

[DATE]

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**AGREEMENT FOR**

**PROVIDER LIST**

**FOR**

**DAY TIME SUPPORT SERVICES FOR OLDER PEOPLE AND PEOPLE WITH DEMENTIA**

between

**LANCASHIRE COUNTY COUNCIL**

and

[NAME OF SERVICE PROVIDER]



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**THIS AGREEMENT** is dated [DATE]

## **PARTIES**

- (1) LANCASHIRE COUNTY COUNCIL of PO Box 78, County Hall, Preston PR1 8XJ ("**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] ("**Service Provider**").

## **BACKGROUND**

- (A) Daytime support services is defined as an establishment where one or more of the following services are provided for more than four hours during the day:
  - Personal care or personal support with or without practical assistance;
  - Reablement activities;
  - Respite; and/or
  - Therapeutic activities.
- (B) Daytime support services offer a wide and diverse range of supports including social interactions, healthy meals, activities, personal care support such as hairdressing and bathing, exercise classes and these can be provided in a variety of settings. Adult day time supports are an important resource to improve people's wellbeing, reduce loneliness and isolation, provide respite for carers and prevent or delay the need for more intensive health and social care support for those using the service.
- (C) Daytime supports services are not Care Quality Commission regulated activities. Therefore, service users and their families and carers assisting the service user can find it difficult to not only find a daytime support service but understand what a quality daytime support looks like or how it can achieve positive outcomes for individuals.
- (D) The aim of the Provider List is to ensure that there is a fair and equitable access to daytime support services across Lancashire and support service user choice by having one provider list so services are identifiable within a certain area.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

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

**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.

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in Schedule 4.

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the 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.

**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.

**Care Managed Service User** means a Service User who is eligible for a personal care budget and has chosen for it to be managed by the Authority on their behalf.

**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.

**Care and Support Plan:** a document prepared by the Authority for the purposes of a Care Managed Service User only which sets out the needs of the Service User and how they are to be met by the Service Provider, the cost of the Service and the details of when the Service will be provided.

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

**Change Control Procedure:** the procedure for changing this agreement, as set out in Schedule 5.

**Charges:** the Service Providers charging rates to the Service User.

**Commencement Date:** means **[1st July 2018]**.

**Commercially Sensitive Information:** the information listed in Schedule 7 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 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.

**Consistent Failure:** where there is collectively any three breaches of the provision of this agreement over any rolling 12 month period during the term of this agreement.

**Contract Year:** a period of one year commencing on the Commencement Date.

**Data Processor:** shall have the same meaning as set out in the Data Protection Act 1998 & GDPR.

**Data Protection Legislation:** the Data Protection Act 1998 (**DPA**), General Data Protection Regulations 2018 (GDPR )the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, 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 5.3.

**Direct Payment Service User:** means a Service User who is eligible for a personal social care budget and has chosen to receive their budget via a direct payment to themselves.

**Dispute Resolution Procedure:** the procedure set out in clause 15.

**Environmental Information Regulations:** 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.

**Exit Management Plan:** the plan set out in Schedule 6.

**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.

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

**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.

**Key Personnel:** those personnel identified in Schedule 4 for the roles attributed to such personnel, as modified pursuant to clause 9

**Management Reports:** the reports to be prepared and presented by the Service Provider in accordance with clause 12.

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

**Personal Data:** shall have the same meaning as set out in the Data Protection Act 1998 and GDPR.

**Personal Plan:** also known as care plan; plan of care and support plan and means a document prepared by the Service Provider that contains the Service User's personal details and instructs the reader of the Personal Plan about how to deliver services that are tailored to that Service User's individual needs.

**Policies:** shall mean the policies listed in Schedule 3, as amended from time to time

**Privately Funded Service Users:** means a Service User who themselves fund their care and support, and may choose to do so even if they are eligible for a personal social care budget.

**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 contract with the Authority; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

**Provider List:** where a Service Provider having complied with the Selection Criteria will be admitted to the provider list at any time during the Term and the provisions of this agreement will apply.

**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.

**Remediation Notice:** a notice served by the Authority in accordance with clause 26.1(a).

**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.

**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 Provider:** a service provider is the named party to this agreement having fulfilled the Selection Requirements.

**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 who are engaged in the provision of the Services from time to time.

**Services:** the services to be delivered by or on behalf of the Service Provider under this agreement to a Service User, as more particularly described in Schedule 1 (Minimum Quality Standards) and any Personal Plan.

**Service Provider Selection:** the different methods a Service User can choose a Service Provider from the Provider List detailed in Schedule 2.

**Selection Requirements:** the selection requirements are standard requirements including business standing, financial standing, technical and professional ability business standing, financial standing, technical and professional ability that a Service Provider must meet to be admitted to remain on the Provider List.

**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.

**Suspension Policy:** the policy relating to the suspension of the services contained at Schedule 8.

**Service User:** means an individual who is an older person or a person with dementia who requires the Services. An older person is usually an individual who is 50 or over however, it would be at the discretion of the Service Provider as to whether they agree to deliver Services to an individual under the age of 50 based on meeting need and suitability of service. Service Users will fall into three main categories (1) Care Managed Service Users; (2) Direct Payment Service Users and (3) Privately Funded Service Users. A Service User will not be another local authority or public body other than the Authority.

**Term:** the period commencing on the Commencement Date and ending midnight on the DD/MM/2028.

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

**Working Day:** Monday to Friday, 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 email 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 the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of this agreement;
  - (b) Schedule 1 to this agreement;
  - (c) the Personal Plan
  - (d) the remaining schedules to this agreement.

## **2. PROVIDER LIST**

- 2.1 This Provider List agreement governs the overall relationship of the parties and the Service Provider acknowledges that admission onto the Provider List requires the Service Provider and its Services to comply with the terms and conditions of this agreement when providing Services to any Service User.
- 2.2 The procedure for admission to the Provider List is as follows:
- (1) the Service Provider meets the Selection Criteria which includes providing Service information to be displayed on the Provider List;
  - (2) the Authority has a signed and completed (i.e. dated) Service Contract for Day Time Support Service for Older People and People with Dementia;
  - (3) the Service Provider provides the Authority with its standard hourly rate and associated breakdown in accordance with Schedule 13 to the Service Contract for Day Time Support Service; and
  - (4) the Authority has a signed and completed (i.e. dated) contract for the Provider List for Day Time Support Services for Older People and People with Dementia.
- 2.3 Once a Service Provider has been admitted to the Provider List the Service Provider acknowledges:
- (1) within 6 months from the Provider List admission date the Authority will conduct a site visit to ensure compliance with the Selection Criteria and Schedule 1 (Minimum Quality Standard); and
  - (2) Thereafter the Authority will conduct annual site visits or desk top checks at its sole discretion.
- 2.4 The Service Provider acknowledges that where it provides Services to a Service User, that relationship will form a separate contract between the Service Provider and the Service User. The Authority will not be privy, responsible or liable to any such contract between the Service Provider and the Service User.

## **COMMENCEMENT AND DURATION**

### 3. **TERM**

This agreement shall take effect on the Commencement Date and shall continue for the Term unless earlier termination in accordance with clause 25 and 26.

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

4.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services.

4.2 Where there is any conflict or inconsistency between the provisions of the 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 line with the requirements of the Services.

4.3 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 4.3(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 4.3(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.

4.4 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.

4.5 The Service Provider:

- (a) warrants that it will ensure it complies with its statutory duty in relation to pay and the treatment of the Service Provider's Personnel and further expressly acknowledges the existence of Unison's Ethical Care Charter and the Authority's commitment to the same. The Service Provider agrees to further the objectives of the Charter in the method detailed within the Schedule 1 (Minimum Quality Standards).
- (b) acknowledges that where it is failing to deliver the Services in line with the terms of the agreements, the Authority at its discretion may suspend the Service Provider pursuant to the

Policy at Schedule 8 from being referred or offered new Services until any failings or concerns have been resolved to an agreed level to the sole satisfaction of the Authority.

- (c) warrants that it 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.
- (d) warrants that will comply with any request made by the Authority relating to the financial position of the Service Provider within 14 days of receipt of the request and will provide all and any such information that is reasonably required by the Authority in order to assess the financial position of the Service Provider.

## THE SERVICES

### 5. SUPPLY OF SERVICES

- 5.1 The Service Provider shall provide the Services to the Service User in accordance with this agreement and in particular Schedule 1 and any Personal Plan (as applicable) with effect from the Commencement Date and during the Term.
- 5.2 The different methods of Service Provider Selection is set out in Schedule 2. The Service Provider accepts that the Authority cannot guarantee the levels of Services Users that will use a Service Provider service as day time support services is dictated by the needs, affordability and choice of the Service User (not an exhaustive list).
- 5.3 In the event that the Service Provider does not comply with the provisions of clause 5.1 (above) & clause 6 (below) in any way, 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**) and invoke the Escalation Policy set out in Schedule 8.
- 5.4 If the Authority serves a Default Notice on the Service Provider the Service Provider shall at its own expense correct or remedy the default or defaults specified in the Default Notice:-
  - (a) in accordance with the requirements of the Default Notice; and
  - (b) within such time as may be specified in the Default Notice,

and shall otherwise perform the Services in accordance with the requirements of this Agreement and any Care and Support Plans (as appropriate).

## **6. SERVICE PROVIDER SERVICE STANDARDS**

- 6.1 Without prejudice to clause 8, the Service Provider warrants that it shall provide the Services, or procure that they are provided:
- (a) 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;
  - (b) in all respects in accordance with the Authority's policies set out in Schedule 3; and
  - (c) in accordance with all Applicable Laws and Policies.
- 6.2 The Service Provider shall use appropriate equipment and skills of their respective kinds and undertakes that the equipment and skills 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.
- 6.3 The Service Provider shall at all times comply with the Minimum Quality Standards at Schedule 1, and where applicable shall maintain accreditation with any relevant Quality Standards authorisation body.
- 6.4 Timely provision of the Services shall be of the essence in this Agreement, including in relation to the commencement and ongoing provision of Services within the time (or on a specified date) agreed by the Parties as detailed within Schedule 1.
- 6.5 Without limiting the general obligation set out in clause 6.1, 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 requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
  - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

## **7. SERVICE PROVIDER HEALTH AND SAFETY**

- 7.1 The Service Provider must ensure a comprehensive health and safety policy compliant with acts, orders, regulations and codes of practice relating to health and safety is in place prior to this agreement being entered into between the parties. The policy must contain relevant and clear written procedures for the management of health and safety and make clear individual and organisational responsibilities.

- 7.2 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.
- 7.3 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.
- 7.4 The Service Provider must have in place an Infection Prevention and Control policy and procedure and must make the same available to the Authority upon request.

## **8. SERVICE PROVIDER CHARGES**

- 8.1 The Service Provider agrees that the Service User will be responsible and shall pay the Service Provider's Charges as agreed separately between them.

## **9. KEY PERSONNEL**

- 9.1 Each party shall appoint the persons named as such in Schedule 4 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.
- 9.2 The Service Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
  - (b) the person is on long-term sick leave;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's 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.
- 9.3 The Service Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.

- 9.4 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 28 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.
- 9.5 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.
- 9.6 If the Service Provider replaces the Key Personnel as a consequence of this clause 10 the cost of effecting such replacement shall be borne by the Service Provider.

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

- 10.1 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;
  - (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;
  - (c) 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;
  - (d) all of the Service Provider's Personnel comply with all of the Authority's policies; and
  - (e) it has robust policies and procedures dealing with capabilities, disciplinary action, grievances, absence management and workforce development.
- 10.2 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 request, 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.

## **11. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 11.1 The parties acknowledge that, in the event that the Service Provider in the delivery of the Services is a Regulated Activity Provider, then they 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.
- 11.2 The Service Provider shall ensure that its Service has in place:

- (a) Robust arrangements to safeguard Service Users from any form of abuse or exploitation as detailed within the Specification at Schedule 1 including but not limited to Regulation 13 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, including physical, financial, psychological or sexual abuse, neglect, discriminatory abuse, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance.
- (b) its policies and procedures are covered in an induction for the Service Provider's Personnel and the same are fully understood by the Service Provider's Personnel.
- (c) the Service Provider's Personnel have an understanding of their Safeguarding duties within their first week of employment.
- (d) Comprehensive training on awareness and prevention of abuse must be given to all the Service Provider's Personnel as part of their core induction within 3 months of their engagement and updated at least annually.
- (e) Update training is provided in light of new policies and procedures introduced either locally or nationally.

11.3 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.

11.4 The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 116 have been met.

11.5 The Service Provider shall refer information about any person carrying out the Services to the DBS 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.

11.6 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 service users.

11.1 The Service Provider will adhere to the Authority's Safeguarding Adults Policy and any other policy detailed at Standard 7 and will perform the Services with a view to safeguarding and promoting the welfare of Service Users.

11.2 The Service Provider will ensure that:-

- (a) all the Service Provider's Personnel know what action to take if they observe, or have reported to them, possible evidence of abuse and that all Service Users receive protection from abuse;
- (b) all the Service Provider's Personnel are familiar with all relevant policies and know what to do if they observe/suspect that a Service User is being abused. Day Time Support Care Workers must know whom to contact outside their line management in the event of a safeguarding

concern and should have access to all relevant governmental publications concerning how and when to report concerns regarding abuse; and

- (c) the Service Provider has in place, and the Service Provider's Personnel are aware of and trained in, written procedural guidance and practices concerning abuse of Service Users, investigations of crime and Day Time Support Care Workers disciplinary procedures.

## **CONTRACT MANAGEMENT**

### **12. REPORTING AND MEETINGS**

- 12.1 Annual report and meetings in accordance with standard 10 of Schedule 1 or as the Authority considers necessary at the sole discretion where it considers there are concerns with the nature or delivery of the Service and/or the Service Provider itself.
- 12.2 The Authority and or any person authorised by the Authority shall have the power to visit inspect and examine (without notice) the performance of the Services at any time where the Services (or any part of them) are being performed or the Service Provider's nominated office.

### **13. MONITORING**

- 13.1 The Authority may monitor the performance of the Services by the Service Provider.
  - 13.2 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 13.1.
- 13.1 The Service Provider shall ensure that its systems comprise and demonstrate a properly documented monitoring system of quality control (incorporating health & safety) and operate to ensure that the Services are provided at all times and in all respects in accordance with Standard 10 of Schedule 1 of this agreement (and the Agreement generally).

### **Complaints**

- 13.2 The Service Provider shall ensure that it has in place a complaints procedure that complies in all respects with any applicable legislation from time to time in force ('the Complaints Procedure') and any reasonable requirements of the Authority.
- 13.3 The Service Provider shall ensure that all Service Users, their relatives, advisors and/or advocates (as appropriate) are aware of and have access to and have had explained to them the Service Provider's complaints procedure.



- 13.4 The Service Provider shall ensure that it has in place arrangements for receiving and acting on complaints that comply in all respects with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (**'the 2014 Regulations'**) and any other applicable legislation from time to time in force.
- 13.5 If complainants approach the Authority directly, and the Service Provider has already responded to the complaint, Service Providers should supply the Authority with existing complaints correspondence on request by the Authority 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 that the Authority initiates.
- 13.6 The Service Provider shall ensure that it has an effective system in place for recording all compliments received regarding services, as outlines in Standard 8 within Schedule 1 of this agreement.
- 13.7 In addition to complying with regulation 16 of the 2014 Regulations, for the duration of the Term the Service Provider shall operate equivalent arrangements for reporting complaints and compliments received regarding the Services to the Authority, for monitoring purposes.
- 13.8 The Service Provider shall maintain comprehensive records of all complaints made and compliments received, including all associated correspondence and shall maintain such records for period of at least 6 years following the expiry of the contract.

#### **14. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT**

- 14.1 Any requirement for a Change shall be subject to the Change Control Procedure set out in Schedule 5.
- 14.2 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services.
- 14.3 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 14.3 shall be addressed by the parties using the Change Control Procedure contained at Schedule 5 of this agreement.
- 14.4 Where the Service Provider wishes to introduce a new method or system, for the delivery of the Services, where in the Authority's opinion, there could be an adverse effect on the provision of Services, the Authority as appropriate, and at its sole discretion, is at liberty to refuse consent as part of the procedure at schedule 5. Should the Authority refuse to provide consent, the Service Provider shall not continue with the implementation of the same.

**15. DISPUTE RESOLUTION**

- 15.1 Either party may call an extraordinary meeting of the parties by service of not less than 7 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.
- 15.2 The members of the relevant meeting 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 14 days of service of such notice. If the officers referred to in this clause 22.2 fail to resolve the dispute in the allotted time, then the parties shall, within that period, 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 days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.
- 15.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 15.4 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 21 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).
- 15.5 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.
- 15.6 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.
- 15.7 While the Dispute Resolution Procedure referred to in this clause 15.2 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.

**16. SUB-CONTRACTING AND ASSIGNMENT**

- 16.1 Subject to clause 16.3, 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, 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, such consent not to be unreasonably withheld.
- 16.2 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 the 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.
- 16.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

## **LIABILITY**

### **17. INDEMNITIES**

The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its Representatives (excluding any Service Provider's Personnel).

### **18. LIMITATION OF LIABILITY**

- 18.1 Subject to clause 18.4, 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 the 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.
- 18.2 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.
- 18.3 The Service Provider's total aggregate liability in respect of the indemnities given by the Service Provider in clause 17 and Schedule 8 is unlimited. 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 £500,000 in each Contract Year or, if greater, 150% of the aggregate Charges paid under or pursuant to this Agreement in the subsequent Contract Year in respect of which the claim arises.
- 18.4 Notwithstanding the foregoing clause, neither party to this agreement limits or 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

### **19. SERVICE PROVIDER INSURANCE**

- 19.1 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 £5, 000, 000 (FIVE MILLION POUNDS) in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £5, 000, 000 (FIVE MILLION POUNDS) in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £1, 000, 000 (ONE MILLION POUNDS) in relation to any one 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;

(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 the 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.

- 19.2 The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause 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.
- 19.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 19.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 19.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

## **INFORMATION**

### **20. FREEDOM OF INFORMATION**

- 20.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Service Provider's expense) to enable the Authority to comply with these information disclosure requirements.
- 20.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
  - (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two 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 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.

20.3 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.

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

20.5 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 20.5(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.

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

20.7 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 20.5.

## **21. DATA PROTECTION**

21.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

- 21.2 Notwithstanding the general obligation in clause 21.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall 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 Seventh Data Protection Principle in Schedule 1 to the DPA; and
- (a) 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 DPA;
  - (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 21.2; and
  - (c) 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 DPA.
- 21.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **22. CONFIDENTIALITY**

- 22.1 Subject to clause 22.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives (Service Provider's Personnel) from making any disclosure to any person of any matters relating hereto.
- 22.2 Clause 22.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 20.1 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 22.1;
  - (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 152;
  - (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.
- 22.3 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

Authorities' employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

## **23. AUDIT**

23.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (b) to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 28(Data Protection) and clause 27 (Freedom of Information) and any other legislation applicable to the Services;
- (c) to review any records created during the provision of the Services;
- (d) to review any books of account kept by the Service Provider in connection with the provision of the Services;
- (e) to carry out the audit and certification of the Authority's accounts;
- (f) to carry out an examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (g) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

23.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 23 more than twice in any calendar year.

23.3 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 to a Service User.

23.4 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.

23.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.

23.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, 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.

23.7 If an audit identifies that:

the Service Provider has failed to perform its obligations under this agreement in any material manner, 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.

## **24. INTELLECTUAL PROPERTY**

24.1 In the absence of prior written agreement 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 Service Provider on creation.

24.2 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 to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## **25. SUSPENSION**

25.1 Where the Service Provider is failing to deliver the Services in line with the terms of this agreement, the Authority at its sole discretion, and pursuant to the Suspension Policy contained at Schedule 9 to this agreement, may suspend the Service Provider from the Provider List and require the Service Provider to provide an improvement plan within a timeframe stipulated by the Authority (to be approved by the Authority) in order to deal with any failings or concerns of the Authority to be resolved to the sole satisfaction of 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 suspend the referral of Services to the Service Provider or terminate this agreement pursuant to the provisions of clause 26 and 27 of this agreement.

25.2 During the period of suspension:

- (a) no new referrals will be made to the Service Provider;
- (b) the Service Providers details will be removed from the Provider List including its web page;

- (c) the Service Provider agrees to implement their improvement plan and meet the objectives contained within the same; and
- (d) payments to the Service Provider for the provision of on-going services shall not cease.

25.3 The Service Provider acknowledges that suspensions may be notified to Service Users and Service Providers as the Authority sees fit. Should the Service Provider anticipate failure to comply with the terms of this agreement, it may, at its discretion, approach the Authority and request for a voluntary suspension in line with the terms of the Escalation Policy at Schedule 8 to be put into place for a limited period to be agreed between the parties. This will be reviewed and varied by the Authority's Contract Management team. The Service Provider acknowledges that the Authority is at liberty to record and monitor the reason for the voluntary suspension and acknowledges that the voluntary suspension may be notified to other Service Users and Service Providers as the Authority sees fit. Any approval of voluntary suspension will be at the sole discretion of the Authority.

25.4 Further to clause 25.3 above, any voluntary suspension sought by the Service Provider is only in relation to the new referrals being made to the Service Provider by the Authority and, for the avoidance of doubt, not in relation to existing commitments and Services being delivered by the Service Provider.

## TERMINATION

### 26. TERMINATION FOR BREACH

26.1 The Authority may terminate this agreement in whole or part 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 provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 26.1 if the Service Provider has failed to remedy such breach within 14 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 has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) fails to meet the Minimum Quality Standards as specified in Schedule 1.
- (e) fails to notify the Authority of a Service Change;
- (f) 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;

- (g) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (h) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Authority reasonably objects.

**27. TERMINATION ON NOTICE**

The Authority may terminate this agreement at any time by giving not less than 3 months' written notice to the Service Provider.

**28. FORCE MAJEURE**

- 28.1 Subject to the remaining provisions of this clause 28, 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.
- 28.2 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.
- 28.3 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.
- 28.4 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.
- 28.5 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 Best Industry Practice.
- 28.6 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.

28.7 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 30 Working Days.

## **29. PREVENTION OF BRIBERY**

29.1 The Service Provider:

- (a) shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- (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.

29.2 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;
- (b) within 14 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 36 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.

29.3 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 Personnel from committing a Prohibited Act and shall enforce it where appropriate.

29.4 If any breach of clause 29.1 is suspected or known, the Service Provider must notify the Authority immediately.

29.5 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of clause 29.1, 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 7 years following the expiry or termination of this Agreement.

29.6 The Authority may terminate this Agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 29.1. In determining whether to exercise the right of termination under this clause 29.6, 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.

29.7 Any notice of termination under clause 29.6 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.

29.8 Notwithstanding the provisions of clause 15 (Dispute resolution), any dispute relating to:

- (a) the interpretation of clause 29; 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.

29.9 Any termination under clause 29.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

### **30. CONSEQUENCES OF TERMINATION**

30.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and 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 as appropriate.

30.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) 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.

- 30.3 The provisions of clause 17 (Indemnities), clause 19 (Insurance), clause 20 (Freedom of Information), clause 21 (Data Protection), clause 23 (Audit), clause 26 (Termination for Breach) and this clause 30 (Consequences of termination) shall survive termination or expiry of this agreement.
- 30.4 On termination of this agreement other than on the expiry of the Term the Authority, a Service Provider may only reapply to be admitted to the Provider List after a minimum of 3 months has expired or at the sole discretion of the Authority (acting reasonable) whichever is the longer.

## **GENERAL PROVISIONS**

### **31. 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 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.

### **32. 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.

### **33. 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.

### **34. 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 them will not be prejudiced.

**35. 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. Accordingly:

- (a) the Service Provider shall not have any right or power to bind the Authority to any obligation;
- (b) the Service Provider shall not (and shall procure that the Service Provider's Personnel including for the avoidance of doubt the Day Time Support Workers) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the Authority; and
- (c) nothing in the Agreement shall impose any liability on the Authority in respect of any liability incurred by the Service Provider to any other person.

**36. THIRD PARTY RIGHTS**

- 36.1 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.

**37. 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.

**38. NOTICES**

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

In respect of the any notice to the Authority:

- (a) sent via email to the contracts team mailbox - [contractmgmt.care@lancashire.gov.uk](mailto:contractmgmt.care@lancashire.gov.uk); or
- (b) delivered by hand or by post to Contract Management, PO BOX 1337, County Hall, PR2 0TG.

In respect of the any notice to the Service Provider:

- (a) sent via email to the Service Provider to – [Service Provider Email Address]; or

(b) delivered by hand or by post to postal address as confirmed by the Service Provider by email

38.2 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	the third Business Day after posting
Email before 9am	on the next Business Day after submission

38.3 This clause 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.

#### **39. VARIATION**

39.1 No variation of this Provider List agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

39.2 Any amendment or variation to this agreement agreed by the Authority and the Service Provider in accordance with clause 38 shall be deemed to apply to all future Services entered into after the date of such amendment.

#### **40. ENTIRE AGREEMENT**

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

#### **41. COUNTERPARTS**

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 counterpart.



**42. GOVERNING LAW AND JURISDICTION**

- 42.1 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.
- 42.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

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

**EXECUTION**

**SIGNED** for and on behalf of **Lancashire County Council** by

**SIGNED** for and on behalf of **[SERVICE PROVIDER]** by

Signature:

Signature:

Name: **[NAME]**

Name: **[NAME]**

Position: **[POSITION]**

Position: **[POSITION]**

Date:

Date:

## **Schedule 1 Minimum Quality Standards**

See attached

## Schedule 2 Service Provider Selection

This Schedule 4 sets out how a Service User selects a Service Provider depending on the category of the Service User. There are broadly speaking three categories of Service Users (1) Care Managed Service Users (via Lancashire County Council Care Navigation Service); (2) Direct Payment Service Users and (3) Privately Funded Service Users.

All Service Users will have access to the Provider List and its associated web pages and the Service User (family and carers as appropriate), will be able to directly refer itself to its chosen Service Provider.

### (1) Care Managed Service Users

Service Providers must use LCC portal for the purposes of charges and payments or any other method as specified by the Authority from time to time.

1. Where Care Managed Service Users require daytime support, the selection procedure can be by one of the following methods (in no specific order):
  - 1.1.1 The Care Managed Service Users shall have the right to choose their Service Provider themselves and then inform their social worker.
  - 1.1.2 The Care Managed Service Users choose to use Lancashire County Council Care Navigation Service to support them and the Care Managed Service User chooses their Service Provider themselves.
  - 1.1.3 The Care Managed Service Users choose to use Lancashire County Council Care Navigation Service to support them and ask their social worker to choose the Service Provider which best meets their needs.
  - 1.1.4 Any other process that meets the requirement of the Provider List set out in the procurement documents.
- 1.2 If the Care Managed Service Users choose to be supported by Lancashire County Council Care Navigation Service to source a Service Provider (1.1.2 and 1.1.3), the following process will be followed:
  - 1.2.1 Lancashire County Council Care Navigation Service will contact Service Providers with details of the Care Managed Service User needs/requirements. This will initially be done by telephone, however during the development of the Provider List the request process may transfer to Oracle Sourcing. Where this occurs the Service Providers will be given adequate notice of this change.
  - 1.2.1 Once informed the Service Providers will confirm to Lancashire County Council Care Navigation Service that they are available to meet the needs of the Service User by the method and timeframes as stipulated.
  - 1.2.2 The selection of the Service Provider can be by one of the following methods:
    - 1.2.2.1 The Care Managed Service Users shall have the right to choose their Service Provider themselves and where appropriate the Service User's family or carers.

1.2.2.2 The Care Managed Service Users ask their social worker to choose the Service Provider which best meets their needs.

1.3 The following criteria can be applied (in no specific order) when choosing a Service Provider:

Care Managed Service Users available budget  
Availability  
Meets Service User needs  
Location

1.4 The Services commissioned via the above process will be delivered in accordance with the Day Time Support Service Contract (Invitation to tender appendix 1b).

**(2) & (3) Privately Funded Service Users and Direct Payment Service Users**

2. Service Users both privately funded and those who receive their personal budget via direct payments will themselves make direct contact from Provider List and its associated webpages as the Service User considers appropriate. The Service Provider will contract directly with the Service User (see Quality Standard 3 in Schedule 1) so the Authority will not be involved in the low level detail however the Service Provider will provide all its Services to any Service User in accordance with the terms and conditions of this Provider List Agreement.
3. Privately Funded Service Users and Service User who receive their personal budget via a direct payments do have the option to ask Lancashire County Council Care Navigation Service to assist with identifying a Service Provider from the Provider List. This does not occur often but where it does then the Care Managed Service User selection 1.1-1.4 above will apply save for the service contract will be between the Service Provider and the Service User and for the avoidance of doubt the Authority nor Lancashire County Council Care Navigation Service will not be privy to any agreement between the Service User and the Service Provider in this method of Service Provider Selection.
4. For Privately Funded Service Users and Direct Payment Service Users the Service Provider will invoice the Service User directly.

## Schedule 3

## POLICIES

### Lancashire County Council Policies

- Pan Lancashire Policies and Procedures for Safeguarding Adults Available at: <http://plcsab.proceduresonline.com/chapters/contents.html>
- Pan Lancashire Policies and Procedures for Safeguarding Children. Available at: <http://panlancashirescb.proceduresonline.com/>

### Guidance

1. Skills for Care - Social Care Commitment Available at: <https://www.thesocialcarecommitment.org.uk/>.
2. National guidance Skills for Care Values Based Recruitment and Retention toolkit available at: <http://www.skillsforcare.org.uk/Recruitment-retention/Values-based-recruitment-and-retention/Values-based-recruitment-and-retention.aspx>
3. Skills for Care Code of Conduct for Healthcare Support Workers and Adult Social Care Workers in England. Available at: <http://www.skillsforcare.org.uk/Documents/Standards-legislation/Code-of-Conduct/Code-of-Conduct.pdf>.
4. Unison's ethical care charter . Available at: <https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220142.pdf>

## **Schedule 4 Contract management**

### **1. AUTHORISED REPRESENTATIVES**

1.1 The Authority's initial Authorised Representative: **[NAME]**

1.2 The Service Provider's initial Authorised Representative: **[NAME]**

### **2. KEY PERSONNEL**

## **Schedule 5 Change control**

### **1. GENERAL PRINCIPLES**

- 1.1 Where the Authority or the Service Provider sees a need to Change this agreement, or the Services, the Authority or the Service Provider (as applicable) shall notify the other party prior to the Change and in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 5.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 5, shall be undertaken entirely at the expense and liability of the Service Provider.

### **2. PROCEDURE**

- 2.1 A Change Control Note shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this agreement or the Services by the Authority; or
  - (c) a recommendation to change this agreement or its Services by the Service Provider.
  - (d) the Authority to undertake a desktop or site visit to ensure such Change complies with the Selection Criteria and the minimum quality standards set out in Schedule 1.
- 2.2 Where there is Change the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority prior to the Change .
- 2.3 A recommendation to amend this agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks of receipt of the Change Control Note and may require the Authority to undertake a desktop or site visit to ensure such Change complies with the Selection Criteria and the minimum quality standards set out in Schedule 1.



2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) any consequential amendments to Schedule 10;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Service Provider.
- (k) All information required for the Authority to reflect any proposed Change in its Provider List and associated web page.

2.5 For each Change Control Note submitted by the Service Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or
  - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this agreement.

## **Schedule 6 Service Provider Exit Management Plan**

The Service Provider is expected to develop an exit management plan to ensure that Service Users and stakeholders are informed, advised and supported through a transition period when the Services ends.

This plan must allow appropriate time for all stakeholders to take action. Stakeholders include but not limited to:

- Service Users
- Carers
- Families
- Social Workers
- Alternative Providers
- Authority

The exit management plan should include (but not limited to):

- an overarching plan for the service(s) ending:
- Communication plan;
- Transition plan to alternative services and supports;
- Project plan and timescales.

It is expected that the Service Provider will work with the Authority to ensure that exit management plans are agreed and implemented effectively in a timely manner. The exit management plan must be fully implemented within three months of notice to cease the service unless agreed otherwise with the Authority.

## **Schedule 7 Commercially sensitive information**

[INSERT RELEVANT CLAUSES RELATING TO COMMERCIALLY SENSITIVE INFORMATION AND THE PROTECTION OF THE SAME]

## Schedule 8 – Escalation Policy

See attached

## **Schedule 9 - Suspension Policy**

See attached