incurred legal expenses in settling such novation up to a maximum of five hundred pounds (£500) (indexed annually by CPI).
- (b) Where the Service Provider has proposed a novation of this agreement and the Authority has provided its consent in accordance with clause 30.1(a) the novation agreement shall be in substantially the form set out at Schedule 11 (Template Novation Agreement) and the Service Provider shall be liable for the Authority's reasonably and properly incurred legal expenses in settling such novation up to a maximum of five hundred pounds (£500) (indexed annually by CPI).

30.5 If there is a proposed change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Service Provider then the Service Provider shall notify the Authority as soon as reasonably practicable in advance. The Authority may reasonably object (having regard to the identity, trading interests, financial standing and intentions of the new controller or potential new controller, having afforded the Service Provider a reasonable opportunity to make representations in this respect and

having given such representations reasonable consideration) where such change of control:

- (a) impacts or may reasonably be expected to impact adversely and materially on the Service Provider's performance of its obligations under this agreement; or
- (b) has or may reasonably be expected to have a material adverse reputational impact on the Authority,

except:

- (a) where there is a bona fide reconstruction within the Service Provider's group which results in a change of control;
- (b) where stock exchange restrictions prevent advance notification of a change of control by the Service Provider; or
- (c) where the Authority has given its prior written consent to the particular change of control,

and in each case where the change of control subsequently takes place as proposed.

## **LIABILITY**

### **31. INDEMNITIES**

31.1 Subject to clause 31.5, the Service Provider shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

- (a) the Service Provider's breach or negligent performance or non-performance of this agreement;
- (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Service Provider or Service Provider's Personnel; and/or
- (c) the enforcement of this agreement.

31.2 Subject to clause 31.5, the Service Provider shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any claim made against the Authority by a third party for death, personal injury or damage to property arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Service Provider or Service Provider's Personnel.

- 31.3 Liability under the indemnity at clause 31.2 is conditional on the Authority discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Authority which may reasonably be considered likely to give rise to a liability under this indemnity (a **Claim**), the Authority shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to the Service Provider specifying the nature of the Claim in reasonable detail;
  - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Service Provider (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Authority may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Service Provider but without obtaining the Service Provider's consent) if the Authority reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
  - (c) give the Service Provider and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Authority so as to enable the Service Provider and its professional advisers to examine them and to take copies (at the Service Provider's expense) for the purpose of assessing the Claim; and
  - (d) subject to the Service Provider providing security to the Authority to the Authority's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Service Provider may reasonably request to avoid, dispute, compromise or defend the Claim.
- 31.4 If a payment due from the Service Provider under this clause 31 is subject to tax (whether by way of direct assessment or withholding at its source), the Authority shall be entitled to receive from the Service Provider such amounts as shall ensure that the net receipt, after tax, to the Authority in respect of the payment is the same as it would have been were the payment not subject to tax.
- 31.5 The indemnities provided under clause 31.1 and clause 31.2 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Authorised Representative.
- 31.6 Nothing in this clause 31 shall restrict or limit the Authority's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this clause 31.

## **32. LIMITATION OF LIABILITY**

- 32.1 Subject to clause 31.2 (Indemnities) and clause 32.5, neither Party shall be liable to the other Party (as far as permitted by law) for indirect, special or consequential loss or damage in connection with this agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 32.2 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this agreement.
- 32.3 Subject to clause 32.5, the Authority's total aggregate liability:
- (a) in respect of the indemnities given by the Authority in Schedule 8 (TUPE) is unlimited; and
  - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed one hundred per cent (100%) of the aggregate Charges paid under or pursuant to this agreement in the Contract Year in respect of which the claim arises.
- 32.4 Subject to clause 32.5, the Service Provider's total aggregate liability:
- (a) in respect of the indemnities given by the Service Provider in clause 31 (Indemnities), clause 39.2 (Intellectual property) and Schedule 8 (TUPE) is unlimited;
  - (b) in respect of Service Credits, is limited, in each Contract Year, to one hundred per cent (100%) of the Charges that are payable by the Authority in the applicable Contract Year; and
  - (c) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed for the Contract Year in respect of which the claim, loss or damage arises:
    - (i) the limit of indemnity of any Required Insurance policy for any liability in respect of amounts that the Service Provider is (or should be but for a breach by the Service Provider of clause 33 (Insurance)) able to recover under the Required Insurances that the Service Provider is required to maintain in accordance with this agreement (but, for the avoidance of doubt, only to the extent such liability is equal to or below the maximum amount of cover specified for the

relevant Required Insurance policy under clause 33 (Insurance) of this agreement); plus

- (ii) subject to clause 32.4(c)(i) in respect of any insured losses, an additional two million pounds (£2,000,000) (indexed annually by CPI) in respect of the Service Provider's uninsured losses.

32.5 Notwithstanding any other provision of this agreement neither party limits nor excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

32.6 All equipment (for example hoists), machines, tools and vehicles belonging to the Service Provider and used for the provision of the Services shall be used at the Service Provider's own risk and the Authority shall have no liability for any loss of or damage to any such tools, machines or vehicles unless the Service Provider is able to demonstrate that such loss of or damage was caused or contributed to by the negligence of the Authority or its Authorised Representative.

32.7 The Authority will not be liable for the death of or injury to any person engaged in the provision of the Services or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Service Provider in the exercise of the rights granted by this agreement except where such death, injury or loss is due to the negligence of the Authority or its Authorised Representative.

32.8 The Service Provider shall make known clearly to the Authority, the Service User, Carers and Representatives of the Service User its policy and practice for the safeguarding and insurance of the Service Provider's possessions and valuables.

32.9 The Service Provider shall upon request promptly provide the Authority with satisfactory evidence of compliance with the requirements of this clause 32.

### **33. INSURANCE**

33.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company such policies of insurance as are reasonably required for the delivery of the Services including but not limited to the following:

- (a) public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one (1) claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (d) medical negligence insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims;
- (e) Service Users' personal possessions and funds insurance with a limit of indemnity of not less than one thousand pounds (£1,000) per Service User (where the Service Provider shall make Service Users or their Representatives aware of items not covered by this policy);
- (f) buildings insurance for the Home of an amount sufficient to enable the repair and reinstatement of the Home to facilitate the continuation of delivery of the Services at the Home;
- (g) property contents insurance of an amount sufficient to enable the replacement of contents to facilitate the continuation of delivery of the Services at the Home;
- (h) motor vehicle insurance (where appropriate) with a limit of indemnity of not less than five million pounds (£5,000,000) in respect of third party damage and unlimited in relation to bodily injury per event; and
- (i) such other insurances as are necessary to enable the Service Provider to fulfil its responsibilities and provide the Services in the event of unforeseen damage, loss or expense occurring at the Home,

(the **Required Insurances**) in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of this agreement, including death or personal injury, loss of or damage to property or any other loss.



Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

- 33.2 The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause 33 or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 33.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Service Provider shall notify the Authority in writing as soon as reasonably practicable of any unavailability of terms of the Required Insurances and the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider. Failure to comply with this requirement will amount to a Material Breach and the Authority may terminate this agreement pursuant to the provisions of clause 40.1 (Termination for breach) of this agreement.
- 33.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this agreement.
- 33.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of this agreement.

## **INFORMATION**

### **34. FREEDOM OF INFORMATION**

- 34.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Service Provider's expense) to enable the Authority to comply with these information disclosure requirements.
- 34.2 The Service Provider shall and shall procure that its Service Provider's Personnel shall:
- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
  - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

34.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
- (b) is to be disclosed in response to a Request for Information.

34.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

34.5 The Service Provider acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Service Provider; or
- (b) following consultation with the Service Provider and having taken its views into account,

provided always that where clause 34.5(b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

34.6 The Service Provider shall ensure that all Information produced in the course of this agreement or relating to this agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

34.7 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 34.5.

## **35. DATA PROTECTION**

35.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of this agreement shall) comply with any notification requirements under the Data Protection Legislation and both parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with this agreement. The Authority and Service Provider shall comply with Part 1 (Processing Obligations) of Schedule 10 (Personal Data). The Service Provider is a data controller for the purposes of Data Protection Legislation, and is bound, amongst other things, to implement appropriate technical and organisational measures against unauthorised processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

35.2 Notwithstanding the general obligation in clause 35.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall:

- (a) ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data) as required under the Data Protection Legislation;
- (b) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the Data Protection Legislation;
- (c) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 35.2(a); and
- (d) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the Data Protection Legislation.

35.3 For the avoidance of doubt, the Service Provider is entitled to act as a Data Processor to process, in accordance with Data Protection Legislation, the Personal Data of Service Users, Service Provider's Personnel and others to enable the Service Provider to provide the Services, to liaise with the Authority in respect of the Services, to maintain and update Service User records, to produce management data, to comply with regulatory requirements and as permitted or required by Applicable Laws.

35.4 Data subjects have a right of access and a right of correction in respect of their Personal Data which the Service Provider holds about them, in accordance with Data Protection Legislation, and (unless the Authority notifies the Service Provider that the

Authority as data controller shall retain responsibility as contact point) the Service Provider shall be the contact point for data subjects wishing to exercise their rights in respect of Personal Data held about them in connection with the delivery of the Services.

- 35.5 If and to the extent that the Service Provider and the Authority are joint controllers (whether or not with anyone else) for the purposes of Data Protection Legislation, each party shall, unless otherwise agreed, be individually responsible for ensuring that the processing each party undertakes is in accordance with Data Protection Legislation for ensuring, so far as each is able, the implementation of appropriate technical and organisational measures in accordance with Data Protection Legislation and as regards the exercising of the rights of the data subject (but the Service Provider shall be responsible for the provision of information referred to in articles 13 and 14 of the GDPR if and to the extent that this provision of information is required by Data Protection Legislation). In the event that the Service Provider is required in accordance with article 33 of the GDPR to notify to a Regulatory Body a Personal Data breach affecting Personal Data relating to the provision of the Services, the Service Provider shall notify the Authority as soon as practicable after notifying the Regulatory Body.
- 35.6 Notwithstanding the general obligation in clause 35.1, where the parties are joint controllers of Shared Personal Data then the provisions of Part 2 (Shared Personal Data) of Schedule 10 (Personal Data) shall apply (in substantially the form shown but as may be amended by agreement of the parties).
- 35.7 In accordance with the Data Protection Legislation the Authority may obtain from and disclose Service Provider information (limited to quality assurance and performance monitoring information to assist an annual overview of the provision of health and social care services) to other local authorities and NHS organisations. This information sharing may include but is not restricted to other Adult Contracting Teams and Social Services Departments.
- 35.8 The Service Provider shall (and shall procure that any Service Provider's Personnel involved in the provision of the Services shall) comply with the Accessible Information Standard. The Service Provider shall provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the Accessible Information Standard.
- 35.9 The Service Provider shall indemnify and keep indemnified the Authority against any losses whatsoever incurred in respect of or in any way arising directly out of a breach by the Service Provider of this clause 35 except insofar as the losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Authorised Representative.

- 35.10 The Service Provider shall practise adequate data security and annually, on or within seven (7) Working Days of each anniversary of the Commencement Date, complete and publish the NHS Digital Data Security and Protection Toolkit (a free on-line annual self-assessment tailored for use in social care) and comply with its mandatory requirements. The Service Provider is to meet the level of "Standards Met" as assessed using such toolkit and if this is not achieved and the level of "Approaching Standards" is met the Service Provider shall provide to the Authority an action plan within four (4) weeks of the "Approaching Standards" assessment which must assure the Authority that the "Standards Met" level shall be achieved at the next assessment.
- 35.11 Notwithstanding clauses 35.1 and 35.2, the Service Provider shall ensure that all correspondence with the Authority is communicated via secure e-mail addresses (and with NHS Bodies via NHS.net e-mail addresses).
- 35.12 The provisions of this clause 35 shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

## **36. CONFIDENTIALITY**

- 36.1 Subject to clause 36.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Authorised Representatives from making any disclosure to any person of any matters relating hereto.
- 36.2 Clause 36.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 34.1 (Freedom of information) shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
  - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
  - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 36.1;
  - (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
  - (e) to enable a determination to be made under clause 29 (Dispute resolution);

- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

36.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's' employees, rate-payers, Services users or the Service Users, are delivered up to the Authority or securely destroyed.

### **37. AUDIT AND WHISTLEBLOWING**

37.1 During the Term and for a period of twelve (12) years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Service Provider's Personnel) of the Services at the level of detail agreed in Schedule 4 (Charges and payment);
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any Service Users;
- (c) to review the Service Provider's compliance with the Data Protection Legislation, the FOIA and the Environmental Information Regulations, in accordance with clause 35 (Data protection) and clause 34 (Freedom of information) and any other Applicable Laws applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) to carry out an examination of the economy, efficiency and effectiveness with which the Authority has used its resources; and/or

- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
  
- 37.2 Except where an audit is imposed on the Authority by a Regulatory Body, the Authority may not conduct an audit under this clause 37 more than twice in any Contract Year.
  
- 37.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
  
- 37.4 Subject to the Authority's obligations of confidentiality, the Service Provider shall on demand provide the Authority and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - (a) all information requested by the above persons within the permitted scope of the audit;
  
  - (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  
  - (c) access to the Service Provider's Personnel.
  
- 37.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its or, where possible, a Regulatory Body's, intention to conduct an audit.
  
- 37.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 37, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
  
- 37.7 If an audit identifies that:
  - (a) the Service Provider has failed to perform its obligations under this agreement in any material manner, (where the Authority notifies the Service Provider) the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Service Provider's

costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) the Authority has overpaid any Charges, the Service Provider shall pay to the Authority the amount overpaid within thirty (30) Working Days. The Authority may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Service Provider the amount of the underpayment less the cost of audit incurred by the Authority (if this was due to a default by the Service Provider in relation to invoicing) within thirty (30) Working Days.

37.8 Notwithstanding the Authority Policies which at the Commencement Date are as referenced or set out in Part 1 (Authority Policies) of Schedule 3 (Policies), the Service Provider shall put in place and maintain a whistleblowing policy and procedures for use by its Service Provider's Personnel, Service Users and their Representatives, in relation to concerns regarding any aspect of the delivery of the Services. The Service Provider shall ensure that Service Provider's Personnel, Service Users and/or their Representatives are aware of and that they understand the whistleblowing policy and how to proceed in raising concerns in terms of its procedures. The Service Provider shall ensure that any whistleblower is protected from adverse treatment.

## **38. RECORDS**

38.1 The Service Provider shall:

- (a) keep and maintain full and accurate Records in such form as the Authority may from time to time require to be kept secure and separate from other records not relating to this agreement;
- (b) create, maintain, store and retain Service User health and social care records for all Service Users including the Service User's verified NHS number (Service User health records to be kept for period required by Applicable Laws and securely destroyed thereafter in accordance with Applicable Laws);
- (c) use Service User health and social care records solely for the execution of the Service Provider's obligations under this agreement;
- (d) give each Service User full and accurate information regarding his/her treatment and Services received; and



(e) comply with clause 35 (Data protection).

38.2 The Service Provider shall make the Records referred to in clause 38.1 available for inspection upon reasonable notice where the Authorised Officer considers this to be practicable and in certain circumstances for seizure as and when required by the Authorised Officer and shall provide copies of records and information relating to the Service as reasonably required by the Authorised Officer.

38.3 The Service Provider must allow access by the Service User to all Records relating to their care except where their Care and Support Plan agreed with the Authority states that it is not in the best interests of the Service User. Where it is not in the Service User's best interests, the Representative acting on behalf of the Service User must be given access to the Care and Support Plan and to all Records relating to the Service User's care.

38.4 The Service Provider shall keep and maintain all Records relating to this agreement for the longest of the time periods detailed in the CQC's "Essential Standards of Quality and Safety", any relevant prevailing NHS England (or successor) guidance and the Specification. At the end of the Term (excluding on a Home closure) the Service Provider shall, at the request of the Authorised Officer, hand over any documentation related to the provision of the Services to the Authority to the extent that such transfer is not prohibited by Applicable Laws.

38.5 The Service Provider shall, if so requested by the Authorised Officer from time to time, provide the Authority with its audited annual accounts.

38.6 At the end of the Term where the Service Provider closes a Home, or upon the death of a Service User or the termination or expiry of a Service User's Placement it shall:

(a) at the request of the Authorised Officer, hand over any documentation related to the provision of the Services to the Authority to the extent that such transfer is not prohibited by Applicable Laws;

(b) where clause 38.6(a) does not apply because the Authorised Officer makes no request, the Service Provider shall:

(i) keep and maintain full and accurate Records in such form as the Authority requires under this agreement, such Records to be kept secure and separate from other records not relating to this agreement; and

(ii) (where the Service Provider closes a Home) store and retain Service User health and social care records for all Service Users including

the Service User's verified NHS number (Service User health records to be kept for period required by Applicable Laws and securely destroyed thereafter in accordance with Applicable Laws); and

- (c) comply with the Policies and in particular the Authority's guidance set out in Schedule 14 (Records Guidance) (as may be amended from time to time) (provided that in the case of inconsistency, error or ambiguity then Applicable Laws take precedence over Schedule 14 (Records Guidance).)

### **39. INTELLECTUAL PROPERTY**

39.1 In the absence of prior written notification by the Authority to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

39.2 The Service Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except insofar as directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Authorised Representative

39.3 Copyright in this agreement shall vest in the Authority but the Service Provider may obtain or make at its own expense any further copies required for use in connection with the provision of the Services and compliance with this agreement.

### **TERMINATION**

## 40. TERMINATION FOR BREACH

### Termination of a Placement at a Home

#### *Service Provider breach*

40.1 The Authority may terminate any Placement under this agreement in whole (and this agreement in whole if it is limited to a single Placement) with immediate effect by the service of written notice on the Service Provider in the following circumstances:

- (a) if the Service Provider is in breach of any material obligation under this agreement (including but not limited to a Material Breach) provided that if the breach is capable of remedy, the Authority may only terminate a Placement (or this agreement) under this clause 40.1 if the Service Provider has failed to remedy such breach within fourteen (14) Working Days (or such other longer period if stipulated by the Authority in writing) of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure described at paragraph 2 of Part 1 (Service Levels) of Schedule 2 (Service Levels) has occurred in respect of a Placement;
- (c) if a Catastrophic Failure has occurred;
- (d) if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;
- (e) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if the Service Provider is in breach of clause 30.4 (Sub-contracting, assignment and change of control) (provided that the Authority's right to terminate this agreement under this clause 40.1(f) is exercised within six (6) months of the change of control);
- (g) (subject to clause 30.4 (Sub-contracting, assignment and change of control) concerning a change of control of the Service Provider) and where clauses 40.1(d) or 40.1(e) do not apply) if there is a proposed sale of the Home by the Service Provider and any of the following apply:

- (i) the Authority reasonably objects to the sale of the Home (and it shall be reasonable for the Authority to object where there are reasonable grounds to believe that the proposed purchaser is incapable of delivering the Services to meet the Specification, is undesirable (based on the nature of the purchaser’s core business so that any primary activity linked to alcohol, tobacco, gambling or pornography means that the proposed purchaser shall be deemed undesirable) or where the CQC or any other Regulatory Body raises legitimate concerns);
  - (ii) the Service Provider gives less than three (3) months’ prior written notice of the proposed Home sale to the Authority (except where the Service Provider is subject to an insolvency event where the Service Provider must give as much notice as is reasonably practicable);
  - (iii) there is a proposed “pre-pack” administration of the Service Provider’s business to follow a Service Provider (or Service Provider group Associated Company or affiliate) insolvency event (which the Authority reasonably believes allows an entity linked to the Service Provider to take control of and operate the Home with a preferential debt position compared to the Service Provider); or
  - (iv) the purchaser of the Home cannot guarantee the transfer to it of all current Placements entered into by the Service Provider at the Home at the date of sale;
- (h) (subject to clause 30.4 (Sub-contracting, assignment and change of control) concerning a change of control of the Service Provider and where clauses 40.1(d) or 40.1(e) do not apply) if there is a proposed closure of the Home by the Service Provider and any of the following apply:
- (i) the Authority reasonably objects to the closure of the Home; or
  - (ii) the Service Provider breaches clause 5.4 (Financial viability and Home closure) and gives less than three (3) months’ prior written notice of the proposed Home closure to the Authority (except where the Service Provider is subject to an insolvency event where the Service Provider must give as much notice as is reasonably practicable);
- (i) if any warranty given by the Service Provider in clause 4 (Consents, Service Provider’s warranty and due diligence) of this agreement is found to be untrue or misleading;
- (j) (where Part 3 (Key Performance Indicators) of Schedule 2 (Service Levels) applies) if the Service Provider fails to meet or exceed the minimum level acceptable level of performance for the specified number of Key

Performance Indicators in a specified period as agreed between the parties on entering into this agreement;

- (k) if, in the reasonable opinion of the Authority, the Service Provider or its Service Provider's Personnel are responsible for subjecting the Service User or any person to, or putting the Service User or any person at risk of, injury and or abuse whether physical, sexual, psychological, financial, or combination of the same;
- (l) if the Service Provider sub-contracts this agreement in whole or in part without the Authority's prior written consent;
- (m) if this agreement is novated or any part is assigned to a third party without the Authority's prior written consent;
- (n) if the Service Provider or Service Provider's Personnel are subject to action, a direction, notice or adverse or unsatisfactory finding following or in connection with an inspection by any Regulatory Body including but not limited to:
  - (i) the Service Provider, or any Service Provider's Personnel engaged in the delivery of the Services, are convicted of an offence, or subject to a finding by a Regulatory Body, which the Authority considers may result in an increased risk to the Service User if delivery of the Services was to continue;
  - (ii) a Regulatory Body makes an initial determination that the Registration should be cancelled or revoked; or
  - (iii) in the Authority's reasonable opinion the Registration should be materially amended;
- (o) if the Service Provider:
  - (i) loses, fails to renew or is not granted any relevant licence or Registration from all relevant Regulatory Bodies (including receiving notice of cancellation of its registration, in accordance with the CQC's publication "Scope of Registration" March 2015 (and any subsequent revisions) for a service providing regulated activities, as listed in Schedule 1 of the 2014 Regulations, including associated regulations);
  - (ii) ceases to hold the appropriate CQC registration; or

(iii) deregisters nursing services with the CQC (such that the Service Provider would be unable to accept Placements sought by the Authority requiring Nursing Care),

provided that termination of this agreement under this clause 40.1(o) shall not operate whilst any appeal is being pursued);

- (p) if the Service Provider has been convicted of an offence or is in breach of the provisions of the Care Act 2014, Care Standards Act 2000 or the Care Homes Regulations 2001 (SI 2001/3965) and any subsequent amendments, or the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (SI 2010/781) as set out by the CQC in the "Essential Standards of Quality and Safety";
- (q) if the Service Provider:
- (i) materially breaches clause 13.1(e)(i) concerning compliance with any of the Policies set out at Schedule 3 (Policies); or
  - (ii) breaches clause 13.1(e)(ii) concerning compliance with the Lancashire Safeguarding Adults Board policies;
- (r) if clause 45.3 (Prevention of bribery) applies;
- (s) if clause 46.5 (Counter-fraud and security management) applies;
- (t) if the Service Provider commits an offence under section 117(2) of the Local Government Act 1972 (or any subordinate legislation or guidance issued under such Act and any subsequent amendment or replacement to such Act);
- (u) if, in the reasonable opinion of the Authority, where there is an actual conflict or potential conflict between the pecuniary or personal interests of the Service Provider and the duties owed to the Authority and the Service User under the provisions of this agreement (including where clause 8.2 (Conflict of interest) is breached);
- (v) if, in the Authority's opinion, the Service Provider offers any improper inducement or exerts unreasonable pressure upon any prospective Service User or their relatives, friends or Representatives to attempt to encourage a prospective Service User to reside in the Home or any other Service Provider Care Home;

- (w) the Authority reasonably considers there to be a serious risk to the life, health or wellbeing of the Service User due to the Service Provider's performance or non-performance of its obligations under this agreement;
- (x) if any of the situations referred to in Regulation 73(1)(b) of the Public Contracts Regulations 2015 (SI 2015/102) apply to the Service Provider;
- (y) in any circumstances set out in any other provisions of this agreement which are expressly stated to entitle the Authority to terminate the Placement (or this agreement if it is limited to a single Placement);
- (z) where there has been a termination of a placement with a service user (of an arrangement similar to the Placement with this Service User) in the Home or a different Care Home in the Authority's administrative area (or under an out of area arrangement) due to Service Provider breach or default; or
- (aa) in the event that any of the matters specified in The Local Government (Exclusion of Non-Commercial Considerations) (England) Order 2022 (SI 2022/741), or any other legislation having a similar purpose, as ceasing to be non-commercial matters for the purposes of section 17(5)(e) of the Local Government Act 1988, apply to the Service Provider.

**Termination of all Placements at the Home and placements with Service Provider at other Care Homes (where agreements for such Placements and placements allow it)**

***Service Provider breach***

40.2 The Authority may terminate, at the Authorised Officer's sole discretion, any and all Placements arranged at the Home and any other Service Provider Care Home with the Service Provider by the Authority (in each case where permitted by the corresponding agreements for each such Placement and placement) and this agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:

- (a) if the Service Provider is in breach of any material obligation under this agreement (including but not limited to (i) a Material Breach (ii) an irremediable fundamental failure of the Services or (iii) systemic failures of the Services identified by any Regulatory Body) in each case affecting the Home rather than a single Placement provided that if the breach is capable of remedy, the Authority may only terminate any and all Placements and this agreement under this clause 40.2 if the Service Provider has failed to remedy such breach within fourteen (14) Working Days (or such other

longer period if stipulated by the Authority in writing) of receipt of notice from the Authority (a **Remediation Notice**) to do so;

- (b) if a Consistent Failure described at paragraph 2 of Part 1 (Service Levels) of Schedule 2 (Service Levels) has occurred in respect of all Placements within a Home;
- (c) if a Catastrophic Failure has occurred;
- (d) if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;
- (e) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if the Service Provider is in breach of clause 30.4 (Sub-contracting, assignment and change of control) (provided that the Authority's right to terminate this agreement under this clause 40.2(f) is exercised within six (6) months of the change of control);
- (g) (subject to clause 30.4 (Sub-contracting, assignment and change of control) concerning a change of control of the Service Provider and where clauses 40.2(d) or 40.2(e) do not apply) if there is a proposed sale of the Home by the Service Provider and any of the following apply:
  - (i) the Authority reasonably objects to the sale of the Home (and it shall be reasonable for the Authority to object where there are reasonable grounds to believe that the proposed purchaser is incapable of delivering the Services to meet the Specification, is undesirable (based on the nature of the purchaser's core business so that any primary activity linked to alcohol, tobacco, gambling or pornography means that the purchaser shall be deemed undesirable) or where the CQC or any other Regulatory Body raises legitimate concerns);
  - (ii) the Service Provider gives less than three (3) months' prior written notice of the proposed Home sale to the Authority (except where the Service Provider is subject to an insolvency event where the Service Provider must give as much notice as is reasonably practicable);
  - (iii) there is a proposed "pre-pack" administration of the Service Provider's business to follow a Service Provider (or Service



- Provider group Associated Company or affiliate) insolvency event (which the Authority reasonably believes allows an entity linked to the Service Provider to take control of and operate the Home with a preferential debt position compared to the Service Provider); or
- (iv) the purchaser of the Home cannot guarantee the transfer to it of all current Placements entered into by the Service Provider at the Home at the date of sale;
- (h) (subject to clause 30.4 (Sub-contracting, assignment and change of control) concerning a change of control of the Service Provider and where clauses 40.2(d) or 40.2(e) do not apply) if there is a proposed closure of the Home by the Service Provider and any of the following apply:
- (i) the Authority reasonably objects to the closure of the Home; or
  - (ii) the Service Provider breaches clause 5.4 (Financial viability and Home closure) and gives less than three (3) months' prior written notice of the proposed Home closure to the Authority (except where the Service Provider is subject to an insolvency event where the Service Provider must give as much notice as is reasonably practicable);
- (i) if any warranty given by the Service Provider in clause 4 (Consents, Service Provider's warranty and due diligence) of this agreement is found to be untrue or misleading;
- (j) (where Part 3 (Key Performance Indicators) of Schedule 2 (Service Levels) applies) if the Service Provider fails to meet or exceed the minimum level acceptable level of performance for the specified number of Key Performance Indicators in a specified period as agreed between the parties on entering into this agreement;
- (k) if, in the reasonable opinion of the Authority, the Service Provider or its Service Provider's Personnel are responsible for subjecting any Service User or any person to, or putting any Service User or any person at risk of, injury and or abuse whether physical, sexual, psychological, financial, or combination of the same;
- (l) if the Service Provider sub-contracts this agreement in whole or in part without the Authority's prior written consent;
- (m) if this agreement is novated or any part is assigned to a third party without the Authority's prior written consent;

- (n) if the Service Provider or Service Provider's Personnel are subject to action, a direction, notice or adverse or unsatisfactory finding following or in connection with an inspection by any Regulatory Body including but not limited to:
  - (i) the Service Provider, or any Service Provider's Personnel engaged in the delivery of the Services, are convicted of an offence, or subject to a finding by a Regulatory Body, which the Authority considers may result in an increased risk to the Service Users at the Home if delivery of the Services was to continue;
  - (ii) a Regulatory Body makes an initial determination that the Registration should be cancelled or revoked; or
  - (iii) in the Authority's reasonable opinion the Registration should be materially amended;
  
- (o) if the Service Provider:
  - (i) loses, fails to renew or is not granted any relevant licence or Registration from all relevant Regulatory Bodies (including receiving notice of cancellation of its registration, in accordance with the CQC's publication "Scope of Registration" March 2015 (and any subsequent revisions) for a service providing regulated activities, as listed in Schedule 1 of the 2014 Regulations, including associated regulations;
  - (ii) ceases to hold the appropriate CQC registration; or
  - (iii) deregisters nursing services with the CQC (such that the Service Provider would be unable to accept Placements sought by the Authority requiring Nursing Care),

provided that termination of this agreement under this clause 40.2(o) shall not operate whilst any appeal is being pursued);
  
- (p) if the Service Provider has been convicted of an offence or is in breach of the provisions of the Care Act 2014, Care Standards Act 2000 or the Care Homes Regulations 2001 (SI 2001/3965) and any subsequent amendments, or the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (SI 2010/781) as set out by the CQC in the "Essential Standards of Quality and Safety";
  
- (q) if the Service Provider:
  - (i) materially breaches clause 13.1(e)(i) concerning compliance with any of the Policies set out at Schedule 3 (Policies); or

- (ii) breaches clause 13.1(e)(ii) concerning compliance with the Lancashire Safeguarding Adults Board policies;
- (r) if clause 45.3 (Prevention of bribery) applies;
- (s) if clause 46.5 (Counter-fraud and security management) applies;
- (t) if the Service Provider commits an offence under section 117(2) of the Local Government Act 1972 (or any subordinate legislation or guidance issued under such Act and any subsequent amendment or replacement to such Act);
- (u) if, in the Authority's opinion, the Service Provider offers any improper inducement or exerts unreasonable pressure upon any prospective Service User or their relatives, friends or Representatives to attempt to encourage a prospective Service User to reside in the Home or any other Service Provider Care Home;
- (v) if, in the reasonable opinion of the Authority, where there is an actual conflict or potential conflict between the pecuniary or personal interests of the Service Provider and the duties owed to the Authority and the Service Users at the Home under the provisions of this agreement (including where clause 8.2 (Conflict of interest) is breached);
- (w) the Authority considers there to be a serious risk to the life, health or wellbeing of the Service Users at the Home due to the Service Provider's performance or non-performance of its obligations under this agreement;
- (x) if any of the situations referred to in Regulation 73(1)(b) of the Public Contracts Regulations 2015 (SI 2015/102) apply to the Service Provider;
- (y) in any circumstances set out in any other provisions of this agreement which are expressly stated to entitle the Authority to terminate this agreement;
- (z) where there has been termination of a placement with a service user (of an arrangement similar to the Placement with any Service User) in the Home or a different Care Home in the Authority's administrative area (or under an out of area arrangement) due to Service Provider breach or default; or
- (aa) in the event that any of the matters specified in The Local Government (Exclusion of Non-Commercial Considerations) (England) Order 2022 (SI 2022/741), or any other legislation having a similar purpose, as ceasing to

be non-commercial matters for the purposes of section 17(5)(e) of the Local Government Act 1988, apply to the Service Provider.

- 40.3 The Authority may terminate this agreement in accordance with the provisions of clause 42 (Force majeure).
- 40.4 If this agreement is terminated by the Authority for cause of Service Provider default pursuant to clause 40.1, clause 40.2, clause 43.6 (Prevention of bribery), clause 45.3 (Compliance with anti-slavery and human trafficking laws and policies) or clause 46.5 (Counter-fraud and security management) such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause (including but not limited to reprourement costs, any additional costs of providing the Services by the Authority's in-house provision or through an alternative service provider and Authority staff costs). The Authority shall cease to be liable for payment, under this agreement, of the Personal Care Fee in respect of the period of the breach and the Service Provider shall pay to the Authority any additional costs of providing such suitable alternative accommodation and services together with any additional costs of closing down the Services and the Authority's reprourement costs incurred in commissioning services in substitution for the Services).

***Authority breach and shared risk termination events***

- 40.5 The Service Provider may terminate any Placement under this agreement in whole (and this agreement in whole if it is limited to a single Placement) in the event that:
- (a) the Authority commits a Termination Payment Default by giving thirty (30) Working Days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the thirty (30) Working Day notice period, the Service Provider's notice to terminate the Placement (and this agreement in whole if it is limited to a single Placement) shall be deemed to have been withdrawn;
  - (b) (in the reasonable professional opinion of the Service Provider) the mental and/or physical condition of the Service User has deteriorated to the extent that the Service Provider is no longer able to care for and/or meet the needs of the Service User within the Home and provide the facilities and Services such that the Service Provider shall notify the Authority as soon as reasonably practicable and act reasonably in proposing a timetable for the removal of the Service User which must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and the Service Provider shall serve no less than seven (7) Working Days' written notice on the Authority of its intention to terminate the Placement pursuant to this

clause 40.5(b) (and any shorter notice period proposed by the Service Provider may be agreed by the Authority giving its prior written consent (not to be unreasonably withheld or delayed)); or

- (c) the Service User conducts themselves in such a way as to (in the reasonable professional opinion of the Service Provider):
  - (i) display abusive, violent or threatening behaviour unacceptable to the Service Provider (acting reasonably and taking into account the mental health of that Service User) including conduct which may:
    - (A) pose a serious risk to the welfare of the other residents and/or Service Users in the Home; or
    - (B) be detrimental to the peaceful enjoyment of other residents and/or Service Users living at the Home;
  - (ii) present a serious risk to the safety of the Service Provider's Personnel or visitors which in that Service User's care setting or circumstances (as applicable) poses a level of risk to the Service Provider's Personnel engaged in the delivery of the relevant Services or to visitors that the Service Provider reasonably considers to be unacceptable; or
  - (iii) presents a material detriment to the Service Provider's reputation,

and the Service Provider shall serve no less than seven (7) Working Days' written notice on the Authority of its intention to terminate the Placement (and this agreement in whole if it is limited to a single Placement) pursuant to this clause 40.5(c) (and any shorter notice period proposed by the Service Provider may be agreed by the Authority giving its prior written consent (not to be unreasonably withheld or delayed)).

40.6 If a Placement (and this agreement in whole if it is limited to a single Placement) is terminated by the Authority in accordance with clause 40.5 the Service Provider shall be entitled to payment for Services provided but shall not be entitled to any other payment by virtue of this clause 40.

#### **41. TERMINATION ON NOTICE**

##### **Termination of a Placement at a Home**

41.1 Without affecting any other right or remedy available to it and subject to clauses 41.2 to 41.4 inclusive, the Authority may terminate any individual Placement (and this agreement in whole if it is limited to a single Placement) at any time:

- (a) (in respect of a Long Stay Placement during the Trial Period) with immediate effect by the Authority giving written notice to the Service Provider during the initial four (4) week Trial Period or during such other extended Trial Period as may be agreed in writing by the Authority and Service Provider on or before the Commencement Date or at the initial review meeting following such initial Trial Period;
- (b) (in respect of a Long Stay Placement after the Trial Period) by giving not less than four (4) weeks' written notice to the Service Provider;
- (c) by giving not less than seven (7) Working Days' written notice to the Service Provider if, following hospital admission:
  - (i) the Service User's needs, in the reasonable opinion of the Service Provider, mean that it would be inappropriate for the Service User to return to the Home; or
  - (ii) the Service User remains in hospital for a continuous period of more than three (3) weeks;
- (d) by giving not less than twenty-eight (28) Working Days' written notice to the Service Provider if, following an Assessment or Care and Support Plan Review the Authority determines, in consultation with relevant healthcare professionals, that:
  - (i) the Service User's needs can no longer be met within the Home (for example where the Service User's health deteriorates irreversibly to the point where the level of care required is beyond that which can be provided by the Service Provider in the Home where the Service User resides); or
  - (ii) the Service User no longer needs the Services (for example where the Service User's health improves to the point where they no longer require the level of care provided by the Service Provider in the Home where the Service User resides);
- (e) by giving not less than twenty-eight (28) Working Days' written notice to the Service Provider if a Service User fails to pay their assessed financial contribution to the Authority for a period of not less than six (6) weeks;
- (f) by giving not less than twenty-eight (28) Working Days' written notice to the Service Provider if a Third Party (not being the Authority) fails to pay their financial contribution to the Authority under a Third Party Agreement (or otherwise) for a period of not less than four (4) weeks; or
- (g) by giving not less than twenty-eight (28) Working Days' written notice to the Service Provider if the Service User or their Representative has

indicated that the Service User wishes to leave the Home (provided that if the Service User discharges themselves the Authority shall cease payment to the Service Provider upon vacation by the Service User).

- 41.2 A Placement will be deemed to be terminated on the date of the death of the Service User. In such circumstances the Service Provider shall as soon as reasonably practicable (and in any event within twenty-four (24) hours):
- (a) inform the Authority in writing of the death of the Service User;
  - (b) inform the Service User's next of kin and/or Representative;
  - (c) remove the Service User's personal effects and provide safe storage at its own expense for these items for a period of fourteen (14) Working Days. During this time the Service Provider must inform the Representative that the Service User's belongings can be collected.
- 41.3 Where the Authorised Officer considers that the needs of the Service User have changed following an Assessment or Care and Support Plan Review and the Authorised Officer considers that the Service Provider is unable to meet the Service User's needs, the Placement (and the Service User's Long Stay Placement) (and this agreement in whole if it is limited to a single Placement) will terminate on the date the Service User leaves the Home or they are admitted to hospital.
- 41.4 Notwithstanding the provisions of this agreement, in extreme circumstances (particularly in respect of Service User safeguarding issues) the Authority may, in pursuance of its statutory obligations, remove any Service User from the Home without notice to the Service Provider and the Long Stay Placement will be varied or terminated accordingly.
- 41.5 The Service Provider may terminate any individual Placement (and this agreement in whole if it is limited to a single Placement) at any time:
- (a) by giving not less than four (4) weeks' written notice to the Authority (such notice period being sufficient for the Service Provider to continue the Services at its own cost and keeping the Service User safe until the Service User leaves the Home for a new destination to be notified as soon as reasonably practicable by the Authority to the Service Provider);
  - (b) by giving not less than seven (7) Working Days' written notice to the Service Provider if, following hospital admission:

- (i) the Service User's needs, in the reasonable opinion of the Service Provider, mean that it would be inappropriate for the Service User to return to the Home; or
  - (ii) the Service User remains in hospital for a continuous period of more than three (3) weeks;
- (c) by giving not less than twenty-eight (28) Working Days' written notice to the Service Provider if, following an Assessment or Care and Support Plan Review the Authority determines, in consultation with relevant healthcare professionals, that:
- (i) the Service User's needs can no longer be met within the Home (for example where the Service User's health deteriorates irreversibly to the point where the level of care required is beyond that which can be provided by the Service Provider in the Home where the Service User resides);
  - (ii) the Service User no longer needs the Services (for example where the Service User's health improves to the point where they no longer require the level of care provided by the Service Provider in the Home where the Service User resides); or
  - (iii) the Service User or their Representative has indicated that the Service User wishes to leave the Home (provided that if the Service User discharges themselves the Authority shall cease payment to the Service Provider upon vacation by the Service User).

**Termination of all Placements at the Home and placements with the Service Provider at other Care Homes (where agreements for such Placements and placements allow it)**

41.6 Where the Home is to be closed by the Service Provider (and where the Service Provider has complied with clause 5.4 (Financial viability and Home closure) and the Authority has provided its prior written consent) the Authority may terminate:

- (a) this agreement (and the corresponding Placement(s)); and
- (b) any and all Placements arranged at the Home and any other Service Provider Care Home with the Service Provider by the Authority (in each case where permitted by the corresponding agreements for each such Placement or placement),

at any time by giving not less than one (1) month's written notice to the Service Provider provided that the Authority shall be entitled to terminate immediately or as at the Home closure date where the reason for the Home closure is an



anticipated Service Provider insolvency event where the Authority is subject to notification under clause 5.5(b)(vi) (Financial viability and Home closure).

- 41.7 The Service Provider may terminate this agreement (and any corresponding Placement) where the Home is to be closed by the Service Provider at any time (and where the Service Provider has complied with clause 5.4 (Financial viability and Home closure) and the Authority has provided its prior written consent) by giving not less than three (3) months' written notice to the Authority (except where the Service Provider suffers an insolvency event) (such notice period being sufficient for the Service Provider to continue the Services at its own cost and keeping the Service User safe until the Service Users leave the Home for new destinations to be notified as soon as reasonably practicable by the Authority to the Service Provider).
- 41.8 If this agreement is terminated by the Authority in accordance with clause 41.6 or clause 41.1 or clauses 41.3 to 41.4 inclusive or is deemed terminated in accordance with clause 41.2 (or by the Service Provider in accordance with clause 41.7) the Service Provider shall be entitled to payment for Services provided but shall not be entitled to any other payment by virtue of this clause 41.
- 41.9 The Service Provider shall, at its own cost (including in respect of Service User decant costs and any Authority intervention team costs between the date such intervention commences and the termination date of this agreement), fully co-operate with reasonable instructions issued by the Authority and any Service User for managing any decant arrangements for Service Users whose Placements are terminated and, where applicable, for any other implications of a Home closure including following termination of this agreement.

## **42. FORCE MAJEURE**

- 42.1 Subject to the remaining provisions of this clause 42, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 42.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 42.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 42.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 42.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Industry Practice.
- 42.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 42.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than thirty (30) Working Days.

**43. PREVENTION OF BRIBERY**

- 43.1 The Service Provider:
  - (a) shall not, and shall procure that any Service Provider Party and all Service Provider's Personnel shall not, in connection with this agreement commit a Prohibited Act; and
  - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this agreement, excluding any arrangement

of which full details have been disclosed in writing to the Authority before execution of this agreement.

43.2 The Service Provider shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act; and
- (b) within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 43 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this agreement. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

43.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Service Provider Party or Service Provider's Personnel from committing a Prohibited Act and shall enforce it where appropriate.

43.4 If any breach of clause 43.1 is suspected or known, the Service Provider must notify the Authority immediately.

43.5 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of clause 43.1, the Service Provider must respond promptly to the Authority's enquiries, co-operate with any investigation and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for the longer of twelve (12) years from the end of the Contract Year to which the records relate or the period required by the relevant NHS records management policy applying from time to time.

43.6 The Authority may terminate this agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider's Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 43.1. In determining whether to exercise the right of termination under this clause 43.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.

43.7 Any notice of termination under clause 43.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this agreement will terminate.

43.8 Notwithstanding the provisions of clause 29 (Dispute resolution), any dispute relating to:

- (a) the interpretation of this clause 43; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

43.9 Any termination under clause 43.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

#### **44. CONSEQUENCES OF TERMINATION**

44.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the Service Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Service Provider.

44.2 On termination of this agreement the Service Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services) shall be

delivered to the Authority forthwith and the Service Provider's Authorised Representative shall certify full compliance with this clause 44.2.

44.3 The provisions of: clause 12.3 (Provision of records), clause 31 (Indemnities), clause 33 (Insurance), clause 34 (Freedom of Information), clause 35 (Data Protection), clause 37 (Audit), clause 40 (Termination for Breach) and this clause 44 (Consequences of termination) shall survive termination or expiry of this agreement.

44.4 On termination of this agreement and/or any Long Stay Placement, the relevant element of the Personal Care Fee and Nursing Care Fee shall be payable only up to and including the date on which this agreement and/or any Long Stay Placement terminates. Where any element of the Personal Care Fee and Nursing Care Fee shall have been paid in advance then the Service Provider shall promptly repay any overpayment to the Authority.

#### **45. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES**

45.1 In performing its obligations under this agreement, the Service Provider shall comply with all Applicable Laws concerning anti-slavery and human trafficking (including but not limited to the Modern Slavery Act 2015).

45.2 The Service Provider shall include in its Sub-Contracts with its Sub-Contractors (if any) and suppliers anti-slavery and human trafficking provisions that each of its Sub-Contractors and suppliers shall (subject to clause 13.1(e)(i)) comply with the Authority's anti-slavery policy which at the Commencement Date is as referenced or set out in Part 1 (Authority Policies) of Schedule 3 (Policies) and with all Applicable Laws concerning anti-slavery and human trafficking (including but not limited to the Modern Slavery Act 2015).

45.3 If the Service Provider or Service Provider's Personnel commit an offence under the Modern Slavery Act 2015 or other Applicable Laws concerning anti-slavery and human trafficking in relation to this agreement or any other agreement with the Authority then the Authority may terminate this agreement by written notice to the Service Provider with immediate effect (and terminate any other agreement the Service Provider has with the Authority where the Authority is permitted to do so under its terms and conditions) and recover from the Service Provider the amount of any losses suffered by the Authority resulting from the termination including the cost reasonably incurred by the Authority in making other arrangements for the supply of the Services for the remainder of the Term of this agreement had it not been terminated).

#### **46. COUNTER-FRAUD AND SECURITY MANAGEMENT**

- 46.1 The Service Provider must put in place and maintain appropriate counter-Fraud and security management arrangements.
- 46.2 The Service Provider must take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by the Service Provider (and Service Provider's Personnel) in connection with the receipt of monies from the Authority or any Service User.
- 46.3 The Service Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur including, but not limited to, cases of:
- (a) collusion with Authority staff;
  - (b) computer Fraud;
  - (c) the submission to the Authority of inaccurate, incomplete, misleading or falsified management information;
  - (d) Fraud involving Service Users; and
  - (e) Fraud involving Regulatory Bodies.
- 46.4 Where the Authority has reasonable cause to suspect that Fraud or irregularity has occurred in relation to the delivery of this agreement and any payments made under this agreement or in relation to any other agreement made between the Authority and the Service Provider, the Authority shall have the right:
- (a) of access to any premises of the Service Provider at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview any Service Provider's Personnel engaged to deliver this agreement; and
  - (b) to suspend payments of any monies owed under this agreement and any other agreement made between the Authority and the Service Provider until such time as the Authority's concerns are abated.
- 46.5 If the Service Provider or Service Provider's Personnel commit Fraud in relation to this agreement or any other agreement with the Authority then the Authority may terminate this agreement by written notice to the Service Provider with immediate effect (and terminate any other agreement the Service Provider has with the Authority where the Authority is permitted to do so under its terms and conditions) and recover from the Service Provider the amount of any losses suffered by the Authority resulting from the termination including the cost reasonably incurred by the Authority in making other arrangements for the supply of the Services for the remainder of the Term of this agreement had it not been terminated).

#### **47. EXTREMISM AND RADICALISATION**

- 47.1 The Service Provider must have, within its policies and procedures on safeguarding children and organisational safeguarding adult policies, procedures in place for the identification and reporting of suspected Extremism and Radicalisation. The Service Provider must ensure all Service Provider's Personnel are familiar with such procedures and know how to report concerns and comply with such procedures in delivering the Services.
- 47.2 The Service Provider and its Service Provider's Personnel must ensure that any concerns of suspected activity are raised and recorded internally and referred to the Authority and other appropriate agencies including the police in the event of a material concern or emergency.
- 47.3 The Service Provider shall ensure that all Service Provider's Personnel receive training in respect of identifying and reporting Extremism and Radicalisation. The Service Provider shall keep a record of all training completed by the Service Provider's Personnel.
- 47.4 The Service Provider shall include in its policies and procedures, and comply with, the principles contained in "Prevent" and the "Prevent Guidance and Toolkit". The Service Provider shall ensure there is a proportionate response to the delivery of "Workshop to Raise Awareness of Prevent" for Service Provider's Personnel.
- 47.5 The Service Provider must nominate a "Prevent Lead" and must ensure that the Authority is kept informed at all times of the identify of such "Prevent Lead".

#### **GENERAL PROVISIONS**

#### **48. NON-SOLICITATION**

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one (1) year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

#### **49. WAIVER**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any

breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Service Provider in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

**50. CUMULATION OF REMEDIES**

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

**51. SEVERABILITY**

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

**52. PARTNERSHIP OR AGENCY**

Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

**53. THIRD PARTY RIGHTS**

53.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement. No Service Provider group Associated Company or affiliate shall be entitled to enforce the terms of this agreement.

**54. PUBLICITY**

The Service Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or



- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

**55. NOTICES**

55.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) in respect of the any notice to the Authority:
  - (i) sent via e-mail to the contracts team mailbox at: [contractmgmt.care@lancashire.gov.uk](mailto:contractmgmt.care@lancashire.gov.uk); or
  - (ii) delivered by hand or by post to: Contract Management, PO Box 1337, County Hall, Preston, Lancashire PR2 0TG.

- (b) in respect of the any notice to the Service Provider:
  - (i) sent via e-mail to the Service Provider to the e-mail address stated on the Contract Acceptance Form (or subsequently notified to the Authority in writing); or
  - (ii) delivered by hand or by post to the address stated on the Contract Acceptance Form (or subsequently notified to the Authority in writing).

55.2 Any notice or communication shall be deemed to have been received in line with the following table:

<b>Transmission method</b>	<b>Deemed received</b>
Delivery by hand	on signature of a delivery receipt or at the time the notice is left at the proper address
Post	on the third Working Day after posting
E-mail	before 9am on the next Working Day after submission

55.3 This clause 55 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**56. ENTIRE AGREEMENT**

This agreement, the schedules and the documents appended or annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

**57. COUNTERPARTS**

57.1 Where the Authority and Service Provider agree to complete a contract for a Placement in a hard copy using "wet ink" signatories for a simple contract under hand which incorporates these terms and conditions then, subject to clause 57.2, this agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one (1) counterpart.

57.2 Delivery of an executed signature page of a counterpart in Adobe™ Portable Document Format (PDF) sent by e-mail shall take effect as delivery of an executed counterpart of this agreement. If this method is adopted, without prejudice to the validity of such agreement, each party shall provide the other with the original of such page as soon as reasonably practicable thereafter.

**58. GOVERNING LAW AND JURISDICTION**

58.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

58.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

**59. EXIT**

59.1 The parties agree that this is a finite agreement for a specific set of defined Services and that this agreement will terminate upon completion of the provision of the Services. On this basis, the parties agree that there is no need to set out exit requirements or prepare an exit plan.

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

**FOR SCHEDULES PLEASE SEE SEPARATE DOCUMENTS**

Schedule 1	Specification
Schedule 2	Service Levels
	Part 1: Service Levels
	Part 2: Service Credits
	Part 3: Key Performance Indicators
Schedule 3	Policies
	Part 1: Authority Policies
	Part 2: Service Provider Policies
Schedule 4	Charges and payment
	Appendices
	Appendix 1: Additional SU Services
	Appendix 2: First Party Agreement template form
	Appendix 3: Commissioning Processes
	Appendix 4: Not used
	Appendix 5: Third Party Agreement template form
	Appendix 6: LCC Care Rates
Schedule 5	Contract management
Schedule 6	Change control
Schedule 7	Out of area
Schedule 8	TUPE
Schedule 9	Commercially Sensitive Information
Schedule 10	Personal Data
	Part 1: Processing Obligations
	Part 2: Shared Personal Data
Schedule 11	Template Novation Agreement
Schedule 12	SUPA
Schedule 13	1 to 1 Form
Schedule 14	Records Guidance

