

Schedule 4: Charges and payment

1. BACKGROUND

1.1 This Schedule 4 applies where NHS Bodies do not fully fund the Services for the Service User.

1.2 The effective date on which the Care Fees will apply for the relevant Contract Year will be the later of:

- (a) the commencement date of that Contract Year; or
- (b) if not requested in advance of that Contract Year, the date in that Contract Year on which the request was submitted to the Authority.

1.3 Schedule 7 (Out of area) applies for "out of area" Placements where:

- (a) a pre-condition to payment by the Authority shall be that the Service Provider notifies the Authority as soon as reasonably practicable (and in any event at least thirty (30) Working Days before payment is requested by the Service Provider from the Authority) of the host local authority rates (and any variation to them from time to time) which are comparable to the LCC Care Rates for that host local authority; and
- (b) if the host local authority rates are subsequently varied or uplifted then:
 - (i) where the Service Provider notifies the Authority within three (3) months of the host local authority notifying the Service Provider then the Authority shall pay the varied or uplifted rates backdated to the date when the host local authority notified the Service Provider; and
 - (ii) where the Service Provider notifies the Authority after three (3) months from the host local authority notifying the Service Provider then the Authority shall pay the varied or uplifted rates from the date when the Service Provider notified the Authority.

1.4 Although the Service User is not a party to this agreement its obligations to the parties may be contained in documentation lodged or referred to on the Care Portal and/or in any 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 **Error! Reference source not found.** (Definitions and Interpretation)).

2. FINANCIAL ASSESSMENT FOR SERVICE USER

2.1 The Authority shall apply its Policy titled “Lancashire County Council Adult Social Care Policies and Procedures: Choice of Accommodation” (as may be amended or superseded from time to time) which at the Commencement Date is as referenced or set out in Part 1 (Authority Policies) of Schedule 3 (Policies).

2.2 The parties acknowledge the terms of the Care Act 2014 and Care and Support (Charging and Assessment of Resources) Regulation 2014 (SI 2014/2672).

2.3 The Service User is subject to a care needs assessment regime as follows:

- (a) by Assessment to determine any NHS Funded Nursing Care requirement i.e. written assessment by Authority, or other party determined by the Authority’s Authorised Officer, in relation to Service User individual needs for residential care and NHS Funded Nursing Care;
- (b) by LA Support Plan to determine any residential care requirement as prepared by the Authority’s Social Workers; and
- (c) by Care and Support Plan to determine any residential care requirement for the Service User in the Home as agreed between the Authority, Service Provider and Service User (and which is the “care and support plan” referenced in the Specification) as regularly reviewed via Support Plan Review process,

provided that the Financial Assessment for the Service User is a separate exercise as described in paragraph 2.4 below.

2.4 The Financial Assessment for a Service User is a retrospective assessment (carried out by the Authority after the Assessment) of the Service User’s ability to contribute towards the Care Fees to be paid to the Service Provider to satisfy the Care Charge. The Financial Assessment is necessary where the Service User is not fully funded by the NHS, where accommodation is not being provided under section 117 of the Mental Health Act 1983 for mental health aftercare, where paragraph 2.7 below does not apply and the Service User’s choice of Care Home accommodation cannot be fully funded through the Authority’s payment of an amount limited to the LCC Care Rates to meet the Care Charge. It is carried out by the Authority’s financial assessment team as soon as reasonably practicable following the Service User starting a residential care Placement in the Home.

2.5 The Service User must complete the Financial Assessment for their:

- (a) capital (savings, investments and value of property or land (but note there are exceptions where the value of the Service User’s home is disregarded); and

- (b) weekly income (including most pensions and benefits, other income and an assumed level of income from savings and investments (known as tariff income)).
- 2.6 The Authority's financial assessment team may conduct a "light touch" desk top assessment in the Authority's office or complete a visit to the Service User at the Home for a more detailed face to face review.
- 2.7 Where the Service User's savings and investments are determined to be equal to or over the maximum capital limit of twenty-three thousand two hundred and fifty pounds (£23,250) for the financial year 2022-2023 following the Financial Assessment the Service User is fully self-funded and is liable to meet the costs of the Care Charge in full.
- 2.8 Where the Service User's savings and investments are determined to be below the maximum capital limit of twenty-three thousand two hundred and fifty pounds (£23,250) for the financial year 2022-2023 following the Financial Assessment the Service User shall be liable to meet some of the costs of the Care Charge by way of a Service User Assessed Contribution.
- 2.9 If the Service User is found to be liable to contribute towards the costs of the Care Charge and the Authority has paid such amount from the commencement of the Service User's Placement at the Home then the Service User shall reimburse the Authority with any calculated contribution (plus interest in respect of any property debt) backdated to the start of the Placement.
- 2.10 For the avoidance of doubt, where the Financial Assessment determines that the Service User shall not be fully self-funded in accordance with paragraph 2.7 but may contribute towards the costs of the Care Charge in accordance with paragraph 2.8 the Care Charge costs shall be paid by Care Fees made up of potentially:
 - (a) a Service User Assessed Contribution paid by the Service User; and
 - (b) the Applicable Fees, First Party Contribution and Third Party Contribution paid by the Authority.
- 2.11 Where a Third Party makes a Third Party Contribution under the terms of a Third Party Agreement in accordance with paragraphs 4.3 to 4.6 below there is no formal financial assessment of the Third Party's ability to pay the Third Party Contribution. The Authority does consider the Third Party's ability to:
 - (a) pay the Third Party Contribution (and hence the Third Party credit risk or covenant strength);
 - (b) offer a guarantor to support the Third Party's payment obligation for the Third Party Contribution; and

- (c) respond to any increased Third Party Contribution requirement (including by indexation) should the Service Provider increase its Care Charge where all other elements of the Care Fees calculation do not correspondingly increase.

2.12 Where the Service User makes a First Party Contribution under the terms of a First Party Agreement in accordance with paragraphs 4.7 to 4.10 below there is no separate assessment to the Financial Assessment of the Service User's ability to pay the First Party Contribution (except where the Service User owns their own home and has been accepted onto the Authority's Deferred Payments Scheme).

3. NURSING CARE

3.1 For the avoidance of doubt, neither the Authority nor the Service User shall be responsible for the payment of the Nursing Care Fee (for NHS Funded Nursing Care) to the Service Provider. As at the date of this agreement the Authority reasonably believes that an NHS Body shall be responsible for the payment of the Nursing Care Fee (which does not form part of the Care Fees calculation).

4. TOP UP PAYMENTS

4.1 When the Service User is entering residential care and NHS Bodies are not fully funding all of the residential care the Authority shall pay for Services (and Additional Care Services, as the case may be) to the extent of the LCC Care Rates published by the Authority. Any service provider may propose to charge its own price for its Care Home facilities and services the same as the Services. Under this agreement the Service Provider at the Home charges the Care Charge where the payment of fees to satisfy the Care Charge may exceed the LCC Care Rates. The Service User must also be able to choose more expensive accommodation than that funded by the Authority's LCC Care Rates if the additional cost (for example because the Service Provider wants to charge more for a room with better facilities than other rooms in its Home (and it may be a Service Provider applies charges for each of its rooms or just certain ones)), known as a "top up" is paid by:

- (a) a Third Party, usually a Service User's family member, friend or other person such as a charity, as a Third Party Contribution; or
- (b) in certain circumstances by the Service User themselves as a First Party Contribution,

and for the avoidance of doubt a Service User Assessed Contribution is not a "top up".

4.2 Only when the Service User has chosen more expensive accommodation than the LCC Care Rates can support will a "top up" payment be sought. If no Care Home preference has been expressed and no suitable Care Home accommodation is available at the amount identified in a Service User's personal budget, the Authority

must arrange care in a more expensive setting and adjust the budget accordingly to ensure that the Service User's needs are met. In such circumstances, the Authority must not ask for the payment of a "top up" fee.

Third Party "top ups"

- 4.3 If the Care Charge cost of the Home chosen by the Service User is more than the standard weekly rate payable by the Authority under the LCC Care Rates then a Third Party Contribution "top up payment" may be required to meet the costs of the Care Charge levied by the Service Provider.
- 4.4 Where a Third Party Contribution is required the Authority and the Third Party shall enter into a Third Party Agreement. The Authority shall be responsible for the payment to the Service Provider of an amount equal to the Third Party Contribution. The Service Provider shall not seek or accept any Third Party Contribution payment direct from any Third Party (nor shall the Service Provider contact a Third Party to notify them of an increase to the Third Party Contribution instead of contacting the Authority with a request to consider a revised Third Party Contribution) (and in any such case doing so shall be a Material Breach of this agreement).
- 4.5 Any Third Party Agreement as referred to in paragraph 4.4 above must be agreed with the Authority as soon as reasonably practicable after the Financial Assessment. Any variation to the Third Party Agreement, for example to deal with a Service Provider periodic request to amend the Third Party Agreement, must be requested by the Service Provider to the Authority and agreed by the Third Party and the Authority.
- 4.6 A Third Party Agreement should not be entered into following the paragraph 4.4 arrangement (entered into as soon as reasonably practicable after the Financial Assessment) except when there is a Service User change in circumstance(s) set out in the relevant Authority Policies. Should it be necessary to add a Third Party Agreement to complement this agreement due to a Service User change in circumstances this must be agreed in writing by both the Third Party and the Authority. In the event of the subsequent discovery, by the Authority, of the existence of an extra-contractual Third Party Agreement arrangement in respect of any Service User, then the Service Provider shall be deemed to be in Material Breach of this agreement.

First Party "top ups"

- 4.7 If the cost of the Home chosen by the Service User is more than the standard weekly rate payable by the Authority under the LCC Care Rates then a First Party Contribution "top up payment" may be required to meet the costs of the Care Charge levied by the Service Provider.

- 4.8 Where a First Party Contribution is required the Authority and the Service User (as First Party) shall enter into a First Party Agreement. The Authority shall be responsible for the payment to the Service Provider of an amount equal to the First Party Contribution. The Service Provider shall not seek or accept any First Party Contribution payment direct from the Service User (as First Party) (and to do so shall be a Material Breach of this agreement).
- 4.9 Any First Party Agreement as referred to in paragraph 4.8 above must be agreed with the Authority as soon as reasonably practicable after the Financial Assessment. Any variation to the First Party Agreement must be agreed by the Service User (as First Party) and the Authority.
- 4.10 A First Party Agreement cannot be entered into once this agreement has been signed except when there is a Service User change in circumstance(s). Should it be necessary to add a First Party Agreement to complement this agreement due to a Service User change in circumstances this must be agreed in writing by both the Service User (as First Party) and the Authority. In the event of the subsequent discovery, by the Authority, of the existence of an extra-contractual First Party Agreement arrangement in respect of any Service User, then the Service Provider shall be deemed to be in Material Breach of this agreement.
- 4.11 Where a Third Party Agreement is in place the Service Provider must request any proposed changes to the Third Party Agreement in writing to the Authority. Any change or increase must be with the agreement of the Third Party and the Authority. No other payments should be introduced outside this agreement.

5. PROVISION OF SERVICE USER INFORMATION BY THE SERVICE PROVIDER

- 5.1 The Service Provider shall be required to confirm via the Care Portal on a twenty-eight (28) Working Days in arrears basis, synchronised to the Authority's payment dates on a twenty-eight (28) Working Day frequency from the Commencement Date, the following information which shall be deemed representations by the Service Provider:
- (a) in respect of each Service User, the Care Charge;
 - (b) any proposed change to the Service Provider's own rates and charges which are used to calculate the Care Charge (and any proposed date of implementation of the change, which date shall not be less than twenty-eight (28) Working Days from the date of confirmation);
 - (c) in respect of each Service User, the Additional Care Fees for Additional Care Services;
 - (d) the actual Care Charge compared to the actual Care Fees received from the Authority (as calculated and paid by the Authority in respect of Applicable Fees, First Party Contribution and Third Party Contribution);

- (e) the impact of any Care and Support Plan Review (or any other adjustments agreed with the Authority) to vary the Service User's receipt of facilities, Services and Additional Care Services which affects the Authority's calculation of Applicable Fees;
- (f) that the Service User, for whom payment is being made, was in residence at the Home at the date of the confirmation and in receipt of the Services on the dates specified (or that the Service Provider is otherwise entitled to payment of the Care Fees) and that the Care Fees are properly due and payable by the Authority;
- (g) the date of (and reason for) discharge of Service Users and period away from the Home, if only a temporary absence); and
- (h) (notwithstanding the Service Provider's obligation to report a Service User death within twenty-four (24) hours in accordance with clause **Error! Reference source not found.** (Service standards)) the date of death of any Service User,

and in addition, not by way of the Care Portal, the receipt of the Personal Expenses Allowance by the Service User where the Service User's finances are paid to (but not administered day to day) by the Service Provider in accordance with paragraph 10 of this Schedule 4.

5.2 The confirmation must be returned via the Care Portal to the finance officer of the Authority's appropriate "District Team" within the time period specified for the confirmation by paragraph 5.1 of this Schedule 4. Failure to comply with this requirement could result in delay in payment until a subsequent scheduled payments run and any such delay shall not constitute a breach of this agreement by the Authority. All claims for payment for any twenty-eight (28) Working Day payment period shall be submitted to the Authority by no later than eight (8) weeks following the last Working Day of the payment period.

5.3 In the event that a Service Provider fails to submit a claim for payment in the manner specified in paragraph 5.2 or any other information required from the Service Provider in accordance with this Schedule 4 the Authority may at its discretion withhold payment of any Care Fees to the Service Provider until the satisfactory provision of such complete and accurate information by the Service Provider (and should the Authority withhold payment in accordance with this paragraph 5.3 the Authority shall not be deemed to be in breach of this agreement).

6. CARE CHARGE TO BE MET BY CARE FEES

6.1 Subject to the Service Provider complying with the requirements of paragraphs 1 and 5 above (and subject to the separate NHS Body payment referred to in paragraph 3.1), the Care Charge levied by the Service Provider for the Services and any Additional

Care Services provided to the Service User at the Home shall be met by payment of the Care Fees in the following amounts and by the following persons:

- (a) the Applicable Fees shall be paid by the Authority in accordance with paragraph 6.2 below, being both:
 - (i) fees not exceeding the LCC Care Rates for Services; and
 - (ii) Additional Care Fees for Additional Care Services as approved in writing in advance by the Authority's Social Worker allocated to a Service User;
- (b) the Service User Assessed Contribution shall be paid by the Service User in accordance with paragraph 6.3 below;
- (c) any First Party Contribution shall be paid by the Authority in accordance with paragraph 6.2 below; and
- (d) any Third Party Contribution shall be paid by the Authority in accordance with paragraph 6.2 below.

6.2 The Applicable Fees, First Party Contribution and Third Party Contribution payable by the Authority to the Service Provider shall be summarised by the Service Provider for each twenty-eight (28) Working Day period and issued for information to the Service User and/or their Representative within seven (7) Working Days of receipt of the remittance statement evidencing payment by the Authority.

6.3 The parties acknowledge that the Service User Assessed Contribution shall be payable by the Authority to the Service Provider (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).

6.4 If the Service Provider shall receive from another person (including an NHS Body or another public body) any payment in respect of the whole or any part of any defined element of the Services and/or Additional Care Services, the Service Provider shall immediately credit the Authority on a monthly basis the amount of such payment, subject to the Service Provider's right to deduct from such payment any sum properly due to the Service Provider (save to the extent that such monies have already been deducted by the Authority from payment of the Care Fees).

7. ADDITIONAL CARE SERVICES TO BE PAID FOR BY ADDITIONAL CARE FEES

7.1 As part of the Applicable Fees the Authority agrees to pay the Service Provider any other Additional Care Fees for Additional Care Services in respect of the Service User admitted to the Home. Payment shall be made in accordance with paragraph 9 of this Schedule 4.

8. ADDITIONAL SU SERVICES TO BE PAID FOR BY SERVICE USER

- 8.1 The Service User may request the Service Provider to provide or procure the provision of Additional SU Services, being non-care related extra services arranged by the Service Provider for a Service User and charged on a schedule of rates or ad hoc/pass through basis (with a reasonable margin or profit for the Service Provider to cover its overheads and profit for procuring such Additional SU Services).
- 8.2 Where the Service Provider wishes to charge Service Users for providing Additional SU Services, the Service Provider shall provide to the Authority, Service User and any Representative at the commencement of the Placement with precise details and applicable charges and subsequently promptly provide to such parties all updates and amendments.
- 8.3 The Service User funds Additional SU Services through their Personal Expenses Allowance or other sources of funding accessible to the Service User or their Representative.
- 8.4 The Authority shall not be liable for payment of Additional SU Services and the Service Provider will be responsible for obtaining all payments for Additional SU Services direct from the Service User.
- 8.5 The Service Provider shall at all times ensure that charges for Additional SU Services shall be reasonable in all the circumstances.
- 8.6 All payments for Additional SU Services shall be recorded by the Service Provider and shall be open for inspection by the Authorised Officer, subject to permission of the Service User or their Representative.

9. PROCESS FOR PAYMENT OF CARE FEES BY AUTHORITY TO SERVICE PROVIDER

- 9.1 The Authority shall make payment to the Service Provider for every twenty-eight (28) Working Days payment period by the Authority's Oracle-based electronic payment system (or equivalent electronic system), not using separately submitted invoices, for the Care Fees (being the Applicable Fees, any First Party Contribution, any Third Party Contribution and any Service User Assessed Contribution).
- 9.2 Paragraphs 1 and 5 of this Schedule 4 set out the Authority's requirements for Service Provider information to justify, and act as a pre-condition to payment for, the Authority's liability for the Care Fees (being the Applicable Fees, any First Party Contribution, any Third Party Contribution and any Service User Assessed Contribution).
- 9.3 The Service Provider shall, pursuant to paragraph 5 of this Schedule 4, provide to the Authority via the Care Portal (or equivalent electronic system as specified by the

Authority) its confirmation of the Services provided in the preceding twenty-eight (28) Working Days payment period and the Service Provider's calculation of the Care Fees (being the Applicable Fees, First Party Contribution, Third Party Contribution and the Service User Assessed Contribution).

9.4

- (a) On or prior to 1 July 2023 the Authority may notify the Service Provider (and all other comparable service providers) on a minimum three (3) months' notice period that the Care Fees payment arrangements shall be amended from a date on or following 1 October 2023. Until the new Care Fees payment arrangements set out in paragraph 9.4(b) apply the Authority shall continue to pay the Care Fees for which it is liable (being the Applicable Fees, any First Party Contribution, any Third Party Contribution and the Service User Assessed Contribution which have become payable in accordance with the Service Provider's submitted confirmation of the Services) four (4) weekly (two (2) weeks in advance and two (2) weeks in arrears) based on the end of the preceding payment period. Any such payment shall take into account any Service Credits which have been accrued in the previous payment period and any reconciliation or set off amounts applied by the Authority. Service Users discharged during the four (4) week payment period shall be included in the payment for the full period and subsequent adjustments shall be made to recover overpayments by the Authority.
- (b) Where the Authority has notified the Service Provider on or prior to 1 July 2023 that the Care Fees payment arrangements shall be amended from a date on or after 1 October 2023 then on the specified date on or after 1 October 2023 the Authority shall pay the Care Fees for which it is liable (being the Applicable Fees, any First Party Contribution, any Third Party Contribution and the Service User Assessed Contribution and which have become payable in accordance with the Service Provider's submitted confirmation of the Services) ten (10) Days after the end of the preceding payment period. Any such payment shall take into account any Service Credits which have been accrued in the previous payment period and any reconciliation or set off amounts applied by the Authority. The Authority shall use reasonable endeavours to ensure that there is no negative cashflow impact on the Service Provider as a result of the revised payment terms being introduced by the Authority (which in the Authority's absolute discretion may include provision for advance payments to be made on account to service providers so there is no gap in payment).

9.5 Not used.

9.6 The parties acknowledge that the Authority shall issue separate invoices within thirty (30) Working Days of the payment of the Care Fees (being the Applicable Fees, any

First Party Contribution, any Third Party Contribution and any Service User Assessed Contribution) for reimbursement by:

- (a) the Service User to the Authority for the First Party Contribution in accordance with the terms of the First Party Agreement;
- (b) the Third Party to the Authority for the Third Party Contribution in accordance with the terms of the Third Party Agreement; and/or
- (c) the Service User to the Authority for the Service User Assessed Contribution.

9.7 Although there is no requirement on the Service Provider to submit invoices (the Service User information provided by the Service Provider under paragraph 5 of this Schedule 4 being sufficient confirmation for the Authority to authorise payment) the actual data for the Services provided within a twenty-eight (28) Working Days payment period must be submitted to the Authority through the Care Portal within fourteen (14) Working Days of the end of such payment period.

9.8 Upon payment of the Care Fees (being the Applicable Fees, any First Party Contribution, any Third Party Contribution and any Service User Assessed Contribution) by the Authority to the Service Provider the Service Provider shall be deemed to have represented to the Authority the following information:

- (a) that those Service User(s) in respect of whom payment is being made are in receipt of the Services on the dates specified in the Authority's remittance advice; and
- (b) it is managing the Care and Support Plan for those Service User(s) in respect of whom payment is being made in accordance with the requirements of this agreement.

9.9 For the avoidance of doubt, the Authority's Supplier Incentive Scheme initiative does not apply to this agreement prior to 1 July 2023. If the notification made by the Authority to the Service Provider in accordance with paragraph 9.4(b) also requires the Supplier Incentive Scheme to apply to Authority payments made on a thirty (30) days in arrears basis under this agreement the Supplier Incentive Scheme shall apply from a date on or after 1 October 2023 onwards.

10. PERSONAL EXPENSES ALLOWANCE

10.1 Following the Financial Assessment of the Service User pursuant to paragraph 2 above the Service User is entitled to retain their Personal Expenses Allowance for personal use (and the Personal Expenses Allowance is twenty-five pounds and sixty-five pence (£25.65) per week for the financial year 2022-2023).

10.2 The Personal Expenses Allowance is an amount of the Service User's income which is disregarded in the Financial Assessment of the Service User. If it has been agreed by the Service Provider and the Service User (or their Representative) that the Service Provider shall administer the Personal Expenses Allowance and/or any other Service User's income then (unless otherwise agreed) such sums shall be paid to the Service User weekly by the Service Provider but shall not be administered day to day on behalf of the Service User by the Service Provider and the Authority can request evidence of the payments by the Service Provider to the Service User on reasonable notice.

10.3 The Service Provider shall not (unless by agreement with the Service User or their Representative) take or attempt to take from any Service User the whole or any part of that person's Personal Expenses Allowance in part payment for the Services. Breach of this paragraph 10.3 by the Service Provider shall amount to a Material Breach and the Authority may terminate this agreement pursuant to the provisions of clause **Error! Reference source not found.** (Termination for breach) of this agreement.

10.4 The Service Provider shall not be entitled to:

- (a) receive any additional fee or charge in relation to those tasks specified in the Service User's Care and Support Plan which are funded by the Authority; or
- (b) claim payment for any alternative services or Additional Care Services,

without the prior written agreement of the Authority, provided that the Service Provider may provide Additional SU Services (funded by a Service User) to a Service User in addition to the Services funded by the Authority.

11. CHANGES OF CIRCUMSTANCE FOR THE SERVICE USER

11.1 The Service Provider shall inform the Authority of any known changes in the financial circumstances of a Service User which are likely to have an effect upon any Authority responsibility for payment of any or all of the Care Fees (or the Service User Assessed Contribution). The Authority shall use reasonable endeavours to notify the Service Provider of any change in the financial circumstances of a Service User which would mean the Service User ceases to become eligible for public funding under the National Assistance Act 1948 and/or sections 8, 13, 14 and 47 of the Care Act 2014.

11.2 In the event that a Service User is assessed (through a Financial Assessment following known changes in financial circumstances) as being ineligible for public funding the Authority shall notify the Service Provider of the fact. The Authority shall continue to make payments in respect of the Service User following notification

for twenty-eight (28) Working Days. The Authority shall be entitled to recover at any time all such continuing payment sums paid to the Service Provider under this paragraph 11.2 as a debt from the Service User.

11.3 In the event of sale of a Service User's real property the Authority shall notify the Service Provider of the fact. The Authority shall continue to make payments to the Service Provider in respect of the Service User following notification for up to a maximum of twenty-eight (28) Working Days. The Authority shall be entitled to recover fees paid on behalf of the Service User, including the twenty-eight (28) Working Days' notice period, from the Service User directly and, where relevant, in accordance with the terms of any Service User Placement Agreement or as a debt.

11.4 Where the Service User has a temporary change of circumstances due to:

- (a) holidays: clause 7.14 (Principal obligations for the Services) applies and the Authority shall pay the Applicable Fees, First Party Contribution and Third Party Contribution elements of the Care Fees for the first fourteen (14) Working Days of the Service User's absence on holiday for each Contract Year with any further payment at the Authority's absolute discretion;
- (b) hospital treatment: the Service Provider shall notify the Authority that the Service User requires hospital treatment through the Care Portal and:
 - (i) where the assumption is that the Service User will return to the Home after hospital treatment then the Authority shall pay the Applicable Fees, First Party Contribution and Third Party contribution elements of the Care Fees for the first six (6) weeks to retain the Placement or bed following Service User admission to hospital (or such longer period as the Authority may agree in writing (which may be at a reduced amount as negotiated between the Service Provider and the Authority)) then from the seventh week the Authority shall pay fifty per cent (50%) for a further six (6) weeks and thereafter nil; or
 - (ii) where the assumption is that the Service User will not return to the Home after hospital treatment then the Authority shall pay the Applicable Fees, First Party Contribution and Third Party contribution elements of the Care Fees for three (3) Working Days subsequent to date of admission to hospital of the Service User;
- (c) temporary absence: clause 7.12(b) applies and the Authority shall pay seventy-five per cent (75%) of the Applicable Fees, First Party Contribution and Third Party contribution elements of the Care Fees for the first week then from the second week to the sixth week then the Authority shall pay fifty per cent (50%) and thereafter the Authority shall not be liable to make any further payment of the Applicable Fees, First Party Contribution and Third Party contribution elements of the Care Fees; and

- (d) death: the Authority continues payment of the Applicable Fees, First Party Contribution and Third Party contribution elements of the Care Fees element for three (3) Working Days subsequent to date of death of the Service User,

and in each such event the Service Provider shall notify the Authority as soon as reasonably practicable and in any event within one (1) Working Day.

11.5 Any Service User discharged during the four (4) week payment period shall be included in the payment for the full payment period and subsequent adjustments shall be made to recover overpayments. Payments by the Authority for a Service User placed on a Short Stay Placement basis or respite care basis in accordance with paragraph 13 of this Schedule 4 whose length of residence is known shall be based upon an agreed discharge date. Payment in relation to new admissions shall be made as part of the next payment which shall take into account any retrospective adjustments.

11.6 Where the Services are terminated at Authority request then:

- (a) where seven (7) Working Days' notice has been given by the Authority then no additional payment of Care Fees shall be made to the Service Provider; and
- (b) where seven (7) Working Days' notice has not been given by the Authority then the Authority shall be liable to continue payment of the Applicable Fees, First Party Contribution and Third Party contribution elements of the Care Fees element for three (3) Working Days.

12. ANNUAL REVIEW OF LCC CARE RATES

12.1 The Authority agrees to review the LCC Care Rates annually and shall continue dialogue with the Service Provider and other service providers during the Authority's budget cycle with any revisions to take effect on the start of the Authority's financial year on 1 April within each Contract Year (or such other date as notified by the Authority to the Service Provider and all other service providers). For the avoidance of doubt, the Authority may not directly notify the Service Provider in writing of any revised LCC Care Rates and may rely on publication instead on the Authority's website (and in any event the revised LCC Care Rates shall apply from 1 April within each Contract Year). This annual review shall take into account the budgetary constraints of the Authority whilst acknowledging the average wage cost increases across the service sector and the Consumer Price Index. The review shall also take into account any other exceptional factors which impact upon service providers' costs but offers no guarantee or representation that any increase in the LCC Care Rates shall take place.

- 12.2 The Authority determines a change in residential care prices generally in accordance with paragraph 12.1 and the parties agree that the Authority may unilaterally alter the LCC Care Rates in accordance with the change in the general residential care prices to be paid by the Authority.
- 12.3 At the date of this agreement the Authority's LCC Care Rates are referred to in Appendix 6 of this Schedule 4 and on the Authority's website from time to time (and in case of inconsistency or ambiguity the details on the Authority's website shall prevail).
- 12.4 For the avoidance of doubt, the LCC Care Rates for "Older People Residential and Nursing Homes" applicable to a Service User in the selected category as set out in the Care and Support Plan shall not be disapplied in favour of any different LCC Care Rates or other financial arrangement between the Authority and the Service Provider unless with the Authority's prior written consent. The Authority shall not permit the Service Provider to attempt to pair the terms of this agreement with a different basis for the LCC Care Rates originally specified (for example to seek a rate applicable for mental health or learning disability care instead of the residential care rate whilst operating a Placement under this agreement).

13. RESPITE CARE

- 13.1 In this paragraph 13 of Schedule 4 the following terms shall apply:
- (a) **Guidance:** any guidance issued by the UK government and/or CQC with which the Service Provider is bound to comply;
 - (b) **Relevant Date:** both (i) the date for Department for Work and Pensions changes to rates and (ii) the date of any increase in the Applicable Fees where such date is different from the date in limb (i); and
 - (c) **Respite Care:** a planned period of care by paid Carers for adults who normally receive care in their own home from informal Carers (such adult being a Service User eligible for Services under a Short Stay Placement under this agreement) to allow the informal Carer s break from their caring role (or the adult requires a break from their Carer).
- 13.2 The Authority promotes well-being and independence to comply with the Care Act 2014. Respite Care is a preventative service to support Carers by the provision of respite services to Service Users with care and support needs. Respite Care may be rolling respite (commissioned but dates not specified at point of commissioning) or planned respite (commissioned and dates specified at point of commissioning).
- 13.3 Prior to 11 April 2022 then:
- (a) Service Users could be provided with a budget to spend flexibly in accordance with their Care and Support Plan;

- (b) where the Authority commissioned rolling Respite Care:
 - (i) the Service Provider was paid by the Authority at the Authority's declared rate minus the Service User's contribution towards residential Respite Care (from April 2022 for 2022-2023 at the rate of a maximum amount of one hundred and sixteen pounds and twenty pence (£116.20) per week); and
 - (ii) the Service Provider collected the Service User's contribution from the Service User; and
- (c) where the Authority commissioned planned Respite Care the Service Provider was paid by the Authority at the Authority's declared rate and the Authority then invoiced the Service User for their contribution after the Respite Care stay.

13.4 With effect from 11 April 2022 the payment process for Respite Care is aligned for rolling Respite Care and planned Respite Care:

- (a) for rolling Respite Care:
 - (i) the Authority pays the Service Provider at the Authority's declared rate;
 - (ii) the Service Provider shall no longer collect the Service User's contribution from the Service User; and
 - (iii) the Authority shall now collect the Service User's contribution towards residential Respite Care (from April 2022 for 2022-2023 at the rate of a maximum amount of one hundred and sixteen pounds and twenty pence (£116.20) per week or such other sum to be agreed following a financial assessment of the Service User made by the Authority) by invoicing the Service User for their contribution after the rolling Respite Care stay
- (b) for planned Respite Care: the Authority pays the Service Provider and then invoices the Service User for their contribution after the planned Respite Care stay,

provided that a third party top up fee must be paid where the Service Provider charges above the LCC Care Rates for Respite Care (for planned Respite Care using a formal third party agreement similar to a Third Party Agreement (with CPLI for the agreed third party fee noted on the Care and Support Plan for the Service User) but for rolling Respite Care using an informal agreement with payment direct from the third party to the Service Provider).

13.5 Where the Service Provider offers residential Respite Care to a Service User and their informal Carer it shall be provided with a copy of the Assessment, Care and Support Plan and the LA Support Plan as prepared by the Authority. The Service Provider shall ensure that the Service User's needs can be met in accordance with Applicable

Laws and Guidance and within the LCC Care Rates fee range specified by the Authority.

13.6 Where Service Users seek renewal of Respite Care then a request for renewal should be made to the Authority and Service Provider:

- (a) prior to the existing planned Respite Care or rolling Respite Care commitment ending;
- (b) no more than twelve (12) months from the date of the Service User's Assessment; and
- (c) be recorded on the Service User's Care and Support Plan.

14. NOT USED

15. SUPPORTED LIVING NIGHT RATES FOR "SLEEP INS"

15.1 (Where sleep in arrangements are applicable under this agreement) the Authority shall not pay the Service Provider for supported living night rates.

16. RESIDENTIAL FINDING SERVICE

16.1 (To the extent not already included in the Specification or this agreement) the Service Provider shall comply with the requirements of the Authority's residential finding service as set out in the Authority's Policies or as otherwise notified by the Authority to the Service Provider.

17. ROOM PREMIUM

17.1 In this paragraph 17 of Schedule 4 the following definitions shall apply:

- (a) **Room Premium:** a premium payable by the Authority, where agreed by the Authority and Service Provider, whereby a Service User may benefit from any of a range of benefits such as more spacious and/or en suite rooms, access to on-site facilities such as cafes and cinemas and/or a wider range of lifestyle activities and a premium dining experience; and
- (b) **Room Premium Charges:** charges approved by the Authority (as set out in the prevailing LCC Care Rates as published and reviewed on an annual basis in accordance with paragraph 12 of this Schedule 4) and to be paid by the Authority to the Service Provider (on the same payment cycle as for the Care Fees) in respect of a Room Premium for a Placement.

- 17.2 Consistent with the LCC Care Rates, whilst the Service Provider is responsible for ensuring that Room Premium Charges are applied for and set up at the time the Placement for the Service User is entered into, should the Service Provider make a retrospective claim for Room Premium Charges the maximum period that the Authority may backdate is the later of the Placement start date or the date falling three (3) months after the claim is made.
- 17.3 A Service Provider request for a review of Room Premium Charges (and their approval by the Authority) must be made in advance of the next relevant Contract Year to which the requested review of Room Premium Charges relates, to take effect from the commencement of that next Contract Year. For the avoidance of doubt, where the Authority agrees to the Service Provider's requested review of Room Premium Charges, the effective date on which the revised Room Premium Charges will apply for the next relevant Contract Year will be the later of:
- (a) the commencement date of that next Contract Year; or
 - (b) if not requested in advance of that next Contract Year, the date in that next Contract Year on which the request was submitted to the Authority.

18. ONE TO ONE CARE FUNDING

- 18.1 The Authority anticipates that where the Authority and Service Provider agree, following consideration of the latest Care and Support Plan, that "one to one" care is to be funded then:
- (a) clause **Error! Reference source not found.** (Principal Obligations for the Service) of this agreement shall apply and such "one to one" care shall be time limited pending a further scheduled Care and Support Plan Review;
 - (b) where such "one to one" care is to meet a healthcare need (including mental health and any hospital admission avoidance) the NHS CCG(s) shall be responsible for funding the Service Provider and the Service Provider is to ensure they approach the relevant NHS CCG(s) in the first instance to secure funding;
 - (c) where such "one to one" care is to meet a social care need the Authority shall be responsible for funding through Additional Care Fees for Additional Care Services; and
 - (d) if multiple sources of funding are being investigated (including where a Complex Package of Care is required) then the Authority shall be responsible for interim funding through Additional Care Fees for Additional Care Services backdated to the date of "one to one" care being authorised by the Authority which shall be reconciled between eligible funders once the Service User's needs have been assessed in a Care and Support Plan.

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

