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**SERVICE CONTRACT**

**FOR**

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

between

**LANCASHIRE COUNTY COUNCIL**

And

**[PROVIDER NAME]**

**[DAY SERVICE NAME]**



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**THIS AGREEMENT** is dated

## **PARTIES**

- (1) LANCASHIRE COUNTY COUNCIL of PO Box 78, County Hall, Preston PR1 8XJ (**Authority**).
- (2) [Provider Name] incorporated and registered in England and Wales with company number [Company Number] whose registered office is at [Registered Address] trading as [trading name] (**Service Provider**).

## **BACKGROUND**

- (A) The Authority has a requirement for the provision of Day Time Support for Older People and People with Dementia at [Day Service Name].
- (B) The Authority (at the choice of the Service User) selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this agreement.
- (C) The Service Provider has entered into the Provider List for Day Time Support Services for Older People and People with Dementia for the provision of the Services dated  
(the "Provider List Agreement") and has been awarded this agreement in accordance with the Provider List Agreement.
- (D) The Service Provider enters into this agreement and acknowledges that the terms and conditions of this agreement form an overarching agreement and its terms and conditions will apply to all Services provided to all Service User. The Care and Support Plan will be the trigger for the Authority's call for Services for each and every Service User.
- (E) 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.

## **AGREED TERMS**

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

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

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

**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

including but not limited to those included with the Minimum Quality Standards contained in Schedule 1.

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in schedule 5.

**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.

**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 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 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 6.

**Charges:** the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of this agreement, Schedule 13 and Care and Support Plan as set out in Schedule 4.

**Commencement Date:** means [ date ].

**Consistent Failure:** means where there is collectively any three breaches of any other 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.

**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 5.2.

**Dispute Resolution Procedure:** the procedure set out in clause 21.

**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 7.

**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 5 for the roles attributed to such personnel, as modified pursuant to clause 14.

**Management Reports:** the reports to be prepared and presented by the Service Provider in accordance with clause 18 and Schedule 1 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

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

**Payment Period:** the payment period is a 4 week cycle and 4 weeks in arrears.

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

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

**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 procedure for admission to the provider list 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.

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

**Remediation Notice:** a notice served by the Authority in accordance with clause 32.1(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 Levels:** the service levels to which the Services are to be provided, as set out in Schedule 2.

**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 Care and Support Plan (as appropriate).

**Service User:** means an individual who is eligible for a personal social care budget and has chosen for it to be managed by the Authority on their behalf also referred to as a Care Managed Service User in the Provider List Agreement. The individual is an older person or a person with dementia who requires the Services. An older person is usually an individual who is over 50 however it would be at the discretion of the Service Provider as to whether they agree to deliver the Services to an individual under the age of 50 based on meeting need and suitability.

**Selection Requirements:** the selection requirements are standard requirements including business standing, financial standing, technical and professional ability that a Service Provider must meet (as part of the Procedure for Admission referred to in the Provider List agreement) to be included and 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 10.

**Term:** the period commencing on the Commencement Date and ending midnight on 14 October 2028 or on the completion of the last Service provided in a Care and Support Plan, unless terminated earlier in accordance with this agreement.

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

**Termination Payment Default:** is defined in Clause 32.

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

**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 the agreement;
  - (b) Schedule 1 to this agreement;
  - (c) the provider list agreement
  - (d) the remaining schedules to this agreement other than Schedule 3;
  - (e) the Care and Support Plan; and
  - (f) Schedule 3 of this agreement.

## **COMMENCEMENT AND DURATION**

### **2. DURATION, TERM, COMMENCEMENT**

This agreement shall take effect on the Commencement Date and shall continue for the Term unless early termination applies in accordance with clause 31 to 34.

### **3. EXIT PROVISIONS**

3.1 Upon termination or expiry of this Agreement the following provisions shall apply:

- (a) the Authority shall no longer be entitled to refer new Service Users to the Service Provider for the purposes of providing Services under the terms of this Agreement;
  - (b) Following expiry of this Agreement its terms and conditions shall automatically apply to those Care and Support Plans holding over until such time as the parties have entered into a further Agreement and upon the parties entering into such a further Agreement the terms of that agreement shall apply to Care and Support Plans and the terms and conditions of this agreement holding over shall then automatically terminate; and
  - (c) The terms of the Exit Management Plan contained at Schedule 7 shall apply
- 3.2 Should the parties fail to enter into a further Agreement within the timescale specified by the Authority (acting reasonably) the Care and Support Plan shall either continue or terminate with the Service Provider on such date as shall be specified by the Authority.

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

- 4.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 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 Minimum Quality Standards (Schedule 1).
  - (b) 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 or meet any Service Levels.
  - (c) 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.
- 4.6 The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with clause 4.5 (c) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.7 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **THE SERVICES**

### **5. SUPPLY OF SERVICES**

- 5.1 The Service Provider shall provide the Services to the Service User in accordance with Schedule 1 and any Care and Support Plan (as applicable) with effect from the Commencement Date and during the Term in accordance with the provisions of this agreement.

- 5.2 In the event that the Service Provider does not comply with the provisions of clause 5.1 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 (Schedule 9).
- 5.3 If the Authority serves a Default Notice on 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. INSTRUCTION OF SERVICES**

- 6.1 As and when the Authority requires the Service Provider to perform Services in accordance with this Agreement the Authority will submit a Care and Support Plan to the Service Provider.
- 6.2 The Care and Support Plan shall detail to the Service Provider:
- (a) the needs of the Service User
  - (b) the Services to be delivered in meeting the Service User's needs and outcomes;
  - (c) details of when the Services will be delivered to the Service User;
  - (d) the Charges to be paid by the Authority for the relevant Services; and
  - (e) any Additional Clauses that apply.
- (the "Support Planning Standards")
- 6.3 Service User change in needs and requirements to their Care and Support Plan will be made by the Service User's social worker and either be notified by the Service Provider to the Authority or the Authority to the Service Provider. Where there is such a change the party notifying of the change must do so by the next Working Day.
- 6.4 Notwithstanding any changes to the Care and Support Plan, the Service Provider must change the Service User's Personal Plan and deliver the Services to the Service User as required by the Authority in line with an amended Care and Support Plan.
- 6.5 Subject to Clause 6.4, all Care and Support Plans will be sent by the Authority's systems. The aforementioned systems may change from time to time at the sole discretion of the Authority.

- 6.6 In cases of an emergency where the Authority or Service Provider are unable to access the Authority's Care Navigation Service, the instructions of Services for the delivery of emergency provision may be provided by the Authority via secure email.
- 6.7 Following the delivery of an emergency provision any ongoing provision of Services for the Service User will revert to that provision commissioned and to be delivered in line with the Service User's Care and Support Plan.
- 6.8 In addition, there may be occasions when it becomes apparent that there is an urgent need for an increase in the number of hours of Service to be provided to a Service User (Emergency Hours), or for the addition of a specific task(s) to alleviate risk arising from an emergency situation. Examples of acceptable use of Emergency Hours include providing assistance following a fall or accompanying the Service User until the arrival of emergency services. The Service Provider may, in these circumstances, use his professional discretion to make a short term additional provision, up to a maximum of 4 hours in respect of any single occurrence.
- 6.9 Pursuant to clause 6.6, where Emergency Hours are delivered by the Service Provider on more than 6 occasions in any consecutive 3 Payment Periods and in respect of any single Service User, the Service Provider is required to notify the Authority's Customer Access Service by telephone on 0300 123 6720 to request a review of the Service User's needs.
- 6.10 The Service Provider, upon request from the Authority, must be able to provide justifiable reasons for the provision of the additional care to the Service User and acknowledges that such provision should only be made in emergency circumstances and to meet urgent needs. In the event that the additional provision is reasonably considered by the Authority to not be delivered in line with the aforementioned, the Authority is at liberty to withhold making payment to the Service Provider pertaining to the additional service provision delivered.
- 6.11 Save in an emergency, (and then subject always to Clause 5.4) no Services shall commence and the Authority shall not be liable for payment of any Charges in relation thereto unless and until a Care and Support Plan has been issued in accordance with this Clause 5, or, in the alternate, other instruction has been provided by the Authority in line with the terms of this agreement.
- 6.12 For the avoidance of doubt:-
- (a) no Services should be provided against any form of instruction given other than in accordance with Clause 5 of this agreement; and
  - (b) this Agreement places no obligation on the Authority to procure any Services from the Service Provider.

## **7. SERVICE LEVELS**

- 7.1 The Service Provider must ensure that the Services are delivered to the requisite Service Level required by the Authority as detailed at Schedule 2.
- 7.2 As existing Services are varied and new Services are added, Service Level for the same will be determined by Care and Support Plans.
- 7.3 The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in this clause 7.
- 7.4 In the event that any Service Level falls short of the Service Level, without prejudice to any other rights the Authority may have, the provisions of clause 31 (Termination) shall apply.

## **8. SERVICE STANDARDS**

- 8.1 Without prejudice to clause 7, 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.
- 8.2 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.
- 8.3 The Service Provider shall at all times comply with the Quality Standards as set out in the Minimum Quality Standards at Schedule 1, and where applicable shall maintain accreditation with any relevant Quality Standards authorisation body.
- 8.4 The approval of service confirmation submissions (as referred to in Schedule 4) provided by the Service Provider or other similar documents shall not be construed as implying the Service Provider's compliance with this Agreement. Where the Service Provider wishes to introduce a new method or system, for the delivery of the Services, consent would need to be sought by the Service Provider from the Authority. 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. Should the Authority refuse to provide consent, the Service Provider shall not continue with the implementation of the same.

- 8.5 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 the Minimum Quality Standards at Schedule 1.
- 8.6 Without prejudice to any other rights and remedies the Authority may have pursuant to this Agreement or otherwise, the Service Provider shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Service Provider's delay or failure in the performance of its obligations under this Agreement and which delay the Service Provider has failed to remedy following reasonable notice from the Authority.
- 8.7 Without limiting the general obligation set out in clause 8.1, 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.
- 8.8 The Service Provider shall provide the Services during the Term in accordance with this Agreement. 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.

## **9. HEALTH AND SAFETY**

- 9.1 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.
- 9.2 For the purposes of the Provider List Agreement and this agreement, the Service Provider must nominate a representative responsible for health and safety issues including but not limited to those matters contained at standard 5, 7, 9 and 10 of the

Minimum Quality Standards contained at Schedule 1 and provide details of the nominee to the Authority immediately upon this agreement being entered into.

- 9.3 The Service Provider shall promptly notify the Authority's Contract Management Team of any health and safety hazards immediately it becomes aware of the same, which may arise in connection with the performance of the Agreement.
- 9.4 The Service Provider shall notify the Authority on request of all incidents that have occurred in the performance of the Agreement where the same have resulted in any personal injury or damage to property that could give rise to personal injury.
- 9.5 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.
- 9.6 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.
- 9.7 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.

**10. NOT USED**

**11. CHARGES**

- 11.1 In consideration of the performance by the Service Provider of its obligations under the Agreement, the Authority shall pay the Charges in accordance with the Agreement.
- 11.2 The Charges in respect of each Service User receiving the Services under this contract will be in accordance with the standard hourly rate as per Schedule 13 and any additional service support at the agreed rate of payment as set out in the Care and Support Plan. The Service Provider will not be permitted to levy additional charges to the Service User for tasks that are already agreed in the Care and Support Plan.
- 11.3 Payment of the Charges (or any relevant part of it) shall be subject to completion and receipt by the Authority of a confirmation (where required) of the Services delivered (in a form agreed in advance by the Authority) and any approved notice to provide care in a form approved by the Authority. In response to a request from the Authority, the Service Provider must provide such information as the Authority shall reasonably



request (including but not limited to financial statements, time sheets, records receipts, invoices, reports and service performance details) to enable the Authority to verify that the sums claimed are correct

- 11.4 All confirmations of Services delivered within the Payment Period in order for the Charges to be paid by the Authority must be provided within 14 calendar days of the end of the Payment Period via the Authority's Oracle Care Portal.
- 11.5 Unless otherwise agreed between the parties, the Service Provider must provide to the Authority confirmation of the Services delivered via Oracle Care Portal or any other method as specified by the Authority from time to time. The aforementioned information must be provided to the Authority on at least a 4 weekly basis.
- 11.6 The Authority will pay sums due to the Service Provider under the Agreement via the Banks Automated Clearing Services System (BACS). Details of Service Provider's accounts will be provided to the Authority. A payment remittance will be issued with each payment.
- 11.7 The Authority may withhold payment against any confirmation or any item shown on any confirmation which is not submitted in accordance with the Agreement or which covers or purports to relate to Services which have not been provided in accordance with the Agreement, or which it disputes for any other reason; the Authority shall notify the Service Provider within thirty 30 calendar days of receipt of the relevant confirmation giving reasons why, and any subsequent dispute shall be resolved in accordance with the provisions of Clause 21.
- 11.8 The Authority shall pay any amount withheld, which it has been agreed (or determined in accordance with Clause 21) to be payable by the Authority, within thirty (30) calendar days of such Agreement being reached or such determination being made.
- 11.9 The Service Provider shall advise the Authority forthwith of any changes, errors, overpayments, underpayments or other information which may affect the amounts paid or to be paid by the Authority for any Services under the Agreement.
- 11.10 The Authority will adjust the Charges payable in the next payment due, to cover any under or over payments, details of which (including such supporting documentation, Care and Support Plans or other information as are required by the Authority from time to time) have been provided by the Service Provider.
- 11.11 The Service Provider must notify the Authority as soon as possible and in any event no later than the Authority's next working day if -
  - (a) a Service User ceases to receive a Service under this Agreement for any reason;

- (b) the Service Provider considers that the Service User may no longer be eligible to receive the Services; and
  - (c) there is any other change in a Service User's circumstances which may affect the Charges.
- 11.12 Changes to which Clause 11.11 refer will be notified to the Authority in such form as the Authority shall require.
- 11.13 All sums due hereunder are exclusive of tax (details of which will be provided to the Authority by the Service Provider) which will be paid by the Authority at the rate and in the manner for the time being prescribed by law.
- 11.14 Subject to Clause 11.11, the Service Provider shall account to HM Revenue and Customs for all taxes, contributions, liabilities, charges and dues (including PAYE and National Insurance) for which the Service Provider (including, for the avoidance of doubt, all staff) is liable.
- 11.15 The Service Provider shall indemnify and keep the Authority fully and effectually indemnified against all losses, liabilities, damages, costs, charges, claims and expenses arising from or incurred by reason of any breach of Clause 11.14 by the Service Provider.
- 11.16 For the avoidance of doubt the parties agree and acknowledge that payment of any sums by the Authority under this Agreement shall be without prejudice to any claims or rights which the Authority may have against the Service Provider and shall not constitute any admission or waiver by the Authority as to the performance by the Service Provider of its obligations hereunder.

## **12. PAYMENT**

- 12.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Service Provider in accordance with any provisions set out in Schedule 4 in accordance with the standard hourly rate and the agreed rate of payment for any additional service support as set out in the Care and Support Plan.
- 12.1 The Service Provider shall provide confirmations (where required) via the Oracle Care Portal to the Authority in order to trigger payment of the Charges by the Authority in accordance with this Agreement.
- 12.2 The Authority shall pay the Charges which have become payable in accordance with this Agreement and within thirty (30) calendar days from the date of receipt of the relevant

confirmation accompanied by all supporting documents as required by the Agreement and payment is to be made 4 weeks in arrears.

- 12.3 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 21. Provided that the sum has been disputed in good faith, interest on any sums in dispute shall not accrue until the earlier of thirty (30) calendar days after resolution of the dispute between the parties.
- 12.4 The Charges are stated exclusive of VAT. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this Agreement.
- 12.5 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for 7 years from the end of the Contract Year to which the records relate.
- 12.6 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 12.7 The Authority may retain or offset any sums owed to it by the Service Provider which have fallen due and are payable against any sums due to the Service Provider under this Agreement or any other Agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authority.
- 12.8 Should the Service Provider choose to appoint a Factoring or Invoice Management Agency to manage its payments received, the Authority will not liaise or discuss payments with the appointed agency and all communications regarding outstanding payments will remain solely between the Authority and the Service Provider.

**13. NOT USED**

**STAFF**

**14. KEY PERSONNEL**

- 14.1 Each party shall appoint the persons named as such in Schedule 5 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.
- 14.2 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.
- 14.3 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.
- 14.4 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.
- 14.5 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.
- 14.6 If the Service Provider replaces the Key Personnel as a consequence of this clause 13 the cost of effecting such replacement shall be borne by the Service Provider.

**15. OTHER PERSONNEL USED TO PROVIDE THE SERVICES**

- 15.1 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.
- 15.2 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.
- 15.1 The Service Provider's Personnel shall not be permitted by the Service Provider to take authorised absences at any time when the performance of the Services will be materially prejudiced.
- 15.2 Subject to Clause 15.3 all Day Time Support Care workers and the Service Provider's Personnel shall be employees of or contracted to the Service Provider.
- 15.3 The Service Provider may make use of agency or temporary staff in the performance of the Services, provided that at no time shall the number of such persons prejudice the Service Provider's ability to perform the Services in accordance with the Agreement.
- 15.4 The Service Provider's Personnel shall remain at all times under the control of the Service Provider. The parties agree that the Service Provider's Personnel will at no time and/or for any purpose be, or be deemed to be, employees or agents of the Authority. The Service Provider shall be fully responsible for all the Service Provider's Personnel (and the acts and/or omissions of all the Service Provider's Personnel) and shall be solely responsible for their supervision, daily direction and control. The Service Provider shall be responsible for and shall fully discharge its duties with regard to payment (where relevant) any sums relating to the employment of the Service Provider's Personnel (including where appropriate salary, tax, insurance, pension and the like) as required by law from time to time.
- 15.5 The Service Provider shall indemnify and keep the Authority fully and effectually indemnified from and against all losses, liabilities, claims, actions, demands, proceedings, damages, costs,

charges and expenses made against or incurred by the Authority as a result of actions by any of the Service Provider's Day Time Support Care workers or the Service Provider's Personnel.

15.6 The Service Provider recognises and acknowledges the need to maintain a high level of continuity of Day Time Support Care Workers in the provision of the Services, and shall therefore take all reasonable steps to ensure that changes to Day Time Support Care Workers are kept to a minimum.

15.7 The Authority shall have the right (without prejudice to the Service Provider's continuing liability to provide the Services hereunder) to require the Service Provider immediately on receipt of notice in writing to remove any of the Day Time Support Care Workers from involvement with the Services:-

(a) who has failed to comply with any rules, regulations or arrangements affecting the same;

(b) who (in the opinion of the Authority) has misconducted himself or been negligent dishonest or incompetent; or

(c) whom the Authority learns has a conviction.

15.8 If and when directed by the Authority, the Service Provider shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of any Service User, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Authority may reasonably require.

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

16.1 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.

16.2 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:

(a) Robust arrangements will be in place to safeguard Service Users from any form of abuse or exploitation as detailed within the Minimum Quality Standards 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.
  - (f) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
  - (g) the Service Provider shall monitor the level and validity of the checks under this clause 16.2 for each member of staff.
- 16.3 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.
- 16.4 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 16 have been met.
- 16.5 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.
- 16.6 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.
- 16.1 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.
- 16.2 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.

## **17. TUPE**

The parties agree that the provisions of Schedule 8 shall apply to any Relevant Transfer of staff under this agreement.

## **CONTRACT MANAGEMENT**

### **18. REPORTING AND MEETINGS**

- 18.1 Annual report and meetings in accordance with Standard 10 Schedule 1 or as the Authority considers necessary because there are concerns with the nature or delivery of the Service and/or the Service Provider itself.
- 18.2 A Change may require a report, meetings (including site meeting) where considered necessary at the sole discretion of the Authority.

### **19. MONITORING**

- 19.1 The Authority may monitor the performance of the Services by the Service Provider.
- 19.2 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 19.1 at no additional charge to the Authority.
- 19.1 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



- 19.2 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.
- 19.3 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 Complaints Procedure.
- 19.4 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.
- 19.5 The Service Provider should send a copy of any complaint response in relation to any individual who receives a directly commissioned Service. The pro-forma attached at Schedule 13 should be completed and submitted to: [contractmgmt.care@lancashire.gov.uk](mailto:contractmgmt.care@lancashire.gov.uk).
- 19.6 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.
- 19.7 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.
- 19.8 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.
- 19.9 The obligation included at clause 18.7 shall include an additional obligation to provide the Authority's contracts management team every 6 months with the number of complaints and the number responded to within twenty eight (28) calendar days as well as number of compliments received.
- 19.10 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.

- 19.11 If as a result of a complaints investigation the Authority is fined by a regulator or has to write off charges / waiver debt or offer a financial remedy, the Authority reserves the right to claim back any financial penalties incurred, if it can be demonstrated that the fault causing the complaint was solely down to the actions of the Service Provider.
- 19.12 The Service Provider's quality assurance system shall be open to inspection at any reasonable time by the Authority, who shall have the right to interview any of the Service Provider's Personnel in connection with the performance of all or any of the Services.
- 19.13 The Service Provider shall provide the Authority promptly with any information it requires relating to the performance quality and assurance of the Services including but not limited to all documentation relevant to the delivery of the Services, the Service Provider's Personnel training records and training programmes and all other policies relevant to the management of the contract.
- 19.14 The quality assurance systems maintained by the Service Provider in accordance with this Agreement shall be in addition to and not prejudice:
- (a) any independent inspection or system of assurance undertaken by the Authority; and/or
  - (b) the issue of any warning notice, instruction default notice or any other similar item issued to the Service Provider by the Authority, the CQC or any other regulatory body.

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

- 20.1 Any requirement for a Change shall be subject to the Change Control Procedure set out in Schedule 6.
- 20.2 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services.
- 20.3 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 20.2 shall be addressed by the parties using the Change Control Procedure contained at Schedule 6 of this agreement.
- 20.4 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 6. Should the Authority refuse to provide consent, the Service Provider shall not continue with the implementation of the same.

## **21. DISPUTE RESOLUTION**

- 21.1 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.
- 21.2 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 21.2 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.
- 21.3 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.
- 21.4 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).
- 21.5 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.
- 21.6 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.

21.7 While the Dispute Resolution Procedure referred to in this clause 21.1 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.

## **22. SUB-CONTRACTING AND ASSIGNMENT**

22.1 Subject to clause 22.3, 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.

22.2 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.

22.3 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**

### **23. 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).

## 24. LIMITATION OF LIABILITY

- 24.1 Subject to clause 24.4, 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.
- 24.2 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.
- 24.3 The Service Provider's total aggregate liability in respect of the indemnities given by the Service Provider in clause 23 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.
- 24.4 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

## 25. INSURANCE

- 25.1 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;

(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.

- 25.2 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.
- 25.3 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.
- 25.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.
- 25.5 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**

### **26. FREEDOM OF INFORMATION**

- 26.1 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.
- 26.2 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.
- 26.3 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.

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

26.5 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 26.5(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.

26.6 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.

26.7 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 26.5.

## **27. DATA PROTECTION**

27.1 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.

27.2 Notwithstanding the general obligation in clause 27.1, 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 27.2; 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.

27.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **28. CONFIDENTIALITY**

28.1 Subject to clause 28.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

28.2 Clause 28.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 26.1 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 28.1;
- (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 21;
- (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.

28.3 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.

## **29. AUDIT**

29.1 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 verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services at the level of detail agreed in 0 12 (Payment);



- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
  - (c) to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 27(Data Protection) and clause 26 (Freedom of Information) and any other legislation applicable to the Services;
  - (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Authority's accounts;
  - (g) to carry out an examination 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;
  - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 29.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 29 more than twice in any calendar year.
- 29.3 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.
- 29.4 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.
- 29.5 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.
- 29.6 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.

29.7 If an audit identifies that:

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

### **30. INTELLECTUAL PROPERTY**

30.1 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 Authority on creation.

30.2 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.

### **31. SUSPENSION**

31.1 Where the Service Provider is failing to deliver the Services in line with the terms of the agreements between the parties and the service standards, the Authority at its sole discretion, and pursuant to the Suspension Policy contained at Schedule 10 to this agreement, may suspend the Service Provider 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 32 or 33 of this agreement.

During the period of suspension:

- (a) no further referrals will be made to the Service Provider;
- (b) the Service Providers details will be removed from the Authority's Day Time Supports Provider List webpages;
- (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.

31.2 The Service Provider acknowledges that suspensions may be notified to other authorities, commissioners and providers as the Authority sees fit. Should the Service Provider anticipate failure to comply with the terms of the agreements between the parties and the service standards, it may, at its discretion, approach the Authority and request for a voluntary suspension in line with the terms of the Escalation Policy 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 authorities, commissioners and providers as the Authority sees fit. Any approval of voluntary suspension will be at the sole discretion of the Authority.

31.3 Further to clause 31.2 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

### 32. TERMINATION FOR BREACH

32.1 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 32.1 if the Service Provider has failed to remedy such breach within 30 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 Services standard as specified in Schedule 1.
  - (e) Fails to notify the Authority of a 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.
- 32.2 If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.
- 32.3 The Service Provider may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.
- 33. TERMINATION ON NOTICE**
- The Authority or the Service Prover may terminate this agreement at any time by giving not less than 3 months' written notice to the other party.
- 34. TERMINATION: CARE AND SUPPORT PLAN**
- 34.1 The Authority may terminate the provision of the Services in relation to individual Care and Support Plan on seven (7) calendar days' notice to the Service Provider (such termination being without prejudice to the rest of the Service Provider's continuing obligations under the Agreement).
- 34.2 Where a Service User is admitted to hospital or in any other circumstances where there is a change in the Services required, the Service Provider shall notify the Authority as soon as possible and in any event no later than the Authority's next working day after any such change. Where a Service User dies, the Service Provider must provide notification to the Authority.

- 34.3 Where the Authority is advised that a Service is no longer required because of a dispute between the Service User and the Service Provider (not otherwise covered in the Service Agreement) the Service Provider will continue to make the Services available for such period as the Authority may require up to a maximum of twenty eight (28) Working Days following receipt of such notification and shall work with the Authority as closely as possible to ensure that an alternative Service Provider can be appointed as quickly as possible.
- 34.4 It is expected that as part of good practice, the Provider would inform the Authority of any developing problem in relation to deteriorating behaviour. However, in very exceptional circumstances where the Service User's behaviour is totally unacceptable, immediate notice may be given by the Provider to the Service User terminating his/her service. The Provider must inform the Authority immediately and payments by the Authority will cease in accordance with the conditions in the Schedule 4.
- 34.5 On termination of the provision of Services to any particular Service User the Service Provider shall take all reasonable steps (including the provision of such assistance and information as is necessary) to ensure that on termination there is a smooth and seamless transfer of the relevant Services to any Successor Service Provider or (at the request of the Authority) there is an orderly cessation of the relevant Services. The information to be provided by the Service Provider to the Authority is pursuant to this clause should include but not be limited to the following:
- (a) a schedule of delivery;
  - (b) reason for ending the individual placements; and
  - (c) all records relating to the individual Service User.
- 34.6 For the avoidance of doubt, termination of any Services under this Clause 35 shall be without prejudice to the rest of the Service Provider's continuing obligations under the Agreement.

## **35. FORCE MAJEURE**

- 35.1 Subject to the remaining provisions of this clause 34, 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.
- 35.2 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.
- 35.3 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.
- 35.4 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.
- 35.5 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.
- 35.6 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.
- 35.7 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.

**36. PREVENTION OF BRIBERY**

- 36.1 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.
- 36.2 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.
- 36.3 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.
- 36.4 If any breach of clause 36.1 is suspected or known, the Service Provider must notify the Authority immediately.
- 36.5 If the Service Provider notifies the Authority that it suspects or knows that there may be a breach of clause 36.1, 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.
- 36.6 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 36.1. In determining whether to exercise the right of termination under this clause 36.6, 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.
- 36.7 Any notice of termination under clause 36.6 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.
- 36.8 Notwithstanding the provisions of clause 21 (Dispute resolution), any dispute relating to:
  - (a) the interpretation of clause 34.1; 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.

- 36.9 Any termination under clause 36.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

### **37. CONSEQUENCES OF TERMINATION**

- 37.1 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.
- 37.2 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.
- 37.3 The provisions of clause 23 (Indemnities), clause 25 (Insurance), clause 26 (Freedom of Information), clause 29 (Data Protection), clause 29 (Audit), clause 32 and 33 (Termination for Breach and Notice) and this clause 37 (Consequences of termination) shall survive termination or expiry of this agreement.

## **GENERAL PROVISIONS**

### **38. 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.



**39. 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.

**40. 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.

**41. 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.

**42. 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.

**43. THIRD PARTY RIGHTS**

43.1 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.

**44. 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.

**45. NOTICES**

45.1 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:

- (c) sent via email to the Service Provider to – [email address]; or
- (d) delivered by hand or by post to postal address as confirmed by the Service Provider by email.

45.2 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
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45.3 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.

**46. 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.

**47. 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.

**48. GOVERNING LAW AND JURISDICTION**

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

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

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 [provider name] by

Signature:

Signature:

Name: Tony Pounder

Name:

Position: Director of Adult Services

Position:

Date:

Date:

## Schedule 1 Minimum Quality Standards

### INTRODUCTION

Day time support service for older people and people with dementia ("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. The Services 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.

Services do not include care at home but can be provided within a residential care home as well as in specialised centres and other community centres.

Services support 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.

It does not include Luncheon Clubs, Shared Lives and befriending services.

Services can help a wide range of people, from those who need support with very complex needs to those where time limited support is needed at different points in their lives.

A principal aim of the Services is to encourage people to remain active members of the community.

The standards described (Minimum Quality Standards) in this document is what each individual person can expect from the Service Provider and focus on the quality of life that the person using the service actually experiences. They reflect an approach to care and support that will meet each individual's preferred lifestyle; they embrace the following values:

- **Privacy** - A right to have privacy and property respected and to receive the time, the space and the facilities they need. To be free from intrusion as long as it is safe for the person and for others using the service.
- **Dignity** - A right to be treated with dignity and respect at all times; and enjoy a full range of social relationships.
- **Choice** - A right to make informed choices, whilst recognising the rights of others to do the same. To know about the range of choices and get help to fully understand the options and choose the one that is right for the individual.
- **Safety** - A right to feel safe and secure in all aspects of life but not to be over protected. To be free from exploitation and abuse.
- **Fulfilment** - A right to live an independent life, rich in purpose and meaning and personal fulfilment; to have the opportunity to achieve all that can be achieved; to make full use of the resources that are available to make the most of life.

- **Equality and diversity** - A right to be valued for ethnic background, language and culture; to be able to express sexuality and have that respected; to be free from bullying, harassment and discrimination and to be able to complain without fear of victimisation.

## **GLOSSARY OF TERMS THAT WILL BE USED IN THIS STANDARD**

- Definitions otherwise not defined here will have the same definition as given in the Provider's List agreement.
- Disclosure and Barring Service (DBS): A DBS replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). A DBS helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including adults.
- Personal Plan: also known as: Care Plan, Plan of Care, Support Plan. Is the document 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 needs. The Service Provider is responsible for completing the personal plan.
- Physical Intervention: Used by staff to manage, restrain or stop people from harming themselves or others.
- Risk Assessments: Written documents that form part of the Service Provider's safety strategies. They can be personal, environmental or generic. Risks are identified and plans set in place to minimise those risks.
- Safeguarding: Sometimes called Adult Protection makes provision for and maps out the obligations and responsibilities on the Service Provider and the Service Provider's Personnel staff at the service to keep people safe and follow agreed procedures where abuse is suspected or alleged.

## **STANDARDS**

### **Standard 1 - Informing and Deciding**

**Outcome – A prospective Service Users has all the information needed to help make an informed decision about whether or not to use the Services.**

The Service Provider must have in place a Statement of Purpose which describes the overall aims, objectives and philosophy of the Services it provides. The information must be updated regularly to ensure accuracy.

A Service User guide or handbook must be available which contains information about the Service Provider's Service and:

- A summary of the Statement of Purpose;
- The location and description of the Services;
- The types of activities and Services provided;
- The fees or charges payable and required payment method for Services, facilities or activities;
- Any transport provided and associated cost;

- The general terms of attendance and any trial period and its review timescale. This can include notice periods for holidays and absences;
- The Service User's rights and responsibilities whilst using the Services and the consequences of not complying with the same;
- How to apply for a placement / referral process.

The Service Provider must offer simple and clear pricing information for Service Users to avoid a hidden cost scenario.

The Service User must be able to visit the Service prior to them, or their named representative, signing a contract between the Service User and the Service Provider.

The Service Provider has an obligation to notify in advance the Authority of all Change and ensure the information regarding the Service Provider Services on the Authority's website/web portal is up to date and correct at all times.

## **Standard 2 - Assessment of Need and the Personal Plan**

### **Outcome – Each Service User must have an assessment of their needs and Personal Plan with regard to the Service provided**

The Service Provider must undertake an assessment of each Service User's needs and Personal Plan prior to offering a place to ensure their needs can be met by the provision ('Assessment').

The Service User, their family and other professionals (as appropriate) must be involved in the Assessment process.

The Assessment must be recorded with the Service User (wherever possible) to create the Personal Plan. For the purposes of a Care Managed Service User the Personal Plan must reflect the individual's Care and Support Plan completed by the Authority.

Each Service Provider must have in place a comprehensive Support Plan for each Service User which is reviewed and updated every six months, or earlier if where the needs of a Service User change.

The Service User must be involved in creating their Support Plan. Where the Service User chooses not to be involved, or is unable to, this must be recorded and family or other professionals must be involved.

The Service User plan must identify all areas of support to be met by the Services and how this is to be achieved. It must include information and decisions about:

- What they prefer to be called
- Any specialist equipment required or food preferences and how this will be provided
- Any communication needs and how these will be met
- Who should be involved in the Support Plan reviews
- Any risk assessments including those around mobility, behaviour and health conditions.

### **Standard 3 - Contract/Agreement**

**Outcome – Each Service User must have a contract/agreement detailing the Services to be provided.**

Each Service User must be provided with an individual written contract/agreement which sets out:

- The services and facilities provided to the Service User
- The start date and the sessions/days of attendance
- Transport arrangements (where applicable)
- Any fees or charges payable and the arrangements for paying these
- The arrangement for reviewing the contract/agreement
- The period of notice required to terminate the contract/agreement including clear communication and exit plan.

The contract/agreement must be presented in a format and language suitable for the Service User and is signed and dated by the Service User and the manager of the Service. Where the Service User is unable or chooses not to sign this must be recorded and where appropriate signed by anyone legally acting on their behalf.

The contract/agreement must be in place prior to the Service User starting the Services.

The Service User must be given at least 28 days written notice of all changes to the contract/agreement including where there is to be a Change and these must be agreed in writing by the service user or their chosen representative. The Service User must be given the option to cancel their contract/agreement if they do not agree to the changes within this time period without penalty.

The Service User must be given at least 28 days advance notice of any increase or variation in the fees or charges. The Service User must be given the option to cancel their contract/agreement if they do not agree to the changes within this time period.

### **Standard 4 – Activities**

**Outcome – The Services provide a structured programme of varied activities and events related to its statement of purpose.**

The programme must provide opportunities for both group and individual activities. It must be flexible and allow for Service User choice.

The types of activities offered must be diverse and varied, engaging, purposeful, enjoyable, age and culturally appropriate and promote well-being. All activities must be resourced appropriately.

Activities, in-house, day trips and community based must be provided in an appropriate setting and facilitate community inclusion. The duration of the activities must take account of the needs and abilities of the Service Users participating.



Service Users must be enabled to participate in the activities of their choice by the provision of equipment, aids and support from staff or others.

The Service Provider must indicate to the Service Users if it offers personal care supports including hairdressing, assisted bathing and other personal care such as cutting nails and chiropody.

Where an activity is provided by a third party contracted in to do so, the Service Provider must:

- Obtain evidence from the third party and monitor the activity to confirm that the third party has the necessary skills to provide the activity.
- The Service Provider must inform the third party about any changed needs of Service Users prior to the activity commencing.
- There must be a system in place to receive timely feedback from the third party providing the activity.

The programme of activities must be displayed in a suitable format and in an appropriate location so that Service Users know what is scheduled. This must be displayed at least a week in advance.

## **Standard 5 - Environment and transport**

**Outcome – the environment and transport must be safe, well maintained and sustainable to meet the needs of the Service Users.**

The Service should be welcoming in character, where Service Users can spend a tranquil and enjoyable day. The facility must be spacious yet secure to allow Service Users to walk around in safety.

The grounds and the outside of the building must be well-maintained and where possible are not identifiable in a way that stigmatises people as a user of the Services.

The building and its fittings must help maintain and increase people's independence.

For Services supporting people with dementia, the environment needs to be dementia friendly with consideration given to appropriate access, floor finishing, furnishings and lighting. The Service Provider will be expected to meet the requirements outlined in the dementia friendly environment checklist which can be found at:

[http://www.dementiaaction.org.uk/assets/0000/4336/dementia\\_friendly\\_environments\\_checklist.pdf](http://www.dementiaaction.org.uk/assets/0000/4336/dementia_friendly_environments_checklist.pdf)

The Service Provider's premises must be kept clean, well maintained and in a suitable state of repair and decoration.

The Service Provider's premises must have a written Fire Risk Assessment that is compliant with Fire Safety guidance and instructions.

Records must confirm that weekly alarm tests, monthly firefighting equipment (including emergency lighting) checks, and fire drills are carried out at least twice per annum.

The Service Provider must have the appropriate Public, Employer and Professional Liability Insurance and the certificates must be prominently displayed.

The Service Provider's Services will include a range of appropriate recreational and craft equipment inside the building and wherever possible the grounds around the Service Provider's premises will be used for outdoor activities. Service Users will be supported in accessing what they need to engage in such activities.

Furniture, fittings and any equipment or mobility aids in areas accessed by Service Users must be positioned to take into account the mobility and overall needs of the Service Users including those with sensory impairments.

Catering areas must comply with Food Safety legislation at all times and staff handling food must be suitably trained. Catering must be registered with the Department of Environment, Food and Agriculture (DEFA) as a food business.

The Service Provider's premises must have separate toilets for ambulant males and females and at least one wheelchair accessible unisex toilet (where appropriate). These facilities must be clearly marked and have suitable hand washing and drying facilities to meet infection control guidance. They must be lockable and where appropriate have an override option.

Vehicles used as part of the Services must be maintained and regularly checked. All Service Provider's Personnel that drive vehicles must have their driving licences checked and details recorded on a regular basis (minimum annually). Appropriate insurances must be in place.

There must be adequate facilities for Service Provider's Personnel and Service Users to store their personal items including lockable storage facilities.

## **Standard 6 – Service Provider's Personnel (incl. management and staffing)**

**Outcome – Good quality support and care must be provided by the Service Provider's Personnel whose professional training, qualifications and expertise enables them to meet the Service Users' needs.**

There must be policies and procedures in place which cover all requirements that apply to the type of Service being provided –appendix 1 lists required policies and procedures.

Service Provider Personnel must be such to ensure requirements are determined by the needs of the Service Users and over time the staffing arrangements should provide sufficient flexibility to enable adjustments to respond to changing need. Service Provider Personnel levels must be determined by the following factors, including:-

- the number and level of dependency of Service Users
- whether Service Users require moving and physical assistance support
- whether Service Users require special assistance due to behaviour/functional ability
- how the layout and design of the building facilitates staff support Service Users
- hours allocated for social, recreational and cultural activities.

The Service Provider will have adequate staffing levels to support the needs of the people in their care at all times. Service Providers need to display their average staffing levels on the website and within the premises.

Staff providing support and care must have the knowledge and skills to care for Service Users attending the Services; all new staff must be supported to develop the essential knowledge and skills as part of a planned training programme.

Staff, managers and volunteers are recruited and selected through a process which includes as a minimum:

- Application form
- Taking up 2 references (one of whom should be the last/current employer)
- Enhanced DBS checks – these must be renewed for all staff a minimum of every 3 years unless the update service has been selected
- Evidence of all checks are recorded and retained in line with Data Protection Legislation.

Volunteers must be familiar with the Service Provider's policies and procedures and receive all relevant training to help them support the Services provided.

Service Provider Personnel must be provided with a clear definition of their roles and responsibilities (job description etc.). Contracts of employment and/or terms and conditions of employment detail their employment obligations. There must be clear lines of accountability within the team.

Successful applicants are employed with an agreed induction/probation period which consists of regular 1-1 meetings with their line manager. A written induction programme is in place and is followed and signed off by supervisor and inductee.

Duty rotas must demonstrate that there are sufficient numbers of staff in various roles to meet Service Users' care and support needs and these take into consideration the layout of the building, activities being undertaken and any risks identified.

There must be a strategy for staff development and an effective training plan for all staff which are regularly reviewed as part of ongoing supervision arrangements. There must be an effective system in place for supervising staff practice. There must be formal 1-1 supervision at least 4 times a year; supplemented by other forms of supervision such as team meetings and group discussions. Appropriate records must be kept, including staff/group meeting minutes and a record of the discussions following a formal 1-1 supervision.

Staff must be fully conversant with the service's fire policies and procedures and ensure that people using the service know what to do in the event of fire. Notices and signs must be clearly sited and are legible. Staff must be trained in fire safety as soon after their appointment as is reasonably practicable and within three months.

The manager must take an active approach to managing risk which results in safe systems of work, safe practice, safe premises and an awareness of danger, liability and responsibility; these areas will be discussed with each person in relation to their personal plan. Risk assessments must be recorded and reviewed regularly.

There must be written policy and procedures in regard to the conditions under which physical interventions may be used, and staff must be fully trained and supported in the use of such interventions. If it is necessary to use physical interventions this will be written into the Service User's Personal Plan and records kept of any incidents that involve physical intervention. All persons must be supported appropriately after any episode of physical intervention.

If medicines are being administered by the staff, those responsible for administration must be knowledgeable and trained to do so. Current best practice guidance must be followed. Staff must be fully aware of the provider's systems for the giving of medication. Staff must know how to store and administer medication safely and in the way that suits the person best. A lockable storage facility must be available. Staff administering medication must be regularly monitored as part of their supervision regime; assessed around competency to administer annually and refresher training must be provided as necessary.

Whenever staff are involved in a financial transaction with a person attending to receive Services, this must be carefully recorded using systems and processes that are in accordance with the provider's policy and procedure.

## **Standard 7 – Safeguarding**

### **Outcome – Service users must be safeguarded from abuse.**

Written procedures for safeguarding vulnerable adults must be in accordance with Lancashire Adult Safeguarding Board guidelines

Procedures must detail safeguarding arrangements within the service and identify named and appropriately trained members of staff with whom concerns should be discussed.

The procedures for safeguarding vulnerable adults must be included in the induction programme for staff. The training must include as a minimum:

- Types of abuse
- Signs and symptoms of abuse
- Recognising abuse
- How to report abuse
- Knowledge of company policies and procedures
- Awareness of local multi – agency policy and procedure

All staff must attend appropriate safeguarding training and undertake a refresher every 3 years.

A written record must be kept of all safeguarding concerns and this must include details of the investigation, the outcome and action taken by the day time supports setting.

Employers must refer someone to the DBS if they are:

- Dismissed because they harmed a vulnerable person
- Dismissed or removed from working in a regulated activity because they may have harmed a vulnerable person otherwise
- Or were planning to dismiss them for either of these reasons, but the person resigned first

<https://www.gov.uk/government/collections/dbs-referrals-guidance--2>

A daily attendance register must be maintained which includes the arrival and departure time of Service Users and the Service Provider's Personnel.

## **Standard 8 – Complaints**

**Outcome – All complaints must be treated seriously and responded to promptly and effectively.**

The Service Provider must operate a complaints procedure which meets the requirements of their complaints policy.

The complaints procedure must include a step by step guide to making a complaint and the timescales involved. The procedure must also include information of independent advocacy services.

A copy of the Complaints Policy and Procedure must be provided to Services Users and be displayed within the service (where appropriate in accessible format).

Written records of complaints must be kept and these must contain details of all communications with the complainant, the results of any investigations, outcomes and the action taken.

## **Standard 9 – Policies and Procedures**

**Outcome – The Service must have policies and procedures in place which ensure the quality of care and services.**

The policies and procedures listed in Appendix 1 must be in place to ensure the service is run safely and in accordance with legislation and good practice.

All policies and procedures must be reviewed regularly (a minimum of every 3 years) and the review date must be clearly recorded.

All policies and procedures must be available for Service User and Service Provider's Personnel.

## **Standard 10 - Quality and Improvement**

**Outcome – The Services Provider must have systems in place to assess the quality of the Service and makes provision for improvement and development.**

The Service Provider must have formal quality assurance systems in place and must use a range of tools to measure the quality of the service provided. This must include:

- The number and type of complaints received and any learning from these;
- Comments and compliments about the service from a range of stakeholders;
- Accident and incident reports;
- Observations of those who use the service;
- Views of staff and volunteers working at the service

The Service Provider will actively encourage feedback from Service Users about the quality of the service each month. The outcomes of the feedback should be displayed and positive action taken.

The Service Provider must produce an annual report which includes provider report, case studies, lists the success and challenges of the service and a written development/improvement plan based on the outcomes of the quality assessment exercise. This plan must be displayed and available to all.

The Service Provider will have annual review (this could be on site or a desktop review) with the Authority which will include a review of service against quality standards

The Service Provider must have in place systems to check and monitor staff activity to ensure compliance with the terms and conditions of their employment and the services policy and procedural requirements.

All records and documents must be maintained in good order, be legible, kept up to date and stored securely in line with Data Protection Legislation.

## **Appendix 1**

Access to records

Accidents and incidents

Assessment, support planning and review

Assessment of risk in the day time supports setting

Communication

Complaints (must be prominently displayed)

Confidentiality

Capacity

COSHH

Disciplinary

Exclusion

Equality

Fire

First Aid

Gifts to staff and donations to the service

Health and Safety

Induction and Training

Infection Control

Maintenance of equipment, plant, premises, ground and vehicles

Management of keys

Management of medicines – including administering or assisting with medication

Management of records

Managing aggression and behaviours which challenge the setting

Menu planning

Missing service users

Moving and Handling

Notifications to Registration and Inspection Unit

Outings

Planning and reviewing programmes and activities

Quality improvement

Record management (including retention)

Recruitment and Selection

Referral

Risk management

Reporting incidents

Safeguarding

Security of the day time supports setting

Sickness

Smoking

Visitors

Volunteers

Whistle blowing



## Schedule 2 Service levels

### Part 1. Service Levels

#### 1. THE SERVICE LEVELS

<b>Service</b>	<b>Method of calculating service delivery</b>	<b>Service level</b>
Minimum Quality Standards for Day Time Support Services for Older People and People with Dementia.	Compliance with the Minimum Quality Standards	100%

## 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. Lancashire County Council Care Provider Portal Guide  
<http://www3.lancashire.gov.uk/corporate/web/viewdoc.aspx?id=121489>
2. Skills for Care - Social Care Commitment Available at:  
<https://www.thesocialcarecommitment.org.uk/>.
3. 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>
4. 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>.
5. Unison's ethical care charter. Available at:  
<https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220142.pdf>

#### **Schedule 4 Charges and payment**

1. In consideration of the Service Provider carrying out its obligations hereunder the Authority shall subject to clause 11 of the agreement, Service User Care and Support Plans, standard hourly rate and the terms of this Schedule pay to the Service Provider the Charges for the Services.
2. Where confirmations of Services delivered are required, these must be submitted via the Oracle Care Portal (see schedule 3 guidance for link to user guide) or any other method as specified by the Authority within fourteen (14) calendar days of the end of the Payment Period. All confirmations must be submitted within the timeframe above as the Service Provider will be unable to submit future confirmations until the current period has been dealt with. Unsubmitted actuals must be submitted within the subsequent Payment Period. The definition of an unsubmitted actual is a missing actual (confirmation) from a previous Payment Period. If a confirmation is not submitted within fourteen (14) calendar days of the end of the Payment Period, then the Service Provider accepts that there is no obligation on the Authority to make payment of Charges relating to the same.
3. In submitting a confirmation the Service Provider shall be deemed to have represented to the Authority the following information:
  - a. that those Service Users in relation to which payment of the Charges is requested were in receipt of the Services on the dates specified in the confirmation (or that the Service Provider is otherwise entitled to payment of the Charges) and that the Charges are properly due and payable by the Authority; and
  - b. that the Service Provider has included notification of adjustments applied in relation to a Service User that have been agreed with the Authority.
4. In relation to Services where the Authority and the Service Provider have entered into a Care and Support Plan for a Service User, the Authority will pay the Service Provider for the Payment Period the Charges for Services that have been confirmed as having been delivered without a requirement for the Service Provider to submit invoices. However, although no invoice is required to pay, the actuals for the Service provided within the period must be submitted after the end the Payment Period via Oracle Care Portal within fourteen (14) days of the end of the Payment Period.
5. Upon payment being received by the Service Provider the Service Provider shall be deemed to have represented to the Authority the following information:

- (a) that those Service Users in respect of whom payment is being made are in receipt of the Services on the dates specified in the Authority's remittance advice;
  - (b) that it is managing the Care and Support Plans for those Service Users in respect of whom payment is being made in accordance with the requirements of Schedule 1.
  
- 6. In the event that a Service Provider fails to manage a Care and Support Plan in accordance with the requirements of Schedule 1, the Authority may if it reasonably considers that it is unable to verify properly that the Services have been provided as claimed at its discretion withhold payment and should the Authority withhold payment in accordance with this paragraph, the Authority shall not be deemed to be in breach of contract.
  
- 7. Unless otherwise agreed payments shall be made by the Authority to the Service Provider by way of bank credit transfer.
  
- 8. The Service Provider shall notify the Authority of any relevant changes in the Service User's condition including improvements and deteriorations and shall do so within five (5) Working Days of becoming aware of such change.
  
- 9. The Service Provider shall notify the Authority if it becomes aware that a Service User is eligible for or is in receipt of any new sources of funding which could affect the future level of Authority contribution towards the cost of that Service User's Service provision.
  
- 10. The Service Provider shall not be entitled to 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 using the Service User's personal budget, nor to claim payment for any alternative or additional Services, without the prior written agreement of the Authority and subject to the provisions of clause 5 relating to Emergency Hours provision. For the avoidance of any doubt, this clause does not prevent the Service Provider from providing privately funded additional services to Service Users in addition to those Services funded by the Authority.
  
- 12. Where a Service User is admitted to hospital or dies, or in any other circumstances where there is an unforeseen suspension or cessation of the delivery of Services, the Service Provider shall notify the Authority immediately and in any event no later than the Authority's next working day after any such change. In such circumstances, the Service Provider can claim up to 3 days of service delivery charge following the last day of service delivery in the event that Services would have otherwise been provided.

14. Where the Services are ceased by the Authority, and seven (7) calendar days' notice is not provided, the Service Provider can claim up to 3 days of service delivery charge following the last day of service delivery in the event that Services would have otherwise been provided.
15. In very exceptional circumstances where the Service User's behaviour is totally unacceptable, immediate notice may be given by the Provider to the Service User terminating his/her service. The Provider must inform the Authority of this without delay. The Service Provider can claim up to 3 days of service delivery charge following the last day of service delivery in the event that Services would have otherwise been provided.
16. The Authority may at its discretion at any time during the Term introduce an alternative payment mechanism in relation to the Services. Whilst the Authority shall consult with Service Providers and give reasonable notice in relation to any proposed changes, the Service Provider shall adhere to any new procedures introduced by the Authority in this regard provided that any changes so proposed are unlikely (taking into account the value of the Service Provider's annual turnover, the number of Service Users to whom the Service Provider delivers Services and the likely cost of the proposed change) to have a significant financial detriment to the Service Provider and its business.
17. The Authority shall make payments within thirty (30) calendar days of receiving a confirmation from the Service Provider that the Services have been delivered.

#### Change in service user needs

18. When a Service Provider notifies the Authority of a Change in an individual Service Users Charges brought about solely from the change in needs and circumstances of the Service User, this must be reviewed by the Service User's social worker to assess whether the existing Services are still affordably and within the Service Users personal social care budget. If the Service User's needs can no longer be met by the Service Provider within the Service Users available personal social care budget the provisions for an individual Service Users Care and Support Plan can be terminated in accordance with clause 34.1.

#### Annual Uplift to the standard hourly rate on the anniversary of the Commencement Date

19. The standard hourly rate shall be uplifted on 1 April each year by the percentage uplift agreed annually by the Authority's cabinet in the report "Adult Social Care - Fees and Charges".

#### Change to standard hourly rate prior to the anniversary of the Commencement Date.

20. Changes to the standard hourly rate in circumstances of an increase that is being proposed prior to the anniversary of the Commencement Date will only be considered by the Authority in exceptional circumstances and on the submission of evidence corroborating the increase change. The Authority will have sole discretionary as to whether it allows the Change. The Authority

makes no representation and offers no guarantee that any Change in these circumstances will be applied to the Charges following any review or assessment carried out.

Decrease to the standard hourly rate

21. For the avoidance of doubt the Service Provider is at liberty to decrease its standard hourly rate at any time whatsoever and any decrease must be notified in accordance with the Change Control Procedure Schedule 5.
22. Any overcharges will be deducted by the Authority from the next payment made to the Service Provider, overpayment of monies to the Service Provider in respect of delivery of the Services will be returned to the Authority on request. Where any sum of money shall be recoverable from or payable by the Service Provider as an overpayment, the same may be deducted by the Authority from any sum then due or which at any time thereafter may become due to the Service Provider under this or any other contract with the Service Provider.
23. All payments due under this Agreement are expressed in Sterling and exclusive of VAT or other tax or duty which will be payable by the Authority in respect of the Charges.
24. Unless otherwise stated the Charges are inclusive of all costs and expenses which may be incurred by the Service Provider in carrying out its obligations hereunder and no additional charges will be payable by the Authority unless agreed in advance by the parties.
25. Late payment of the Charges by the Authority does not permit the Service Provider to delay or suspend service.
26. [If applicable, and where there is a consortium of Service Providers operating, payments will be made to the lead Service Provider only. The lead Service Provider is then responsible for administering payments to consortium.]

## **Schedule 5 Contract management**

### **1. AUTHORISED REPRESENTATIVES**

1.1 The Authority's initial Authorised Representative: Jackie Fielding  
contractmgmt.care@lancashire.gov.uk

1.2 The Service Provider's initial Authorised Representative:

## **Schedule 6 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 6.
- 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 clause 1, shall be undertaken entirely at the expense and liability of the Service Provider.

### **2. PROCEDURE**

- 2.1 A Change shall result in any one of the following:
- (a) no further action being taken; or
  - (b) a request to change this agreement by the Authority; or
  - (c) a recommendation to change this agreement 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 a 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 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) the price/charge, if any, of the Change;
- (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 other information required for the Authority to respond, the Authority to use request to be reasonable.

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 7 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 8 - TUPE

### 1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

**Effective Date:** the date(s) on which the Services (or any part of the Services) transfer from the Authority or any Third Party Employer to the Service Provider or Sub-contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider or Sub-contractor.

**Employee Liability Information:** the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

(a) the identity and age of the employee; and

(b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and

(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and

(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor; and

(e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

**Employment Liabilities:** all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**Redundancy Costs:** statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Service Provider to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

**Redundant Transferring Employees:** Transferring Employees whom the Service Provider has dismissed following a lawful redundancy within 12 months of the Effective Date.

**Relevant Employees:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Service Provider by virtue of the application of TUPE.

**Service Provider's Final Staff List:** the list of all the Service Provider's and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Service Provider's Provisional Staff List:** the list prepared and updated by the Service Provider of all the Service Provider's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-contractor to the Authority or any Replacement Service Provider.

**Staffing Information:** in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Third Party Employee:** employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Service Provider or Sub-contractor by virtue of the application of TUPE.

**Third Party Employer:** a Service Provider engaged by the Authority to provide [some of the] Services to the Authority and whose employees will transfer to the Service Provider on the Effective Date.

**Transferring Employees:** employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of TUPE.

## **2. TRANSFER OF EMPLOYEES TO THE SERVICE PROVIDER**

2.1 The Authority and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees [and Third Party Employees] shall transfer to the Service Provider or Sub-

contractor. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The Relevant Transfer shall occur on the Effective Date.

2.2 The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date. The Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Service Provider, as required by TUPE. The Authority shall warrant that such information is complete and accurate as it is aware or should reasonably have been aware as at the date it is disclosed.

2.3 Subject to [paragraph 2.4](#), the Authority shall indemnify [and keep indemnified] the Service Provider against any losses, except indirect losses incurred by the Service Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Service Provider or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

2.4 The Service Provider shall be liable for and indemnify and keep indemnified the Authority [and any Third Party Employer] against Employment Liabilities arising from or as a consequence of:

- (a) any proposed changes to terms and conditions of employment the Service Provider or Sub-Contractor may consider taking on or after the Effective Date;
- (b) any of the employees informing the Authority [and any Third Party Employer] they object to being employed by the Service Provider or Sub-Contractor; and
- (c) any change in identity of the Transferring Employees' [and Third Party Employees'] employer as a result of the operation of TUPE or as a result of any proposed measures the Service Provider or Sub-Contractor may consider taking on or after the Commencement Date.

2.5 The Service Provider shall be liable for and indemnify and keep indemnified the Authority [and any Third Party Employer] against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees[, the Third Party Employees,] and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.

2.6 The Service Provider shall immediately on request by the Authority [and/or the Third Party Employer] provide details of any measures that the Service Provider or any Sub-Contractor of the Service Provider envisages it will take in relation to any Transferring Employees [and the employees of any Third Party Employer] including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider shall give confirmation of that fact, and shall indemnify the Authority [and any Third Party Employer] against all Employment Liabilities resulting from any failure by it to comply with this obligation.

### **3. EMPLOYMENT EXIT PROVISIONS**

3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2 The Service Provider shall [and shall procure that any Sub-Contractor shall] on receiving notice of termination of this Contract or otherwise on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Service Provider shall notify the Authority of any material changes to this information as and when they occur.

3.3 At least 14 days prior to the Service Transfer Date, the Service Provider shall [and shall procure that any Sub-Contractor shall] prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.

3.4 The Authority shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.

3.5 The Service Provider warrants that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.

3.6 The Service Provider shall [and shall procure that any Sub-Contractor shall] ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the [six] months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Service Provider shall and shall procure that any Sub-Contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

3.8 The Service Provider shall indemnify and keep indemnified in full the Authority [and at the Authority's request each and every Replacement Service Provider] against all Employment Liabilities relating to:

(a) any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services; or

(b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Service Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.10 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to [paragraph 3.1](#) to [paragraph 3.8](#), to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.11 Despite [paragraph 3.10](#), it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

#### **Transferring and third party employees**

<b>Transferring Employees</b>	<b>Third Party Employees</b>



# Adult Social Care Policy and Procedure for Managing Service Provider Quality and Performance in Commissioned Services

Version 0.5 – November 2016

<b>POLICY NAME</b>	<b>Managing Service Provider Quality and Performance in Commissioned Services</b>		
<b>Document Description</b>	<b>This document sets out the Council's response to Service Provider poor performance and quality within commissioned services and how this should be escalated through levels</b>		
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<b>Document Author</b>	<b>Katherine Holt</b>	<b>Date</b>	<b>18 November 2016</b>
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0.3	18/10/16	Katherine Holt	Added in CSU badge and references within document
0.4	28/10/16	Katherine Holt	Removed CSU and CCG to be Lancashire County Council only policy initially
0.5	4/11/16	Katherine Holt	P1 – updated name of policy P2 – added reviewer table Section 1 - additions and alterations made Section 2 – reworded first 2 paragraphs and added Care Act responsibilities Section 3 – 6 <sup>th</sup> row addition in table Section 4 – categories renamed Section 5 – level of concerns renamed to match risk assessment Section 6 - formatting altered Section 7 - added link to appendix 6 Section 8 – removed 2 <sup>nd</sup> set of bullet points; reformatted and removed LCC responsibilities information Section 10 – Added in Legal requirements and removed Contract Officer section Section 11 – removed Appendix 4 – letter removed Appendix 5 – Risk Assessment clarity on the definitions provided

## Amendment Notes

Documents at draft status are to use number designations to denote issue status: 0.1, 0.2 0.3 etc.

Documents at full issue status are to use number designations to denote issue status after full revision: 1.0, 2.0, 3.0, etc.

For an amendment to a full issue document you are to use number designation to denote issue status: 1.1, 1.2, 2.1, etc.

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## 1 Definitions/Glossary

Continuing Health Care (CHC)	Service Users whose care is fully funded by Health
Clinical Commissioning Group (CCG)	This refers to All CCG's within the geographical county of Lancashire who have the lead for the health for citizens
Contract Officer	Refers to either/or a Contract Monitoring Officer or a Contract Assurance Officer
Good Quality	A measure of excellence or a state of being free from deficiencies and significant variations. It is safe, effective and has a positive service user/resident experience. It follows a strict and consistent commitment to certain standards that achieve uniformity in order to satisfy service user and resident requirements, whilst building strong relationships, handling and resolving complaints quickly and satisfactorily.
Lancashire Care Association	Not for profit company which represents quality independent sector providers in Lancashire
Lancashire County Council (LCC)	Lancashire County Council are statutorily responsible for the Social Care of Lancashire citizens
Level 1 Provider Performance and Quality Improvement Plan(ning)	When contracts have undertaken an audit or contract monitoring and compliance exercise with a Service Provider and found areas for improvement. This relates primarily to contractual breaches, but can also be in relation to quality. These are lead primarily by a Contract Assurance Officer.
Level 2 Provider Performance and Quality Improvement Plan(ning)	Where there is a wide scale need for improvement across the whole of the Service Provider organization in relation to the quality that is being provided. This can also be contractual but is not limited to specific contractual breaches. These are primarily led by a Senior Quality Improvement Practitioner
Inability to Staff	Failure to provide registered nurses, care workers, registered manager or none direct care staff such as kitchen and domestic
Midland and Lancashire Commissioning Support Unit (CSU)	Undertake commissioning, contracting and quality for the CCGs
Pro-active Concerns	These are where there has been a trend identified through KPI returns, or from an audit or contract monitoring review, which has identified some areas for improvement.
Provider Failure	This is where a Service Provider has failed to meet Improvement/Action Plans as requested and may lead to contract termination by LCC and/or CCG/CSU. This can also relate to financial failure of the Service Provider.
RADAR	Multi agency meeting looking at trends of intelligence regarding Service Providers in a multi-agency setting. The RADAR allows for confidential information sharing to occur. This can be regarding a single Service Provider or multiple Service Providers within an area of the county or across the county

	client group, area of delivery and size; consideration will also be taken on the potential size or seriousness and number of the concerns raised. Pro-active intelligence will also be considered alongside re-active.
Safeguarding Enquiry Service (SES)	Team of qualified Social Workers within the Local Authority who care out investigations into reported Safeguarding alerts.
Self-Referral	This is where a Service Provider has identified that they are struggling and approach LCC and/or CCG/CSU for advice and guidance. This may result in sign posting or a visit from LCC and/or CCG/CSU
Service Provider	A service provider is the commissioned organization who holds the contract with Lancashire county council to deliver social care services both registered and none registered.
Suspension	Where the Service Provider is restricted from taking on new LCC or CCG funded Service Users or Residents. Current Service Users or Residents may remain with the Service Provider, but will be re-assessed where needed to ensure that their care and support can be delivered to a required standard. No financial penalty on current packages of care or residential placements.
Termination	Where LCC and or CCG/CSU end the contractual arrangement with the Service Provider. Terms of the notice of termination will be set out in the respective contracts.
Re-active Concerns	These are where intelligence is being received regarding a Service Provider, through safeguarding notifications and intelligence from health or social care professionals, CQC, the Police or whistleblowers. There will be threshold triggers set dependent on the Service Provider

## 2 Scope of Policy

This document sets out Lancashire County Council's (LCC's) policy on managing poor performance in commissioned Social Care Services

Actions taken will be proportionate to the perceived risks to service users; the seriousness of the issues; whether contractual obligations have been breached; the level of engagement with the provider, and their view and response to the poor performance.

The policy relates to:

All services with which LCC have contracts or service level agreements.

The policy:

- Defines what we mean by poor performance
- Defines poor performance indicators and the trigger points for action
- Defines the range of possible responses to poor performance
- Defines roles and responsibilities

This policy should be used in conjunction with and as required the following Policies

- Suspension Policy
- LCC Managing Provider Failure Policy
- NHSE Standard Operating Procedure (SOP)
- NHSE [ManagingCareHomeClosures](#) and associated [managementchecklist](#)

From April 2015 The Care Act 2014 defines adult safeguarding as a statutory duty, the key responsibility is with local authorities in partnership with the police and the NHS. Under the act the local authority has statutory responsibilities to respond to provider failure.

The Act makes it clear that local authorities have a duty to step in and ensure that the needs of people continue to be met if their care provider becomes unable to carry on providing care because of business failure, no matter what type of care or support they are receiving. Local authorities have a responsibility towards all people receiving care regardless of whether they pay for their care themselves, the local authority pays for it, or whether it is funded in any other way.

In these circumstances, the local authority must take steps to ensure that the person does not experience a gap in their support or care they need as a result of the provider failing. This policy is intended to take all reasonable measures to maintain the quality of services and to prevent provider closure.

### 3 Principles of the Policy

Ensuring the quality of services is central to our strategic approach to commissioning. The aim is to have a diverse range of high quality services in Lancashire that contribute to improving and maintaining the health and well-being and quality of life for the people using them. The focus is on the outcomes for all people using the services, not only for those people who LCC have arranged services, but also for 'self-funders'

There are six overarching principles that underpin this policy and procedure and these are:

Transparency	Clear and pre-determined performance measures and interventions
Consistency	A uniform approach across different types of providers and locations
Proactivity	Thresholds for intervention that identify underperformance at an early stage so that it can be swiftly addressed
Proportionality	Intervention is related to risk and appropriate to the local circumstances
Focused On Recovery	Initial interventions focus on recovery and include action to address the root causes of issues
Developmental Approach	Recognition that mistakes happen and that everyone should have the chance to learn from them and to change in order to prevent reoccurrence.



## 4 Definition of Poor Performance

For the purposes of this policy, a provider is deemed to be performing poorly if:

The provider is not providing a good quality of service to the people using it and/or  
It is placing the health, well-being and safety of service users at risk.

Poor performance can be categorised under the following headings:

- Low risk
- Moderate risk
- High risk
- Extreme risk

There are no positive designations of performance beyond Performing as the focus of this policy is on unacceptable levels of performance.

A high level diagram of the Escalation Plan is at [appendix1](#)

### Indications of Poor Performance

Concerns about the performance of a service could arise through a number of activities; as a result of a single incident, or through concerns raised over a period of time. In all cases the aim of any intervention is to minimise risks to the safety, health and well-being of service users, and to work with contracted services to support immediate and rapid improvements.

The following sources of information could be indications of poor performance:

#### Information from CQC:

- Statutory requirements made on a service
- National Standards judged not be met
- Formal enforcement actions being taken

#### Information arising from investigations of complaints, concerns, and safeguarding referrals:

- Increase in volume
- Emerging patterns or trends in the nature of issues being raised
- Issues where outcomes have not been fully resolved or are inconclusive – for example: where people have retracted allegations; where there is a lack of evidence to substantiate or refute allegations
- Cases where service providers do not co-operate with investigations
- Outcomes where it is evident that there has been a risk to the safety, health and well-being of service user(s)

Information through Contract Management Teams monitoring incoming intelligence regarding a provider and building a provider profile and risk profile:

Incoming intelligence may be in a structured or unstructured format and may include the following

- the return of monthly/quarterly/ six monthly/annual key performance indicators  
other monitoring returns required from the provider
- complaints received by LCC
- Professional Observation Checklist (for establishments) [appendix2](#)

General:

High staff turnover and/or frequent changes in management in line with market specific thresholds

Enforcement actions taken by any regulatory body

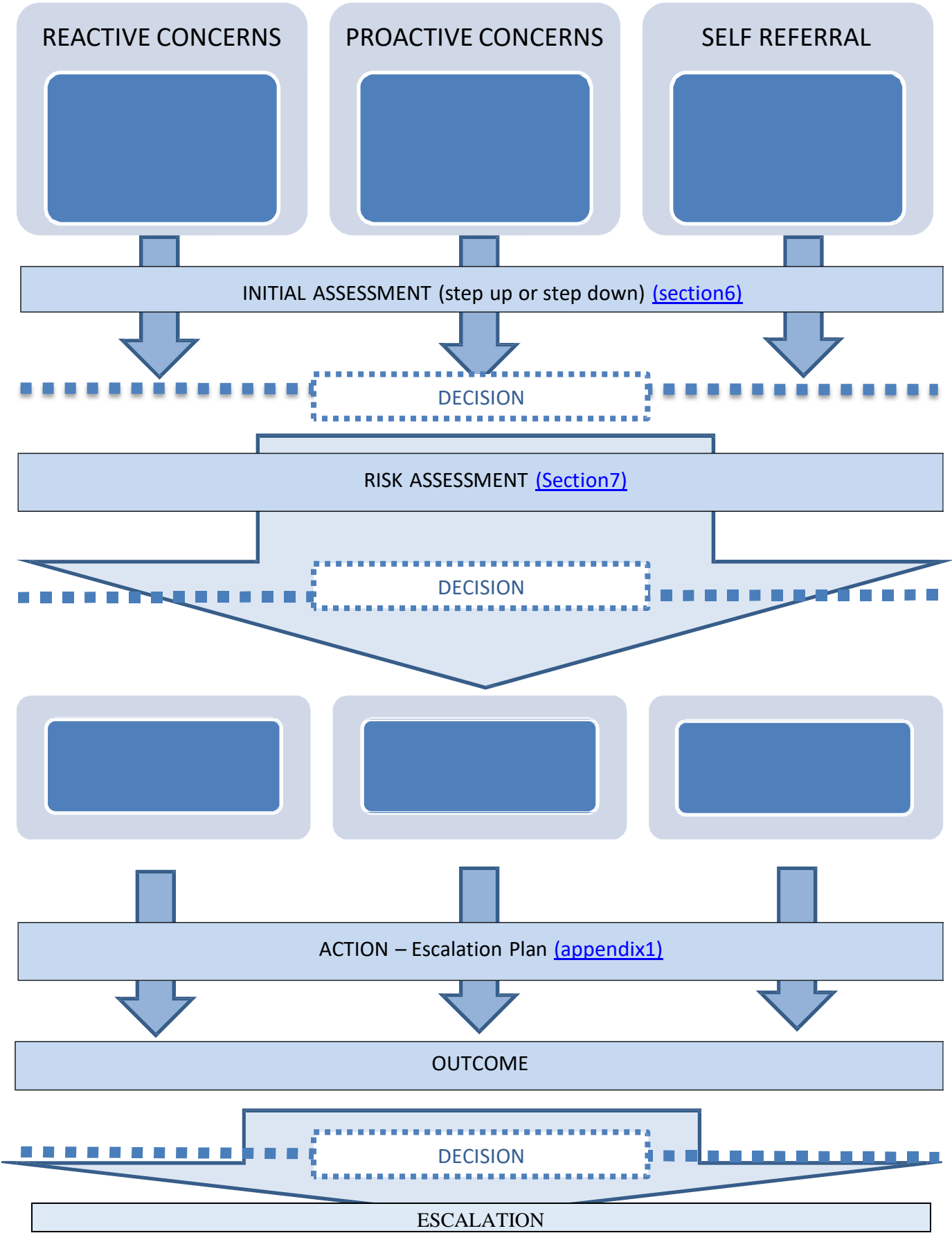
Loss of formal accreditation from a recognised body i.e.: Investors in People, RDB, ISO

Radical changes in service design, delivery or usage.

Contractual obligations not being met - service volume, contract standards or service specifications

Service outcomes differ from other similar local services

# 5 The Managing Service Provider Performance Process



## 6 Initial Assessment

The purpose of an initial assessment is to determine whether the concerns that have been reported warrant further action.

Initial assessment should be undertaken by a Contract Monitoring Officer or Contract Assurance Officer from the Contracts or Health and Residential Team and should be carried out to determine if there is evidence of poor performance exists and whether it requires action to be taken at a particular point, for example:

- a) As part of a scheduled contract review, or
- b) As part of Contract Performance Meetings, or
- c) In response to concerns being expressed, or
- d) At any other time the Contract Officer receives information that may indicate performance concerns.

All cases should be treated individually and objectively, and be based on all of the available evidence. There are four possible outcomes from an initial assessment exercise:

1. The extent of the poor performance is not sufficient to warrant implementing poor performance procedures.
2. The extent of the poor performance is not sufficient to warrant implementing poor performance procedures but the situation should be monitored through continued monitoring of monthly and quarterly provider returns and or Contracts Performance Management Meetings and or included in the next Contract Review meeting with the provider, depending on the Service Provider type and contractual requirements.
3. Should the Initial Assessment have been inconclusive further discussions with other Professionals will be undertaken as required, this could be through RADAR meetings.
4. Where the extent of the poor performance or quality is sufficient to warrant implementing poor performance and quality procedures. A template for Initial Assessment of Concerns can be found at [appendix3](#)

## 7 Risk Assessment

The purpose of the risk assessment is to determine the level of risk that service users are exposed to.

The policy sets out a holistic risk assessment tool (appendix5) to assess the risk of harm through poor care. Using the tool can assist in making decisions about any action required to address poor performance and in developing action plans to develop specific areas of poor performance.

Risk assessments focus on the impact on service users and the likelihood of the incident occurring again. The table at appendix4 shows the ranges of impact and likelihood judgments that can be made using the risk assessment tool.

The tool may assist in making decisions about any action required to address poor standards of care. It should be used to assess the level of risk for a sample group of individual service users and whether any risk identified may affect other vulnerable service users within the same care setting.

## 8 Determining Action To Be Taken

The Contracts Team is responsible for communicating concerns about contracted services to partner agencies so that an appropriate course of action can be determined in each case. Decisions about actions to be taken will be made on a case-by-case risk assessment basis and will take account of any related actions already being taken through the LCC Complaints Procedures and/or Safeguarding Adults Procedures.

### Managing Service Provider performance

Following the flow chart for managing Service Provider performance in section 5 the following may be required to reach a decision about what action needs to be taken and should be coordinated by the Contracts Team:

- a) Seek further information about the service from internal staff, eg: Social Care Managers
- b) Request service provider to investigate/respond to the issues and provide further information
- c) Request further information and views from other commissioning agencies about the service and the situation (CCG, NHS Commissioning Support Unit or other Local Authorities etc.)
- d) Seek advice and information from regulators e.g. Fire, Environmental Health, CQC, Police
- e) Undertake a monitoring or investigative visit to the service – this should be conducted by a Contract Officer
- f) Carry out unscheduled reviews of service users (Quality Improvement Team, Learning Disability & Autism worker or Mental Health Worker), seeking their views and those of their representatives

### Decisionmaking

The decision to take action will be made based on the risk assessment by the Contracts/Health and Residential Team. The options open to them at this stage include:

- Monitor the situation via routine monitoring arrangements and review within specific timescale. Increase the frequency of monitoring activity and Contract Review Meetings. (Specific procedures will be maintained for enhanced monitoring.)
- Review the risk rating of the Contract
- Provide advice and information to the service to facilitate improvements.
- Arrange a Level 1 Quality and Performance Improvement Planning (Level 1 QPIP) meeting, a Level 2 Quality and Performance Improvement Planning (Level 2 QPIP) meeting or a Professionals meeting with involved agencies

LCC will develop and maintain specific procedures for the relevant Quality and Performance Improvement Meetings.

### Level 1 and Level 2 Quality and Performance Improvement Planning

Arranging a Level 1 or Level 2 QPIP is appropriate when more robust action is required to address more serious concerns with performance and maybe linked to the risk assessment score. The options open to a Level 1 and 2 QPIP include:

- Request an Action Plan from the Service stating how they intend to address the issues and their timescales for implementation.

Re-assessment of need of specific service user(s) - where issues relate to the suitability of the service for an individual(s)

Request the removal of specific staff members from direct contact with service users – as per Contract. Could be used in cases of suspected abuse, or misconduct. And report to professional body where appropriate.

Temporary suspension of commissioning new placements – pending investigation and/or improvements (Please refer to suspension policy)

Arrange alternative services for existing service users. See Section 10 below for further information. Cease commissioning new placements to facilitate a planned termination of the contract with the service provider.

Validation visit

Issuing a warning letter or Default Notice to the provider

Renegotiation of contract within the contract terms available

Termination of Contract

Decommissioning

Lancashire County Council will develop and maintain specific procedures for Service Provider Quality and Performance Improvement Meetings.

Actions taken will:

Be timely and proportionate to the perceived level of risk to the health, safety and well-being of service users. Generally, the higher the risks, the more immediate and substantial the response will need to be.

Reflect the seriousness of the issues, for example, concerns relating to the quality of care will be more serious than administrative problems such as late submission of routine monitoring information;

Consider the extent of the perceived risks – is the service as a whole at risk or do the issues relate to an individual?

Consider any recent changes that have taken place within the Provider business and how these have contributed;

Take into account the full range of monitoring information held about the service;

Provide opportunity for a full investigation into the issues raised before final conclusions are drawn and actions taken.

Consider if the terms of a Contract or Service Level Agreement have been breached;

Consider the relationship with the service provider and adopt a proportionate response – the response to a high quality provider with few examples of poor performance could be different to the response to a poor provider with an evidence-based history of poor performance;

Provide opportunity for the contracted service to respond to the issues raised and take their response into account;

Take into account the ongoing support needs and wishes of all of the people using the service.

The following table shows actions that may be appropriate at differing levels of risk.

Screening	Joint Risk Assessment Judgment	Possible corrective / remedial actions
Performing  (Level 1 QPIP's)	Low	Monitor the situation via routine monitoring arrangements and review within specific timescale.
		Increase the frequency of monitoring activity and Contract Review Meetings
		Review the risk rating of the Contract
		Provide advice and information to the Service to facilitate improvements.
Under-performing  (Level 2 QPIPs)	Moderate	Request an Improvement/Action Plan from the Service stating how they intend to address the issues and their timescales for implementation. See Section 9 below for further information on Improvement/Action Plans.
		Re-assessment of need of specific service user(s) - where issues relate to the suitability of the service for an individual(s)
	High	Request the removal of specific staff members from direct contact with service users – as per Contract. Could be used in cases of suspected abuse, or misconduct.
		If the Service is a Care Home, consider changing the fee band or quality incentive to reflect changes in circumstances, for example, loss of IIP Accreditation
Serious Concerns	Extreme	Suspension of commissioning new placements – pending investigation and/or improvements (Policy/Procedure for Suspension)
		Arrange alternative services for existing service users. See Section 10
		Cease commissioning new placements to facilitate a planned termination of the contract with the service provider. See Section 10 below for further information.
		Validation visit
		Issuing a warning letter to the Service Provider
		Issue Default Notice to the Service Provider
		Renegotiation of Contract
		Termination of Contract
		Decommissioning

Process charts showing decisions and actions can be found at Appendix 6.



## 9 Improvement/Action Plans

Improvement/Action Plans are used to support a developmental approach to managing poor performance, as opposed to a punitive one. A developmental approach recognises that mistakes happen and that everyone should have the chance to learn from them and to change in order to prevent reoccurrence.

When an Improvement/Action Plan is required, it should be developed and agreed in partnership with the Service. Where there is support being provided by CCG staff, any improvement/action plans in place to support improvement will be included in the Council's improvement/action plan and vice versa.

At this time, there may be a voluntary agreement to limit new placements (suspension) with the service until agreed changes have been implemented or shown to have effectively resolved the original problem(s). Improvement/Action Plans will be monitored and reviewed. Once the risk has been removed or returned to an appropriate limit or low level, return to standard contract monitoring.

An Improvement/Action Plan template be found at Appendix7

## 10 Termination of Contract

LCC's Legal Services should be involved where potential contract termination is being sought.

A developmental approach may not always achieve the required improvements and concerns about performance may continue. If satisfactory performance is not re-established, if problems escalate or if further concerns arise it may become necessary to consider termination of a contract.

Improvement/Action Plans will provide an audit trail demonstrating that reasonable time and support has been given to enable providers to improve performance and that this has not been achieved.

Where evidence demonstrates that the provider cannot provide services at expected standards and as a result may prejudice the health, safety or wellbeing of a service user; or where evidence demonstrates that the provider cannot comply with, and is in breach of the terms and conditions of their contract with LCC then and it will be necessary to consider termination of a contract. The terms of the Contracts set out the mechanisms for this.

The decision to terminate the contract must be taken by the Head of Service in consultation with Legal Services.

Should the CCG/CSU terminate their contract with the service provider, this does not lead to automatic termination by LCC, the specific Contract must be referred to and process for termination must have been followed.

Termination may create the need to arrange alternative services for existing service users, possibly at short notice. The disruption this creates must be balanced against the local authority duty of care to the people it supports.

LCC will develop and maintain specific procedures for the termination of a contract and the moving of service users, including those detailed within those agreements entered into between LCC and its Service Providers. There may be occasions where there is a joint approach across the Authority and Health. Refer to the LCC Managing Provider Failure Policy and/or NHSE ManagingCareHomeClosures and associated management checklist

## Appendix 1 Escalation Plan

Level 0 outside the scope of this procedure:

individual safeguarding cases – managed through safeguarding procedures

minor concerns - managed through action plan from provider, improvements confirmed via monitoring

Level 1 Quality and Performance Improvement Planning Meetings

Important concerns uncovered, provider asked to attend meeting

Chair summarises concerns

Provider agrees to produce Level 1 Quality and Performance Improvement Plan covering urgent actions, within agreed timeframe.

### Outcome of Level 1 and Quality and Performance Improvement Plan

- Further meetings and feedback show good progress on all urgent actions and start on developmental actions
- No further Action required under procedure

or

Chair requires further monitoring at level 0

- Meetings show little progress on urgent actions

or

- Provider called in again because of further concerns identified within 12 Months

Level 2 Quality and Performance Improvement Planning Meetings

- Usually held as a result of failure to improve at Stage 1
- Might also be called because CQC has issued warning or compliance letter
- Might also be called because investigation of safeguarding issues uncovers very serious concerns
- Might also be called because of serious concerns made by whistle blower or partner agency  
(Service Provider Senior Manager to respond to request to call meeting within 48 hours)
- Provider asked to attend meeting, Chair summarises serious concerns
- Provider agrees to produce Level 2 Quality and Performance Improvement Plan which addresses urgent actions (submitted within 1 week, requires improvements within 2-4).

### Outcome of Level 2 Quality and Performance Improvement Plan

- Action Plan produced, fast progress made on all urgent actions
- De-escalate concerns

Either

- End process or
- Continue monitoring over agreed

- Action Plan and further meetings show little progress on urgent actions or
- Provider back again because sustainable improvement not maintained and limited chance of improvement

Either

- Provider decides to close, or
- Escalate to Level 3

Level 3 Decommissioning of Service

Appendix 2 Care Home Provider - Professional Observation Checklist

Name of Care Home provider:	
Name and title of Observer	
Date of visit:	
Purpose of visit:	

Please complete this form after every visit and return to: [ContractMgmt.Care@lancashire.gov.uk](mailto:ContractMgmt.Care@lancashire.gov.uk)

Prompts	Yes	No	Not obs	Comments
<b>Environment</b>				
Did the home smell pleasant?				
Was the home tidy and in good order?				
Did the home/equipment appear to be clean?				
Did you see a good standard of food & drinks?				
<b>Resident(s) if seen</b>				
Did you see the resident you were reviewing?				
Was the resident(s) dressed appropriately and in clear clothing?				
Did the resident(s) appear well cared for e.g. hair combed, clean finger nails, positioned comfortably?				
<b>Resident's own room if seen</b>				
Was the identified equipment (from care plans) in place i.e. profile bed, mattress, sensors, call bell, hoist?				
Was the room 'clean' and tidy?				
<b>Staff</b>				
Did there appear to be enough staff on duty?				
Were the staff polite and courteous?				
Did the staff treat the residents with dignity and respect?				
Were the staff professional in their attitude and approach towards each other, residents and visitors?				
Did you see evidence of good infection control, health and safety, use of equipment?				
<b>Care plans/ Support plans</b>				
Were the care files up to date and Information to access?				
Do you have any medication concerns? <b>if appropriate</b>				
If 'No' to any questions did you inform the manager of the service?				
Did you agree any actions and if so 'what' and by 'when'?				
Any other comments;				

## Appendix 3 Initial Assessment Of Concerns

Criteria		Assessment	Score
1	What is the nature of the concern?		
2	How many people does the concern affect?	All staff and service users	5
		A number of service users	4
		A single service user	3
		A number of staff	2
		A single staff member	1
3	How long has it been since the service was last inspected by CQC or regulator?	Never/ Don't know	5
		More than 2 years	4
		Within the last 2 years	3
		Within the last year	2
		Within the last few months	1
4	How long has it been since the service was last subject to a monitoring visit?	Never/ Don't know	5
		More than 2 years	4
		Within the last 2 years	3
		Within the last year	2
		Within the last few months	1
5	Have there been previous isolated incidents?	4 or more in the last 12 months	5
		No more than 3 in the last 6 months	4
		No more than 3 in the last 12 months	3
		None in the last 6 months	2
		None in the last 12 months	1
6	Is there a history of underperformance?	Judged to be underperforming in the last 6	5
		Judged to be underperforming at least twice in the last 12 months	4
		Not judged to be underperforming in the last year	3
		Not judged to be underperforming in the last 2 years	2
		No underperformance	1
7	Is there a history of serious concerns about the service provider?	Judged to be serious concerns in the last 6	5
		Judged to be serious concerns at least twice in the last 12 months	4
		Not judged to be serious concerns in the last year	3
		Not judged to be underperforming in the last 2 years	2
		No underperformance	1

8	Is there any known concern about the service provider?	Significant public or internal <sup>1</sup> concern	5
		Some public or internal concern	4
		A little public concern	3
		A little internal concern	2
		None	1

9	What would be the impact of doing nothing at this stage?	Possible death of or injury to a service user	5
		Threat to wellbeing of a group of service users or staff.	4
		Threat to wellbeing of single service user or	3
		Organisation reputational risk.	2
		Little or no impact.	1

---

<sup>1</sup> An internal concern could be a whistle-blower from the Service Provider or self-referral by the Service Provider

## Appendix 4 Risk Assessment Tool

### Step 1

Using the risk grading tool below identify the impact of the care issues for the individual(s) and the likelihood of this

Impact on Service User	
Low	One-off issue, unlikely to have any long term affect on service user. No harm/injury or no intervention required/near miss
Minor	Any incident that required extra observation or minor treatment and caused harm to or caused by one or more Service Users or adjustments to the care has minimised the impact on the service user.
Moderate	Any Service User incident that resulted in a limited increase in support or treatment and which cause significant but not permanent harm to or by one or more service users.
High	Impact on the individual service user that requires urgent review of care and treatment or that appears to have resulted in permanent harm to or caused by one or more service users
Very High	Impact on the service user who requires immediate review of care and treatment or death

Likelihood of Reoccurrence	
Rare	One-off issue, unlikely to re-occur. Risk management and control measures in place
Unlikely	Low risk of re-occurrence, control measures in place.
Possible	Moderate risk of re-occurrence, limited risk management and control measures in place.
Likely	High risk of re-occurrence, risk management and controls measures do not mitigate risk to individual
Almost Certain	Very high risk of re-occurrence. No risk management or controls in place. Evidence of poor practice.

Using the risk grading tool below identify the impact of care issues on other services users and the likelihood of the potential impact

Impact on Other Service Users	
Low	Not expected to affect other service users
Minor	May have a small impact on other service users but where adjustments to their care could minimise the impact
Moderate	Small risk that care issues will have an impact on other service users and result in a limited increase in support or treatment or which could cause significant but not permanent harm
High	High risk that care issues will have an impact on other service users and could result in permanent harm
Very High	Very high risk that care issues will have an impact on other service users and could cause death

Likelihood of Potential Impact on other Service Users	
Rare	One-off issue, unlikely to re-occur. Risk management and control measures in place
Unlikely	Low risk of re-occurrence, control measures in place.
Possible	Moderate risk of re-occurrence, limited risk management and control measures in place.
Likely	High risk of re-occurrence, Risk management and controls measures do not mitigate risk to individual
Almost Certain	Very high risk of re-occurrence. No risk management or controls in place. Evidence of poor practice.



Once the impact for both Service User and other Service Users, and the likelihood of the reoccurrence and potential impact on other Service Users has been noted, use the following matrix to identify the level of risk.

		Likelihood				
		Rare 1	Unlikely 2	Possible 3	Likely 4	Almost Certain 5
Impact	Low 1	Low 1	Low 2	Low 3	Moderate 4	Moderate 5
	Minor 2	Low 2	Moderate 4	Moderate 6	High Risk 8	High Risk 10
	Moderate 3	Low 3	Moderate 6	High Risk 9	High Risk 12	Extreme risk 15
	Major 4	Moderate 4	High Risk 8	High Risk 12	Extreme risk 16	Extreme risk 20
	Very High 5	Moderate 5	High Risk 10	Extreme Risk 15	Extreme risk 20	Extreme risk 25

	1-3	Low risk
	4-6	Moderate risk
	8-12	High risk
	15-25	Extreme risk

Use the Holistic Risk Assessment tool [appendix6](#) to plot the results.

Step 2

Ensure any immediate action is taken to address any immediate high or extreme risks for the individual(s) service user(s).

Step 3

Review and collate the sample group assessments from step 1. Identify below any mitigating factors that may reduce the levels of risk

Mitigating Factors that may reduce the risk (consider management, staffing, providers history of working with outside agencies, sustainability)	Comment

Continue on separate sheet if required

Please record any service user/care worker views on their care and treatment.

Step 4

Consider collated assessments and any mitigating factors. Assess overall level of risk and any remedial action required.

**ACTION PLAN**

Risk Level	Insert Tick	Action
Low		Continue with standard monitoring and review by Local Authority
Moderate		Service provider develops and implements action plan. Increased monitoring and support by Local Authority
High		Service provider develops and implements Improvement/ Action plan, which is to be agreed by LCC. Increased monitoring and support by LCC. Consider specific measures to manage service users safety in line with the Escalation plan (appendix 1) e.g. managing as institutional safeguarding adults referral; involving regulators meeting with residents and families; alerting primary care; suspension of placements.
Extreme Risk		Service provider develops and implements action plan. Increased monitoring and support by LCC. Apply specific measures to manage Service User safety in line with the Escalation Plan procedure for unplanned or potential care home or agency closure e.g. in addition to action for “high risk”; planning for alternative care.

Form Completed by:	
Date, time and method of feedback to providers:	
Designation:	
Organisation:	
Telephone:	
E-mail Address:	
Date:	
Signature:	

## Appendix 5 Holistic Risk Assessment Tool<sup>2</sup>

			A	B	C	D	E	F	G
	Domain	Suggested <sup>3</sup> Responsibilities for populating the Tool	Care Issues Identified (if no issues identified leave blank)	Impact on Service user	Potential Likelihood of re-occurrence	Overall Risk Grading for service user	Impact on other Service Users	Potential of Likelihood of re-occurrence for other Service Users	Overall Risk Grading for Other Service Users
1.	Behaviour	QI or SES SW/SCSW							
2.	Cognition								
3.	Psychological and Emotional								
4.	Communication								
5.	Mobility	QI or SES SW/SCSO							
6.	Nutrition Food – Drink	Health							
7.	Continence	Health							
8.	Skin including Tissue Viability	Health							
9.	Breathing	Health							
10.	Drug therapies and medication including symptom control	Health							
11.	Altered states of consciousness	Health							
12.	Pre admission assessment process	Contracts							

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<sup>2</sup> To be completed as appropriate depending on the type of residential home or community care service.

<sup>3</sup> Suggested responsibility may need to be adjusted depending on Service Provider type, whether residential home or community care service

	Domain	Suggested Responsibilities for populating the Tool	A Care Issues Identified (if no issues identified leave blank)	B Impact on Service user	C Potential Likelihood of re-occurrence	D Overall Risk Grading for service user	E Impact on other Service Users	F Potential of Likelihood of re-occurrence for other Service Users	G Overall Risk Grading for Other Service Users
13.	End of Life Care	Heath							
14.	Infection Prevention Control	IPC							
15.	Safeguarding	SES							
16.	Mental Capacity Act	Contracts, Safeguarding							
17.	Deprivation of Liberty Safeguards	Contracts, Safeguarding							
18.	Record Keeping	Contracts							
19.	Complaints Management	Contracts							
20.	Access and referral to primary care	Contract							
21.	Governance and Management	Contracts							
22.	Therapeutic Activities including Social Activity	Contracts							
23.	Staffing	Contracts							
24.	Staff Training	Contracts							
25.	Environment and Health and Safety	Contracts							
26.	Other								

## Appendix 6 Flow Charts

Chart 1 – Initial Assessment

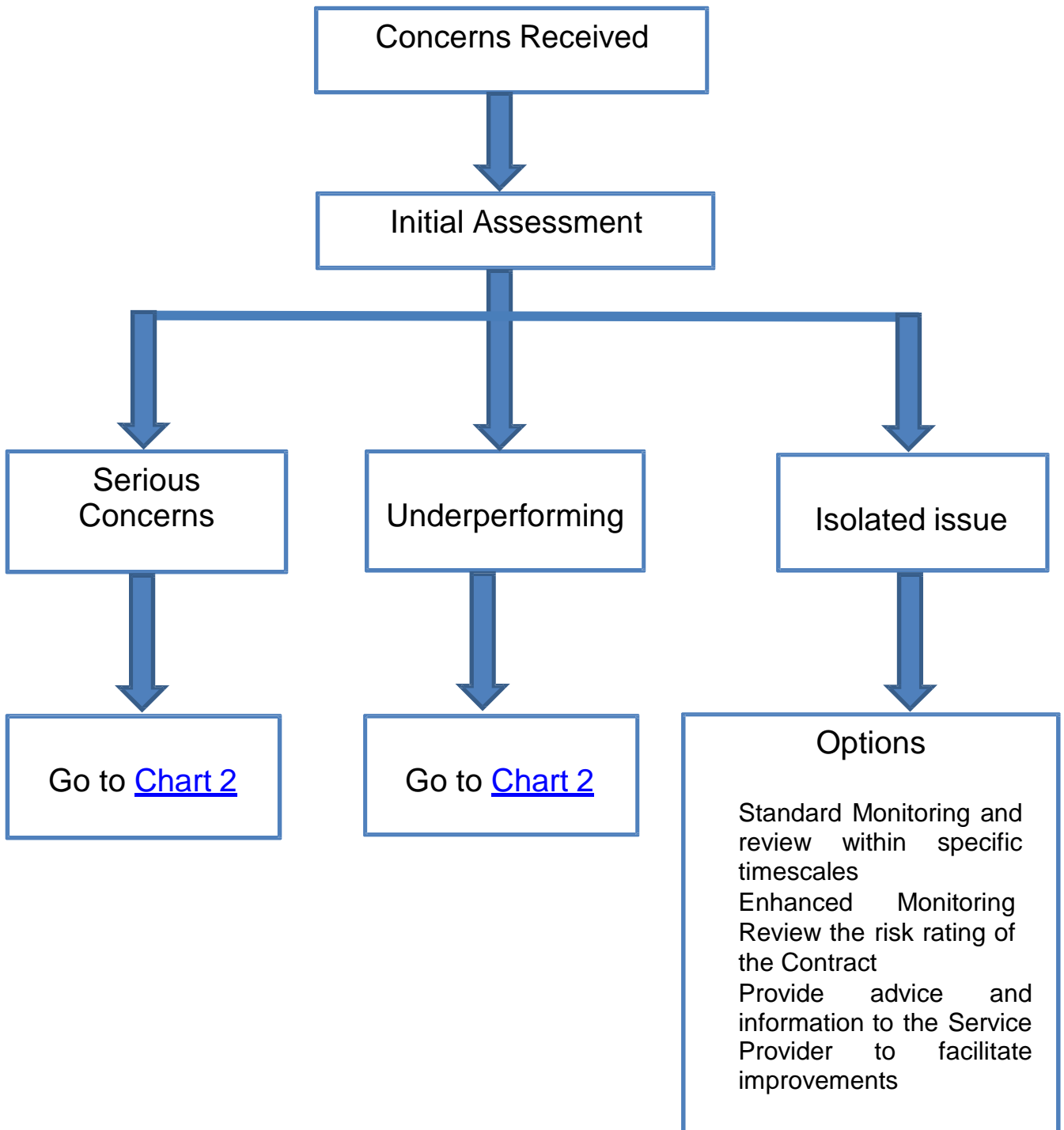


Chart 2 – Serious Concerns or Underperforming

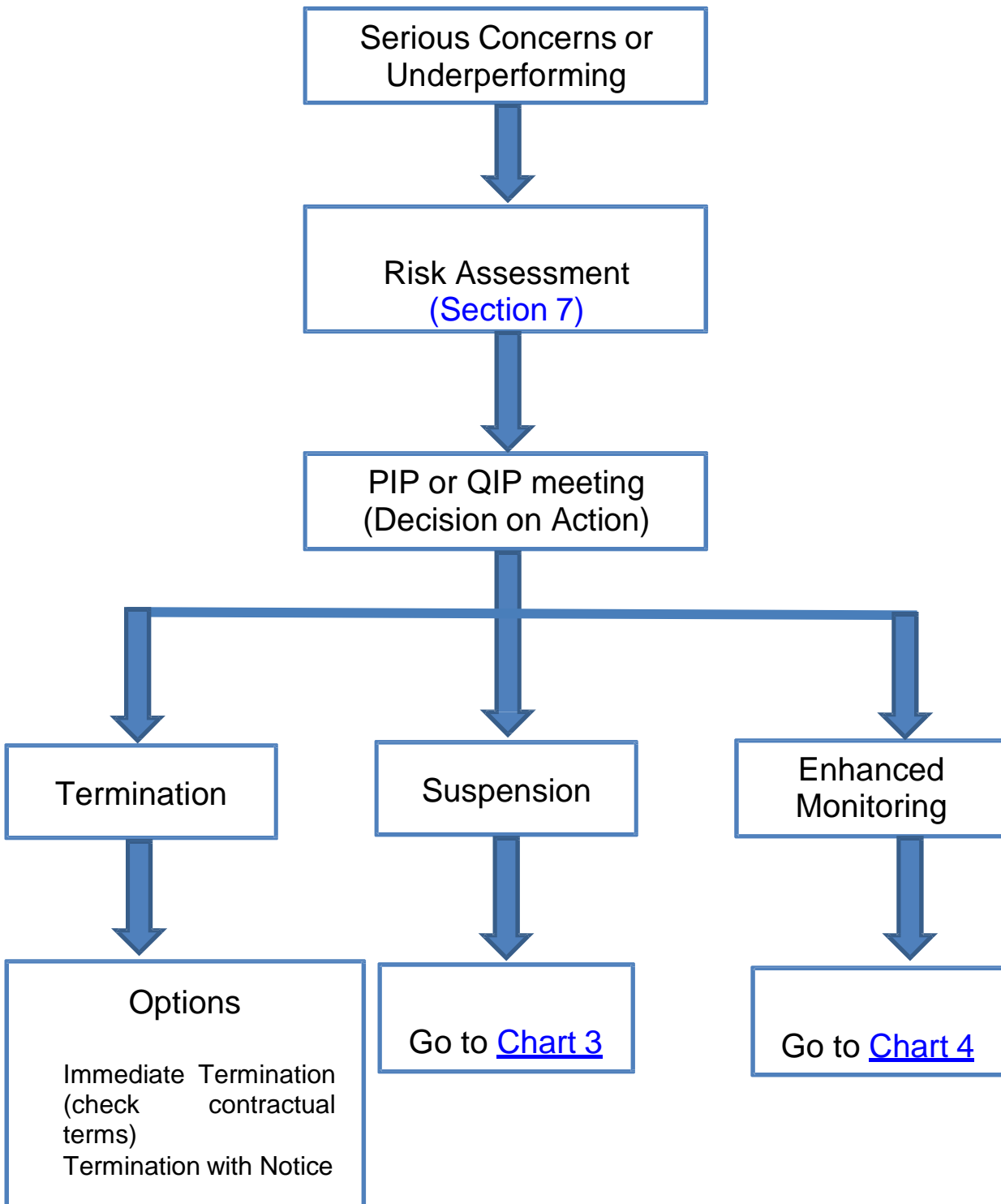




Chart 3 - Suspension

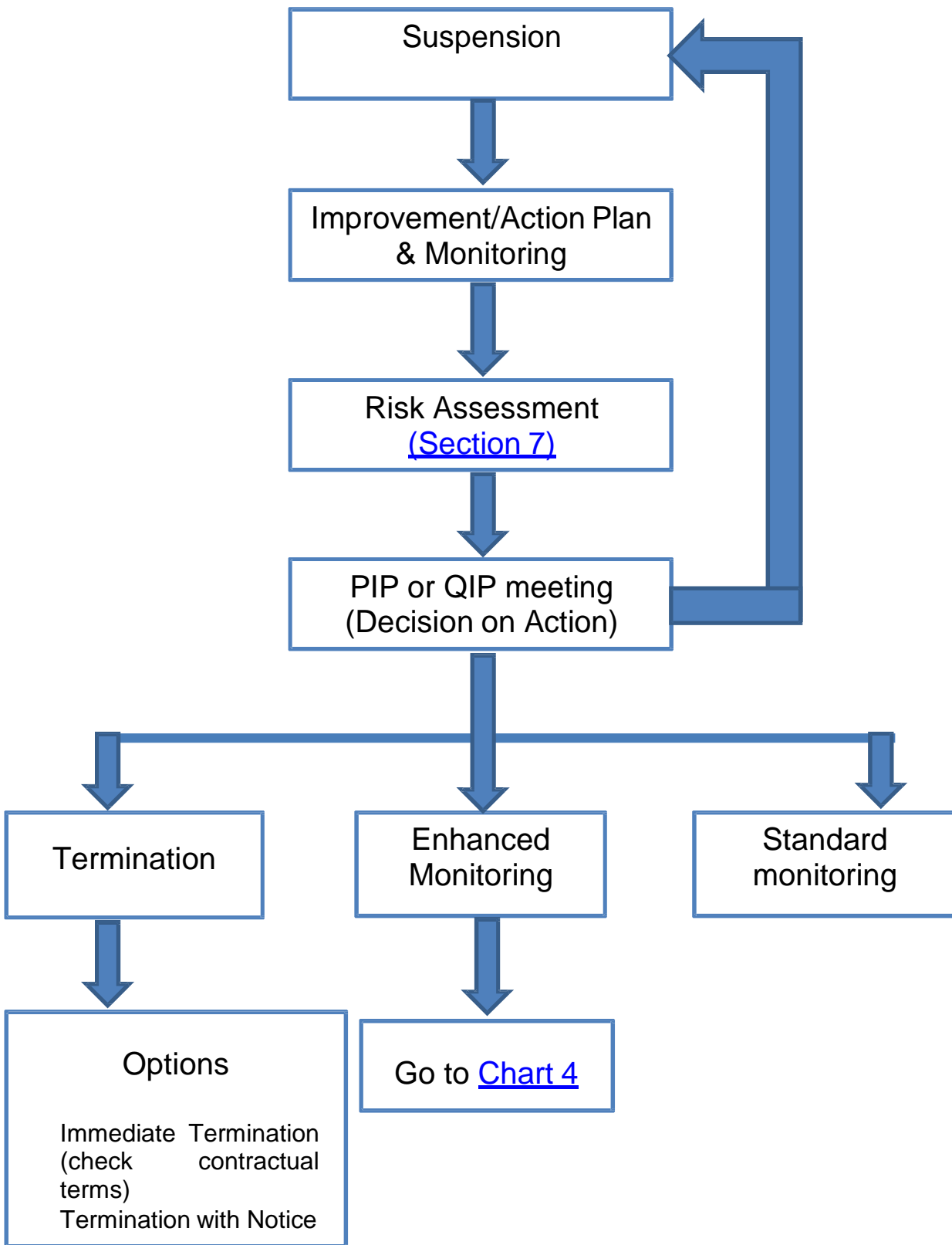
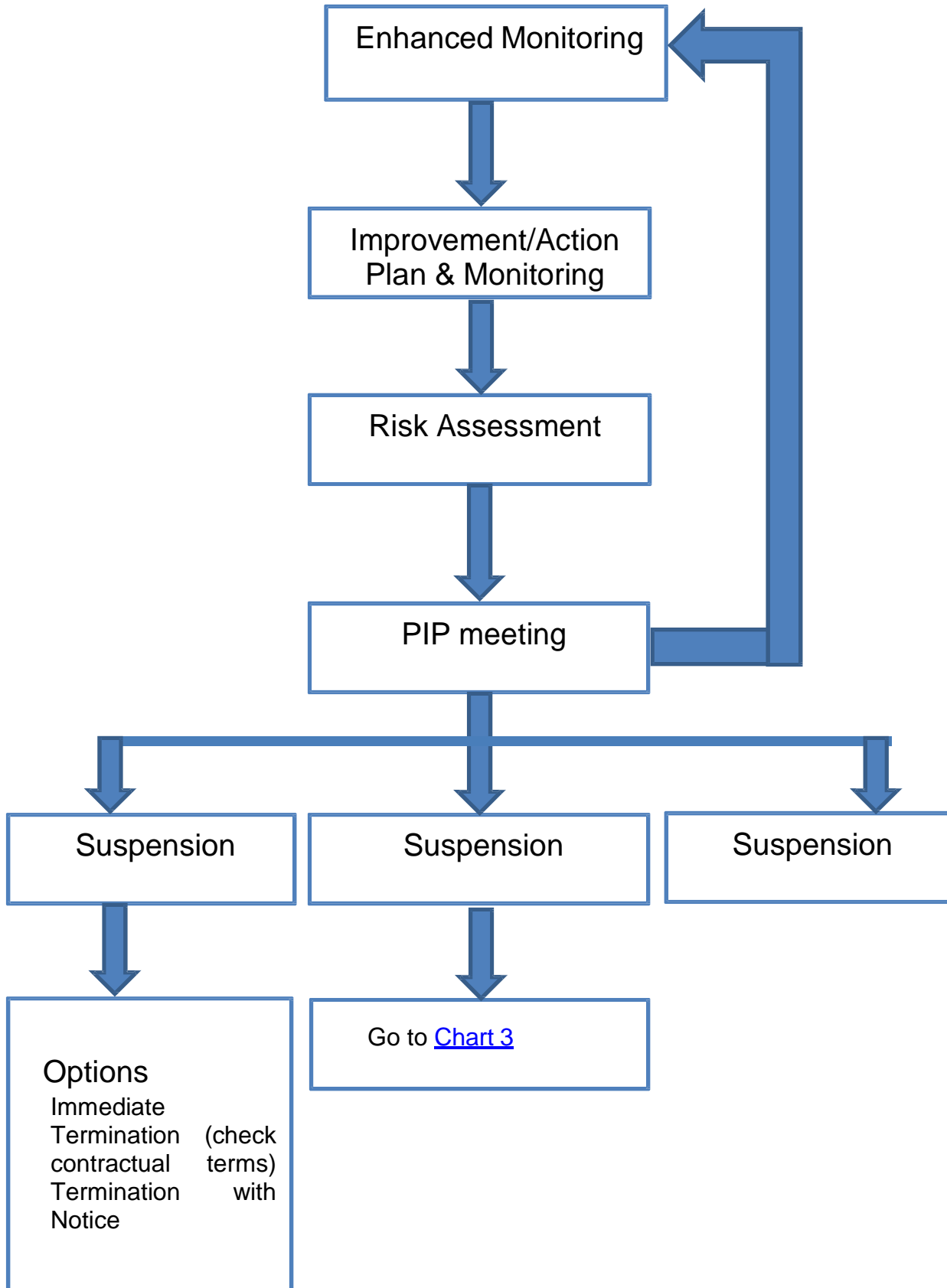


Chart 4 – Enhanced Monitoring



Appendix 7

Action Plan Template

Concern No.	Nature of Concern	Action Required	Providers response	By Whom? (Person Responsible)	By When? (Date)	Completed By Due Date? (Y/N)	Means by which compliance will be measured and Next Step (Carried Forward, or Changed & Carried Forward, or No Longer)
Source							

## Schedule 10 - Suspension Policy

### SUSPENSION OF NEW PLACEMENTS REQUEST – GUIDANCE

Author Katherine Holt  
Date 22 November 2017  
Version 2.1

Ahead of a full Suspension policy update, the suspension request form has been updated to be fit for the current needs. This note provides some assistance regarding the completion of the form.

#### Background

Suspensions are a contractual action that when applied restricts the Service Provider from taking on new packages of care or from taking in new residents to their care home. A suspension does not directly alter the service being provided to any Service User or resident already being supported by a Service Provider. Increases and decreases in care packages may be allowed during a period of suspension, however, these should always be reviewed in line with the best interests of the Service User, i.e. is it better to remain with the current provider and increase and in doing so the Service Provider is safe, or would this increase the risk and as such an alternative provider should be sought. The exception to this is where the CQC have imposed a restriction on changes to packages.

A suspension does not restrict payments that are due to a Service provider for care and support which they have delivered. However, the longer that a suspension is in place, there may be an impact on the Service Providers ongoing ability to be sustainable, should the number of Service Users or Residents reduce during the period in which a suspension is in place. As such these levels should be monitored and taken into consideration when requesting suspension be implemented and when reviewing a suspension for potential extension of removal.

#### A suspension can be in the form of:

*Voluntary* – where the Service Provider has requested a suspension. These must be lifted upon the request of a Service Provider. Paperwork must also be completed to enable a voluntary suspension to be put into place.

*LCC Imposed* – where LCC Contracts Management or the Health and Residential team have identified the need for a suspension of new placements being made.

*CQC Imposed* – This is where the CQC have taken formal action and restricted a Service Provider from accepting new packages of care. These must also be lifted in line with the CQC and cannot be kept on longer than the CQC restriction being in place.

The reason that Voluntary and CQC imposed suspensions follow the same process ensures we have an audit trail of all actions, as well as supporting the provider by reducing the contacts they may otherwise receive to take on packages of care.

#### Requesting a suspension

When there is a request for the application of a suspension, there needs to be an assessment of the level of risk that if a suspension is not applied, would have on both those new packages of care that are being taken on, as well as increasing the level of risk for those service users who are already in receipt of care and support by the Service Provider, or continually failing to meet a contractual deliverable.

For example, if a service provider is identified as having insufficient staff to provide the required level of care and support that Lancashire County Council has commissioned, a suspension may be requested to be put into place until the Service Provider has increased their staffing level and the new staff are appropriately trained for their role, at which point the suspension would be reviewed and then lifted.

Another example of when a suspension may be requested could be applied due to a Service Provider failing to submit or failing to meet on a recurrent basis their Key Performance Indicators which they are contractually required to do. This would be preceded by contract default notices and only upon failure to act following a contract default notice would a suspension request to be applied. There may not be any direct risk to a Service User or resident, however, the Service Provider is failing to fulfil their Contractual obligations

Any requests for suspensions must also include clear actions that need to be achieved for the suspension to be considered to be lifted. If there are a number of actions that are required to be completed, but potentially on the completion of some of them, the risk level has reduced enough that the suspension can be reviewed for lifting, this should take place. It is not always appropriate to require every action to be completed before a review of a suspension to remove it takes place. Proportionality MUST be taken into account.

If the suspension is a direct result of a Care Quality Commission Notice of Decision to restrict placements or to remove a registered manager, or any other NoD, clear understanding of CQCs restrictions must be understood prior to a suspension being requested.

Where the restriction of placements is taking place, a suspension on the ContrOCC record is required as this ensures that Care Navigation and Social Care workers do not attempt to arrange new placements. This must be carried out for all types of suspension, voluntary, LCC imposed and CQC restriction on placements.

Some NoD will restrict the provider from not only taking on new packages of care, but also restrict them from increasing any packages of care that are already being provided. It must be clear in the suspension report if this is the case.

Before any suspension is applied or lifted the Managing Provider Quality and Performance Policy and procedure should have been referred to. Following this, the Suspension Request Form and the 'Suspension Letter to providers Template v1 2017' should be:

- Be completed by a member of the Contract Management Team for Community Based service provision, or a member of the Health and Residential Team for Care Home settings.
- Be reviewed by the Contract Team Manager, or in their absence, the Quality Improvement and Safety Specialist – Health and Residential (due to their contractual oversight)
- Be approved by the Head of Patient Safety and Safeguarding (or in their absence the relevant Operational Head of Service within Adult Social Care)

Once a suspension has been applied or lifted there is a need for other teams and organisations to be notified. These are listed in the form and should be marked off as they are completed. The following information should be included in the notifications to those listed.

For Residential

Name of home and location of home	
Group name (if belonging to a group)	
If group, number of homes in group	
Type of home (Residential/Nursing/dual)	
Total Capacity Residential/Nursing split	
LCC funded occupancy	
Number of vacancies (if known)	
Type of needs supported (eg Dementia)	
Reason for Suspension – (Voluntary, LCC or CQC imposed, if CQC also confirm any package increase restrictions if applicable)	
Suspension Approved by	
Suspension Approved on	
Suspension lifted (include any restrictions, eg 1 new placement per week)	
Suspension lifting approved by	
Suspension lifting approved on	

For Homecare Inc. Reablement, Crisis and Roving Nights

Name of provider	
Type of Contract	
Districts services delivered in	

Lot covering (1-OP/PD, 2-LDA, 3-MH)	
Confirmation of districts/lots suspension relating to (all or specifics if only some)	
Part of group (include which) or independent?	
Current LCC funded SU numbers by district	
Number of private/other funded Service users if known	
Reason for Suspension – (Voluntary, LCC or CQC imposed, if CQC also confirm any package increase restrictions if applicable)	
Suspension Approved by	
Suspension Approved on	
Suspension lifted (include any restrictions, eg 1 new placement per week)	
Suspension lifting approved by	
Suspension lifting approved on	

**For Supported Living/Extra Care**

Name of provider	
Supported Living/Extra Care	
Districts services delivered in	
Lot covering (1-OP/PD, 2-LDA, 3-MH)	
Part of group (include which) or independent?	
Confirmation of districts/lots suspension relating to (all or specifics if only some)	
Total Number of Schemes with Provider	
Number of Schemes affected by suspension	
Current LCC funded SU numbers at suspended schemes	

Number of vacancies/voids at suspended schemes	
Reason for Suspension – (Voluntary, LCC or CQC imposed, if CQC also confirm any package increase restrictions if applicable)	
Suspension Approved by	
Suspension Approved on	
Suspension lifted (include any restrictions, eg 1 new placement per week)	
Suspension lifting approved by	
Suspension lifting approved on	

For Day time support

Name of provider	
Part of group (include which) or independent?	
Location of suspended provision	
Type of support provided (day centre etc)	
Block or spot contract	
Number of LCC funded SUs supported	
Reason for Suspension – (Voluntary or LCC)	
Suspension Approved by	
Suspension Approved on	
Suspension lifted (include any restrictions, eg 1 new placement per week)	
Suspension lifting approved by	
Suspension lifting approved on	

In addition to the above being shared internally, the Information Sharing Protocol should also be followed to notify other North West Local Authorities.

The Service Provider needs to be informed of the suspension. In some cases they will already be aware that this may be due to happen, although in other cases, they may have no previous knowledge due to the speed in which the suspension has been requested and agreed. All Service Providers should be notified of the suspension being applied or lifted by the Contract Assurance Officer, in all of the following formats



- 1) An initial telephone call to confirm the suspension has been approved and when it is in place from, or when it has been removed
- 2) By post. A suspension letter must be issued via the post to the owner/director/trustees and where appropriate copied to the registered manager. This letter must include:
  - a. The clauses of the contract that have been breached.
  - b. Clarification of actions to enable a review of the suspension to be lifted.
  - c. An initial review period
  - d. Be signed by the head of Patient Safety and Safeguarding
- 3) By email. The letter being issued by post must also be emailed (encrypted) to the provider. As well as a copy of the ISP form.

The completed suspension report along with all suspension emails and letters must be saved in the Service Providers folder in the Escalation/Suspension folder for full audit purposes.

#### Requesting to Lift a Suspension

The same process as to request the application of a suspension must be followed, ensuring that all the actions have been appropriately achieved and maintained, or the risk is of a sufficient low enough level for the suspension to be lifted.


Identify if there are any restrictions being applied at the time of the suspension being lifted, e.g. limited number of new placements each week for a period of time.

All the same notifications as when applying a suspension should be notified of the removal of a suspension.


Potential for suspension identified.  
Refer to the Managing Provider  
Quality and Performance Policy and  
Procedure



Complete Suspension Request form.  
Send completed form to Contract Team  
Manager for checking and initial Approval



Once Contract Team Manager approved,  
they will forward onto head of service PSS  
for final approval



Upon receipt of approval from HoS, contract  
assurance officer to notify

- \* provider of suspension
- \* PIM to action on ContrOCC
- \* other internal contacts as listed on the  
suspension request form
- \* ISP process to be followed

## **GUIDANCE ON SUSPENSION OF CONTRACTING ARRANGEMENTS**

### **INTRODUCTION**

The purpose of this guidance is to set out the process for the temporary suspension of commissioning arrangements with a provider.

This covers temporary arrangements only and any formal termination of services would either be via the ceasing of an individual service agreement for a particular service user or within the contract termination clause. This termination would be conveyed in writing under the terms of the contract.

### **REASONS FOR TEMPORARY SUSPENSION**

In some instances the Authority should temporarily cease making new commissions from a provider. The purpose of the suspension is to protect service users whilst allowing time for either an investigation to take place or for a provider to put right areas in which weaknesses have been highlighted. In some instances the provider may themselves request that they take no new work for an agreed period because they have identified some difficulties in providing a service.

The provider should be formally notified of the suspension arrangements and the reasons for this. If they wish to contest the decision they can use the disputes procedure set out in the contract.

Suspension does not automatically mean that the contract ceases only that there would be no new placements or commission of services and in some circumstance consideration may need to be given for existing services.

### **CRITERIA FOR SUSPENDING NEW PLACEMENTS/COMMISSIONS**

The decision to suspend a service will be the result of an assessment of the risks to current and potential service users if the service remains unchanged.

The criteria for suspension would be:

Reasonable grounds for considering a provider cannot provide services that are at the normal expected standards and as a result may materially prejudice the health, safety or wellbeing of a service user.

Reasonable grounds to consider the provider cannot comply with and are in breach of the terms and conditions of the contract that they have signed.

There is no written contract with the provider which may be for a number of reasons, one of which could be if the business is sold to new owners.

## **CRITERIA FOR ENDING SERVICES TO EXISTING SERVICE USERS**

In some instances there may be more serious risks to service users and consideration be given to transfer of work to a new provider.

The criteria would be:

Reasonable grounds for considering that to continue to use the provider would endanger the safety and leave service users vulnerable due to ineffective operation of the service.

## **PROCEDURE FOR THE SUSPENSION OF SERVICES**

When suspension of services is considered to be the most appropriate way of dealing with the concerns and issues raised in relation to the service provided, the forms in appendix 1 should be completed and the following actions should be taken:

A report to the Head of Service, Patient Safety and Safeguarding and the Head of Service with budgetary responsibility for the service, setting out the following:

- Description of the situation.
- Assessment of risks for continuing of work.
- Assessment of risk for ceasing use of provider.
- Recommendation for action including proposed timescale of the suspension.
- Be presented in circumstances where a suspension has been seriously considered but not recommended

Action by Contracts Manager (operations and delivery)

- Following liaison with the budget holder, confirmation and signing off of the suspension agreement by Head of Service, patient safety and safeguarding

Once suspension is agreed the action to be taken as follows:

Letter signed by Head of Service, PSS to provider setting out the areas where the contract has been breached and the actions required to rectify the position and including timescales if appropriate.

Information sharing protocol to be used to pass information to other local authorities.

Confirmation of suspension sent to Contracts staff, care navigation and Commissioners and any other staff who need to be aware of the position. Notification to service users, carers or next of kin if appropriate to the circumstances of suspension and to include alternative arrangements provision of the service.

Once an investigation has been completed and a review of the suspension indicates that this can be lifted then all the above need to be notified of the change in the position.

Ann Smith, Head of Service – Patient Safety and Safeguarding. Amended November 2016

**Report for the Approval of the Suspension of Services**

<b>Report</b>	<b>Summary</b>
<b>Description of Service</b>	
<b>Assessment of risks for continuing of work</b>	
<b>Assessment of risk for ceasing use of provider</b>	

Approved	Not Approved	
Head of Service, Patient Safety and Safeguarding		Date:

<b>Action List</b>	<b>Tick Box</b>	<b>Actioned By?</b>
<b>Letter signed by Head of Service, patient safety and quality improvement to provider setting out the areas where the contract has been breached and the actions required to rectify the position and including timescales if appropriate.</b>		Contract Management or Health and Residential Team
<b>Local Authorities to be informed via Information sharing protocol</b>		Contract Management or Health and Residential Team
<b>Request to provider to share information regarding out of county funded SUs</b>		Contract Management or Health and Residential Team
<b>Confirmation of suspension sent to Contract Unit staff and Commissioners and any other staff who need to be aware of the position.</b>		Contract Management or Health and Residential Team

<p><b>Confirmation of suspension sent to CQC where appropriate.</b></p>		<p>Contract Management or Health and Residential Team</p>
<p><b>Notification letter to service users, carers or next of kin if appropriate to the circumstances of suspension and to include alternative arrangements provision of the service.</b></p>		<p>Social Care, Learning Disability and Autism</p> <p>Contract Management or Health and Residential Team</p>
<p><b>Once an investigation has been completed and a review of the suspension indicates that this can be lifted then all the above need to be notified of the changes in the position</b></p>		<p>Contract Management or Health and Residential Team</p>

Schedule 11 – Provider Complaint Form

**PROVIDER COMPLAINT CASE FORM**

<b>Provider name:</b> _____	<b>Date of completion:</b> _____
<b>Patient Service / Users name:</b>  <b>Complainants Name:</b> <b>Address:</b>	
<b>Postcode:</b> <b>Telephone:</b> <b>Email:</b>	
<b>Date received:</b>	
<b>Outline of complaint:</b>	
<b>Lead organisation and lead contact:</b>	
<b>Outcome of investigation:</b> (Please circle)	<i>Upheld/ Not Upheld/ Partially Upheld/ Withdrawn</i>
<b>Action taken:</b>  Eg. Apology / Explanation / Change in procedures / Reimbursement / Resolution Meeting	
<b>Lessons learnt:</b>	



Details of investigation (please tick and fill in dates or detail as appropriate, investigation should be proportional):

<b>Details</b>	<b>Date</b>	<b>Additional Notes</b>
<b>Review of daily case notes</b>		
<b>Assessment information</b>		
<b>Care/Support Plan information</b>		
<b>Telephone records</b>		
<b>Staff interviews</b>		
<b>Further consultation with complainant / SU</b>		
<b>Referral to organisations policy, procedure and guidance</b>		
<b>Obtained expert/independent advice or information</b>		
<b>Other action [please state]</b>		

Please email completed forms to: [complaintsandfeedback@lancashire.gov.uk](mailto:complaintsandfeedback@lancashire.gov.uk)

**Completed by :**

**Designation:**

**Schedule 12 Commercially sensitive information**

N/A

**Schedule 13 - Service Provider's Standard Hourly Rate**

The standard hourly rate is the hourly charged to deliver the Service as per the Minimum Quality Standards and excludes the costs of optional extras such as meals and transport etc.

<b>Service Name:</b>	
<b>Client Group:</b>	
<b>Length of a standard Day (hours)</b>	
<b>Places Available</b>	
<b>TOTAL STANDARD HOURLY RATE</b>	
<b>TOTAL STANDARD DAILY RATE</b>	

<b>Service Name:</b>	
<b>Client Group:</b>	
<b>Length of a standard Day (hours)</b>	
<b>Places Available</b>	
<b>TOTAL STANDARD HOURLY RATE</b>	
<b>TOTAL STANDARD DAILY RATE</b>	