

SERVICE CONTRACT FOR THE PROVISION OF
LOT 1A SHORT TERM CARE AT HOME SERVICES
LOT 1B HOMECARE SERVICES
LOT 1C EXTRA CARE SERVICES
LOT 2 NON REGULATED SERVICES

between

LANCASHIRE COUNTY COUNCIL

and

PROVIDER (NAMED ON THE ACCEPTANCE FORM)

CONTENTS

CLAUSE

1	Definitions and Interpretation	4
2	Duration, Term , Commencement And Extension	11
3	Individual Service Fund.....	12
4	Consents, Provider's warranty and due diligence.....	12
5	Supply of services	14
6	Service Levels / Key Performance Indicators	14
7	Instruction Of Services.....	15
8	Service standards	16
9	Health and Safety	18
10	Exit Management	20
11	Charges and payment.....	20
12	Electronic time management system	24
13	Key personnel	25
14	Other personnel used to provide the services	25
15	Safeguarding Service users.....	26
16	TUPE.....	27
17	Reporting and meetings.....	27
	Social Value Reporting Requirements.....	27
18	Monitoring, complaints and compliments.....	28
19	Change control.....	29
20	Dispute resolution	30
21	Sub-Contracting and assignment	30
22	INDEMNITIES.....	32
23	LIMITATION OF LIABILITY	33
24	Insurance.....	34
25	Freedom of information.....	35
26	Data protection.....	36
27	Confidentiality.....	38
28	Audit.....	39
29	Intellectual property.....	40
30	Termination on notice or breach	42
31	Termination Of Services	42
32	TERMINATION: Individual Service Users	43
33	Termination on mandatory grounds	44
34	Force majeure	45
35	Prevention of bribery.....	45
36	Consequences of termination	47
37	Non-solicitation	47
38	Waiver	47
39	Culmination of remedies	48
40	Severability.....	48
41	Partnership or agency.....	48

42	Third party rights	48
43	Publicity	48
44	Notices	49
45	Entire agreement	49
46	DISCRIMINATION	49
47	Step In Rights.....	50
48	Governing law and jurisdiction	50
	Appendix A	84

SCHEDULE

SCHEDULE 1 - CORE SPECIFICATION	51
SCHEDULE 2 - LOT SPECIFICATION	52
SCHEDULE 3 – LANCASHIRE COUNTY COUNCIL POLICIES	53
SCHEDULE 4 - SERVICE LEVELS / KEY PERFORMANCE INDICATORS	55
Part 1. Service Levels	55
Included at Appendix 3 in the Invitation to Participate.	55
Part 2. Consistent failure	55
SCHEDULE 5 – NOT USED	56
SCHEDULE 6 – CONTRACT MANAGEMENT	57
SCHEDULE 7 - CHANGE CONTROL	58
SCHEDULE 8 - EXIT MANAGEMENT AND BUSINESS CONTINUITY PRINCIPLES	60
SCHEDULE 9 - COMMERCIALLY SENSITIVE INFORMATION	62
SCHEDULE 10 – SPECIMEN SERVICE CONTRACT DATA FORM	63
SCHEDULE 11 – ESCALATION	66
SCHEDULE 12 - COMPLAINTS FORM	87
SCHEDULE 13 - SUSPENSION POLICY	89

PARTIES

(1) **Lancashire County Council** whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ (**The Authority**).

(2) **Provider or Service Provider** named on the **Acceptance Form**.

individually the "party" and together the "parties".

BACKGROUND

(A) Lancashire County Council sought proposals for the provision of Lot 1a Short Term Care at Home, Lot 1b Homecare, Lot 1c Extra Care and Lot 2 Non Regulated Services. Lancashire County Council placed a Find a Tender Notice [REFERENCE] on [DATE] seeking expressions of interest from potential providers for the provision of these Services under the "Living Well at Home" Psuedo Dynamic Purchasing System ("PDPS").

(B) Following the Provider's application, Lancashire County Council has appointed the Provider as a potential provider of the Services in accordance with the PDPS.

(C) The Authority sent a Request for Services via Email or any subsequent systems in order to request the supply of Services from the Service Provider following the Call Off Procedure.

(D) Following the procedure outlined in the PDPS, the Authority has selected the Provider to provide the Services for the Lot specified by the Authority, on the terms set out in this Service Contract.

(E) The specific instructions and details of the Services to be provided and the Charges to be paid shall be included in the appropriate Request for Services / Service Contract Data Form / Care and Support Plan.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

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

Acceptance Form: means the form signed by both Parties incorporating this Agreement and the PDPS Agreement.

Achieved Service Levels: in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 4).

Agreed Purposes: the data to be processed as part of the Services.

Agreement: means this Service Contract between the Authority and the Provider together with all schedules and appendices hereto.

Allocated Worker: the relevant social care support officer appointed by the Authority in relation to any given Care and Support Plan.

Applicable Laws: means all applicable laws, statutes, regulations and codes from time to time in force.

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

Authorised Representatives: the persons respectively designated as such by the Authority and the Provider.

Authority: means Lancashire County Authority of PO Box 78, County Hall, Preston, Lancashire PR1 8XJ.

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.

Block Contracted Hours: the agreed number of hours for which the Service Provider shall be paid over the Payment Period as detailed in the Core and Lot Specification also referred to as Total Block Hours of Support.

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

Business Continuity Plan: the plan to be prepared and delivered by the Provider pursuant to Schedule 8.

Business Transition: the process by which existing Services will be recommissioned through the PDPS over a period expected to last approximately 3-6 months following the commencement date of the PDPS.

Care Navigation Service: the Authority's internal service managing the delivery of Homecare Services under this Agreement.

Care and Support Plan: the document prepared by the Authority and the Service User 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 to the Authority and details of when the Services will be provided.

Care Package: the total amount and type of Services to be provided to the Service User as detailed in the Service User's Care and Support Plan.

Care Worker: those engaged by the Service Provider in directly delivering the Services to the Service User/Individual within the Service User's/ Individual's home.

Catastrophic Failure:

any action by the 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.

there is a safeguarding issue which cannot be remedied.

Change: any change to this Agreement including to any of the Services.

Change Control Procedure: the procedure for changing this Agreement, as set out in Schedule 7.

Charges: the charges which shall become due and payable by the Authority to the Provider in respect of the Services in accordance with the provisions of clause 11 of this Agreement or as further particularised in the appropriate Service Contract Data Form, Care and Support Plan or in the Request for Services.

Commencement Date: means the date specified on the Acceptance Form or relevant Service Contract Data Form.

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

Confirmation: the submission an invoice and/or claim form or subsequent form or any other means, via email or an alternative system specified by the Authority, with details of the Services delivered by the Provider.

Consistent Failure: shall have the meaning set out in Schedule 4.

Contingency Hours: a requirement identified in the Care and Support Plan for support hours to enable the Provider to respond to and manage known and potential Service User risk, fluctuating needs and or crisis situations or to manage planned care and support.

Contingency Plan: the element of the Care and Support Plan relating to the provision of Contingency Hours.

Contract Year: a period of 12 months, commencing on the Commencement Date.

Controller, Processor, Data Subject, Joint Controller, Personal Data, Personal Data Breach, Processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation in force at the time.

Core Specification: means the minimum service requirements to be delivered by the Service Provider in each Lot.

CQC: Care Quality Commission.

Data Discloser: a party that discloses Shared Personal Data to the other party.

Data Protection Legislation: mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a part.

Default Notice: is defined in clause 5.

Dispute Resolution Procedure: the procedure set out in clause 20.

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

Emergency Duty Team: the out of office hours social work service which exists to provide an emergency service for situations that cannot wait until the resumption of normal office working hours.

ETMS: Electronic Time Management System.

Exit Management Plan: the plan to be prepared and delivered by the Provider pursuant to clause 10 and in accordance with the principles set out in Schedule 8.

Find a Tender Notice: the contract notice published on www.find-tender.service.gov.uk

Fraud: means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud the Authority.

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 Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

Frustrated Support Hours: where a Service User has cancelled an individual visit (not the whole Care and Support Plan) with less than 24 hours' notice to the Service Provider's office or where the Service User has unreasonably, at the determination of the Authority, refused or not able to gain access to the Service Provider.

Individual Service Fund (ISF): the Service User's Personal Budget (or part thereof) which they have chosen to be placed with the Service Provider under an Individual Service Fund Agreement for the provision of Services under this Agreement.

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 the Authority's, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

ISF Care and Support Plan: the Individual Service Fund Care and Support Plan developed for individual Service Users setting out the Services to be provided to that Service User under the Individual Service Fund Agreement and shall include a Care and Support Plan.

Key Personnel: those personnel identified in the Service Contract Data Form, or otherwise documented in writing by the parties, who are identified by each party as being key to the success of the implementation and/or operation of the Services as a whole.

LED: means the Law Enforcement Directive (Directive (EU) 2016/680).

Lot: means the division the Services into the following categories:

- Lot 1a Short Term Care at Home
- Lot 1b Homecare Services
- Lot 1c Extra Care Services
- Lot 2 Non Rregulated

Lot Specification: means those services to be delivered in addition to the Core Specification as relate to a specific Lot.

Management Reports: the reports to be prepared and presented by the Provider in accordance with clause 17 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 Services.

Order: means an order for Services sent by the Authority to the Provider in accordance with the Call-Off Procedure.

Payment Period: a period of 4 (four) weeks the commencement of which will be defined by the Authority and set out in a schedule to be issued to the Provider.

PDPS: means the PDPS between the Authority and the Provider together with all schedules and appendices under which this Service Contract is awarded.

Permitted Recipients: the parties to this Agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Agreement.

Personal Budget: an agreed amount of money that is allocated to an individual by the Authority following an assessment of their care and support needs. This is a statement of the amount of money needed to meet their eligible social care needs.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Premises: means the location from which the Services are, or can be, provided as set out in the Care and Support Plan or Service Contract Data Form as appropriate and as amended with the consent of the Authority.

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

Provider's Personnel: all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Provider Portal: the Authority's supplier management system.

Provider's Response the response submitted by the Provider to the Authority in response to the Authority's Request for Services for formal offers to supply it with the Services and other associated documentation.

Referral: means a request for the Provider to deliver Lot 1a Short Term Care at Home Service pursuant to the terms of these Terms and Conditions which for the avoidance of doubt is done via a telephone call or subsequent system (Electronic referral form).

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

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

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.

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

Remediation Notice: a notice served by the Authority in accordance with clause 31.

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 Provider.

Replacement Provider: any third party Provider 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.

Request for Services: the Authority's request to eligible PDPS providers to take part in a Call-off Procedure for the award of Services under this Service Contract;

Service Contract Data Form: the document at Schedule 10 and forming part of this Service Contract and supplementing this Agreement and the Core and Lot Specifications setting out the key details of the Authority's requirement for Services following the Call-Off Procedure;

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

Service Levels: the service levels to which the Services are to be provided, as set out in Clause 8 and Schedule 4.

Services: the services to be delivered by or on behalf of the Provider under this Agreement, as more particularly described in Schedule 1 and Schedule 2 (Core Specification and Lot Specification).

Service User: means any individual notified by the Authority to the Provider as requiring the Services.

Shared Personal Data: the personal data to be shared between the parties under clause 26.1 of this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) Data Subjects to include any or all of the following: staff (including volunteers, agents and temporary workers), service users, service users' family, suppliers or any other such data subjects as detailed in the main body of the Agreement and any Schedules and Appendices as appended to it.
- b) The categories of data to be processed shall be defined only insofar as they relate to the detail of the main body of the Agreement and any Schedules and Appendices as appended to it.

Short Term Care at Home Plan: the document which sets out; the needs of the Service User and how they are to be met by the Service Provider and details of when the Services will be provided.

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

Sub-Contractor: the contractors or Providers that enter into a Sub-Contract with the Provider.

Term: the period commencing on the Commencement Date and ending on the completion of the Services.

Termination Date: the date of expiry or termination of this Agreement.

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

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

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 any statement is qualified by the expression **so far as a PARTY is aware** or **to a PARTY's knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 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) PDPS Agreement;
- (c) Service Contract Data Form or Care and Support Plan;
- (d) the Core Specification and Lot Specification;
- (e) the remaining schedules to this Agreement.

COMMENCEMENT AND DURATION

2 DURATION, TERM , COMMENCEMENT AND EXTENSION

- 2.1 The Service Contract shall take effect on the Commencement Date and shall continue for the Term unless it is otherwise terminated in accordance with the provisions of these Terms and Conditions, or otherwise lawfully terminated, or on completion of the Services whichever is sooner.
- 2.2 If the Authority wishes to extend this Agreement, it shall give the Service Provider at least 6 months' written notice of such intention before the expiry of the Initial Term or extended period.
- 2.3 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 2.4 If the Authority does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and the provisions of clause 35 shall apply.
- 2.5 Upon termination or expiry of this Agreement the following provisions shall apply:
 - (a) the Authority shall no longer be entitled to submit further Requests for Services from 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 Service Users / Care and Support Plans / Service Contract Data Forms 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 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 8 shall apply
- 2.6 Should the parties fail to enter into a further Agreement within the timescale specified by the Authority (acting reasonably) the Service Users' placement / Service Contract Data Form / Care and Support Plan shall either continue or terminate with the Service Provider on such date as shall be specified by the Authority.

3 INDIVIDUAL SERVICE FUND

- 3.1 Where permitted by the Contracting Body, if a Service User takes payment of some or all of their Personal Budget via an Individual Service Fund, the Provider will manage the Individual Service Fund in accordance with the individual's ISF Care and Support Plan. The ISF governance principles set out at Schedule 15 shall apply to the management by the Provider of the Individual Service Fund and the Provider shall, unless otherwise agreed in writing, enter into a separate form of Agreement with the Contracting Body and the Service User, the content of which will reflect the ISF governance principles and deal with any other related principles at the absolute discretion of the Contracting Body.

4 CONSENTS, PROVIDER'S WARRANTY AND DUE DILIGENCE

- 4.1 The 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 Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 4.3 The 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 1.1a) 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 1.1b);
 - 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 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 Provider as at the Commencement Date, warrants and represents that:
- a) all information contained in the Provider's Application and Response to Request for Services remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Agreement; and

- b) 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 if at any time during the term of this Agreement the Service Provider is inspected by the CQC "Inadequate" or "requires improvement" and receives an overall rating by the CQC of "inadequate" or "requires improvement" against any one of the CQC's 5 key questions for the office out of which the Service Provider is operating, for the purposes of delivering Services under this Agreement (or equivalent by any successor body or system of evaluation), the Service Provider shall inform the Authority immediately and, within a timeframe to be stipulated by the Authority, share an improvement plan with the Authority.
- d) it has accurately confirmed to the Authority the names of its CQC Registered Manager(s) and the CQC Registered Office(s) from which it shall operate the Services.
- e) it has full capacity and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Agreement and that the Agreement is executed by a duly authorised representative of the Provider;
- f) in entering the Agreement, it has not committed any Fraud;
- g) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
- h) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Agreement;
- i) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- j) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property that are necessary for the performance of its obligations under the Agreement;
- k) in the 3 years prior to the date of the Agreement:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Agreement.

4.6 The 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 Provider in accordance with clause 1.1b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with

fundamentally misleading information by or on behalf of the Authority and the 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 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 shall limit or exclude the liability of the Authority for Fraud or fraudulent misrepresentation.

THE SERVICES

5 SUPPLY OF SERVICES

- 5.1 The Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of the date(s) specified in the Request for Services / Service Contract Data Form / Care and Support Plan in accordance with the provisions of this Agreement, the Core Specification and the Lot Specification.
- 5.2 In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**).
- 5.3 If the Authority serves a Default Notice on the Service Provider the Service Provider shall at its own expense correct or remedy the default or defaults specified in the Default Notice:-
- a) in accordance with the requirements of the Default Notice; and
 - b) within such time as may be specified in the Default Notice, and
 - c) shall otherwise perform the Services in accordance with the requirements of this Agreement and any relevant Service Contract Data Forms/Request for Service / Care and Support Plan.

6 SERVICE LEVELS / KEY PERFORMANCE INDICATORS

- 6.1 The Provider shall ensure that any element of the Services which is subject to a specific Service Level or Key Performance Indicator is provided in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 6.2 The Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in the Core Specification and Lot Specification.
- 6.3 In the event that any Achieved Service Level falls short of the expected service level, without prejudice to any other rights the Authority may have, the provisions of clause 30 (Termination) shall apply.

7 INSTRUCTION OF SERVICES

- 7.1 As and when the Authority requires the Service Provider to perform Services in accordance with this Agreement (having complied with the provisions of the PDPS Agreement), and in particular Schedule 2 of the PDPS Agreement the Authority will submit a Request for Services / Referral or Service Contract Data Form to the Service Provider.
- 7.2 The needs and requirements of the Service User as detailed within the Care and Support Plan or Service Contract Data Form are subject to change in accordance with the Core and Lot Specifications and, in the alternate, upon notice to the Service Provider and at the sole discretion of the Authority. Notwithstanding any changes to the Care and Support Plan or Service Contract Data Form, the Service Provider must deliver the Services to the Service User as required by the Authority in line with an amended Care and Support Plan or Service Contract Data Form. The Care and Support Plan or Service Contract Data form, will 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")
- 7.3 Where the Core or Lot Specification allows, the Service Provider may amend, so as to increase or reduce, the Services to be provided. The Service Provider, upon request from the Authority, must be able to provide justifiable reasons for the provision of increased or reduced care to the Service User and acknowledges that such provision should only be made in circumstances set out in the Core and Lot Specification. In the event that the amended 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 service provision delivered and may require an immediate reinstatement of the Services to their previously agreed levels.
- 7.4 Subject to Clause 7.5, all Care and Support Plans or Service Contract Data Forms will be sent by the Authority's systems. The aforementioned systems may change from time to time at the sole discretion of the Authority.
- 7.5 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.
- 7.6 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 or Service Contract Data Form.
- 7.7 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.

- 7.8 Pursuant to clause 7.6 and 7.7, 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.
- 7.9 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.
- 7.10 Save in an emergency, (and then subject always to Clause 7.4) 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 or Service Contract Data Form 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.
- 7.11 For the avoidance of doubt:-
- a) no Services should be provided against any form of instruction given other than in accordance with Clause 7 of this Agreement; and
 - b) this Agreement places no obligation on the Authority to procure any Services from the Service Provider.

8 SERVICE STANDARDS

- 8.1 Without prejudice to clause 7, the 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 Service Provider or contractor experienced in performing the same or similar services and will perform the Services at all times in compliance with the Authority's requirements set out in this Agreement and the Core Specification and Lot Specification appended to 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 Without limiting the general obligation set out in clause 8.1, the Provider shall (and shall procure that the Provider's Personnel shall) at all times when supplying the Services do so with all due skill, care and diligence and that the Provider's Personnel supplying the Services shall possess such qualifications, skills and experience as is necessary for the proper supply of the Services.
- 8.3 It shall be a condition of this Agreement that the substance of the Provider's policies and procedures shall comply with all Applicable Laws and legislative requirements.

- 8.4 The Provider shall at all times comply with the Service Outcomes and Performance Monitoring as set out in the Core and Lot Specifications, and where applicable shall maintain accreditation with any relevant Quality Standards authorisation body (including for the avoidance of doubt the Care Quality Commission).
- 8.5 With the exception of Services which are not regulated by the CQC, if at any time during the term of this Agreement, the Provider is inspected by the CQC and receives an overall rating by the CQC of "inadequate" or "requires improvement" or "an "inadequate" rating against any one of the CQC's five key questions for the office out of which the Provider is operating, for the purposes of delivering Services under this Agreement (or equivalent by any successor body or system of evaluation), the Provider shall inform the Authority and the Authority immediately and, within a timeframe to be stipulated by the Authority (having consulted the Authority), share an improvement plan with the Authority and the Authority. The Authority shall discuss the Provider's improvement plan with the Authority and if the Authority (at its sole discretion) is not satisfied with the Provider's response, this shall amount to a Material Breach and the Authority may suspend the award of Services to the Provider and/or the Authority may terminate this Agreement pursuant to the provisions of clause 30 of this Agreement.
- 8.6 Further, where the Provider receives notification of an inspection outcome from the CQC of either 'requires improvement' or 'inadequate' against any one of the CQC's five key questions for the office out of which the Provider is operating for the purpose of delivering Services under this Agreement as detailed in the Acceptance Form, the Authority may at its sole discretion suspend Services being commissioned via the Call Off process and schedule a Provider performance meeting with the Provider.
- 8.7 Where the Provider is failing to deliver the Services in accordance with this Agreement, the Authority may consult with the Provider and the Authority, at its sole discretion, may suspend the Provider and require the Provider to provide an improvement plan within a timeframe stipulated by the Authority. The improvement plan (to be approved by the Authority in consultation with the Authority) shall stipulate the Provider's proposals to deal with any failings or concerns of the Authority and/or the Contracting. If the Authority, having consulted with the Provider, is not satisfied with the Provider's response this shall amount to a Material Breach and the Authority may terminate this Agreement pursuant to the provisions of clause 30 of this Agreement.
- 8.8 During the period of suspension:
- a) no further Request for Services will be awarded to the Provider;
 - b) the Provider agrees to implement their improvement plan and meet the objectives contained within the same; and
 - c) payments to the Provider for the provision of ongoing services shall not cease.
- 8.9 The Provider acknowledges that suspensions may be notified to other authorities, commissioners and providers as the Authority or the Authority sees fit. Should the Provider anticipate failure to comply with the terms of the Agreement between the parties and the service standards, it may, at its discretion, approach the Authority and request for a voluntary suspension to take effect for a limited period to be agreed between the Authority and the Provider. This will be reviewed by the Authority. The 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 or the Authority sees fit. Any approval of voluntary suspension will be at the sole discretion of the Authority.

- 8.10 Further to clause 8.9 above, any voluntary suspension sought by the Provider only has effect in relation to the award of new Request for Services to the Provider and, for the avoidance of doubt, does not affect the Provider's existing Services being delivered.
- 8.11 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 appropriate Care and Support Plan or Service Contract Data Form.
- 8.12 Without prejudice to any other rights and remedies the Authority may have pursuant to this Agreement or otherwise, the Provider shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Provider's delay or failure in the performance of its obligations under this Agreement and which delay the Provider has failed to remedy following reasonable notice from the Authority.
- 8.13 The Provider shall provide the Services during the Term in accordance with this Agreement, in consideration of the mutual rights and obligations in 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 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 PDPS and this Agreement, the Service Provider must nominate a representative responsible for health and safety issues 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 Key Personnel of any health and safety hazards immediately it becomes aware of the same, which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Service Provider of any health and safety hazards it is aware of at the location at which the Services are delivered and that may affect the Service Provider in 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, any related Health and Safety Regulations and/or approved codes of practice and the Regulatory Reform (Fire Safety) Order 2005 relating to health and safety and fire safety, which may apply to those Service Users at the Premises.

- 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 shall ensure that its fire risk assessment (as required by the Regulatory Reform (Fire Safety) Order 2005) is made available to the Council on request.
- 9.8 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.
- 9.9 The Service Provider will ensure that it has a procedure in place for Service Provider Personnel to follow in the event of the Service Provider's Personnel being unable to gain access to the Service User's home, using the entry arrangements agreed and, at a time previously agreed for the delivery of service.
- 9.10 Further to clause 9.9 above, the Service Provider will ensure that Provider Personnel and managers understand their individual responsibilities in relation to the procedure and as a minimum it is expected that the Service Provider's procedure will require the following:
- a) Ensure Provider Personnel attempt to gain entry to the Service User's property using all the doors available and look through the ground level windows.
 - b) If it is discovered that the Service User is ill or can be seen in a dangerous situation the Provider Personnel should immediately contact the appropriate emergency service (police, ambulance, fire).
 - c) Check with the housing management staff (as applicable) and neighbours to ascertain whether the whereabouts of the Service User is known.
 - d) Provider Personnel to check with the Service Provider in case of a subsequent cancellation and establish if additional information is held on file and which may assist e.g. Service User telephone contact number.
 - e) Provider Personnel to check with a nominated family member/friend to ascertain if they are aware of the whereabouts of the Service User.
 - f) The Provider Personnel should keep the registered manager or immediate supervisor informed of all no entry visits and take advice including the opportunity for a return visit at a later time.
 - g) Report all Service User missed visits and incidents to the Authority Customer Access Centre, or the Authority's Emergency Duty Team outside normal office hours on 0300 123 6720.
 - h) Carefully record the date, time and all actions taken in relation to missed visits through no entry.

- 9.11 The Provider will take all reasonable measures to ensure the safety of the Service User when being transported by the Provider's staff on an activity in the community. This should include taking into account risk assessments associated with travel; and ensuring that the use of any Provider vehicle is fit for purpose (i.e. adequately maintained) and appropriately equipped to meet the needs of the Service User.

10 EXIT MANAGEMENT

- 10.1 The Provider shall, within six (6) weeks after the Commencement Date, prepare and supply a draft Exit Management Plan (which shall be consistent with the principles set out in Schedule 8 and deliver it to the Authority for its approval in a format to be determined by the Authority. Any amendments to the Exit Management Plan reasonably required by the Authority shall be made by the Provider forthwith.
- 10.2 The Exit Management Plan will be reviewed and tested by the Provider as and when required by the Authority.
- 10.3 Upon Exit, the Provider must carry out immediately all steps required by the Authority to ensure all material information and data relating to the delivery of the Services to the Service Users and all other reasonable information as required is transferred to the Authority or a Successor Provider immediately.

11 CHARGES AND PAYMENT

- 11.1 In consideration of the performance by the Provider of its obligations under the Agreement, the Authority shall pay the Charges in accordance with this clause 11 and any specific instructions included in the Request for Services / Service Contract Data Form / Care and Support Plan or agreed during Business Transition.
- 11.2 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 undisputed Confirmations accompanied by all supporting documents as required by the Agreement and payment is to be made 4 weeks in arrears.
- 11.3 For all Services provided otherwise than pursuant to an Individual Service Fund, arrangement or where otherwise directed by the Authority, payment shall be subject to completion and receipt by the Authority of a Confirmation of the Services delivered which must be provided by the Provider within 14 calendar days of the end of the Payment Period via the Authority's Provider Portal or an alternative system specified by the Authority. The Provider shall not submit an invoice. In response to a request from the Authority, the 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 In submitting a Confirmation the Provider shall be deemed to have represented to the Authority:
- 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 Provider

is otherwise entitled to payment of the Charges) and that the Charges are properly due and payable by the Authority;

b) that the Provider has included notification of adjustments applied in relation to a Service User that have been agreed with the Authority; and

c) Details of Frustrated Support Hours;

11.5 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 Provider shall notify the Authority in accordance with clause 31.6. In such circumstances, [except where a Service User is taking payment of some or all of his/her Personal Budget via an Individual Service Fund,] the Provider can claim up to 3 days of Charges pertaining to Individualised Support provided to an individual Service User following the last day of service delivery in the event that Services would have otherwise been provided.

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 will 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 20.

11.8 The Authority shall pay any amount withheld, which it has been agreed (or determined in accordance with Clause 20) 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 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. 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.

- 11.11 Changes to which Clause 11.10 refer will be notified to the Authority in such form as the Authority shall require.
- 11.12 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.
- 11.13 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.
- 11.14 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 11.11 by the Service Provider.
- 11.15 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.
- 11.16 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 20. 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.
- 11.17 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.
- 11.18 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.
- 11.19 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.

11.20 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.

11.20.1 Without prejudice to Clause 11.20, the Provider may make arrangements with a Service User to charge them for the reimbursement of mileage costs in circumstances where the Provider's Staff transport the Service User on an activity in the community. Such cost recovery by the Provider must not exceed the corresponding rate as set out within the HMRC Mileage Allowance Payments (MAPs)

11.21 Late payment of the Charges by the Authority does not permit the Service Provider to delay or suspend service.

11.22 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.

11.23 The Parties agree that as part of its budget setting process, the Authority's cabinet meets each year to agree the annual price uplift that apply to the contracts its commissions and this uplift (to be agreed at the time by the Authority's cabinet) may apply to the Charges each financial year or as determined in a Service Contract Data Form.

11.24 Without prejudice to clause 11.23, the Parties agree that during the Term of this Agreement, there may be circumstances which arise outside of the Authority's control which may result in the Authority seeking to vary the rate it pays for the Service. The Authority shall come to any such decision in accordance with the principles of equal treatment, transparency non-discrimination and proportionality.

11.25 Without prejudice to clause 11.23 and 11.24 the Authority will only consider additional increases to the Charges as a result of the following evidenced circumstances only and, in any event, only in circumstances where the Service Provider has incurred an increase of its costs due to factors entirely out of its control and manageability:

- a) Changes to the living wage or inflation resulting in the delivery of Services under the Agreement being unsustainable for the Service Provider;
- b) An increase in auto-enrolment pension contributions; and
- c) Any other evidenced circumstances or situation in the Authority's complete and sole discretion.

11.26 Prior to agreeing to any additional increase in Charges, where appropriate, the Service Provider must agree to an open book exercise to demonstrate that cost increases are due to factors outside its control and the same cannot be offset by operational efficiencies. The Authority's budgetary constraints and any such other considerations that the Authority considers are relevant may also be taken into account in assessing any rate increase request from the Service Provider.

11.27 The Authority makes no representation and offers no guarantee that any increase will be applied to the Charges following any review or assessment carried out.

- 11.28 In the event that the Service User or any third party makes payment in contribution to or in addition to the Charges without the prior written consent of the Authority, the Authority shall have to right to take action to recover any sums paid as if it were the payer. For the avoidance of doubt, this includes all rights of recovery, including set-off, as detailed in this Agreement.

12 ELECTRONIC TIME MANAGEMENT SYSTEM

- 12.1 With the exception of Lot 2, the Service Provider will be required to utilise an ETMS for monitoring and recording the delivery of the Services.
- 12.2 The Service Provider will ensure that the Authority has unrestricted access to the data recorded on the ETMS and is able to verify the delivery of Services by the Service Provider using the same. Complete details of the information to be provided by the Service Provider using the ETMS are to be agreed between the parties as soon as is practicable. In terms of minimum requirements the Authority requires the Service Provider's ETMS system to be able to do the following:
- a) Record and notify the arrival and departure time with the Service User of Care Workers engaged by the Service Provider to deliver the Services;
 - b) Record and notify the visits required to all Service Users including a scheduling tool for Care Workers;
 - c) Record data relating to Service User visits carried out outside of tolerances to be agreed with the Authority;
 - d) Provide for a system of notification and flagging for notice to be provided to the Service Provider for factors such as missed visits, cancelled visits and reasons; and
 - e) Produce reports upon data recorded and Target Service Levels agreed with the Authority.
- 12.3 The Authority may require access to the Service Provider's ETMS to check that any other reasonable requirements are met. The Authority shall comply with any reasonable restrictions which the Service Provider may stipulate relating to confidentiality or data protection. The Authority may require, the Service Provider to provide, the required information in paper form or other hard copy, rather than, or in addition to, the electronic form, and the Authority shall be entitled to make repeated requests relating to the Service Provider's ETMS until it is satisfied that the transfer of the required information from the Authority to the Service Provider is operating smoothly.
- 12.4 The parties acknowledge and agree that they will share the data arising from the information required by the Authority and produced by the Service Provider using its ETMS pursuant to this Agreement, that the Service Provider agrees that it will not show any such data to a third party without the Authority's Approval and, to the extent that any such data is owned by the Service Provider, then the Service Provider hereby grants to the Authority a non-exclusive, royalty free licence to use such data for the purpose of enabling the Authority to meet its obligations under this Agreement.

13 KEY PERSONNEL

- 13.1 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 13.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority (which shall not be unreasonably withheld or delayed), except by reason of long-term sickness, maternity leave, paternity leave or termination of employment, resignation by the Key Personnel and other extenuating circumstances.
- 13.3 In the event that the Key Personnel stops providing the Services in accordance with clause 13.2, the Provider shall immediately notify the Authority.
- 13.4 Any replacements to the Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 13.5 Replacements to the Key Personnel shall not have a detrimental impact on the provision of the Services. Where the Provider reasonably considers the change in Key Personnel will have a detrimental impact on the Services, it shall immediately notify the Authority and the parties shall work in good faith to mitigate the risks to Service delivery.
- 13.6 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 30 Working Days (or such other reasonable period as may be agreed between the parties).
- 13.7 The Authority may require the 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.
- 13.8 If the Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Provider.

14 OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 14.1 At all times, the Provider shall ensure that:
- a) each of the 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 Provider's Personnel to provide the Services properly;
 - c) only those people who are authorised by the 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; and
 - d) all of the Provider's Personnel comply with all of the Authority's and/or the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's or Authority's Premises.

- 14.2 The Authority may refuse to grant access to, and remove, any of the Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Provider shall replace any of the Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider's Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 14.4 The Provider shall maintain up-to-date personnel records on the Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Provider's Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 14.5 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 14.6 The Provider shall immediately notify the Authority and the Authority in the event of any significant staffing changes including, but not limited to, an unexpected increase in staff turnover or the increased use of agency staff to deliver commissioned hours.

15 SAFEGUARDING SERVICE USERS

- 15.1 The Provider shall ensure that all individuals engaged in the provision of the Services are:
- a) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - b) the Provider shall monitor the level and validity of the checks under this clause 15.1 for each member of staff.
- 15.2 The 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 Provider in the provision of the Services would be 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.
- 15.3 The 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 15 have been met.
- 15.4 The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.

- 15.5 The 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 perform the Services or who may otherwise present a risk to service users.

16 TUPE

- 16.1 The parties agree that the provisions of Schedule 14 shall apply to any Relevant Transfer of staff under this Agreement.

CONTRACT MANAGEMENT

17 REPORTING AND MEETINGS

- 17.1 The Provider shall provide the Management Reports in the form and at the intervals set out in Core and Lot Specifications and Schedule 4.
- 17.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in the Core Specification and Lot Specification and the Provider shall, at each meeting, present its previously circulated Management Reports and, if appropriate, financial reports in the format set out in that Schedule.

SOCIAL VALUE REPORTING REQUIREMENTS

- 17.3 The Service Provider shall deliver the Services at all times having regard to the approach to social value detailed in the by the Authority in the Core and Lot Specifications.
- 17.4 The Service Provider shall maintain and keep up to date records in line with the Authority's Social Value Policy as required by the Authority.
- 17.5 As a minimum the Service Provider shall be required, at the request of the Authority to provide a summary report detailing progress and measurable benefits of the proposals contained in The Service Provider's tender. The summary report shall include but not be limited to:
- a) A summary of the actions taken to create employment opportunities for people in the area where the Service Provider is delivering the Services;
 - b) Data relating to the numbers and percentage of the Service Provider's Personnel who live within the administrative area of Lancashire (excluding within the areas of the unitary authorities of Blackpool and Blackburn with Darwen);
 - c) A summary of actions taken to create opportunities for staff to develop professionally.
 - d) A summary of actions taken to create opportunities to tackle social isolation of Service Users.

18 MONITORING, COMPLAINTS AND COMPLIMENTS

- 18.1 The Authority shall monitor the performance of the Services by the Provider in accordance with Schedule 4 and the Core and Lot Specifications.
- 18.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in any monitoring undertaken in accordance with clause 18.1 and within a format or system as determined by the Authority, (which may change from time to time)
- 18.3 In cooperating in the monitoring referred to at clause 18.1 no additional charge will be incurred by the Authority.
- 18.4 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 this Agreement and its Schedules. As and when required by the Authority the Service Provider shall collect customer feedback and compile this in the form of a report to be discussed with the Authority, together with actions proposed by the Service Provider to address issues of concern.
- 18.5 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.
- 18.6 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.
- 18.7 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.
- 18.8 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 12 should be completed and submitted to: contractmgmt.care@lancashire.gov.uk.
- 18.9 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.
- 18.10 The Service Provider shall ensure that it has an effective system in place for recording all compliments received regarding services.

- 18.11 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.
- 18.12 The obligation included at clause 18.10 shall include an additional obligation to provide the Authority's contracts management team every 12 months with the number of complaints and the number responded to within twenty eight (28) calendar days as well as number of compliments received.
- 18.13 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.
- 18.14 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.
- 18.15 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.
- 18.16 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.
- 18.17 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

19 CHANGE CONTROL

- 19.1 Any requirement for a Change, including the need to amend a Care and Support Plan or Service Contract Data Form shall be subject to the Change Control Procedure or other procedure as agreed in writing between the Parties.
- 19.2 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services.

- 19.3 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 19.2 shall be addressed by the parties using the Change Control Procedure contained at Schedule 7 of this Agreement.

20 DISPUTE RESOLUTION

- 20.1 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.
- 20.2 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 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 20.2 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.
- 20.3 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.
- 20.4 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).
- 20.5 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.
- 20.6 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 SUB-CONTRACTING AND ASSIGNMENT

- 21.1 The Provider shall not 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 Authority, neither may the Provider sub-contract the whole or any part of its obligations under this Agreement except

with the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.

21.2 In the event that the 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.

21.3 Subject to clause 21.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof to:

- (a) any Contracting Authority; or
- (b) any other body established by the Authority or under statute in order substantially to perform any of the functions that had previously been performed by the Authority ; or
- (c) any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Agreement.

21.4 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 21.3, affect the validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Authority.

21.5 If the rights and obligations under the Agreement are assigned, novated or otherwise disposed of pursuant to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):

- (a) the rights of termination of the Authority in clause 30 (Termination For Breach) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof with the prior consent in writing of the Provider.

21.6 The Authority may disclose to any Transferee any confidential information of the Provider which relates to the performance of the Provider's obligations under the Agreement. In such circumstances the Authority shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Provider's obligations under the Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such confidential information.

- 21.7 Each party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Agreement.

LIABILITY

22 INDEMNITIES

- 22.1 Subject to Clause 22.5, the Provider shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:
- a) the Provider's breach or negligent performance or non-performance of this Agreement;
 - b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Provider or Provider Personnel;
 - c) the enforcement of this Agreement.
- 22.2 Subject to Clause 22.5, the Provider shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:
- a) any claim made against the Authority by a third party for death, personal injury or damage to property arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Provider, its employees, agents or subcontractors.
- 22.3 Liability under the indemnity at clause 22.2 is conditional on the Authority discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Authority which may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Authority shall:
- a) as soon as reasonably practicable, give written notice of the Claim to the Provider specifying the nature of the Claim in reasonable detail;
 - b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Provider (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Authority may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to

the Provider but without obtaining the Provider's consent) if the Authority reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;

- c) give the Provider and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Authority so as to enable the Provider and its professional advisers to examine them and to take copies (at the Provider's expense) for the purpose of assessing the Claim; and
- d) subject to the Provider providing security to the Authority to the Authority's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Provider may reasonably request to avoid, dispute, compromise or defend the Claim.

22.4 If a payment due from the Provider under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Authority shall be entitled to receive from the Provider such amounts as shall ensure that the net receipt, after tax, to the Authority in respect of the payment is the same as it would have been were the payment not subject to tax.

22.5 The indemnities provided under Clause 22.1 and 22.2 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this Agreement by the Authority or its Representatives.

22.6 Nothing in this clause shall restrict or limit the Authority's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this clause.

23 LIMITATION OF LIABILITY

23.1 Subject to clauses 22.2 and 23.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, savings (whether anticipated or otherwise), goodwill or business opportunities whether direct or indirect.

23.2 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.

23.3 Subject to clause 23.5, the Authority's total aggregate liability:

- a) in respect of the indemnities given by the Authority in Schedule 14 is unlimited; and
- b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event 100% of the aggregate Charges paid under or pursuant to this Agreement in the subsequent Contract Year in respect of which the claim arises.

- 23.4 Subject to clause 23.5 the Provider's total aggregate liability:
- a) in respect of the indemnities given by the Provider in clauses 22.2, 26.5, 29.5 and Schedule 14 is unlimited;
 - b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement, shall in no event exceed the greater of £1million or 150% of the aggregate Charges paid (or due to be paid) under or pursuant to this Agreement in the subsequent Contract Year in respect of which the claim arises.
- 23.5 Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
- a) Fraud or fraudulent misrepresentation;
 - b) death or personal injury caused by its negligence;
 - c) breach of Data Protection Legislation;
 - d) breach of any obligation as to title implied by statute; or
 - e) any other act or omission, liability for which may not be limited under any Applicable Law.

24 INSURANCE

- 24.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance covering 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 arising out of each and every event without limit on the number of claims in any one year or other period and such insurance shall expressly by its terms confer its benefits on the Authority. Such insurance policy shall not limit or exclude any claims relating to sexual abuse, exploitation, molestation or emergency first aid;
 - b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS);
 - c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
 - d) appropriate compulsory motor insurance; where the Services involves the transportation of Service Users,

(the "**Required Insurances**") in respect of all risks which may be incurred by the Provider, arising out of the 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 Provider.

- 24.2 The 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.
- 24.3 If, for whatever reason, the 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 Provider.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement.
- 24.5 The Provider shall hold and maintain the professional indemnity insurance for a minimum of six years following the expiration or earlier termination of the Agreement.

INFORMATION

25 FREEDOM OF INFORMATION

- 25.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to comply with these information disclosure requirements.
- 25.2 The 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 EIRs.
- 25.3 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 EIRs; and/or
 - b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 25.5 The Provider acknowledges that the Authority may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice (issued under section 45 of the FOIA, July 2018), be obliged under the FOIA or the EIRs to disclose Information:
- a) without consulting with the Provider; or

- b) following consultation with the Provider and having taken its views into account,

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

25.6 The 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.

25.7 The 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 25.5.

26 DATA PROTECTION

26.1 **Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the Data Discloser) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

26.2 **Effect of non-compliance with UK Data Protection Legislation.** Each party shall comply with all the obligations imposed on a controller under the UK Data Protection Legislation under this Agreement, and any material breach of the UK Data Protection Legislation in relation to this Agreement by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.

26.3 **Particular obligations relating to data sharing.** Each party shall:

- a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- b) give full information to any data subject whose personal data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- c) process the Shared Personal Data only for the Agreed Purposes;
- d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
- f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing

of personal data and against accidental loss or destruction of, or damage to, personal data.

- g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor:
- h) complies with the provisions of Articles 26 of the UK GDPR (in the event the third party is a joint controller); and
- i) ensures that (i) the transfer is to a country approved by the Secretary of State as providing adequate protection pursuant to Article 45 of the UK GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 UK GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 UK GDPR applies to the transfer.

26.4 **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the UK Data Protection Legislation in relation to this Agreement. In particular, each party shall:

- a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- b) promptly inform the other party about the receipt of any data subject access request. Data subjects have a right of access and a right of correction in respect of their personal data which the Provider holds about them, in accordance with Data Protection Law and the Provider shall be the contact point for data subjects wishing to exercise their rights in respect of personal data held about them in connection with the delivery of the Services;
- c) provide the other party with reasonable assistance in complying with any data subject access request;
- d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever reasonable;
- e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the UK Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- f) notify the other party within a reasonable period on becoming aware of any breach of the UK Data Protection Legislation;
- g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data;
- h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- i) maintain complete and accurate records and information in relation to this Agreement to demonstrate its compliance with this clause and allow for audits by the other party or the other party's designated auditor; and

- j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the UK Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the UK Data Protection Legislation.

26.5 **Indemnity.** Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the UK Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

26.6 **NHS DSP Toolkit.** Where the performance of Services involves the processing of Personal Data originating from the NHS, the parties acknowledge that the NHS may require an annual Data Security Protection Toolkit Submission to demonstrate each Party's data security arrangements. Where required, the Service Provider shall use its best endeavours to submit the relevant information to the NHS for their approval. The Service Provider acknowledges that if approval is not granted, this may impact on the Service Provider's ability to continue to provide the Services either to the Authority or to the NHS under this Agreement.

27 **CONFIDENTIALITY**

27.1 Subject to clause 27.2, 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.

27.2 Clause 27.1 shall not apply to any disclosure of information:

- a) required by any Applicable Law, provided that clause 25.1 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 27.1;
- 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 20;
- 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 Provider has given its prior written consent to disclosure.

- 27.3 On or before the Termination Date the 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.

28 AUDIT

- 28.1 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 Providers (including Sub-Contractors) of the Services at the level of detail agreed in Clause 11 (Charges and Payment);
 - b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
 - c) to review the Provider's compliance with the DPA, the FOIA, in accordance with clause 26 (Data Protection) and clause 25 (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 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 7ZA of the National Audit Act 1983 (as amended) 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.
- 28.2 Except where an audit is imposed on the Authority by a Regulatory Body, the Authority may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 28.4 Subject to the Authority's obligations of confidentiality, the 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 Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - c) access to the Provider's Personnel.
- 28.5 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.

28.6 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 Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

28.7 If an audit identifies that:

- a) the 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 Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the 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 Provider shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
- c) the Authority has underpaid any Charges, the Authority shall pay to the 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 Provider in relation to invoicing within 20 days.

29 INTELLECTUAL PROPERTY

29.1 All Intellectual Property in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

- a) furnished to or made available to the Provider by or on behalf of the Authority shall remain the property of the Authority; and
- b) prepared by or for the Provider on behalf of the Authority for use, or intended use, in relation to the performance by the Provider of its obligations under the Agreement shall belong to the Authority;

and the Provider shall not, and shall ensure that the Provider's Personnel shall not, (except when necessary for the performance of the Agreement) without prior written approval of the Authority, use or disclose any Intellectual Property in the IP Materials.

29.2 The Provider hereby assigns to the Authority, with full title guarantee, all Intellectual Property which may subsist in the IP Materials prepared in accordance with clause 29.1 (b). The Provider shall execute all documentation necessary to execute this assignment.

29.3 The Provider shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Agreement or the performance of the Agreement.

29.4 The Provider shall ensure that the third party owner of any Intellectual Property that are or which may be used to perform the Agreement grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property in the same. Such licence or sub-licence

shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the replacement Provider or to any other third party supplying services to the Authority.

- 29.5 The Provider shall not infringe any Intellectual Property of any third party in supplying the Services and shall, during and after the Agreement, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- a) items or materials based upon designs supplied by the Authority; or
 - b) the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of the Agreement.
- 29.6 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property in materials supplied or licensed by the Provider.
- 29.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property in materials supplied or licensed by the Provider, provided always that it:
- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - b) shall take due and proper account of the interests of the Authority; and
 - c) shall not settle or compromise any claim without the prior written approval of the Authority (not to be unreasonably withheld or delayed).
- 29.8 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or by a third party for infringement or alleged infringement of any third party Intellectual Property in connection with the performance of the Provider's obligations under the Agreement and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 29.5(a) or (b).
- 29.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property by the Authority or the Provider in connection with the performance of its obligations under the Agreement.
- 29.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property is made in connection with the Agreement or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

- a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
- b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

and in the event that the Provider is unable to comply with clauses 29.7(a) or (b) within 20 Working Days of receipt of the Provider's notification the Authority may terminate the Agreement with immediate effect by notice in writing.

- 29.11 The Provider grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property that the Provider owned or developed prior to the Commencement Date and which the Authority reasonably requires in order exercise its rights and take the benefit of this Agreement including the Services provided.

TERMINATION

30 TERMINATION ON NOTICE OR BREACH

- 30.1 Either party may voluntarily terminate this Agreement by giving the other party not less than 6 months' written notice at any time after the Commencement Date.
- 30.2 The Authority may terminate this Agreement in accordance with the provisions of this clause 30 and clauses 31-33.

31 TERMINATION OF SERVICES

- 31.1 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 31.1 if the Service Provider has failed to remedy such breach within thirty (30) calendar 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 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;
 - c) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
 - (d) 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.

31.2 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.

31.3 The Service Provider may terminate this Agreement in the event that the Authority commits a Material Breach by giving thirty (30) calendar days' written notice to the Authority and invoke the Exit Management Plan. In the event that the Authority remedies the material breach within the 30 day notice period, the Service Provider's notice to terminate this Agreement shall be deemed to have been withdrawn.

32 TERMINATION: INDIVIDUAL SERVICE USERS

32.1 The Authority may terminate the provision of the Services in relation to any particular Service User 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).

32.2 Where a Service Contract Data Form / Care and Support Plan specifies the provision of the Services in relation to a particular Service User shall cease on the date specified in the Service User's Care and Support Plan / Service Contract Data Form, the Authority shall be liable to pay the relevant Charges outstanding in relation thereto for Services provided up to the last day of actual Service delivery.

32.3 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.

32.4 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.

32.5 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) key safe details;
- c) reason for ending the individual placements; and
- d) all records relating to the individual Service User.

32.6 The Service Provider may, in exceptional circumstances, terminate the provision of a Service User's Care and Support Plan by notice with immediate effect where, in the reasonable opinion

of the Service Provider and subject to the consent of the Authority having reviewed the documents in (b) below (such consent not to be unreasonably withheld), the Service User's behaviour is unacceptable and;

- a) the Service User's behaviour has not previously been recognised as a risk or a care and support need detailed in the Service User's Care and Support Plan;
- b) an incident investigation report and risk assessment is provided to the Authority to evidence that it is no longer safe to deliver Services to the Service User.

32.7 For the avoidance of doubt, termination of any Services under this Clause 31 shall be without prejudice to the rest of the Service Provider's continuing obligations under the Agreement.

33 TERMINATION ON MANDATORY GROUNDS

33.1 The Authority is required by virtue of Regulation 73 of the Public Contracts Regulations 2015 to ensure that all contracts which it awards contain provisions enabling the Authority to terminate those contracts under certain circumstances. Thus, the Authority will terminate the whole of this Agreement with immediate effect by the service of a written notice on the Provider in the following circumstances:

33.1.1 where the Agreement has been subject to a substantial modification which will include any change in the Agreement irrespective of the monetary value and which meets one or more of the following conditions:

- i. materially alters the character of the Agreement; or
- ii. would have allowed other potential Providers to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted; or
- iii. attracted additional Providers in the procurement procedure; or
- iv. the modification changes the economic balance of the Agreement in favour of the Provider in a manner which was not provided for in the original Agreement; or
- v. the modification extends the scope of the Agreement considerably; or
- vi. a new Provider replaces the Provider other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the Agreement or following a universal or partial succession into the position of the Provider following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial modifications and where the purpose of the modification is not aimed at circumventing procurement law.

33.1.2 Where post-award of the Agreement it is discovered that the Provider should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of the Public Contracts Regulations 2015. These exclusion grounds are where the Provider has been convicted of any of the offences that are detailed in Regulation 57.

34 FORCE MAJEURE

- 34.1 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.
- 34.2 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.
- 34.3 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.
- 34.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 34.5 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 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.
- 34.6 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.
- 34.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the 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.

35 PREVENTION OF BRIBERY

- 35.1 The Provider:
- a) shall not, and shall procure that any Provider Party and all 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.

35.2 The 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 Provider) compliance with this clause 35 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

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

35.4 If any breach of clause 35.1 is suspected or known, the Provider must notify the Authority immediately.

35.5 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 35.1, the 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.

35.6 The Authority may terminate this Agreement by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 35.1. In determining whether to exercise the right of termination under this clause 35.6, 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 Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the 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 Provider or the Sub-Contractor (as the case may be); or

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

35.7 Any notice of termination under clause 35.6 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.

35.8 Notwithstanding the provisions of clause 20 (Dispute resolution), any dispute relating to:

- a) the interpretation of clause 35; 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.

35.9 Any termination under clause 35.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

36 CONSEQUENCES OF TERMINATION

36.1 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 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 Provider.

36.2 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 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 Provider's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.

36.3 The provisions of clause 6 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit), clause 30 (Termination for Breach) and this clause 35 (Consequences of termination) shall survive termination or expiry of this Agreement.

GENERAL PROVISIONS

37 NON-SOLICITATION

37.1 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.

38 WAIVER

38.1 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 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 Provider of its obligations to deliver the Services in accordance with the provisions of this Agreement.

39 CULMINATION OF REMEDIES

- 39.1 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.

40 SEVERABILITY

- 40.1 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.

41 PARTNERSHIP OR AGENCY

- 41.1 At all times during for the duration of the Agreement the Provider shall be an independent contractor and nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and accordingly neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the agreement.

42 THIRD PARTY RIGHTS

- 42.1 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

43 PUBLICITY

- 43.1 The 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.

- 43.2 The Provider shall take reasonable steps to ensure that their servants, employees, agents, Sub-Contractors, Providers, professional advisors and consultants comply with clause 43.1.

44 NOTICES

- 44.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the party concerned.
- 44.2 Any notice or other communication which is to be given by either party to the other shall be given by letter (sent by hand, first or second class post, recorded delivery or special delivery), or electronic mail (confirmed by letter). Such letters shall be addressed to the other party in the manner referred to in clause 44. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted (save with the exception of post delivered by second class, in which case service shall be deemed to have occurred on the third Working Day after posting), or 4 hours, in the case of electronic mail or sooner where the other party acknowledges receipt of such letters, or item of electronic mail.
- 44.3 For the purposes of clause 44.2, the address of each party shall be those set out as below:

Authority: **Head of Service Strategic & Integrated Commissioning**
Lancashire County Council, County Hall, Preston PR1 8XJ
contractmgmt.care@lancashire.gov.uk

Service Provider: As set out in the Acceptance Form

- 44.4 Either party on the giving of a minimum of 10 Working Days' notice may change its address for service by serving a notice in accordance with this clause.

45 ENTIRE AGREEMENT

- 45.1 This Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement and understanding 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, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

46 DISCRIMINATION

- 46.1 The Provider shall not unlawfully discriminate either directly or indirectly within the meaning and scope of any Law. Furthermore the Provider will ensure that it provides equality of treatment for anyone who shares a protected characteristic (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise in the provision of the Services and in the employment of the Provider's Personnel) including but not limited to the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 46.2 The Provider shall take all reasonable steps to secure the observance of clause 46.1 by all Provider Personnel.

47 STEP IN RIGHTS

- 47.1 For the avoidance of doubt, if at any time the Service Provider shall (for whatever reason) fail to provide the Services in accordance with the Agreement the Authority may (after notifying the Service Provider of its intention) perform the Services itself, or obtain the relevant Services from an alternative source of supply, the Service Provider being responsible to the Authority for any additional cost incurred by the Authority in so doing, and for providing the Authority with all reasonable assistance with regard thereto, if required.

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 English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

FINAL

Schedule 1 - Core Specification

Included at Appendix 3 in the Invitation to Participate.

Appendix 3 Lot 1a, 1b and 1c Core Specification

Appendix 3d Lot 2 Core Specification

FINAL

Schedule 2 - Lot Specification

Included at Appendix 3 in the Invitation to Participate.

Appendix 3a Lot 1a

Appendix 3b Lot 1b

Appendix 3c Lot 1c

FINAL

Schedule 3 – Lancashire County Council Policies

For the avoidance of doubt this does not constitute an exhaustive list of policies and guidance and is subject to additions including without limitation any successor, replacement or amendment.

- 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/>
- Lancashire County Council social value policy Available at: <http://www.lancashire.gov.uk/media/898255/approved-social-value-policy-and-framework.pdf>
- **Guidance**
- 'Think Local Act Personal' (TLAP) statements:
- <https://www.thinklocalactpersonal.org.uk/makingitreal/about/six-themes-of-making-it-real/>
- Skills for Care – End of Life Care:
- <https://www.skillsforcare.org.uk/Developing-your-workforce/Care-topics/End-of-life-care/End-of-life-care.aspx>
- NICE End of Life Care for Adults standards:
- <https://www.nice.org.uk/guidance/qs13>
- Skills for Care Adult Social Care Workforce Data Set:
- <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Adult-Social-Care-Workforce-Data-Set/Adult-Social-Care-Workforce-Data-Set.aspx>
- National guidance Skills for Care Values Based Recruitment and Retention toolkit:
- <http://www.skillsforcare.org.uk/Recruitment-retention/Values-based-recruitment-and-retention/Values-based-recruitment-and-retention.aspx>
- Skills for Care Code of Conduct for Healthcare Support Workers and Adult Social Care Workers in England.
- <http://www.skillsforcare.org.uk/Documents/Standards-legislation/Code-of-Conduct/Code-of-Conduct.pdf>.
- Skills for Care Autism training resources:
- <https://www.skillsforcare.org.uk/Developing-your-workforce/Care-topics/Autism/Autism.aspx>

- Skills for Care 'Principles to Practice' which defines the principles and key areas to support good mental health:
- <http://www.skillsforcare.org.uk/Documents/Topics/Mental-health/Principles-to-Practice-good-mental-health.pdf>
- Care Improvement Works guides, tools and resources produced by Skills for Care and the Social Care Institute for Excellence:
- <http://www.careimprovementworks.org.uk/>.
- National Institute for Health and Care Excellence – Home care: delivering personal care and practical support to older people living in their own homes (NG21):
- <https://www.nice.org.uk/guidance/ng21>
- National Institute for Health and Care Excellence – Home care for older people quality standard.
- <https://www.nice.org.uk/guidance/qs123/chapter/using-the-quality-standard>

Schedule 4 - Service Levels / Key Performance Indicators

Part 1. Service Levels

Included at Appendix 3 in the Invitation to Participate.

Appendix 3e Lot 1a, 1b and 1c Core Specification KPIs

Appendix 3f Lot 1a Lot Specification KPI

Appendix 3g Lot 1b Lot Specification KPI

Appendix 3h Lot 1c Lot Specification KPI

Lot 2 KPIs to be provided at time of Call-off

PART 2. CONSISTENT FAILURE

In this agreement, **Consistent Failure** shall mean: the Authority serving 4 Default Notices in a rolling 12 Month period.

Schedule 5 – Not Used

FONVAL

Schedule 6 – Contract Management

To follow.

FINAL

Schedule 7 - Change control

GENERAL PRINCIPLES

1. Where the Authority or the Service Provider sees a need to change this Agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such change only in accordance with the Change Control Procedure set out in this Schedule 7.
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.
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.
4. Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Service Provider.

PROCEDURE

5. Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change the Agreement by the Authority; or
 - (c) a recommendation to change the Agreement by the Service Provider.
6. Where a written request for an amendment (a "Change Control Note") is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within three weeks of the date of the request.
7. A recommendation to amend the 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.
8. 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 Charges, if any, relating to the actual 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.

9. 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. indicate the Authority's acceptance by arranging 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.

11. A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this Agreement. A record of all such signed Change Control Notes will be maintained as memorandum to the Agreement to which this Schedule relates.

Schedule 8 - Exit Management and Business Continuity Principles

The Exit Management Plan shall include (without limitation) the following:

1. A list, by reference to each part of the Services, of the Provider's Personnel, resources and Key Personnel (if any) used to provide such Services;
2. A detailed programme for the transfer process for use in conjunction with the Authority or (as the case may be) a Successor Provider in the event that the Services (or their equivalent or any part thereof) are to be transferred to the Authority or (as the case may be) a Successor Provider including details of:
 - 2.1 The means to be used to ensure an orderly and prompt transfer of responsibility for providing the relevant Services to the Successor Provider while maintaining continuing provision of the Services throughout the transfer process;
 - 2.2 The process for handing responsibility for any work in progress and/or ongoing liabilities to the Successor Provider;
 - 2.3 The management structure to be employed during transfer; and
 - 2.4 Arrangements for the transfer of any rights and/or obligations under the agreement with the Provider to a Successor Provider including for the avoidance of doubt the Authority;
 - 2.5 Plans for communication with the Provider (and the Provider's Personnel) and the Authority's staff and suppliers and Service Users, to avoid any detrimental impact on the Authority's operations as a result of termination of the Agreement;
 - 2.6 Rules and procedures which will be adopted by the Provider to ensure that it does not make inappropriate use of, or gain an unfair advantage as a result of, any information gained by the Provider during any process for the tender of the Services (or their equivalent or any part thereof); and
 - 2.7 Plans for provision of contingent support and meeting with the Authority or a Successor Provider for a reasonable period after transfer for the purposes of providing services replacing the Services.
 - 2.8 A detailed and accurate timeline for all information to be produced and shared with Successor Service Provider and/or the Authority. It is expected that this timeline will run from contract award to Successor Service Provider until the Contract end date.
3. Business Continuity Plan
 - 3.1 The Provider shall comply with the provisions relating to Business Continuity, in particular those provisions contained in the Core and Lot Specifications.

3.2 Upon exit, should the Provider fail to provide to the Authority all material information and data relating to the delivery of the Services to the Service User, the Authority will have the right to immediately access the Provider's premises to obtain the information required and the Provider will be obligated to assist in all material ways in order for the Authority to obtain the information required in an efficient manner.

FINAL

Schedule 9 - Commercially Sensitive Information

[DETAILS OF ANY PROVIDER INFORMATION TO BE CLASSIFIED AS COMMERCIALY SENSITIVE]

FINAL

Service Contract Data – [INSERT NAME OF SERVICE]

PART ONE – AUTHORITY AND PROVIDER

1 Parties

The Authority is:

Lancashire County Council whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ; (the "Authority")

The Service Provider is:

[name of Service Provider] incorporated and registered in England and Wales with company number [company number] whose registered office is at [address] trading as [trading name]

2 Scope

The subject of this Service is:

[INSERT NAME]

[include a definitive description as per examples below:

groups of specified number of Service Users, including any needs are to be considered and accommodated, circumstances where specialist services for complex behaviours or needs is the requirement;

type of activity

a specified number of session, hours, times, days, term time, non term time;

geography in which the Services are required to be delivered;

Or combination thereof]

Service delivery is:

As per X.x of the Specification.

[with the exception of the following requirements:

- X.x.x Xxxxxx
- X.x.x Xxxxxx
- X.x.x Xxxxxx]

The Commencement Date is:

[a date occurring in the next 12 months]

The Initial Term is:

[months or years up to a maximum of seven years]

The Authority may extend this agreement beyond the Initial Term by a further period or periods up to a maximum of:

[number of months / years]

in addition to the Initial Term.

During the course of the Service Contract Data Form the service volumes may be varied by agreement of the parties.

Service volumes may increase by:

[always consider foreseeable changes linked additional service users, sessions, days, times, then express this as a specific increase in numbers of service users, hours or percentage change in contract value. Provide modest change (<20%) as a default position]

Service volumes may decrease by:

[always consider foreseeable changes linked additional service users, sessions days, times, then express this as a specific decrease in numbers of service users, hours or percentage change in contract value. Provide modest change (<20%) as a default position]

The trigger(s) for permitted changes to service volumes shall be:

[change of number of service users, change in service users need]

The termination provisions are:

[as per the Clause 31 of the Service Contract]

3 Contracting Model

The Charges will be:

[INSERT DETAILS AS TO CHARGES I.E. WHAT THEY REPRESENT]

The basis for the Charges is:

*[(i) session rates,
(ii) performance related,
(vii) being set by the Authority,
(viii) arising out of further competition between Providers with the option to use ceiling and/or floor rates, and/or,
(ix) Any combination of these options.
How many session and total amount for term]*

Service Provider's Charge

[Service Provider will state their Charge/price per session for the requested sessions]

4 Notices

Authority address for communications:

email for

Authority postal
address for
communications:

Provider email
address for
communications:

Provider postal
address for
communications:

5 Key Personnel

The Authority's initial
Key Personnel is:

The Provider's Key
Personnel is:

6 Special Conditions

Special Conditions are:

Service Contract Data Variations

ISSUE	DETAIL OF VARIATION	DATE AGREED
1	Initial variation	

To be completed by the successful Service Provider

I confirm receipt of this Service Contract Data form. I confirm I will deliver the Services as described above and in the Service Contract, Core and Lot Specifications and the Care and Support Plan and understand that the details contained within this document will form part of the Service Contract.

I understand that, as described above, Services are subject to change and variation will be detailed in the Service Contract Data Variations table above.

Signed:

Dated:

Print

Name:

Position:

Managing Provider Quality and Performance in Commissioned Services

Version 1.7 – May 2022

POLICY NAME	Managing Service Provider Quality and Performance in Commissioned Services		
Document Description	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		
Document Owner 1) Officer, position and contact details	Clare Mattinson Policy, Information and Commissioning		
Document Author	Kathleen Barron and Sumaiya Sufi and Karen Thompson	Date	14 December 2022
Status (Draft/Live/Withdrawn)	Live	Version	1.7
Last Review Date	December 2022	Next Review Due date	December 2023
Document Author	Title	Signature	Date
Kathleen Barron	Quality Improvement & Safety Specialist		
Sumaiya Sufi	Quality Improvement and Safety Specialist: Health and Residential Settings		
Document Owner	Title	Signature	Date
Clare Mattinson	Head of Policy Information and Commissioning		
Document Approvers	Title	Signature	Date
Louise Taylor	Director of Adult Services		
Jane Brennan	Director of Adult Health and Care		

--	--	--	--

Document Reviewers	Title/organization	Issue Date
Lisa Slack	Head of Service Quality Assurance & Safeguarding Adults, LCC	
Clare Mattinson	Head of Service, Policy, Information and Commissioning	
Sumaiya Sufi	Quality Improvement & Safety Specialist, LCC	
Kathleen Barron	Quality Improvement & Safety Specialist, LCC	
Lisa Lloyd	Safeguarding Team Manager, LCC	
Jane Brennan	Director of Adult Health and Care	
Emma O'Kane	Morecambe Bay Safeguarding Lead	
Peter Chapman	Pennine Lancashire Safeguarding Lead	
Fiona O'Donoghue	Fylde Coast Safeguarding Lead	
Angela Clarke	West Lancashire Care Sector Quality Lead	
AnnLouise Stephens	NHS England Regional Ageing Well Lead	
Barry Glaspell	Midlands and Lancashire Commissioning Support Unit	
Amy Nicholas		
Ciaran Wells	Legal Services LCC	

Document Change History			
Versio	Date	Issued by	Reasons for Change
1	30/12/16		Agreed and published
1.1			Draft amendments
1.3	04/08/2017	Katherine Holt/Sumaiya Sufi	Appendices removed out of the main document for ease of retrieval and application.
1.4	24/11/17	Katherine Holt/Sumaiya Sufi	Reviewed and revised section 9 and 10. Renumbered document.
1.5	13/12/2017	Katherine holt and Sumaiya Sufi	Updated content based on feedback from NHS England Care Sector Lead
1.6	18/11/2021	Sumaiya Sufi & Kathleen Barron	Updated content as part of current Quality Project, linked to introduction of additional escalation processes which have been included within the
1.7	16/05/2022	Sumaiya Sufi & Kath Barron	app Made amendments following review by Lisa Slack. endices.
1.7	14/12/2022	Sumaiya Sufi and Karen Thompson	Updated document to reflect ICB changes.

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.

Contents

1 DEFINITIONS/GLOSSARY	71
2 SCOPE OF POLICY	74
3 PRINCIPLES OF THE POLICY	75
4 DEFINITION OF POOR PERFORMANCE AND/OR UNSAFE SERVICES	76
5 MANAGING SERVICE PROVIDER PERFORMANCE PROCESS	78
6 RISK ASSESSMENT	79
7 DETERMINING ACTION TO BE TAKEN	80
8 IMPROVEMENT/ACTION PLANS	82
9 DECOMMISSIONING OF SERVICE / TERMINATION OF CONTRACT	83
APPENDIX A	84

FINAL

1 DEFINITIONS/GLOSSARY

Continuing Health Care (CHC)	Service Users whose care is fully funded by Health
Integrated Care Board	Clinically-led statutory NHS body responsible for the planning and commissioning of health care services for their local area.
Contract Officer	Refers to a Contract Monitoring Officer or a Contract Assurance Officer or Contract Support Officers responsible for managing the day to day contract and quality of commissioned Service Providers. CAOs chair of Level 1 QPIP
Contract Manager	Responsible for ensuring that all Contract Officers are undertaking their duties and managing escalations. Deputy Chair of radar and level 2 QPIP
Contracts Team	Refers to the contract management team, health and residential contracts and quality improvement team at the LA and the Contract Management team at the Midlands and Lancashire CSU.
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 needs, whilst building strong relationships, handling and resolving complaints quickly and satisfactorily.
Information Sharing Protocol	The sharing of information regarding the quality and performance of a service provider with other organisations as appropriate, including other Local Authorities, Clinical Commissioning Groups, Commissioning Support Units, the Care Quality Commission
Lancashire County Council (LCC)	Lancashire County Council has the statutory responsible for meeting the assessed care needs for citizens of Lancashire, as defined in the Care Act 2014 and Mental Capacity Act 2005.
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 concerns. These are led primarily by a Contract Assurance Officer.
Level 2 Provider Performance and Quality Improvement Plan(ning)	Where there is a significant need for improvement across the whole of the Service Provider organization in relation to the quality that is being provided. This maybe contractual but is not limited to specific contractual breaches. These maybe led by a Senior LCC or Senior CCG officer.
Inability to Staff the service	Failure to provide an appropriate level of competent registered nurses, care workers, registered manager or nondirect care staff such as kitchen and domestic, to meet the needs of the service

Midland and Lancashire Commissioning Support Unit (CSU)	Undertake commissioning, contracting and quality on behalf of the CCGs
Pro-active	A time table of contractual

Monitoring	
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/Safeguarding 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, or where CQC deregister the service.
Quality and Performance Specialists (Clinical)	
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 and consider options for intervention. This can be regarding a single Service Provider or multiple Service Providers within an area of the county or across the county
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 are threshold triggers set dependent on the Service Provider client group, area of delivery and volume; consideration will also be taken on the potential number or seriousness. Pro-active and re-active intelligence will be considered.
Safeguarding Enquiries Service	Team of qualified Social Workers within the Local Authority who receive safeguarding alerts for individuals with care and support needs and carry out Section 42 Safeguarding enquiries into allegations of abuse and agree a safeguarding plan.
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
Senior Quality Improvement Practitioner	Responsible for ensuring that all Contract Officers are undertaking their duties and managing escalations. Chair of radar and level 2 QPIP
Service Provider	A service provider is the commissioned organization who holds the contract with Lancashire County Council and/or the Clinical Commissioning Group(s) to deliver health and/or social care services both registered and none registered.

Suspension	Where the Service Provider is restricted from accepting new LCC or CCG care packages or funded residential placements. 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. This is not a 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.

FINAL

2 SCOPE OF POLICY

This document sets out Lancashire County Council's (LCC's) and the Integrated Care Board's (ICBs) and joint policy on managing poor performance and ensuring safety in commissioned services.

The response 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 and/or where services are deemed to be unsafe and/or service users assessed needs are not being met

The policy relates to:

All services with which the above organisations have contracts or service level agreements.

The policy:

- Defines what is meant by poor performance
- Defines what is meant by "unsafe services"
- 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, Procedures or Guidance

- Organisational specific new admission suspensions
- Organisational specific contract termination
- LCC Managing Provider Failure
- NHSE Standard Operating Procedure (SOP)
- Care Act, 2014 (*Section 42*)
- LSAB Safeguarding Concerns Guidance
- NHSE [Managing Care Home Closures](#) and associated [management checklist](#)

From April 2015 **The Care Act 2014** defines adult safeguarding as a statutory duty, section 42 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 care act reference is not related to safeguarding but another part of the act – need to check with legal

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. Add in section of the care act temp duty section 48

In these circumstances, the local authority must lead partner agencies in taking 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 and safety of services and to prevent provider failure.

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 involved; including services users regardless of funding stream, their families and service provider workforce.

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	Initial interventions focus on recovery and include action to address the root causes of issues
Recovery 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.

In addition, there are also 6 key principles of adult safeguarding which include:

- Empowerment
- Prevention
- Protection
- Partnership
- Accountability
- Proportionality

4 DEFINITION OF POOR PERFORMANCE AND/OR UNSAFE SERVICES

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

- The service 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.
- The service has received serious safeguarding concerns of harm or abuse.

Safeguarding concerns and poor performance can be categorised under the following headings:

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

Indications of Safeguarding concerns and/or 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.

Receipt of a range of safeguarding alerts- e.g., multiple low-level alerts or a single alert which has resulted in serious injury or death.

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

Information from CQC

- Statutory requirements made on a service
- Inspection domains judged to not be met
- Formal enforcement actions being taken

Information arising from investigations of complaints, concerns, and safeguarding referrals (high risk /death cases)

- 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

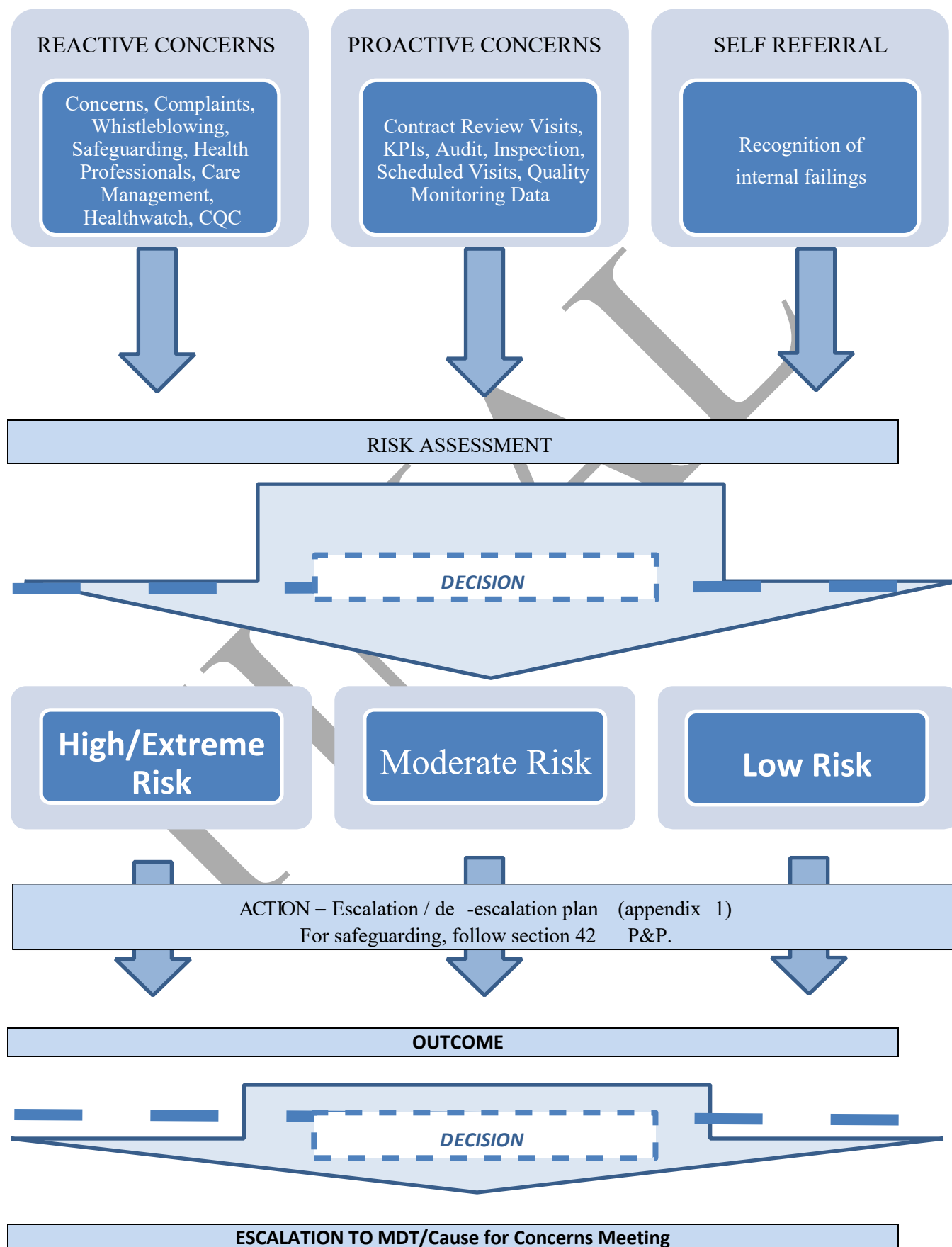
- the return of monthly/quarterly/ six monthly/annual key performance indicators
- other monitoring returns required from the provider
- compliance and audit exercises
- complaints received by commissioning organisations
- financial checking of credit rating and/or companies house/charities commission etc registers
- Professional Observation Checklist (for establishments) (see tools in appendix 3)

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
- Known concern within group owned organisations
- Healthwatch intelligence
- Adequate risk assessments for service users/residents not in place/followed/regularly reviewed
- Lack of learning from previous safeguarding incidents

5 MANAGING SERVICE PROVIDER PERFORMANCE PROCESS

(for multiple pieces of intelligence)



6 RISK ASSESSMENT

The purpose of a risk assessment is to determine level of risk and whether the concerns that have been reported warrant further action.

A risk assessment should be undertaken by a Contract Officer and should be carried out to determine if there is evidence of poor performance 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.

A safeguarding risk assessment should be undertaken by the allocated social worker undertaking safeguarding enquiries.

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

1. The extent of the poor performance and/or safeguarding concern is not sufficient to warrant implementing poor performance and/or safeguarding procedures.
2. The extent of the poor performance and/or safeguarding concern 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. Where there are safeguarding concerns, a safeguarding plan has been agreed to minimise the identified risks
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 tool for undertaking a Risk Assessment can be found at appendix 3
For safeguarding concerns, the relevant risk assessment can be found in LAS.

7 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 existing organizational Complaints Procedures and/or Safeguarding Adults Procedures.

Where there is a severe risk and/or a range of safeguarding concerns there will be a need for a collaborative response on the actions to be taken between Safeguarding and Contracts Management.

Managing Service Provider performance

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 Social Work Team, Learning Disability & Autism worker or Mental Health Worker, CHC Nurse assessor), seeking their views and those of their representatives

Decision making

The decision to take action will be made based on the risk assessment by the Contracts Team, however this will take into account discussions with and feedback from service providers.

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.
- Be aware of any ongoing criminal charges against the provider

The options open to the Contracts team at this stage include, but in no particular order:

- 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.)
- 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 or ○ issue a contract default notice
- Suspend new admissions/placements to allow for improvement activity to be prioritised

LCC as the process owner will develop and maintain specific procedures for the relevant Quality and Performance Improvement Planning Meetings, however the execution of the process is multi-agency.

Process flow charts can be found in Appendix 2.

8 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. This principle is embedded within the authority's QPIP process- the terms of reference and operational guidance can be found here (INSERT LINKS). The action plan will be time limited and updated as progress is made.

When an Improvement/Action Plan is required, it should be developed and agreed in partnership with the Service provider. Support provided by partner agencies will be incorporated into one action plan.

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.

If the improvement/action plan does not lead to a successful outcome within the timescales outlined at the beginning of the process, the escalation route outlined in section 9 and appendix A will be followed.

The Safeguarding Service will agree individual safeguarding plans to protect service users/residents from risk of reoccurrence of a safeguarding incident. Where learning from safeguarding enquiries is not embedded within a setting (evidenced by a number of safeguarding alerts with similar persisting themes), the escalation process outlined in section 9 will be followed.

9 DECOMMISSIONING OF SERVICE / TERMINATION OF CONTRACT

Commissioning organisation, Legal Services and the Safeguarding Service 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. The escalation route from quality and/or safeguarding concerns through to the potential termination of a contract can be found in Appendix A below.

Improvement/Action Plans will form part of 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 and/or safeguarding concerns remain.

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

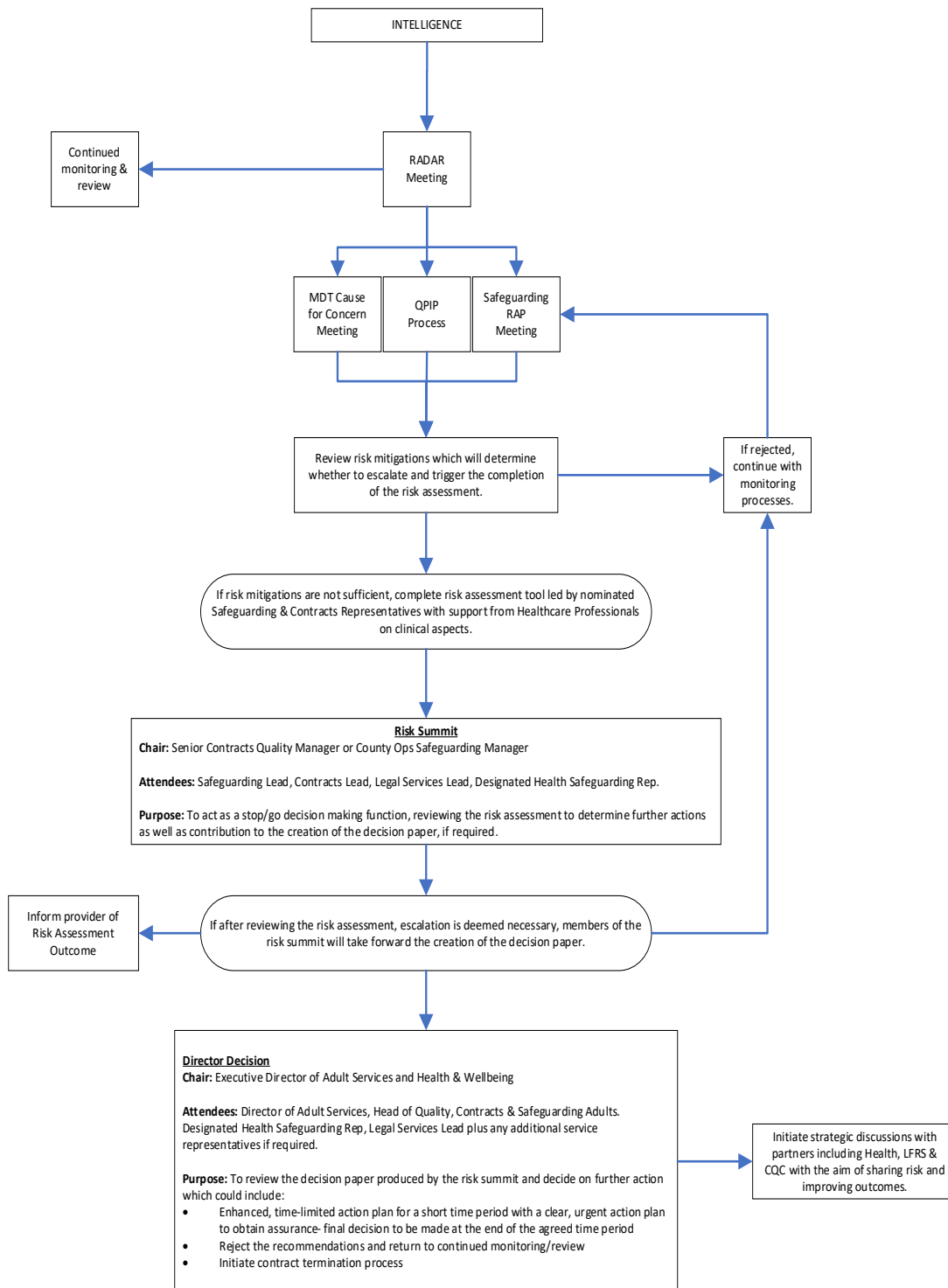
The decision to terminate the contract must be taken by the Accountable individual within the commissioning organisation in consultation with Legal Services.

Should the NHS Commissioning Organisation 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 be followed and vice versa. It is key that communications/discussions with commissioning partners take place when escalation towards potential termination of contracts takes place to enable risks to be shared.

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 our duty of care to the people we support and the local authority *Managing provider failure policy and procedure*, and where required NHSE [Managing Care Home Closures](#) checklist must be followed.

APPENDIX A

Escalation Route



Key Points

Once a care setting has been escalated to one of the 3 meetings (RAP Meeting, QPIP Meeting or a Cause for Concern MDT), a representative from both Contracts Management and Safeguarding will be involved- this ensures formal collaboration between the 2 teams.

The process mapped out above is part of a planned escalation response- any emergency calls for action from partners such as CQC should be dealt with separately to make the situation/home safe before engaging in the escalation process.

Escalation from RAP/QPIP/MDT

If it is decided within one of the above meetings/processes that an issue or collection of issues within a care setting may need to be escalated towards potential termination of contract, **then a decision to escalate should be made by the group through the review of current risk mitigations.**

This will allow for a quick decision as to whether a [full risk assessment](#) has the potential for further escalation.

Risk Assessment

If it is identified that there is a severe enough risk, the group will commence the completion of the [complete risk assessment document](#). This will be jointly completed by the group providing information to justify escalating the care setting to the subsequent risk summit.

A nominated representative from both Safeguarding and Contracts Management will lead on ensuring the risk assessment is completed by the relevant contributors as well as organising and attending any risk assessment site visit. Relevant contributors may include OTs, Lancashire Fire & Rescue Service, specific Health colleagues etc.

Each relevant category within the risk assessment is assigned to a responsible party who will complete their category before returning in advance of the next meeting. The completed risk assessment will be discussed and signed off, ready for escalation to the risk summit.

Risk Assessment Visit

To complete the risk assessment, a site visit will be required to gain valuable information to build an extensive picture of the situation.

The site visit could be announced and planned with the provider or potentially it could be an unannounced visit, this is at the discretion of the group.

In terms of site visit attendance, it will include both the Safeguarding and Contracts Management nominated representatives, a Health representative (if a nursing home) and any other professionals who will be able to assess the current situation.

Risk Assessment Weightings/Thresholds

Determining the thresholds for escalation after the completion of the risk assessment should be based on weightings of each category- these weightings should be based on the individual case in question.

Notifying Partners

As partners such as ICB colleagues and other Local Authorities will be in attendance at the QPIP, RAP or Cause for Concern meetings, they will be asked to trigger their escalation processes at the same time as LCC trigger theirs- utilising the same risk assessment as a foundation for their discussions.

Risk Summit

With the risk assessment received, the risk summit group can review the evidence and decide whether the issue reaches the threshold for escalating to the director decision board. If it does reach the threshold, the group will pull together the key points which will form the basis of the decision paper. Discussions/agenda will be structured around the decision paper template headings.

The risk summit is not a regularly occurring meeting, a group will only come together to respond to individual cases.

Attendees will include the Senior Contracts Quality Manager, County Ops Safeguarding Manager (one of which will chair the risk summit), Safeguarding Lead, Contracts Lead, Legal Services Lead, Designated Health

Safeguarding Rep in the case of Nursing Homes and additional service contributors if required **Decision**

Paper

Either the Safeguarding or Contracts Management Lead will be responsible for pulling together the final version of the decision paper using the summary document produced at the risk summit and any additional information gathered at the QPIP/RAP/Cause for Concern meeting.

Director Decision Board

The decision paper will be circulated to attendees of the decision board prior to the board taking place.

Attendees of the decision board will include the Executive Director of Adult Services, the Director of Adult Services, the Head of Service Quality, Contracts and Safeguarding Adults and a Legal rep. They may also invite representatives from Safeguarding or Contracts if further information is required.

The decision-making process will be determined by which commissioning organisations are involved. If LCC are the sole commissioning organisation within a care setting, then the decision comes through the LCC decision making process. The same can be said in the event that the NHS Commissioning Organisation is the sole commissioner. For care setting where both LCC and NHS are involved, the escalation discussion will be undertaken jointly but the overall decision will go via both organisation's decision-making processes

Outcome

If the outcome of the decision board is to proceed with termination of the contract, notification will be given to Contracts and Safeguarding representatives to proceed with the relevant actions and engage with partners to notify them of our decision. Other actions to consider may include:

- Implementing a strict time limited action plan alongside enhanced monitoring, with a decision due at the end of that period.
- Rejecting the recommendations and returning the case to the relevant QPIP, RAP, Cause for Concern process.
- Suspension of admissions

Schedule 12 - Complaints Form

PROVIDER COMPLAINT CASE FORM

Provider name: _____ Date _____ of _____ completion:

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

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

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

Please email completed forms to: complaintsandfeedback@lancashire.gov.uk

Completed by :
Designation:

Schedule 13 - Suspension Policy

To follow

Schedule 14 TUPE

1. DEFINITIONS

The definitions in this paragraph apply in this Schedule 14:

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 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 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 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 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 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 Provider by virtue of the application of TUPE.

Provider's Final Staff List: the list of all the 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.

Provider's Provisional Staff List: the list prepared and updated by the Provider of all the 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 Provider or Sub-contractor to the Authority or any Replacement Provider.

Staffing Information: in relation to all persons detailed on the 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 Provider or Sub-contractor by virtue of the application of TUPE.

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

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

2. TRANSFER OF EMPLOYEES TO THE PROVIDER

2.1 The Authority and the 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 Provider or Sub-contractor. The 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 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 Provider against any losses, except indirect losses incurred by the 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 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 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 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 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 Provider or Sub-Contractor may consider taking on or after the Commencement Date.

2.5 The 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 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 Provider shall immediately on request by the Authority and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the 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 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 Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2 The 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 Provider or any Sub-Contractor in the provision of the Services, the 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 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 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 Provider, the Provider's Final Staff List, which shall be complete and accurate in all material

respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees.

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

3.5 The Provider warrants that the Provider's Provisional Staff List, the 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 Provider's Final Staff List.

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

(a) any person who is or has been employed or engaged by the 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 Provider and/or any Sub-Contractor), arising from or connected with any failure by the 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 Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the 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.

Schedule 15

ISF Governance Principles and Template Tripartite Agreement
(to be inserted if ISF provision applicable)

FINAL