

DATED

APPROVED PROVIDER LIST AGREEMENT FOR THE PROVISION OF

CARE SERVICES IN SUPPORTED HOUSING

-

between

LANCASHIRE COUNTY COUNCIL

and

[PROVIDER]

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THIS AGREEMENT is made the

BETWEEN

THE PARTIES

- (1) **Lancashire County Council** whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ (the "Council") and
- (2) **Name of Provider** (Company registration number) of registered address ("the Provider").

BACKGROUND

- (A) The Council published a contract notice in the Official Journal of the European Union seeking Requests to Participate from prospective providers for the provision of care services in supported housing for people with learning disabilities/autism, mental health needs, a physical disability or sensory impairment under an Approved Provider List ("APL").
- (B) On the basis of the Provider's Request to Participate, the Council admitted the Provider onto the APL to enable it to bid for Service Contracts on a mini competition basis or for Service Contracts to be allocated to the Provider by the Council and other Contracting Bodies in accordance with the Call-off Procedure.
- (C) All providers applying to join the APL indicated in their Requests to Participate that they would comply with all relevant legislation, codes of conduct and regulations governing the subject matter of the APL.
- (D) This Agreement sets out the award and ordering procedure for Service Contracts which may be required by the Council or the Contracting Bodies, details of the terms and conditions applicable to any Service Contract, and the obligations of the Provider during and after the validity period of the APL.
- (E) It is the Parties' intention that the neither the Council nor the Contracting Bodies have any obligation to award Service Contracts to the Provider under this Agreement or at all.

IT IS AGREED as follows:-

1. INTERPRETATION AND NOTICES

Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Agreement or APL Agreement" means this means this Agreement together with all schedules and appendices attached hereto

"APL" means the **Approved Provider** List established in accordance with the Public Contracts Regulations 2015 to which this Agreement relates.

"Auditor" means the National Audit Office or an auditor appointed by the Audit Commission as the context requires.

"Best Interests Decision" has the meaning set out in the Mental Capacity Act.

"Business Day" means 9:00a.m – 5.00p.m on any day (other than a Saturday, Sunday or a public

holiday) when banks in London are open for business.

"Business Transition" has the meaning set out in the Service Contract

"Call-Off Procedure" means the method by which Service Contracts are awarded to Providers as set out at Schedule 2;

"Call-Off Terms and Conditions" the terms and conditions at Schedule 1;

"Care Plan/ Care and Support Plan / Support Plan" has the meaning set out in the Service Contract;

"Change of Control" means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

"Charges" means the charges which shall become due and payable by a Contracting Body to the Provider in respect of the Services in accordance with the provisions of clause 11 of the Service Contract and as further particularised in the Service Contract Data.

"Commencement Date" means the date of this Agreement

"Confidential Information" means:-

- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive personal data within the meaning of Data Protection Legislation; and
- (b) commercially sensitive information

"Contracting Bodies" means the Council and such other bodies as are identified and/or described in the OJEU Notice

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy

"EIR" means The Environmental Information Regulations 2004.

"FOIA" means The Freedom of Information Act 2000.

"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 this Agreement or defrauding or attempting to defraud or conspiring to defraud the Council.

"Information" has the meaning given under Section 84 of the Freedom of Information Act 2000.

"Information Sharing Protocol" shall mean the policy in place between the Council and other public bodies which permits the sharing of information about the Provider and other providers relating to concerns about the Services (including safeguarding concerns), the accommodation provided or the Provider itself. A template Information Sharing Protocol is provided at Schedule 4 and any revisions to the same shall be provided to the Provider by the Council.

"Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

"Invitation to Participate" means the Council's invitation to Providers to participate in the APL.

"Invitation to Tender" means a Contracting Body's invitation to tender to eligible APL providers to compete in a mini-competition for the award of Services under a Service Contract;

"Law" any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, statutory guidance or statutory code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;

"Location" means the area where the Services are provided;

"Minimum Building Standards" means the Decent Home Standards as further particularised in paragraph 3.17.3 of the Specification;

"Month" means a calendar month.

"OJEU Notice" means the contract notice 2019-165253 corrigendum 2019168988 published in the Official Journal of the European Union

"Order" means an order for Services sent by a Contracting Body to the Provider in accordance with the Call-Off Procedure;

"Party" means the Council and or the Provider;

"Personnel" all directors, officers, employees, agents, consultants and providers of the Provider and/or of any Sub- Contractor engaged in the performance of its obligations under this Agreement;

"Prohibited Act" to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- (a) induce that person to perform improperly a relevant function or activity; or 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 APL;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this APL or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

"Providers" the organisations who have been appointed to the APL and where applicable this shall include the Provider's employees, Sub-Contractor, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members;

"Regulations" The Public Contracts Regulations 2015;

"Regulatory Bodies" means 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 this APL Agreement or any other affairs of the Council.

"Requests for Information" means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

"Request to Participate" means the submission by a provider in response to the OJEU Notice seeking admission onto the APL

"Services" the services described in the Specification, to be supplied by the Provider where appointed in accordance with this Agreement and the Call-Off Procedure;

"Service Contract" the legally binding agreement (made pursuant to the provisions of this APL Agreement) for the provision of Services made between a Contracting Body and the Provider comprising:

- (i) the Service Contract Data and any documents Annexed to it
- (ii) the Call-Off Terms and Conditions; and
- (iii) the Tender (where applicable)

"Service Contract Data" means the document at Schedule 4 to the Service Contract, forming part of the Service Contract and supplementing the Specification, setting out the key details and specifics of the Contracting Body's requirement for Services following the Call-Off Procedure;

"Specification" the document detailing the Services to be delivered by the Provider set out at Schedule 3;

"Service User" means any individual notified by a Contracting Body to the Provider as requiring the Services;

"Subcontract" 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" means the service providers that enter into a Subcontract with the Provider.

"Tender" means the documents submitted to the Council by the Provider in response to a mini-competition held by the Council for the provision of Services

"Term" means the period commencing on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement or it is otherwise lawfully terminated or otherwise extended in accordance with clause 2.2) ending on the seventh anniversary of the Commencement Date

"Termination Date" means the date of expiry or termination of this APL Agreement.

"Working Days" means any day other than a Saturday, Sunday or public holiday in England and Wales.

"Year" means a calendar year.

1.2 The interpretation and construction of this APL Agreement shall be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.6 headings are included in this APL Agreement for ease of reference only and shall not affect the interpretation or construction of this APL Agreement;
- 1.3 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be given by electronic mail (confirmed by letter). Notices shall be sent by email to contractmgmt.care@lancashire.gov.uk and confirmed by post to Contract Management, Quality, Contracts and Safeguarding Adult Service, Lancashire County Council, PO Box 1337, County Hall, PRESTON PR1 8XJ. 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.

2. AGREEMENT

- 2.1 The Parties agree to comply with the terms of this APL Agreement in consideration of the payment by each Party to the other of the sum of one pound (£1), the receipt and sufficiency of which is acknowledged by each Party.
- 2.2 This APL Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.
- 2.3 The Council shall be entitled to extend this Agreement on one or more occasions, save that the Agreement shall not continue to take effect beyond 4th January 2030.
- 2.4 Clause 2.1 shall not apply to any Service Contract made under this APL Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Service Contract.

3. WARRANTIES

- 3.1 The Provider warrants to the Council that:
- 3.1.1 it has full power and authority to enter into this APL Agreement and any Service Contract and all governmental or official consents and all necessary consents have been obtained and are in full force;
 - 3.1.2 all obligations of the Provider pursuant to this Agreement and under any Service Contract shall be performed by appropriately experienced, certified, qualified and trained staff with all due skill, care and diligence;
 - 3.1.3 it will ensure that it and all its staff, agents, subcontractor, self-employed staff or personnel employed in connection with the Services will comply with all applicable Laws governing the delivery of the Services;
 - 3.1.4 any accommodation that it supplies in relation to the provision of the Services shall meet or exceed the Minimum Building Standards;
 - 3.1.5 this Agreement is executed by a duly authorised representative of the Provider;
 - 3.1.6 in entering into this Agreement or any Service Contract it has not committed any Fraud;
 - 3.1.7 as at the Commencement Date, all information, statements and representations contained in the Request to Participate (including statements made in relation to the exclusion grounds referred to in regulation 57 of the Regulations and

compliance with the Minimum Building Requirements) are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

- 3.1.8 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 affect its ability to perform its obligations under this Agreement and/or any Service Contract which may be entered into with a Contracting Body;
- 3.1.9 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and/or any Service Contract which may be entered into with a Contracting Body;
- 3.1.10 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;
- 3.1.11 in the three (3) years prior to the date of this Agreement:-
 - a) 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;
 - b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
 - c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement;
- 3.1.12 it shall perform any Service Contract awarded under this APL Agreement in a conscientious and timely manner in accordance with any standards set out in this Agreement and the Service Contract awarded under it or as is otherwise reasonably required by the Council or a Contracting Body;
- 3.1.13 it shall notify the Council immediately of any circumstances relating to the Provider and/or the Council concerning the Services of which the Provider is aware or anticipates which may justify the Council taking action to protect its interests (including its reputation and standing);

3.2 The warranties set out in this clause **Error! Reference source not found.** are given on the execution of this APL Agreement and repeated on every day during the term of this APL Agreement and/or any Service Contract.

4. CALL-OFFS

- 4.1 The Council appoints the Provider as a potential supplier of the Services and the Provider shall be eligible to be considered for the award of Orders for Services by Contracting Bodies during the Term.
- 4.2 When admitted to the APL Agreement and where the award of a Service Contract for those Services is to be the subject of a mini-competition, only Providers identified by a Contracting

Body, in its absolute discretion and in accordance with the Call-Off Procedure, as being capable of performing the Services shall be eligible to be considered for Services.

4.3 Where a Contracting Body has identified a need for Services, it shall

- a) enter into a Service Contract with the Provider for the Services whose terms are materially in accordance with the Call-off Terms and Conditions, as further particularised in the Service Contract Data; and
- b) award the Service Contract in accordance with the Call-Off Procedure set out in Schedule 2.

4.4 Subject to Clause 4.5, a Contracting Body, when ordering Services under the Agreement using a mini-competition pursuant to paragraph 3.1 of the Call-Off Procedure, shall:

- a) Identify, in accordance with the Call-Off Procedure, the Providers capable of performing the Service Contract for the Services requirements;
- b) conduct a mini-competition seeking a Tender from eligible, invited Providers by issuing an Invitation to Tender document setting out the Contracting Body's requirements, a copy of the proposed Service Contract (which incorporates the Service Contract Data) and a deadline by which the Tender must be submitted;
- c) evaluate all Tender submissions received by the Invitation to Tender deadline in accordance with the Award Criteria set out in the Contracting Body's Invitation to Tender;
- d) (on conclusion of the Tender submission evaluation process) award a Service Contract to the Provider submitting the most economically advantageous Tender on the basis of the Award Criteria specified in the Contracting Body's Invitation to Tender;
- e) prepare and send to the successful Provider via the Oracle e-tendering system (or such other system as the Contracting Body may from time to time employ) a notification of award following which the Provider is required, within 14 days, to respond to the Contracting Body to either:
 - i. accept the invitation to deliver the specification set out in the Contracting Body's Invitation to Tender and offer to enter into the Contract with the Contracting Body; or;
 - ii. notify the Contracting Body that it declines to deliver the Services set out in the Contracting Body's Invitation to Tender and shall not enter into the Service Contract (whereby the Service Contract offer from the Provider shall lapse and the Contracting Body may then send the Service Contract to the next Provider that has submitted the next most economically advantageous Tender (and so on until all Providers decline and the Contracting Body has to re-procure such Services)),

provided that if a Provider does not respond to the Contracting Body's notification of award within 14 days and commences performance of the Services then the Provider is deemed to have accepted the invitation and offered to enter into the Contract;

f) where:

- (i) on receipt of the Provider's response to the Contracting Body's notification of award (where the Provider has accepted the invitation and offered to enter into the Service Contract); or
- (ii) the Provider does not respond to the Contracting Body's notification of award within 14 days of receipt and commences performance of the Services,

the Contracting Body is deemed to have accepted the Provider's offer to enter into the Service Contract; and

- g) the Provider shall provide the Services in accordance with the terms of the Service Contract.

4.5 The Contracting Body may make a direct award of a Service Contract (bypassing the mini-competition and submission of a Tender by the Provider) where:

- a) Service User Choice applies, in the circumstances further particularised in paragraph 3.2 of the Call-Off Procedure; or
- b) A Direct Award is appropriate in the circumstances further particularised in paragraph 3.3 of the Call-Off Procedure;

4.6 Where a direct award of a Service Contract is made pursuant to clause 4.5, the provisions of clause 4.4(e) and (f) shall apply.

4.7 The Provider agrees that each Tender submitted by the Provider in relation to a mini-competition for Services held pursuant to this Clause 4 shall remain open for acceptance for sixty (60) days from the specified commencement date for such Services (or such other period specified in the Invitation to Tender issued by the Contracting Body in accordance with this Clause 4).

4.8 Notwithstanding the fact that the Contracting Body has followed the procedure set out above in this Clause 4 for Services, the Contracting Body may cancel, postpone, delay or end the procedure without awarding a Service Contract. Nothing in this Agreement shall oblige the Contracting Body to award a Service Contract.

4.9 The Parties acknowledge and agree that the issue of an Invitation to Tender is an "invitation to treat" by the Contracting Body. Accordingly, the Provider shall submit its Tender as its offer to the Contracting Body on the terms of the Service Contract. The Parties shall form a contract by entering into a Service Contract incorporating the Call-Off Terms and Conditions and the Service Contract Data.

4.10 The Provider acknowledges that, in entering this APL Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Provider and that the Contracting Bodies are at all times entitled to:

- a) enter into other contracts and agreements with other Providers for the provision of any or all of the Services; or
- b) enter into other contracts and arrangements with other providers for the provision of services which are the same as or similar to the Services.

5. TERMINATION

5.1 The Council or Provider may terminate this APL Agreement upon the provision of no less than six (6) months written notice to the other. Following termination under this Clause **Error! Reference source not found.** the Provider shall no longer be invited to submit bids for Services nor shall the Provider be eligible for the direct award of Services.

5.2 The Council may terminate this Agreement by serving written notice on the Provider with effect from the date specified in such notice where:-

- (a) the Provider is using staff that are not appropriately experienced, certified, qualified and trained in the delivery of the types of Services to which the APL relates;

- (b) the Provider and/or its staff, agents, subcontractor, or personnel employed by the Provider in connection with the Agreement have failed to comply with any applicable Laws;
 - (c) The Minimum Building Standards are no longer being met and the Provider is unable to source any new premises from which the Services could be provided.
- 5.3 Subject to the Council sharing any information in its possession concerning the financial standing of the Provider and providing the Provider with reasonable opportunity to clarify such information, the Council may terminate this Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is or seems likely to occur a material detrimental change in the financial standing and/or the credit rating of the Provider which will or may adversely impact on the Provider's ability to comply with its obligations under the Agreement.
- 5.4 Without affecting any other right or remedy available to it, the Council may terminate this Agreement or suspend the referral or acceptance of Service Contracts with immediate effect by giving written notice to the Provider if:
- 5.4.1 the Provider commits a Material Breach of any term of this APL Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 calendar days after being notified in writing to do so;
 - 5.4.2 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
 - 5.4.3 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 5.4.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 5.4.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
 - 5.4.6 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 5.4.7 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
 - 5.4.8 the Provider (being an individual) is the subject of a bankruptcy petition or order;
 - 5.4.9 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 (fourteen) days;
 - 5.4.10 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 5.4.1 to clause 5.4.8 (inclusive); or
 - 5.4.11 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 5.5 The Provider shall notify the Council immediately if the Provider undergoes or anticipates undergoing a change of control within the meaning of section 1124 of the Corporation Tax Act 2010. ("**Change of Control**"). The Council may terminate this Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:-
- 5.5.1 being notified that a Change of Control has occurred; or

5.5.2 where no notification has been made, the date that the Council becomes aware of the Change of Control,

but shall not be permitted to terminate where the Council approved such a change prior to the Change of Control occurring.

5.6 The Council reserves the right to terminate the APL Agreement where:

5.6.1 the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR; or

5.6.2 the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) PCR, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

5.6.3 the contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

6. CONSEQUENCES OF TERMINATION AND EXPIRY

6.1 Notwithstanding the service of a notice to terminate the APL Agreement under clause 5, the Provider shall continue to fulfil its obligations under the APL Agreement until the date of expiry or termination of the APL Agreement or such other date as required under this clause 6.

6.2 Termination or expiry of the APL Agreement shall not cause any Service Contracts to terminate automatically. For the avoidance of doubt, all Service Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

6.3 Termination or expiry of this APL Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this APL Agreement prior to termination or expiry.

6.4 In the event of any termination of the Agreement, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Council under this Agreement or otherwise, the Council shall be entitled to obtain a refund of any monies paid in respect of any Services which have not been supplied by the Provider in accordance with the terms of the Agreement.

6.5 Termination by the Council in relation to one Provider in accordance with clauses 5.2- 5.6 shall not have the effect of automatically terminating APL agreements in place with other providers.

7. SUSPENSION FROM APL AND CONSEQUENCES OF SUSPENSION

7.1 A suspension event shall have occurred if the Council reasonably considers that there has been a breach by the Provider of any obligation under this APL Agreement or any Service Contract ("Suspension Event") which for the avoidance of doubt will include circumstances where a Location specified for use by the Provider does not meet the minimum criteria set out in Minimum Building Requirements and the Provider is unable or unwilling to immediately provide the Services at another Location which meets the Minimum Building Requirements.

7.2 Where a Suspension Event occurs the Council will follow the Suspension Policy at Schedule 12 of the Service Contract. The Council may by written notice to the Provider and with immediate effect suspend the Provider from the APL, until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to perform the Service, to the required standard if successful in any Tender exercise.

7.3 During the suspension of any Service under this clause 7, the Provider must comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council's decision to suspend pursuant to this clause 7 has been referred to dispute resolution under clause 16 (Dispute Resolution).

8. ORDER OF PRECEDENCE

8.1 The Provider shall perform all Service Contracts entered into with Contracting Bodies in accordance with:-

8.1.1 the requirements of this APL Agreement; and

8.1.2 the Service Contract(s).

8.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this APL Agreement, and the Service Contract, the application of the Clauses shall prevail in the following order:

(a) the Service Contract;

(b) this APL Agreement

(c) the Invitation to Tender requiring a Tender (where applicable);

(d) the Tender (where applicable);

(e) the Invitation to Participate;

(f) the Request to Participate;

(g) any other document referred to in the Service Contract; and

(h) any other document referred to in this Agreement.

9. TRANSFER AND SUB-CONTRACTING

9.1 The APL Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the APL Agreement or any part thereof without the prior written consent of the Council. The Provider shall not be entitled to subcontract any of its rights or obligations under this APL Agreement.

9.2 The Council shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the APL Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council provided that such assignment, novation or disposal shall not increase the burden of the Provider's obligations under the APL Agreement.

10. CQC REQUIREMENTS

10.1 The Provider shall maintain at all times throughout the term of this APL Agreement and the term of the Service Contract(s) registration with the CQC for the Regulated Activity of Personal Care and must specify a nominated office for the purposes of delivering the Services under this APL Agreement and the Service Contract(s). Failure to comply with this requirement will amount to a Material Breach and the Council may terminate this APL Agreement pursuant to the provisions of clause 5.4.

10.2 If at any time the Provider wishes to change its nominated office through the 'add and/or remove location(s)' procedure with the CQC, the Provider must have received approval from CQC in the form of a Notice of Decision to confirm the change before delivering services from its chosen location.

10.3 If at any time the Provider wishes to change its nominated office by virtue of a complete change of business and location address outside of the CQC's 'add and/or remove location(s)' regime but will be continuing to provide the Services to the same Service Users as it originally did, the Provider must have received approval from CQC in the form of an updated certificate before delivering services from its new location.

- 10.4 Further to paragraph 10.3 above, for any periods of time the new location is not rated by CQC, the Council is at liberty to carry out reasonable further and additional inspections beyond the scope carried out with other APL Providers.
- 10.5 If at any time during the term of this APL Agreement or the term of any Service Contract(s), 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 the Service Contract (or equivalent by any successor body or system of evaluation), the Provider shall inform the Council immediately and, within a timeframe to be stipulated by the Council, share an Improvement Plan with the Council. If the Council is not satisfied with the Provider's response, this shall amount to a Material Breach and the Council may suspend the award of Service Contracts to the Provider or terminate this APL Agreement pursuant to the provisions of clause 5.4.
- 10.6 Where the Provider is engaged as part of a consortium, all consortium members, subject to CQC regulation, including the Provider, must maintain the CQC requirements detailed within this clause 4 throughout the term of this Agreement.
- 10.7 The Council shall have the ability to terminate contracting with the entire consortium or, in the alternate, and at its absolute discretion, require the Lead Member of the consortium to terminate its arrangements with the failing consortium member, allowing the remaining consortium members to continue to deliver the Services.

11. CONFIDENTIALITY

- 11.1 Subject to clause 11.2, the Parties shall keep confidential all matters relating to this APL Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:
- 11.2.1 required by any applicable law, provided that clause 13 shall apply to any disclosures required under the FOIA or the EIR;
 - 11.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this APL Agreement;
 - 11.2.3 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 11.1;
 - 11.2.4 by the Council of any document to which it is a party and which the Parties to this APL Agreement have agreed contains no Confidential Information;
 - 11.2.5 to enable a determination to be made under clause 16;
 - 11.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
 - 11.2.7 by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the information; and
 - 11.2.8 by the Council relating to this APL Agreement and in respect of which the Provider has given its prior written consent to disclosure.
 - 11.2.9 information disclosed by the Council to other local authorities under the Information Sharing Protocol or the Provider Visit Template.

12. NOT USED

13. FREEDOM OF INFORMATION

- 13.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 13.2 The Provider shall and shall procure that its Subcontractors shall:
- 13.2.1 transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 13.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - 13.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council 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 EIR.
- 13.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 13.4 The Provider acknowledges that the Council may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- 13.4.1 without consulting with the Provider; or
 - 13.4.2 following consultation with the Provider and having taken its views into account,
- provided always that where clause 13 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 13.5 The Provider shall ensure that all Information produced in the course of the APL or relating to the APL is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 13.6 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 13.

14. PUBLICITY

- 14.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise this APL in any way without the Council's prior written consent.
- 14.2 The Council shall be entitled to publicise this APL in accordance with any legal obligation on the Council, including any examination of this APL by the Auditor or otherwise.
- 14.3 The Provider shall not do anything that may damage the reputation of the Council or bring the Council into disrepute.

15. PREVENTION OF BRIBERY

- 15.1 The Provider:

- 15.1.1 shall not, and shall procure that the Personnel and all Sub-Contractor personnel shall not, in connection with this APL Agreement and any Service Contract made under it commit a Prohibited Act; and
- 15.1.2 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 Council, or that an agreement has been reached to that effect, in connection with the execution of this APL Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this APL Agreement.
- 15.2 The Provider shall:
- 15.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- 15.2.2 within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause 15 by the Provider and all persons associated with it or other persons who are supplying services in connection with this APL Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 15.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Personnel or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 15.4 If any breach of clause 15 is suspected or known, the Provider must notify the Council immediately.
- 15.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 15, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this APL Agreement.
- 15.6 The Council may terminate this APL Agreement by written notice with immediate effect if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 15.
- 15.7 Any notice of termination under clause 15 must specify:
- 15.7.1 the nature of the Prohibited Act;
- 15.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 15.7.3 the date on which this APL Agreement will terminate.
- 15.8 Despite clause 16, any dispute relating to:
- 15.8.1 the interpretation of this clause 15; or
- 15.8.2 the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.
- 15.9 Any termination under this clause 15 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

16. DISPUTE RESOLUTION

- 16.1 If a dispute arises between the Council and the Provider in connection with the APL, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 16.2 If a dispute is not resolved within fourteen (14) days of referral under clause 16.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for

resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

16.3 Provided that both parties consent, a dispute not resolved in accordance with clauses 16.1 and 16.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.

16.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

17. VARIATIONS TO THE APL AGREEMENT

17.1 Any variations to the APL Agreement must be made in writing and agreed by the Council and all Providers on the APL.

17.2 Any variation to the APL Agreement must not amount to a material change in the APL or the Services.

18. THIRD PARTY RIGHTS

Except as explicitly provided in this Agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

19. SEVERANCE

19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

19.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. ENTIRE AGREEMENT

- 22.1 This APL Agreement including all Schedules constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 22.2 Each of the Parties acknowledges and agrees that in entering into this APL Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this APL Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this APL Agreement.
- 22.3 Nothing in this clause 22 shall operate to exclude Fraud or fraudulent misrepresentation.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, but all of which together shall be constitute one agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart.

24. LAW AND JURISDICTION

The Parties accept the exclusive jurisdiction of the English courts and agree that the APL Agreement is to be governed by and construed according to English law.

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

SIGNED by (INSERT NAME))
Duly authorised for and on behalf of)
the Council)

Title: _____

Executed by the Provider acting by)
(INSERT NAME OF DIRECTOR), a director)
and (NAME OF 2ND SIGNATORY), [a)
a director OR its secretary]

Director

[Director OR Secretary]

SCHEDULE 1- CALL-OFF TERMS AND CONDITIONS

DATED

**SERVICE CONTRACT FOR THE PROVISION OF
CARE SERVICES IN SUPPORTED HOUSING**

between

[INSERT DETAIL OF CONTRACTING BODY]

and

[INSERT DETAIL OF PROVIDER]



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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [NAME AND ADDRESS OF CONTRACTING BODY] (**Contracting Body**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Provider**).

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

BACKGROUND

- (A) The Council has been seeking proposals for the provision of care services in supported housing for people with learning disabilities/autism, mental health needs, a physical disability or sensory impairment by means of a public tender exercise. The Council placed a contract notice in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of provision of the Services.
- (B) Following the Provider's application, the Council has appointed the Provider as a potential provider of the Services in accordance with the APL Agreement.
- (C) Following the procedure outlined in the APL Agreement, the Contracting Body has selected the Provider to provide the Services on the terms set out in this Service Contract.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this 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 2).

Affected Services: has the meaning given in Clause 9.1(a).

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

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

Annual Service Development Plan (ASDP): a plan developed and agreed between the Contracting Body and the Provider setting out the Provider's obligations in relation to Service efficiency and improvement (Appendix A to the Service Contract Data at Schedule 4)

APL: means the Approved Provider List established in accordance with the Public Contracts Regulations 2015 to which this Service Contract relates

APL Agreement: means the Approved Provider List Agreement between the Council and the Provider together with all schedules and appendices under which this Service Contract is awarded

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 Contracting Body and the Provider, as set out in Schedule 5.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

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

Business Continuity Plan: the plan to be prepared and delivered by the Provider pursuant to Schedule 9 and in accordance with the principles set out at paragraph 4.4 of the Specification

Business Transition: the process by which existing care and support Services will be recommissioned through the APL over a period expected to last approximately 18 months following the commencement date of the APL Agreement

Care Plan/ Care and Support Plan / Support Plan: The individualised plan outlining the support requirements of the Service User to be issued to the Provider on award of a Service Contract.

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 Contracting Body's Representative has or may cause significant harm to the reputation of the Contracting Body.

there is a safeguarding issue which cannot be remedied.

the Minimum Building Standards are no longer being met in respect of the Premises where Service Users are placed.

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 Contracting Body to the Provider in respect of the Services in accordance with the provisions of clause 11 of this agreement and as further particularised in the Service Contract Data.

Commencement Date: the date set out in the Service Contract Data

Commercially Sensitive Information: the information listed in Schedule 11 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 Contracting Body that, if disclosed by the Contracting Body, would cause the Provider significant commercial disadvantage or material financial loss.

Confirmation: the submission, through the Council's Oracle Care Portal or an alternative system specified by the Contracting Body, of actual support hours delivered by the Provider

Consistent Failure: shall have the meaning set out in Part 3 of Schedule 2.

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.

Contracting Council: shall mean any contracting Council as defined in Regulation 2 of the Public Contracts Regulations 2015.

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 Support: has the meaning set out in the Specification.

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

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

Data Protection Legislation: shall mean:

- i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
- ii) the DPA to the extent that it relates to processing of personal data and privacy;
- iii) all Applicable Law about the processing of personal data and privacy;

Default Notice: is defined in clause 5.2.

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

Disturbed Sleep: means a disturbance, or number of disturbances, equating to 30 minutes or more disturbed minutes occurring in any one night (such period being further particularised in the Service Contract Data) for Provider's staff undertaking sleep-in support in accordance with paragraph 3.4.2 of the Specification

Disturbed Sleep Payments: shall have the meaning set out in Schedule 14

DPA: means the Data Protection Act 2018 as amended from time to time.

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.

Escalation Policy: the Adult Social Care Policy and Procedure for Managing Service Provider Quality and Performance in Commissioned Services as set out at Schedule 8

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 9.

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 Contracting Body

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 support hours (not the entire Care and Support Plan) with less than 24 hours' notice to the Provider or where the Service User has unreasonably, at the determination of the Contracting Body, refused access to the Provider.

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

[Individual Service Fund or 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]

Individualised Support: has the meaning set out in the Specification

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

Initial Term: the period from the Commencement Date to 5th January 2027, or such earlier date of termination of the agreement in accordance with the Law or the provisions of the agreement.

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

Key Personnel: those personnel identified in the Service Contract Data who are identified by each party as being key to the success of the implementation and/or operation of the Services as a whole, as modified pursuant to clause 13.

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

Management Reports: the reports to be prepared and presented by the Provider in accordance with clause 17 and Schedule 5 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Minimum Building Standards: the Decent Home Standards as further particularised in paragraph 3.17.3 of the Specification

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

Non-Schedule Payment: payment of Charges to the Provider that are not Scheduled Payments

Non-Standard Rate: any Charges applying to the provision of Services following a mini-competition or negotiated with the Provider following a direct award of a Service Contract

Payment Plan: the plan for payment of the Charges as set out in clause 11 and as further particularised in the Service Contract Data.

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

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 allocated to a Service User by the Contracting Body following an assessment of their care and support needs representing the sum needed to meet their eligible social care needs.

Premises: means the location from which the Services are, or can be, provided as set out in the Service Contract Data, as amended with the consent of the Contracting Body.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Body 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 Contracting Body; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Contracting Body.

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's Tender: the tender submitted by the Provider to the Contracting Body in response to the Contracting Body's invitation to Providers for formal offers to supply it with the Services and other associated documentation set out in Schedule 3.

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.

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 Contracting Body and "Regulatory Body" shall be construed accordingly.

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

Remediation Notice: a notice served by the Contracting Body in accordance with clause 30.2(a).

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

Replacement Provider: any third party Provider of Replacement Services appointed by the Contracting Body 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.

Scope: the details of the specific Services to be delivered under this agreement in accordance with the Specification as further particularised in the Service Contract Data

Scheduled Payment: Payment of Charges to the Provider at defined intervals in respect of Services delivered under this Service Contract

Service Contract Data: the document at Schedule 4 and forming part of this Service Contract and supplementing the Specification, setting out the key details and specifics of the Contracting Body'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 Schedule 2.

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

Service User: means any individual notified by the Contracting Body 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.

Standard Rate: the Charges or prices published by the Council to take effect from the first day in April each year

Step-in Actions: has the meaning given in clause 9.1(d).

Step-in Event: means:

- a) the Provider is in material breach of the Service Levels for a consecutive period of 60 days;
- b) the Contracting Body has reasonable grounds for believing that the Provider is unable to deliver the Services, or that those Services will be in material breach of the Service Levels;
- c) a Force Majeure Event occurs that materially prevents or materially delays the performance of the Services or a substantial part of the Services by the Provider for a consecutive period of 30 Working Days;
- d) the Contracting Body is required by a regulatory body that the exercise by the Contracting Body of its rights under Clause 9 (Step-in rights) is necessary;
- e) a condition occurs that triggers the Contracting Body's right to terminate the agreement under clauses 30 or 31; or
- f) the Contracting Body has reasonable grounds for believing that there is a safeguarding concern.

Step-in Notice: has the meaning given in Clause 9.1.

Step-in Party: has the meaning given in Clause 9.1(a)

Step-in Period: has the meaning given in Clause 9.1(e) and as subsequently extended pursuant to Clause 9.8.

Step-out Plan: has the meaning given in Clause 9.4.

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.

Supplier Incentive Scheme: means the Council's programme to improve its pay to purchase processes to enable the Provider to benefit from the early payment of their invoices or the Charges in return for a small rebate of the Charges. If the Provider's tender submission indicated that they wished to be part of the scheme in relation to this contract, the terms of the Supplier Incentive Scheme shall be set out at Schedule 6.

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

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

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

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) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. INITIAL TERM

- 2.1 The Agreement shall take effect on the Commencement Date and shall continue for the Initial Term unless it is otherwise terminated in accordance with the provisions of the agreement, or otherwise lawfully terminated, or extended under clause 3.1 (Extending The Initial Term).

3. EXTENDING THE INITIAL TERM

- 3.1 The Contracting Body may extend this agreement beyond the Initial Term by a further period or periods as set out in the Service Contract Data. If the Contracting Body wishes to extend this agreement, it shall give the Provider at least 3 (three) months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Contracting Body gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Contracting Body 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 34 shall apply.
- 3.4 If the Contracting Body does extend the Initial Term, then it shall do so on the same terms and conditions as set out in this Agreement.

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 Contracting Body 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 Contracting Body 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 Contracting Body pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Contracting Body pursuant to clause 4.3(b);
 - (d) it has raised all relevant due diligence questions with the Contracting Body 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 Contracting Body in respect of any information which is provided to the Provider by the Contracting Body 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 Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Contracting Body prior to execution of the agreement; and
 - (b) it shall promptly notify the Contracting Body in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Contracting Body during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.
 - (c) 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;
 - (d) in entering the agreement it has not committed any Fraud;

- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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 Contracting Body which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Contracting Body by the Provider in accordance with clause 4.5(b) 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 Contracting Body 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 Contracting Body or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4.7 Nothing in this clause 4 shall limit or exclude the liability of the Contracting Body for Fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Provider shall provide the Services to the Contracting Body with effect from the date set out in the Service Contract Data and for the duration of this Agreement in accordance with the provisions of this Agreement.
- 5.2 In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Contracting Body may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**).

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 Contract Management Strategy at Schedule 5.
- 6.3 In the event that any Achieved Service Level falls short of the Target Service Level, without prejudice to any other rights the Contracting Body may have, the provisions of clause 30 (Termination) shall apply.

7. SERVICE STANDARDS

- 7.1 Without prejudice to clause 6, the Provider warrants that it shall provide the Services, or procure that they are provided:
- a) in accordance with Best Industry Practice;
 - b) at all times in compliance with the Contracting Body's requirements set out in this agreement;
 - c) in all respects in accordance with the Council's policies set out in Schedule 1; and
 - d) in accordance with all Applicable Laws.
- 7.2 Without limiting the general obligation set out in clause 7.1, 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.
- 7.3 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.

- 7.4 The Provider shall at all times comply with the Quality Standards as set out in the Specification at Schedule 1, and where applicable shall maintain accreditation with any relevant Quality Standards authorisation body (including for the avoidance of doubt the Care Quality Commission).
- 7.5 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 Contracting Body and the Council immediately and, within a timeframe to be stipulated by the Contracting Body (having consulted the Council), share an improvement plan with the Council and the Contracting Body. The Contracting Body shall discuss the Provider's improvement plan with the Council and if the Council (at its sole discretion) is not satisfied with the Provider's response, this shall amount to a Material Breach and the Council may suspend the award of Service Contracts to the Provider and/or the Contracting Body may terminate this Agreement pursuant to the provisions of clause 30 of this agreement.
- 7.6 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, the Contracting Body may at its sole discretion commence the Escalation Policy detailed at Schedule 8 or, in the alternate, schedule a Provider performance meeting with the Provider.
- 7.7 Where the Provider is failing to deliver the Services in accordance with this Agreement, the Contracting Body may consult with the Council and the Council, at its sole discretion and pursuant to the Suspension Policy at Schedule 12 to this agreement, may suspend the Provider and require the Provider to provide an improvement plan within a timeframe stipulated by the Council. The improvement plan (to be approved by the Council in consultation with the Contracting Body) shall stipulate the Provider's proposals to deal with any failings or concerns of the Council and/or the Contracting. If the Council, having consulted with the Contracting Body, is not satisfied with the Provider's response this shall amount to a Material Breach and the Council or the Contracting Body may follow the appropriate part of the Escalation Policy or the Contracting Body may terminate this agreement pursuant to the provisions of clause 30 of this agreement.
- 7.8 During the period of suspension:
- a) no further Service Contracts 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.
- 7.9 The Provider acknowledges that suspensions may be notified to other authorities, commissioners and providers as the Council or the Contracting Body sees fit. Should the Provider anticipate failure to comply with the terms of the agreements between the

parties and the service standards, it may, at its discretion, approach the Council and request for a voluntary suspension in line with the terms of the Escalation Policy, to take effect for a limited period to be agreed between the Council and the Provider. This will be reviewed by the Council's Contract Management team. The Provider acknowledges that the Council or the Contracting Body 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 Council or the Contracting Body sees fit. Any approval of voluntary suspension will be at the sole discretion of the Council.

- 7.10 Further to clause 7.9 above, any voluntary suspension sought by the Provider only has effect in relation to the award of new Service Contracts to the Provider and, for the avoidance of doubt, does not affect the Provider's existing Service Contracts.
- 7.11 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 Service Contract Data.
- 7.12 Without prejudice to any other rights and remedies the Contracting Body may have pursuant to this Agreement or otherwise, the Provider shall reimburse the Contracting Body for all reasonable costs incurred by the Contracting Body 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 Contracting Body.
- 7.13 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 Contracting Body and or any person authorised by the Contracting Body 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.

8. HEALTH AND SAFETY

- 8.1 The Provider shall promptly notify the Contracting Body of any health and safety hazards, which may arise in connection with the performance of the agreement.
- 8.2 The Provider shall notify the Contracting Body immediately in the event of any incident occurring in the performance of the agreement where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.3 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to those Service Users at the Premises.
- 8.4 The 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 Contracting Body on request.

9. STEP IN RIGHTS

- 9.1 Without prejudice to the Contracting Body's other rights and remedies under this Agreement and at law, if a Step-in Event occurs, the Contracting Body shall have the right to issue a written step-in notice, which shall include the following information (**Step-in Notice**):
- (a) that the Contracting Body, or a third party appointed by it, or the Contracting Body jointly with that third party (**Step-in Party**) intends to perform or manage the performance of part or all of the Services (**Affected Services**);
 - (b) the details of the Step-in Event that has triggered the exercise of the Step-in Notice;
 - (c) details of the Affected Services;
 - (d) the actions that the Step-in Party intends to take in order to rectify the Affected Services (**Step-in Actions**);
 - (e) the estimated dates on which the Step-in Actions will commence and end (**Step-in Period**);
 - (f) in the Contracting Body's reasonable opinion, the extent that the Contracting Body anticipates the Step-in Actions will have on the Provider's obligation to provide the remaining Services that are not the Affected Services; and
 - (g) any other information that the Contracting Body is reasonably able to provide in relation to how the Step-in Party intends to perform the Step-in Actions.
- 9.2 On receipt of the Step-in Notice, the Provider shall, subject to Clause 9.3 and at no additional cost, provide, enable or procure access for the Step-in Party to:
- (a) any of the Premises and facilities that the Contracting Body so requests; and
 - (b) any equipment and software that are used in the administration, management and provision of the Affected Services;
- for the sole purpose of enabling the Step-in Party to perform the Step-in Actions during the Step-in Period only.
- 9.3 The Contracting Body shall use reasonable endeavours to ensure that the Step-in Party's personnel and representatives that have the access as provided for under Clause 9.2;
- (a) comply with all relevant health and safety requirements for any of the Provider's Premises, such requirements as notified by the Provider;
 - (b) only use the facilities, equipment or software on the Provider's instructions and exercise reasonable care when using those items so as not to cause damage; and
 - (c) do not disrupt or interfere with the Provider's obligations to deliver the Services that are not the Affected Services.
- 9.4 Within ten Business Days of receipt of the Step-in Notice, the Provider shall submit to the Contracting Body a written plan setting out the measures the Provider intends to take after the Step-in Period in order to restore the Affected Services to satisfy the requirements of the agreement (**Step-out Plan**).
- 9.5 The Contracting Body is not liable to pay the charges relating to the Affected Services, and the Charges shall be reduced accordingly so as not to include those relating to the Affected Services.

- 9.6 During the Step-in Period, the Provider shall:
- (a) be relieved of its obligations to provide the Affected Services and shall not be liable for any liability arising out of the Affected Services not meeting the Service Levels if the Supplier can show that the sole cause of that failure is due to the Step-in Party's actions;
 - (b) continue to provide the Services that are not the Affected Services, and shall inform the Contracting Body if the Affected Services will impact on its ability to deliver those other Services;
 - (c) not receive any new placements for Service Users at any Premises where the Affected Services are performed.
 - (d) fully cooperate and provide all reasonable assistance at no additional charge to the Step-in Party for the sole purpose of enabling the Step-in Party to perform the Step-in Actions; and
 - (e) use best endeavours to ensure that the relevant Provider's Personnel promptly follows the reasonable and lawful instructions of the Step-in Party in pursuance of the Step-in Actions.
- 9.7 The Contracting Body shall keep a written record of the Step-in Actions that the Step-in Party has taken and keep the Provider informed of the progress of the Step-in Actions.
- 9.8 The Contracting Body shall use reasonable endeavours to ensure that the Step-in Actions are completed during the Step-in Period, but if the Contracting Body reasonably deems it necessary to extend the Step-in Period, it shall inform the Provider accordingly no later than ten Business Days before the Step-in Period is due to end.
- 9.9 If the Contracting Body is satisfied that the circumstances leading to the Step-in Event are no longer present and the Provider has demonstrated in the Step-out Plan that it can resume responsibility for the Affected Services, the Contracting Body will issue a written notice to the Provider that:
- (a) requires the Provider to resume performance of the Affected Services;
 - (b) specifies the date on which the Provider shall resume such performance; and
 - (c) sets out the Step-in Actions that the Step-in Party actually took during the Step-in Period.
- 9.10 The Provider shall be liable to the Contracting Body for all direct costs and expenses that are reasonable and necessarily incurred by Step-in Party in taking the Step-in Actions, and the Customer shall use all reasonable endeavours to mitigate any such costs and expenses.

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 9) and deliver it to the Contracting Body for its approval in a format to be determined by the Contracting Body. Any amendments to the Exit Management Plan reasonably required by the Contracting Body 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 Contracting Body.
- 10.3 Upon Exit, the Provider must carry out immediately all steps required by the Contracting Body 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 Contracting Body 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 Contracting Body shall pay the Charges in accordance with this clause 11.
- 11.2 Charges may be paid on the basis of Scheduled Payments or Non-Scheduled Payments. The breakdown of Charges to be paid to the Provider is set out in the Service Contract Data.
- 11.3 The Charges will be fixed for each of the Services in accordance with the Service Contract Data. The Provider will not levy additional charges to the Service User for tasks that are agreed in the Care and Support Plan and are within the scope of Services commissioned and to be delivered to the Service User, nor will the Provider be entitled to claim payment for any alternative or additional Services without the prior written agreement of the Contracting Body and subject to the provisions of clauses 11.28-11.30 relating to Emergency Hours provision. For the avoidance of any doubt, this clause does not prevent the Provider from providing privately funded additional services to Service Users in addition to those Services funded by the Contracting Body.
- 11.4 Save for Frustrated Support Hours, for which the Provider is entitled to claim relevant Charges, and notwithstanding clause 11.2, should any element of the Services not be delivered or the duration of the same be reduced either at the request of the Contracting Body or the Service User, then the Provider shall be precluded from claiming from the Contracting Body for the entirety of the Charges detailed in the Contract Data and will instead claim an amount proportionate to the Services actually delivered.
- 11.5 For all Services provided otherwise than pursuant to an Individual Service Fund arrangement or where otherwise directed by the Contracting Body, payment shall be subject to completion and receipt by the Contracting Body of a Confirmation of the Services delivered which must be provided by the Provider within 28 calendar days of the end of the Payment Period via the Council's Oracle Care Portal or an alternative system specified by the Contracting Body. The Provider shall not submit an invoice. In response to a request from the Contracting Body, the Provider must provide such information as the Contracting Body shall reasonably request (including but not limited to financial statements, time sheets, records receipts, invoices, reports and service performance details) to enable the Contracting Body to verify that the sums claimed are correct.

- 11.6 In submitting a Confirmation the Provider shall be deemed to have represented to the Contracting Body:
- 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 Contracting Body;
 - b) that the Provider has included notification of adjustments applied in relation to a Service User that have been agreed with the Contracting Body;
 - c) Details of Frustrated Support Hours; and
 - d) Details of Disturbed Sleep Payments in accordance with Schedule 14
- 11.7 The Contracting Body is not obliged to make payment of Charges in respect of a Confirmation which is not submitted within 28 calendar days of the end of the Payment Period to which the Charges relate. The Contracting Body will consider all reasonable requests for payment of Charges in respect of a Confirmation which is not submitted within 28 calendar days of the end of the Payment Period in circumstances where the Provider has been prevented, as a result of failure or delay solely on the part of the Contracting Body, from submitting the relevant Confirmation for Services. The Contracting Body will not process Confirmations for subsequent Payment Periods until any unsubmitted Confirmations from the previous Payment Period have been submitted.
- 11.8 The Contracting Body will pay sums due to the Provider under the Agreement via the Banks Automated Clearing Services System (BACS). Details of the Provider's accounts will be provided to the Contracting Body. A payment remittance will be issued with each payment. Payment terms are 30 days in arrears subject to any other arrangements agreed in writing with the Contracting Body during Business Transition.
- 11.9 Upon payment being received by the Provider the Provider shall be deemed to have represented to the Contracting Body the following information:
- (a) that those Service Users in respect of whom payment is being made are in receipt of the Services on the dates specified in the Contracting Body's remittance advice;
 - (b) that it is managing the Care and Support Plans for those Service Users in respect of whom payment is being made in accordance with the requirements of Schedule 1 and the Service Contract Data.
- 11.10 Where a 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. The Contracting Body shall notify the Provider within thirty 30 calendar days of receipt of the relevant Confirmation giving reasons for the disputed sum and any subsequent dispute shall be resolved in accordance with the provisions of clause 20. Provided that the sum has been disputed in good faith, interest on any sums in dispute (which for the avoidance of doubt will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%) shall not

accrue until the earlier of thirty (30) calendar days after resolution of the dispute between the parties. The Contracting Body may withhold payment against any Confirmation or any item shown on any Confirmation which is not submitted in accordance with the Agreement or which covers or purports to relate to Services which have not been provided in accordance with the Agreement, or which it disputes for any other reason. Should the Contracting Body withhold payment in accordance with this sub-clause, the Contracting Body shall not be deemed to be in breach of contract.

11.11 The Contracting Body shall pay any amount withheld pursuant to clause 11.10, which has subsequently been agreed (or determined in accordance with clause 20 to be payable by the Contracting Body) within thirty (30) calendar days of such agreement being reached or such determination being made.

11.12 The Provider shall advise the Contracting Body forthwith of any changes, errors, overpayments, underpayments or other information which may affect the amounts paid or to be paid by the Contracting Body for any Services under the Agreement.

11.13 The Contracting Body will adjust the Charges payable in the next payment due, to cover any under or over payments, details of which (including such supporting documentation, Care and Support Plans or other information as are required by the Contracting Body from time to time) have been provided by the Provider. Where any sum of money shall be recoverable from or payable by the Provider as an overpayment, the same may be deducted by the Contracting Body from any sum then due or which at any time thereafter may become due to the Provider under this or any other contract with the Provider.

11.14 The Provider must notify the Contracting Body via (in the case of a Service Contract concluded with the Council, the Council's Customer Access Service by telephone on 0300 123 6720, or in the case of a Service Contract concluded with another Contracting Body, such arrangements as are agreed between the Parties) as soon as possible and in any event no later than the Contracting Body's next Working Day, if -

- (a) a Service User ceases to receive a Service under this Agreement for any reason;
- (b) the 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.
- (d) if it becomes aware that a Service User is eligible for or is in receipt of any new sources of funding which could affect the future level of the Contracting Body's contribution towards the cost of that Service User's Service provision

11.15 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 Contracting Body in accordance with clause 30.9. 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.

- 11.16 Where the Services in respect of Individualised Support provided to an individual Service User are ceased by the Contracting Body in accordance with clause 30.5 and seven (7) calendar days' notice has been provided, no additional payment of the Charges shall be made to the Provider.
- 11.17 Where the Services in respect of Individualised Support provided to an individual a Service User are ceased by the Contracting Body, and seven (7) calendar days' notice is not provided, the Provider can claim up to 3 days of Charges following the last day of service delivery in the event that Services would have otherwise been provided.
- 11.18 All sums due hereunder are exclusive of VAT (details of which will be provided to the Contracting Body by the Provider) which will be paid by the Contracting Body at the rate and in the manner for the time being prescribed by law.
- 11.19 Subject to Clause 11.18, the Provider shall account to HM Revenue and Customs for all taxes, contributions, liabilities, charges and dues (including PAYE and National Insurance) for which the Provider (including, for the avoidance of doubt, all staff) is liable.
- 11.20 The Provider shall indemnify and keep the Contracting Body 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 11.19 by the Provider.
- 11.21 For the avoidance of doubt the Parties agree and acknowledge that payment of any sums by the Contracting Body under this Agreement shall be without prejudice to any claims or rights which the Contracting Body may have against the Provider and shall not constitute any admission or waiver by the Contracting Body as to the performance by the Provider of its obligations hereunder.
- 11.22 Unless otherwise stated the Charges are inclusive of all costs and expenses which may be incurred by the Provider in carrying out its obligations hereunder and no additional charges will be payable by the Contracting Body unless agreed in advance by the Parties.
- 11.23 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Contracting Body pursuant to this Agreement. Such records shall be retained for inspection by the Contracting Body for 7 years from the end of the Contract Year to which the records relate.
- 11.24 Where the 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 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.

- 11.25 Should the Provider choose to appoint a factoring or invoice management agency to manage the payments it receives under this agreement, the Contracting Body will not liaise or discuss payments with the appointed agency and all communications regarding outstanding payments will remain solely between the Contracting Body and the Provider, save for any confirmation received from the appointed agency or the Provider that the arrangement with the agency has ceased.
- 11.26 Late payment of the Charges by the Contracting Body does not permit the Provider to delay or suspend provision of the Services.
- 11.27 If applicable, and where there is a consortium of Providers operating, payments will be made to the lead Provider only. The lead Provider is then responsible for administering payments to consortium.

EMERGENCY HOURS PROVISION

- 11.28 There may be occasions in which it becomes apparent that there is an urgent need for an increase in the number of hours of Services 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 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.
- 11.29 Pursuant to clause 11.28, where Emergency Hours are delivered by the Provider on more than 6 occasions in any consecutive 3 Payment Periods and in respect of any single Service User, the Provider is required to notify (in the case of a Service Contract concluded with the Council, the Council's Customer Access Service by telephone on 0300 123 6720 or such telephone number as the Council may subsequently notify to the Provider, or in the case of a Service Contract concluded with another Contracting Body, such arrangements as are agreed between the Parties) to request a review of the Service User's needs.
- 11.30 The Provider, upon request from the Contracting Body, 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 Contracting Body to not be delivered in accordance with this clause, the Contracting Body may at its discretion withhold payment to the Service Provider pertaining to the additional service provision delivered.

CONTINGENCY HOURS PROVISION

- 11.31 The Contracting Body may terminate the agreed Contingency Plan with immediate effect if the Contracting Body reasonably considers that:

- a. The Provider is not complying with the Contingency Plan;
 - b. The Service User's needs and agreed outcomes are not being met as agreed in the Care and Support Plan;
 - c. The Provider exceeds the number of support hours agreed in the Contingency Plan
 - d. The Provider is utilising and claiming Contingency Hours in a way other than in accordance with the agreed Contingency Plan.
- 11.32 The Contracting Body will monitor the delivery of commissioned Contingency Hours in accordance with KPI 5.

REVIEW OF CHARGES

11.33 The Charges shall be reviewed by the Contracting Body in accordance with the applicable procedure set out in the Service Contract Data, based on the following options:

- (a) Where Charges are paid on the basis of a Standard Rate, the Council shall review Charges annually and shall publish, via the Council's website prior to the commencement of the next financial year, revised Charges to take effect from the first day in April of each contract year.
- (b) Where Charges are paid on the basis of a Non-Standard Rate, the following options for review of Charges may apply:
- (c) the Contracting Body may require the Provider to submit its Charges for each year of the Service Contract at mini-competition which will apply for the Term of the Service Contract; or
- (d) where a Service Contract is directly awarded, the Provider and the Contracting Body may agree the Charges at the point of contract award, which will apply for the Term of the Service Contract; or

in either cases (b)(i) or (b)(ii) annual adjustments to Charges may be built into the agreed Charges, or subsequently agreed between the Contracting Body and the Provider, or an adjustment to Charges may be based on the percentage increase or decrease in the Consumer Prices Index during the previous year, to be applied from 1 April each year.

- 11.34 Notwithstanding the provisions of paragraph 11.33, the Provider may request a review of Charges once per calendar year. The Contracting Body will only consider increasing the rate payable to the Provider as a result of the following evidenced circumstances only and in, in any event, only in circumstances where the Provider has incurred an increase of its costs due to factors entirely out of its control, manageability and foreseeability:
- a) Changes to the living wage or inflation resulting in the delivery of Services under the agreement being unsustainable for the Provider;
 - b) An increase in auto-enrolment pension contributions;

- c) An increase in the Consumer Price Index; and
- d) Any other evidenced circumstances or situation in the Contracting Body's complete and sole discretion.

11.35 Prior to agreeing to any increase in rates, where appropriate, the Provider must agree to an open book exercise to demonstrate that cost increases are due to factors outside its control, manageability and foreseeability and the same cannot be offset by operational efficiencies. The Contracting Body's budgetary constraints and any such other considerations that the Contracting Body considers are relevant may also be taken into account in assessing any rate increase request from the Provider. The Contracting Body makes no representation and offers no guarantee that any increase will be applied to the Charges following any review or assessment carried out.

11.36 A Provider request for a review of Charges must be made in advance of the relevant Contract Year to which the requested uplift of Charges relates, to take effect from the commencement of that Contract Year. For the avoidance of doubt, where the Contracting Body agrees to a Provider's requested uplift of Charges, the effective date on which the revised Charges will apply for the relevant Contract Year will be the later of the commencement date of that Contract Year or, if not requested in advance of that Contract Year, the date in that Contract Year on which the request was submitted to the Contracting Body.

SUPPLIER INCENTIVE SCHEME

11.37 If as part of the Provider's Tender, the Provider indicated that they wished to utilise the Supplier Incentive Scheme in relation to this agreement, the supplemental terms outlined in Schedule 6 shall apply. In the event of any conflict between the terms of Schedule 6 and this clause 11, the provisions in Schedule 6 shall take priority until expiry or termination of Schedule 6 in which case only this clause 11 shall apply.

12. INDIVIDUAL SERVICE FUNDS

12.1 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 [] shall apply to the management by the Provider of the Individual Service Fund and the Provider shall 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.

STAFF

13. KEY PERSONNEL

- 13.1 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Contracting Body.
- 13.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Contracting Body (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 Contracting Body.
- 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 Contracting Body 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 28 Working Days (or such other reasonable period as may be agreed between the parties).
- 13.7 The Contracting Body 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 Council's and/or the Contracting Body's policies including those that apply to persons who are allowed access to the applicable Council's or Contracting Body's Premises.

14.2 The Contracting Body 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 Contracting Body 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 Contracting Body 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 at the prevailing industry norm for similar services, locations and environments.

14.6 The Provider shall immediately notify the Council and the Contracting Body 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 Contracting Body 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 10 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 Schedule 5.
- 17.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 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.

18. MONITORING

- 18.1 The Contracting Body shall monitor the performance of the Services by the Provider in accordance with Schedule 2 and Schedule 5.
- 18.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Contracting Body in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Contracting Body.

19. CHANGE CONTROL

Any requirement for a Change, including the need for any Additional Services shall be subject to the Change Control Procedure.

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 Contracting Body (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 Contracting Body'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 Contracting Body, 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 Contracting Body, 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 Contracting Body 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 Contracting Body, of any such Sub-Contract on receipt of a request for such by the Contracting Body's Authorised Representative.

21.3. Subject to clause 21.5, the Contracting Body may assign, novate or otherwise dispose of its rights and obligations under the agreement or any part thereof to:

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

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 Contracting Body such that it ceases to be a Contracting Council 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 Contracting Body.

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 Council or if there is a change in the legal status of the Contracting Body such that it ceases to be a Contracting Council (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

- (a) the rights of termination of the Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body against all liabilities, costs, expenses, damages and losses incurred by the Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body arising out of or in connection with:

- (a) any claim made against the Contracting Body 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 Contracting Body discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Contracting Body which may reasonably be

considered likely to give rise to a liability under this indemnity (Claim), the Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body to the Contracting Body'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 Contracting Body shall be entitled to receive from the Provider such amounts as shall ensure that the net receipt, after tax, to the Contracting Body 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 Contracting Body are directly caused (or directly arise) from the negligence or breach of this agreement by the Contracting Body or its Representatives.

22.6 Nothing in this clause shall restrict or limit the Contracting Body'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 Contracting Body's total aggregate liability:
- a) in respect of the indemnities given by the Contracting Body in Schedule 10 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 Contracting Body 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 10 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 Contracting Body. 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 Contracting Body, 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 Contracting Body 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 Contracting Body is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Contracting Body (at the Provider's expense) to enable the Contracting Body 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 Contracting Body as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - b) provide the Contracting Body with a copy of all Information in its possession or power in the form that the Contracting Body requires within five Working

Days (or such other period as the Contracting Body may specify) of the Contracting Body requesting that Information; and

- c) provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body 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 Contracting Body 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 Contracting Body.

25.5 The Provider acknowledges that the Contracting Body 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 25.5(b) applies the Contracting Body 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 Contracting Body 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 Contracting Body may nevertheless be obliged to disclose Confidential Information in accordance with clause 25.5.

26 DATA PROTECTION

26.1 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 Each party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation 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 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 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 GDPR or the EEA unless the transferor:
 - (i) complies with the provisions of Article 26 of the UK GDPR (in the event the third party is a Joint Controller); and
 - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR as of 31 December 2020; or (ii) there has been an adequacy regulation by the Secretary of State based on section 17A of the Data Protection Act 2018; or (iii) there are appropriate safeguards in place pursuant to Article 46 UK GDPR; or (iv) Binding corporate rules are in place pursuant to Article 47 UK GDPR or (v) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 26.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. 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 possible;
- (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 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 without undue delay on becoming aware of any breach of the 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 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 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 Data Protection Legislation.

26.5 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 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 Contracting Body to manage, defend and/or settle it.

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 Contracting Body 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 Contracting Body to any other department, office or agency of the Government; and
- h) by the Contracting Body 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 Contracting Body or securely destroyed.

28 AUDIT

28.1 During the Term and for a period of 7 years after the Termination Date, the Contracting Body 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 Contracting Body 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 Contracting Body'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 Contracting Body 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 Contracting Body by a Regulatory Body, the Contracting Body may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3 The Contracting Body 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 Contracting Body's obligations of confidentiality, the Provider shall on demand provide the Contracting Body 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 Contracting Body 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 Contracting Body for all the Contracting Body'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 Contracting Body 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 Contracting Body has overpaid any Charges, the Provider shall pay to the Contracting Body the amount overpaid within 20 days. The Contracting Body may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
 - c) the Contracting Body has underpaid any Charges, the Contracting Body shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Contracting Body 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 Contracting Body shall remain the property of the Contracting Body; and
- (b) prepared by or for the Provider on behalf of the Contracting Body for use, or intended use, in relation to the performance by the Provider of its obligations under the agreement shall belong to the Contracting Body;

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 Contracting Body, use or disclose any Intellectual Property in the IP Materials.

29.2 The Provider hereby assigns to the Contracting Body, 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 Contracting Body a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Contracting Body 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 Contracting Body to sub-license, transfer, novate or assign to other Contracting Authorities, the replacement Provider or to any other third party supplying services to the Contracting Body.

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 Contracting Body harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Body or the Contracting Body 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 Contracting Body ; or
- (b) the use of data supplied by the Contracting Body which is not required to be verified by the Provider under any provision of the agreement.

29.6 The Contracting Body shall notify the Provider in writing of any claim or demand brought against the Contracting Body 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 Contracting Body 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 Contracting Body; and
 - (c) shall not settle or compromise any claim without the prior written approval of the Contracting Body (not to be unreasonably withheld or delayed).
- 29.8 The Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body and, at its own expense and subject to the consent of the Contracting Body (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 Contracting Body,
- 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 Contracting Body may terminate the agreement with immediate effect by notice in writing.
- 29.11 The Provider grants to the Contracting Body 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 Contracting Body 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 Contracting Body may terminate this agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:
- a) if the Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Contracting Body may only terminate this agreement under this clause 30.1 if the Provider has failed to remedy such breach within 14 days (or such other longer period if stipulated by the Contracting Body in writing) of receipt of notice from the Contracting Body (a **Remediation Notice**) to do so;
 - b) if a Consistent Failure has occurred;
 - c) if a Catastrophic Failure has occurred;
 - d) if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the 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 Provider's property or equipment;
 - e) if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
 - f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Provider to which the Contracting Body reasonably objects.
- 30.3 The Contracting Body may terminate this agreement in accordance with the provisions of this clause 30 and clauses 31-33.
- 30.4 If this agreement is terminated by the Contracting Body for cause such termination shall be at no loss or cost to the Contracting Body and the Provider hereby indemnifies the Contracting Body against any such losses or costs which the Contracting Body may suffer as a result of any such termination for cause.

TERMINATION: INDIVIDUAL SERVICE USERS

TERMINATION BY THE CONTRACTING BODY

- 30.5 The Contracting Body may terminate the provision of Individualised Support in relation to a single Service User on seven (7) calendar days' notice to the Provider. Such termination shall be without prejudice to the rest of the Provider's continuing obligations under the Agreement including the provision of Core Support, unless the Core Support is being provided solely to the Service User in respect of whom the Individualised Support is being terminated, in which case the provision of the Core Support shall be co-terminus with the Individualised Support.

- 30.6 Where the Contracting Body simultaneously terminates the provision of Individualised Support in respect of more than one Service User in a single Premises or multiple Premises, 28 (twenty eight) calendar days' notice shall be required. Such termination shall be without prejudice to the rest of the Provider's continuing obligations under the Agreement including the provision of Core Support, unless the Core Support under the Agreement is being provided to all Service Users in the Premises in respect of whom the Individualised Support is being terminated, in which case the provision of the Core Support shall be co-terminus with the Individualised Support).
- 30.7 Where the Contracting Body terminates the provision of Individualised Support in respect of all Service Users in a Premises or multiple Premises, three calendar months' notice (or, where agreed by the Parties, a shorter period of notice) shall be provided and the provision of Core Support shall be co-terminus with the Individualised Support.
- 30.8 Where a Care and Support Plan specifies that 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, the Contracting Body shall be liable to pay the relevant Charges outstanding in relation thereto for Services provided up to the last day of actual Service delivery.
- 30.9 Where a Service User is admitted to hospital or dies or in any other circumstances where there is a change in the Services required, the Provider shall notify the Contracting Body immediately and in any event no later than the Contracting Body's next working day after any such change.
- 30.10 Where the Contracting Body is advised that a Service is no longer required because of a dispute between the Service User and the Provider the Provider will continue to make the Services available for such period as the Contracting Body may require up to a maximum of 28 (twenty eight) calendar days following receipt of such notification and shall work with the Contracting Body as closely as possible to ensure that an alternative Provider can be appointed as quickly as possible.
- 30.11 On termination of the provision of Services to any particular Service User the 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 Provider or (at the request of the Contracting Body) there is an orderly cessation of the relevant Services. The information to be provided by the Provider to the Contracting Body pursuant to this clause must include but not be limited to the matters listed in the Exit Management Plan.
- 30.12 For the avoidance of doubt, termination of any Services under this Clause 30 shall be without prejudice to the rest of the Provider's continuing obligations under the Agreement.

TERMINATION BY THE PROVIDER

- 30.13 The Provider may terminate the provision of Individualised Support in relation to a Service User on 28 (twenty eight) calendar days' notice to the Contracting Body.

Such termination shall only be permitted where the Service User in respect of whom the Individualised Support is being terminated is the only Service User living in the Premises. Provision of any Core Support under the Agreement shall be co-terminus with the Individualised Support.

- 30.14 Where the Provider terminates the provision of Individualised Support in respect of a Service User living in a Premises which is occupied by other Service Users who are in receipt of Individualised Support from the Provider, 3 (three) calendar months' notice shall be required. The consequences of such termination shall be the termination of all Individualised and Core Support to all Service Users in the Premises on the expiry of the notice period.
- 30.15 The Provider may, in exceptional circumstances, terminate the provision of Individualised Support in relation to a single Service User by notice with immediate effect where, in the reasonable opinion of the Provider and subject to the consent of the Contracting Body 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 Contracting Body to evidence that it is no longer safe to deliver Services to the Service User.
- 30.16 In the case of termination of Individualised Support in the circumstances described in clause 30.15 where the Premises is occupied by other Service Users who are in receipt of Individualised Support from the Provider, the provisions of clause 30.14 shall not apply and the provision of Individualised and Core Support to all remaining Service Users shall continue.
- 30.17 The Provider and the Contracting Body may by prior agreement in writing and at the Contracting Body's absolute discretion agree alternative notice periods in respect of the termination of Services.
- 30.18 The provisions of clause 30.11 shall apply to any termination of Services by the Provider.

31 TERMINATION ON MANDATORY GROUNDS

31.1 The Contracting Body 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 Contracting Body to terminate those contracts under certain circumstances. Thus the Contracting Body will terminate the whole of this agreement with immediate effect by the service of a written notice on the Provider in the following circumstances:

31.1.1 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.

31.1.2 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.

31.1.3 where the Court of Justice of the European Union has declared the agreement was awarded in 'serious infringement' of the Contracting Body's obligations under EU law and Directive 2014/24/EU in infringement proceedings brought by the European Commission against the Member State concerned under Article 258 TFEU.

32 FORCE MAJEURE

32.1 Subject to the remaining provisions of this clause 32, 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.

32.2 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.

32.3 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.

- 32.4 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.
- 32.5 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.
- 32.6 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.
- 32.7 The Contracting Body 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.

33 PREVENTION OF BRIBERY

33.1 The Provider:

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

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 Contracting Body, 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 Contracting Body before execution of this Agreement.

33.2 The Provider shall:

- a) if requested, provide the Contracting Body with any reasonable assistance, at the Contracting Body's reasonable cost, to enable the Contracting Body 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 Contracting Body in writing (such certification to be signed by an officer of the Provider) compliance with this clause 33 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 Contracting Body may reasonably request.

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

- 33.4 If any breach of clause 33.1 is suspected or known, the Provider must notify the Contracting Body immediately.
- 33.5 If the Provider notifies the Contracting Body that it suspects or knows that there may be a breach of clause 33.1, the Provider must respond promptly to the Contracting Body's enquiries, co-operate with any investigation, and allow the Contracting Body to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this Agreement.
- 33.6 The Contracting Body 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 33.1. In determining whether to exercise the right of termination under this clause 33.6, the Contracting Body 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 Contracting Body; 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.
- 33.7 Any notice of termination under clause 33.6 must specify:
- a) the nature of the Prohibited Act;
 - b) the identity of the party whom the Contracting Body believes has committed the Prohibited Act; and
 - c) the date on which this Agreement will terminate.
- 33.8 Notwithstanding the provisions of clause 20 (Dispute resolution), any dispute relating to:
- a) the interpretation of clause 33; or
 - b) the amount or value of any gift, consideration or commission,
- shall be determined by the Contracting Body and its decision shall be final and conclusive.
- 33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Body.

34 CONSEQUENCES OF TERMINATION

- 34.1 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 Contracting Body to ensure an orderly migration of the Services to the Contracting Body or, at the Contracting Body's request, a Replacement Provider.
- 34.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Contracting Body before such completion) the Provider shall procure that all data and other material belonging to the Contracting Body (and all media of any nature containing information and data belonging to the Contracting Body or relating to the Services), shall be delivered to the Contracting Body forthwith and the Provider's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.
- 34.3 The provisions of clause 6.3 (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 34 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

35 NON-SOLICITATION

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

36 WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Contracting Body to the Provider in respect of the Services or any omission on the part of the Contracting Body 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.

37 CULMINATION OF REMEDIES

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall

be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

38 SEVERABILITY

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

39 PARTNERSHIP OR AGENCY

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.

40 THIRD PARTY RIGHTS

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.

41 PUBLICITY

41.1 The Provider shall not:

- a) make any press announcements or publicise this agreement or its contents in any way; or
- b) use the Contracting Body's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Contracting Body.

41.2 The Provider shall take reasonable steps to ensure that their servants, employees, agents, Sub-Contractors, Providers, professional advisors and consultants comply with clause 41.1.

42 NOTICES

42.1 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.

42.2 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 42.3. 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.

42.3 For the purposes of clause 42.2, the address of each party shall be those set out in the Service Contract Data.

42.4 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.

43 ENTIRE AGREEMENT

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.

44 DISCRIMINATION

44.1 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.

44.2 The Provider shall take all reasonable steps to secure the observance of clause 44.1 by all Provider Personnel.

45 COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

46 GOVERNING LAW AND JURISDICTION

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.

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

End.

Process of signature or sealing will be agreed when issued.

Schedule 1 Specification

SCHEDULE 1 – CARE SERVICES IN SUPPORTED HOUSING - SERVICE SPECIFICATION

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1.0 Introduction

- 1.1 This schedule sets out the specification for Care Services in Supported Housing settings which will be an integral part of care pathways for people with learning disabilities, autism, mental health and other complex needs to ensure a continuum of care and support. It describes what the Council requires from the Provider in delivering the Service, and must be considered alongside the Service Contract and ITT document.
- 1.2 The Service will promote and actively demonstrate a commitment to citizenship, inclusion and an ordinary life by empowering people to participate in their communities and will focus on prevention, recognising the right level of support to reach the desired outcomes.
- 1.3 The Service will place an emphasis on managing and responding to recognised needs and risks, developing care and support at point of discharge or will prevent or delay admissions to institutional rather than community based care and support.
- 1.4 The Service will place an emphasis on Progression¹ and asset based approaches where Services users are supported to maintain or to learn new skills, recovery and moving on to independent accommodation or less intensive forms of support wherever possible.
- 1.5 The Provider will work with the Housing Provider to ensure that the Service Users receive an integrated and co-ordinated service. It should be noted that the provision of housing is not part of the Service required. Housing is provided by a Third Party Housing Provider.

2.0 Scope

Definition

"Supported housing is defined as any scheme where housing, support and sometimes care services are provided with the purpose of enabling the person receiving the support to live as independently as possible in the community" Making it Real for Supported Housing", Think Local Act Personal, Sitra (June2016)

2.1 Within this specification, Supported Housing is a term used to describe a place where someone lives in order to receive care and support. Typically :

- There is an agreement between the Housing Provider and the Provider, or the property is owned by the Provider
- Support is shared within a scheme between 2 or more people and there is a mix of shared and 1:1 support. There will be an established staff presence within the scheme, varying from visiting to 24 hour presence.
- The scheme may consist of a single building or group of linked properties in close proximity
- The person will have moved to Supported Housing in order to receive care and support, i.e. there is a direct link between the accommodation and receipt of care and support
- The housing, care and support would be considered for people with ongoing care and support needs.

1

<http://www.alderadvice.co.uk/images/user/171013%209%20Learning%20about%20Progression%20-%20Thought%20Leadership.pdf>

2.2 The Service will be provided to people with care and support needs who:

- Meet the national eligibility threshold for care and support as set out in the Care and Support (Eligibility Criteria) Regulations 2014 for the Care Act 2014 or any replacement legislation;
- Have unmet eligible needs and outcomes that could be met through the provision of accommodation and support and
- Are deemed to be ordinarily resident within the administrative area of Lancashire County Council.

2.3 The Service may also be provided in circumstances where the Council exercises its powers, under Section 19(3) of the Care Act 2014, to meet a person's urgent care and support needs without having first conducted a needs assessment or eligibility determination.

2.4 The Service is predominantly aimed at people aged 18 or over but there are no explicit age restrictions, so there must be flexibility to provide this Service to young people with disabilities or Mental Health needs as they transition to adulthood, typically 16+ in accordance with the Care Act 2014 Statutory Guidance on Transition.

2.5 The Service will be commissioned by the Council or any organisation acting on its behalf under the Council's power to delegate its functions.

2.6 The Service shall be available to all eligible Service Users irrespective of gender, religion or belief, ethnicity or race, culture, sexuality, disability, age, class or socio-economic status or other protected characteristics.

The Service shall be delivered within Lancashire County Council boundaries. However, there may be a small number of exceptional occasions when it is requested to provide Services outside of these boundaries.

3.0 Service requirements

3.1 Regulatory and legal

The Provider must be registered to provide personal care with the Care Quality Commission (CQC) with a Good or Outstanding rating to be accepted onto the Approved Provider List and will maintain registration throughout the duration of the Service Contract. Therefore, the regulations required for registration (and their associated standards), and the monitoring of the achievement of those regulations, and standards are not duplicated in this specification. The Provider must comply with all relevant legislation that relates to the operation of their business. The Service provided under this Service Contract must be provided in accordance with (but not limited to) the requirements of:

- The Care Act 2014

- Care Standards Act 2000 (including any amendments, modifications or re-enactments).
- CQC
- The National Minimum Standards for Domiciliary Care
- The Domiciliary Care Agencies Regulations 2002
- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- Mental Health Act -1983 and 2007
- Mental Capacity Act 2005 (Deprivation of Liberty Safeguards)
- Equality Act 2010
- Human Rights Act 1998
- Autism Act 2009
- *Fulfilling and Rewarding Lives: The strategy for adults with autism in England HM Government March 2010*
- Deprivation of Liberty Safeguards
- Counter Terrorism and Security Act 2015
- *Services for Service users with Learning Disabilities and Challenging Behaviour or Mental Health Needs (Mansell Report revised 2007) & Raising Your Sights*
- Transforming care: A national response to Winterbourne View Hospital December 2012
- The Regulatory Reform (Fire Safety) Order 2005 where applicable to the premises
- Service Users' individual assessed needs and outcomes and any subsequent assessment, Care and Support Plan or review documentation
- Any future legislative changes or changes to national minimum standards that determine the standard of care to be delivered.

3.2 Service User Groups

The primary Service User groups served by this specification are:

- People with learning disabilities (including with a forensic history)
- People with autistic spectrum disorder (including with a forensic history)
- People with mental health needs (including with a forensic history)
- People with physical disabilities
- Sensory impairment
- People with dementia
- Adults with a disability who display behaviours which challenge and may put themselves or others at risk and which could lead to contact with the criminal justice system (this could include things like fire-setting, abusive or aggressive or sexually inappropriate behaviour).

Other client groups which may receive this Service include:

- Young people 16+ with long term care and support needs transitioning to adulthood. The Council may require from time to time for the Service to be delivered to other Service User groups that fall outside of the scope of the primary and other Service User groups detailed above and are to be determined at the sole discretion of the Council.

The Council may also require the Service to be delivered to people with multiple and complex needs. Multiple needs in this context refers to a person presenting with a housing need further complicated by significant support needs, or a combination of support needs such as an alcohol and or drug dependency. Complex needs in this context refers to high level significant complex needs in addition to a learning disability and/or mental health.

3.3 Key Principles, Objectives and Outcomes

The Service Specification is underpinned by the Care Act (2014) Wellbeing Principle and Care and Support (eligibility regulations) 2015 where Service Users are unable to achieve two or more outcomes without assistance. The Principle applies equally to individuals with or without eligible needs and states the importance of preventing or delaying the development of needs for care and support and the importance of reducing needs that already exist. The Care Act Wellbeing Principles underpinning this Service specification include:

- personal dignity (including treatment of the individual with respect)
- physical and mental health and emotional wellbeing
- control of the individual over day-to-day life
- participation in work, training, education, or recreation
- social and economic wellbeing
- domestic, family and personal wellbeing
- suitability of living accommodation
- the individual's contribution to society

3.3.1 Objectives

- i. To promote independence and improve health and wellbeing, including reducing social isolation.
- ii. To provide ongoing care and support which delivers cost savings
- iii. Enable each Service User to reduce anxiety, build resilience and increase confidence to live independently
- iv. Ensure Support Workers are able to provide the Service in a way that acknowledges and respects Service Users' gender, sexual orientation, age, ability, race, religion, culture lifestyle and communication needs
- v. Maximise Service Users' Progression including their self-care abilities, and well being
- vi. Give Service Users flexibility to plan their support to achieve their outcomes
- vii. Acknowledge that Service Users have the right to take risks in their lives and to enjoy a lifestyle of their choosing
- viii. Provide protection to Service Users who need it, including a safe and caring environment
- ix. Prevent or delay the requirement for more intensive care and support services
- x. Support and interventions should always be provided in the least restrictive manner.

The Service models must be consistent with the five key principles of the Mental Capacity Act 2005 and the associated code of practice.

The Provider must adhere to any conditions of discharge imposed by a Mental Health Review

Tribunal and seek authority from the Secretary of State if a condition of discharge is to be varied.

3.3.2 Service Outcomes

In order that the Key Principles can be met, the Provider will deliver the outcomes specified in each sub-heading:

3.3.2.1 Service Development

The Provider will be required to produce an Annual Service Development Plan which will assure the Council the planned service/s are delivered in a way/s which will support the implementation of the Council's Housing with Care and Support Strategy 2018 – 2025, Our Vision for the Care, Support and Wellbeing of Adults in Lancashire and Support Strategy, namely:

1. To develop innovative Housing with Care and Support options so more people have choice about where they live and receive care and support, are supported to live independently and have a better quality of life;
2. To reduce the number of shared houses and increase the number of Apartment Schemes for younger adults with disabilities;
3. To improve the Housing with Care and Support options for people with complex needs and conditions;
4. To provide ongoing care and support which delivers cost savings to the health and care system;
5. To promote the delivery of better integrated health, social care and housing by joining-up services to improve people's outcomes;
6. To provide a home suitable to meet ongoing needs and a viable and genuine alternative to residential care settings;
7. To provide a wider community resource and facilities to connect and benefit local residents;
8. To locate schemes where they will be in demand and people will be able to access local amenities and feel connected to their community.

In order to promote Service Development, the Provider will produce annual proposals which the Council will review and approve (the proposals will be subject to the Council's policy in managing Provider quality and performance) which will typically include (but not be limited to) any of the following:

- i. Reconfiguring support in some 1, 2 and 3 bed properties or otherwise high cost schemes;
- ii. The Service will not arrange for Service Users to move between tenancies without notifying the Council in advance
- iii. If a service user is not able to understand the tenancy or needs assistance, a best interest meeting must be held to consider the issues affecting the person.
- iv. Assistance with moving on to other more suitable accommodation where the need for support changes or no longer exists;
- v. Planning with Service Users and families to move from residential services into supported housing where appropriate;
- vi. Support nominations and referrals to apartment schemes or other suitable accommodation types;
- vii. Establish effective collaboration between Providers;
- viii. The appropriate reduction, removal or reconfiguration of night time support;
- ix. Introduce assistive technology to reduce reliance on paid support;
- x. Any other appropriate reduction in care and support volumes utilising the 'Provider

- led Review' agenda;
- xi. Managing vacancies by reducing unnecessary under-occupancy;
 - xii. The Service will not create more vacancies without a business case demonstrating an overall plan unless this is planned in conjunction with the Council;
 - xiii. Reducing the number of support voids and or housing benefit voids in shared houses;
 - xiv. Plan to meet needs in individualised ways that do not create over reliance on one to one support;
 - xv. Identifying and delivering more cost effective ways of meeting the daytime support needs of individuals;
 - xvi. Developing in conjunction with the Council criteria for the use of one to one support;
 - xvii. Clear mechanisms to monitor the Providers progress from current average weekly cost at commencement of the service contract to a year on year cost improvement.

Noting that:

The Provider must not arrange for Service Users to move between tenancies without notifying the Council in advance

If a Service User is not able to understand the tenancy or needs assistance, a best interest meeting must be held to consider the issues affecting the person.

The Service shall not take any action that will create additional vacancies or support voids without the prior approval of the Council obtained either through the agreement of the Annual Service Development Plan or other approved business case.

Please refer to **Annex 2** for further information

3.4 Service Models

Core support

- Shared support to two or more individuals which may include the provision of personal care.
- Overnight shared support to two or more individuals which may include the provision of personal care.

See **Appendix 1** for more detailed breakdown of requirements and roles

3.4.1 Core Support Day

The Provider shall:

- i. Provide a suitable, in terms of physical access, and safe, in terms of minimising risks presented by the Service User and or by others sharing, environment that meets the needs of each Service User.
- ii. Continue to provide recovery focussed support Service where the Service User feels safe, respected and is treated with dignity.
- iii. Ensure the Service to be delivered within shared supported accommodation is able to meet the assessed social, personal, and healthcare needs of an individual and such needs being detailed within an agreed Care and Support Plan for each Individual Service User.
- iv. Support Service Users to maintain their tenancy/licence to occupy agreement.
- v. Support tenants to access finances and benefit entitlement
- vi. Provide support in instances when additional support is required to the staff member providing individualised support e.g. when 2:1 support is required on a

planned/unplanned situation

3.4.2. Core Support Night

The Provider shall:

- i. Ensure the night support Service to be delivered in shared supported accommodation is able to meet the assessed night support needs of an individual as set out in their Care and Support Plan.
- ii. Deliver support which might include waking night support, sleep in support (Sleep-in shifts are typically delivered between 10pm and 7 am, however, this does vary depending upon the needs of the people receiving the service) or on call systems, or a combination of these models (including personal care). Support may be delivered flexibly in supported housing or across a number of properties, available peripatetically. The Provider may be required to work in partnership with other agencies, including those providing assistive technology solutions.
- iii. Ensure the use of assistive technology is maximised to promote independence.
- iv. Deliver agreed changes to night support that require a smooth transition into day time support. The Provider will be required to facilitate effective partnership working with Service Users, carers and other agencies as required to manage this change.
- v. Ensure the Service to be delivered within shared supported accommodation is able to meet the assessed night support needs of an individual.

3.4.3. Neighbourhood Support

The Provider shall:

- i. Ensure the Service will establish community support networks with shared support to two or more individuals which may include the provision of personal care is agreed as a proportionate approach to meeting the identified need/s.
- ii. Provide shared support to Service Users in defined locations as part of an agreed plan with two or more individuals as a proportionate response to the identified needs of each Service User as set out in their Care and Support Plan.
- iii. Support Service Users to maintain their tenancy/licence to occupy agreement.

3.4.4. Individualised Support

The Provider shall:

- i. Deliver outcome focused care based on the Council's Care and Support Plan reporting on Progression regarding identified outcomes
- ii. Support to individuals which may include the provision of personal care.
- iii. Meet all identified outcomes within the Service User's individualised Care and Support Plan.
- iv. To build on Service Users' strengths and potential with a focus on independence, and reflecting the Service User's agreed individualised Care and Support plan
- v. Develop and agree approaches to manage and mitigate risk including positive risk taking

- vi. Ensure the Service will promote recovery and the wellbeing of the Service User which encompasses improving activities of daily living
- vii. Enable the Service User to exercise personal choice and control over their life. in a way which promotes the Service User's health; independence; self-reliance
- viii. Support the Service User to live as healthy and independently as possible irrespective of their condition/circumstance.
- ix. Ensure that the nutritional and hydration needs and preferences of the Service User are met
- x. Assist and enable the Service User to access other services as required including access employment, education or other vocational activities.
- xi. Cooperate with discharge planning for patients with the NHS, CCGs and other NHS agents.
- xii. Where appropriate, enable the Service User to die with dignity in a manner that supports their wishes along with their cultural and spiritual beliefs.

3.5 Types of care and support tasks

The Service required for each Service User will be set out as part of their agreed outcomes and person-centred Care and Support Plans. Personal care and support is defined by the CQC as meaning physical assistance given to a person. Therefore, the following list of types of care and support tasks required is not intended to be exhaustive or needed in all cases, and should not preclude creative solutions which may better suit an individual where it is part of their agreed Care and Support Plan. Such requirements that the Provider must provide must include:

3.5.1 Care tasks

- 3.5.1.1 Direct assistance with, or regular encouragement, to perform tasks of daily living
- 3.5.1.2 Providing advice and support on self-care
- 3.5.1.3 Regular encouragement to dress, undress and supporting choice of what clothes to wear for the day
- 3.5.1.4 Assistance when and where required:
 - a. to get up or go to bed;
 - b. assistance with transfers from or to bed/chair/toilet;
 - c. washing and bathing using equipment if necessary, shaving and hair care, denture and mouth care, hand and fingernail care, foot care (excluding any aspect which requires a registered chiropodist or podiatrist);
 - d. support with using the toilet, including necessary cleaning and safe disposal of waste/continence pads (including in relation to the process of menstruation);
 - e. empty or change catheter or stoma bags and associated monitoring and; assistance with skin care such as moisturising very dry skin.

3.5.2. Promote the independence of Service Users through an enabling approach:

- 3.5.2.1 The Provider must use a strengths approach by identifying the current skills and capabilities of Service Users as a basis for supporting Service User led outcomes and priorities to gain/regain skills and confidence to achieve greater independence e.g.

shopping, cooking including use of assistive technology.

- 3.5.2.2 Enabling the Service User to develop strategies and coping skills to respond to known issues.
- 3.5.2.3 Work with Service Users, families and other services so that they understand the approach to monitoring Progression and contribute to informing annual reviews.
- 3.5.2.4 Support Service Users to carry out caring responsibilities they have for a child where this is an eligible need.

3.5.3. Other support that promotes wellbeing and self-care of the person

- 3.5.3.1 Assistance with prosthetics, orthotics or equipment which aids daily living
- 3.5.3.2 Food or drink preparation - ensuring that staff have an understanding of nutrition and hydration, and are able to support Service Users to plan, shop, prepare and cook nutritious food
- 3.5.3.3 Assistance with eating and drinking (including the administration of parenteral nutrition), including any associated kitchen cleaning and hygiene.
- 3.5.3.4 Ensuring that any assistive technology such as telecare is active i.e. a regular basic check to ensure the telecare base unit and/or phone line has not been disconnected.
- 3.5.3.5 Taking account of the Mental Capacity Act and any safeguarding concerns Service Users will be supported to enjoy their relationships, by establishing a culture in which Service Users will be able to express their sexuality and therefore be able to develop and maintain intimate relationships if they so wish.
- 3.5.3.6 Act lawfully when supporting or refusing to support a relationship. The Council will be informed if there are any concerns regarding this decision by taking account of the needs and risk to the Service Users and others. (The local authority would need to consider if a court of protection application is required, namely if there is an objection raised in relation to this decision).

3.5.4 Support Service Users to stay safe and take a positive approach to risk, rights and responsibilities:

- 3.5.4.1 Ensure any risks to the Service User or others are appropriately and effectively managed (e.g. self-harm, harm from others, intimidation) through regular review and updating of risk assessment. Including reporting of possible safeguarding adults, safeguarding children, domestic abuse or hate crime concerns
- 3.5.4.2 Support Service Users to identify and report mate/hate crime and to develop approaches to minimise the impact
- 3.5.4.2 Ensuring Support Workers read the risk assessments relevant to the Service User
- 3.5.4.3 Support Service Users to maintain the tenancy and comply with the tenancy agreement
- 3.5.4.4 Supporting tenants to develop skills to access finances and benefit entitlement and agree approaches to manage their personal finance in line with Service agreed policies and CQC guidance
- 3.5.4.6 Enable Service Users to exercise their voting rights
- 3.5.4.7 Ensuring Support Workers recognise when key control measures are obviously missing or not working (e.g. hand rail broken, smoke alarm removed).

3.5.5. Support Service Users to engage with family/friends, their interests and community services

Supporting, encouraging and facilitating access to community resources and facilities to socialise, work etc as stipulated in the Care and Support Plan, ensuring that support is available to Service Users for events at night beyond 9pm as and when required.

3.5.5.1. Support Service Users to sustain significant relationships², including personal relationships and fulfilling their role within their families, e.g. attending celebrations/significant events.

3.5.5.2. Support Service Users to develop confidence in their own ability to engage with hobbies/interests and to access and contribute their wider community e.g. paid employment, volunteering, training

3.5.5.4. Support Service Users to communicate and engage positively with others in a way which is appropriate to their personal preference lifestyle and needs

3.5.6. Cleaning and domestic support around the home

Where it is stipulated in the Care and Support Plan that cleaning and domestic support is required around the supported accommodation the Provider will provide this or support the Service User to do so or make arrangements for Service Users to employ a cleaner. This may include vacuuming, sweeping, washing up, polishing, cleaning floors and windows, bathrooms, kitchens, toilets and general tidying, using appropriate domestic equipment. The Provider will, unless alternative arrangements are in place, also:

- a. Make beds and change linen;
- b. Dispose of household and personal rubbish;
- c. Assist with laundry;
- d. Clear areas of any potential slip or trip hazards;
- e. Identify and mitigate as far as possible any hazards or risks around the household
- f. And other household tasks the Service User requires in order to maintain their home.

3.5.7. Support Service Users to improve their health, mental health and wellbeing

The Provider will be required to encourage Service Users have an active part in in managing their health and wellbeing by using self-care programmes for long term health conditions or Health Action Plans to sustain their health. The Provider will also need to be able to recognise specific health and mental health needs, including those associated with dual diagnosis, and develop approaches to respond to these.

3.5.7.1. Health

- a. Support to Service Users to access their GP, dentists, opticians, chiropodists and wider healthcare services, sexual health advice and services, screening programmes for early diagnosis and treatment of mental health needs, such as dementia etc.

² <https://www.cqc.org.uk/news/stories/new-guidance-addresses-relationships-sexuality-among-people-using-adult-social-care>

- b. The Provider will ensure Service Users access all screening and Annual Health Check appointments, as applicable, and identify all barriers that make access to health services difficult, including the availability of staff/family who know the person well, specific phobias e.g. needles, waiting rooms etc.
- c. The Provider will set out the actions that need to be taken to overcome these barriers and record details in the Service User's Care and Support Plan.
- d. Support to Service Users to comply with medication regimes, including supporting self-administration and use of over the counter medications in accordance with agreed Provider protocols developed to adhere to CQC guidance³.
- e. To work with specialist NHS teams where appropriate to deliver planned interventions, including recording information, adjusting practice and home routines to support positive outcomes for individuals.
- f. Participate in community learning disability team local physical intervention quality check and agreed actions.
- g. Ensure Support Workers know where to report their concerns should Service User circumstances change in a way that may require a risk assessment review and note this in the care records kept in the Service User's home.
- h. Implement the recommendations from dysphasia assessments to support Service Users to maintain their communications skills and ability to swallow.
- i. Providing support to manage the health care of the Service User under the direction of a health professional, where this has been specifically agreed and the Support Worker has received the appropriate training and has been deemed competent by the trainer or supervisor.
- j. Support with the safe disposal of clinical waste.

3.5.7.2 Mental Health

- a. A flexible, person centred, empathetic, non-confrontational and non-judgemental approach, which is important for maintaining an appropriate intervention programme.
- b. Supportive relationships with clinical or social work professionals to develop a shared understanding with the Service User.
- c. An understanding of the chronology of the disorders, but maintaining a holistic focus in addressing the substance misuse, psychological, social and physical health problems.
- d. Support Service Users to make informed decisions about the management of their care and treatment, using appropriate information including risks and benefits.
- e. Ensure Service Users with learning disabilities/autism who develop mental health needs are supported to access generic mental health services with access to specialist support if needed.
- f. Work with Service Users and their care coordinator/social worker to develop and respond to relapse prevention plans and make reasonable adjustments as part of the Equality Duty and in relation to delivering health care via Health Action Plans, communication passports and assistive technology.
- g. Support to Service Users with learning disabilities/autism who develop mental health problems to access generic mental health services with access to specialist support if needed.
- h. Where appropriate, use the Recovery Star as a framework (or other appropriate alternative) to supporting positive change around Service User led outcomes and

³ <https://www.nice.org.uk/guidance/ng67> <https://www.cqc.org.uk/guidance-providers/adult-social-care/treating-minor-ailments-promoting-self-care-adult-social-care>

- priorities.
- i. Support to Service Users to alleviate their loneliness and risk of isolation.
- j. The Provider must work with other agencies to prevent inappropriate admissions to hospital at the point of crisis.

3.5.7.2.1. **Substance and addiction**

- i. An abstinence and recovery approach to substance misuse in the first instance which is an approach that supports people in reducing the negative consequences associated with substance use.
- ii. The Provider will support innovative individualised solutions for Service Users. Optimism and building motivation to deal with addiction problems and other associated difficulties.
- iii. Advice and information about the impact of substance misuse and support access to specialist services where indicated.

3.5.8. Positive Behavioural Supports

3.5.9.1. The Provider must, where appropriate, use a positive behavioural support framework⁴ and standards for developing an understanding of a Service User's challenging behaviour⁵ where applicable use this understanding to develop effective support. It must include:

- a. Identified lead trainer in PBS/functional assessment or similar
- b. Personalisation of both assessment and support arrangements
- c. Systematic assessment of the antecedent, behaviour and consequence of challenging behaviour
- d. Service User's behaviour, to develop an understanding of its function i.e. how it helps the Service User to cope better or exert some control over their immediate environment. This process is often referred to as functional assessment or functional analysis
- e. Attention to the broader context to ensure that other factors influencing the Service User's behaviour are properly understood
- f. Development of both proactive and reactive support arrangements
- g. How to prevent the Service User's challenging behaviour as much as possible, through the provision of a more helpful and less challenging environment
- h. Support for the Service User that enables the greatest possible reduction in the occurrence of challenging behaviour in the context of the best possible quality of life
- i. Avoidance of support arrangements that punish the Service User in any

⁴ http://restraintreductionnetwork.org/wp-content/uploads/2016/11/BILD_RRN_training_standards_2019.pdf

⁵ <https://www.nice.org.uk/guidance/ng93>

way or create unnecessary restrictions on their freedom of movement and choice.

3.5.8.2. The Provider is required to ensure that were deemed appropriate by a multi-disciplinary team or best interest meeting, there is an up to date written, individualised behaviour support plan that includes:

- Relational support requirements.
- Proactive strategies. If an individual needs to be restrained either for their own protection or the protection of others, restrictive interventions should be for the shortest time possible and using the least restrictive means possible.
- Reactive strategies.
- Monitoring and review arrangements.

3.5.8.3. The Provider must make reasonable adjustments in the approaches used to support Service Users and develop the most effective ways of understanding and communicating individuals' experience, help others to understand them and find ways of responding.

3.5.9. Transforming Care

This section only applies to providers identified to provide these services.

3.5.9.1. The Provider when selected to deliver Care and Support services for individuals who appear on the CCG held Dynamic Risk Register including supporting hospital discharges. The criteria for inclusion on the register are:

- a. People with a learning disability and/or autism and who display behaviours that can be described as challenging (for example, who present an active and high risk to others/members of the public or themselves).
- b. This could include where this behaviour has led to contact with the criminal justice system, or where there is risk of this (i.e. relating to behaviours which could be construed as an offence or are viewed as precursors to more serious offending behaviours).

3.5.9.2 The provider will develop care and support plans which will be highly individualised tailored to their particular needs, strengths, interests and in some cases the risks they pose to themselves and others (all of which might change over time).

3.5.9.3 The provider will be required to work closely with the transforming care commissioner at an operational and at a strategic level to develop and provide services to these individuals.

3.5.10 Double-handed care

Where a Service User's care and support needs require two Support Workers, for example because the Service User lacks the ability to weight bear, it will be set out in their Care and Support Plan and the Provider will be required to accommodate this in ways which are proportionate to meet the Service Users need.

The Provider must not operate blanket policies, or have insurance cover, that disregard individual situations and require as mandatory practice the use of double-handed care in moving and handling Service Users.

The Provider must minimise the provision of double-handed care through the use of specialist moving and handling equipment (e.g. ceiling track hoists, bed positioning systems) and techniques provided by the Council or the NHS, where it is considered safe as part of a suitable and sufficient individual risk assessment undertaken by a competent person, and the Support Worker has received the necessary training and is deemed competent to safely carry out the moving and handling alone, or with a willing and able informal carer.

3.6 Supported Housing based requirements

3.6.1. Service Users supported by this service have accepted that some of their support will be shared and will be delivered by the Provider based at the property or group of properties sharing support and have agreed to contribute towards the cost of this core support.

3.6.2 Support workers will be in the building at times for core day/night support as specified by the Council, the Provider will complete risk assessments to manage times when Service Users may be unsupported or have some of their needs catered for via assistive technology.

3.6.3. The Provider will provide a support service to Service Users to manage their tenancy including:

- a. Providing support to assist in the resolution of disputes with other Service Users and/or neighbours on an informal basis.
- b. Providing support to Service Users to enable them to live in the accommodation in accordance with the terms of the tenancy agreement.(Ensure weekly rent is paid, follow requirements set out for safe use of communal areas and safe use of personal space)

3.6.4. Where the Provider is operating in premises where Service Users are tenants, Providers will:

- a. Ensure that there are arrangements in place; for example a Management Agreement which clearly establishes roles and responsibilities between the Provider and Housing Provider.
- b. The Provider will ensure that there are appropriate protocols and procedures in relation to the following:
 - i. Supporting Service Users to sign up to, maintain their Tenancy /licence Agreements using advocacy services where needed;
 - ii. If a service user is not able to understand the tenancy or needs assistance, a best interest meeting must be held to consider the issues affecting the person.
 - iii. If required the Provider will assist the Council in the making of an application to the Court of Protection for an order authorising the tenancy;
 - iv. Completing and submitting Housing Benefit documentation (or its replacement) and resolving any issues e.g. backdated claims in relation to Benefits;
 - v. Reporting of repairs;
 - vi. On site Housing Management functions and activities;
 - vii. Ending tenancies/licences and facilitating move on where the service is no

longer needed

viii. Any other activity as agreed with the Housing Providers that would form part of the Management Agreement;

ix. Clarify roles and responsibilities to ensure there is not a conflict of interest in instances where the Provider has agreed to lease properties from a freeholder and then manage service user's finances to claim housing benefit.

3.6.5 The Provider will notify the housing provider of any changes in support plans or risk assessments that may require action on the part of the Housing Provider, for the implementation of building based control measures.

3.6.6. The Provider will ensure they have liaised with the Housing Provider to obtain information regarding their operating arrangements for dealing with emergency housing repairs or other emergencies, which may also require out of hours assistance.

3.6.7 The Provider will review the housing needs of Service Users and notify the Council and Housing Provider where current housing is no longer suitable in meet the needs of one of more Service User.

3.7 Service availability and flexibility

3.7.1. The Provider must be available to meet the full requirements of the specification up to 24hrs per day, 7 days a week, 365 days a year (366 days during leap years). The Provider will not operate on a reduced basis over periods of public holidays or festivities.

3.7.2. The Service must be provided in a flexible manner to ensure the Service User's identified needs and outcomes are met. The level and frequency of Service provided to an individual will be set out by the Council unless the Council agrees the Provider will manage a personal budget on behalf of the Service User or the Service User themselves is directing their own care and support.

3.7.3 The Provider must:

- i. As far as is reasonably and safely possible, be proactive in accepting all referrals and nominations made by the Council through effective management of referrals, workforce capacity and staff rostering/coordination.
- ii. Report to the Care Navigation Service on a weekly basis to confirm the availability and capacity of the Service including any unexpected vacancy or change in individual circumstances.
- iii. Provide a response within 7 days to Supported Housing package requests to the Care Navigation Service via the Oracle Sourcing system.
- iv. The Service will not arrange for Service Users to move between tenancies without notifying the Council in advance
- v. Ensure that there is the necessary workforce capacity to accept and commence care and support over weekends/Bank Holidays if required.
- vi. Encourage reductions in care and support needs where safe to do so.
- vii. Minimise the number of different Support Workers delivering care and support to

the Service User to promote consistency and continuity.

- viii. Ensure that there is a match between Service Users' care and support needs and the skill sets, knowledge and competency of Support Workers.
- ix. Undertake Service User risk assessments prior to commencement of the Service and produce a plan to manage these.
- x. Ensure the Service is delivered in accordance with the Service User's Care and Support Plan and personalised outcomes.
- xi. The Service will not create more vacancies without a business case demonstrating an overall plan unless this is planned in conjunction with the Council.

3.8 Keeping Service Users informed and in control

3.8.1. The Provider must supply Service Users with reliable and timely information via an information pack when the Service commences and update the information pack as required to ensure the Service User is kept informed and involved in their support. The information pack should be in plain English, be available in formats that suit Service Users with different communication or capacity needs, and include the following:

- a. Statement of purpose.
- b. Contact details for the Service including out of hours and emergency contacts.
- c. Service provision details Core, Individualised and Neighbourhood supports.
- d. The contingency arrangements in the event of Service interruption.
- e. Safeguarding information.
- f. How to access the Provider's most recent CQC inspection reports.
- g. Complaints procedure.

3.8.2. The Provider must keep Service Users informed in advance and involved in decisions about any planned long term changes to their Service and, as far as possible, unavoidable short term changes to their Service, including changes to the Service User's regular Support Worker and/or changes to the Care and Support Plan.

3.8.3. Once the core support has been established the Provider should give Service Users choice regarding the specific Support Worker who provides the Service and, where possible, the opportunity to meet new Support Workers.

3.9 Recording

3.9.1. With the Service User's knowledge, the Provider must ensure that Support Workers note progress in relation to delivery of the Care and Support Plan including details of any significant occurrence. Records should include (where appropriate):

- a. Assistance with medication, including time and dosage on a medication chart.
- b. Other requests for assistance with medication and action taken.
- c. Details of any change in the Service User's circumstances, health, physical

- condition or care and support needs.
- d. Details of any change in the Service User's circumstances that prompt the need for a risk assessment review.
- e. Any accident, however minor, involving the Service User and/or Support Worker.
- f. Any other untoward or serious incidents (e.g. emergencies or safeguarding issues).

3.9.2. The Provider must ensure that no information is recorded in the Service User's home that could compromise their safety and/or wellbeing, and that Support Workers read new entries if they have not seen the person recently.

3.10 Out of hours service

The Provider must ensure that at all times outside of normal office opening hours (9am to 5pm) there is a dedicated responsible person(s) with sufficient knowledge and training to be a point of contact to respond to enquiries and emergencies from Service Users, Support Workers and the Council to provide advice, information or direction to keep Service Users safe from avoidable harm. The Provider will ensure the out of hours contact service has telephone and email capabilities as a minimum. The out of hours contact details must be clearly communicated to those who may need to use them.

3.11 Care and support planning

The Provider may, without reference to the Council, mutually agree with the Service User minor changes to their direct care and support provision and minor revisions to the direct care and support elements of the Service User's Care and Support Plan. The changes made still need to meet the needs identified in the Care and Support Plan. In agreeing any such changes the Provider is required to:

- a. Ensure that such changes are in keeping with the objectives of the Care and Support Plan and continue to meet the Service User's assessed needs and identified outcomes in a safe way.
- b. Ensure that all support changes are within the personal budget, reduce or manage risk and are legal.
- c. Consult the Council if the Service User wishes to use funds within their personal budget for an outcome that has not been identified within the Care and Support Plan.
- d. Inform the Council if a Service User's support needs reduce or if the Service User's needs increase and cannot be met within the existing care package and Care and Support Plan.
- e. Update the Service User's Care and Support Plan so that it remains current and reflects the actual support that is being provided by the Provider.
- f. Consult with the Service User's carer/representative/advocate where they would have substantial difficulty in agreeing such changes, including those who lack mental capacity.
- g. Develop an initial Care and Support Plan within 2 weeks with all risk assessment and other key safety information completed within a 1 week, of a Service User moving into shared supported housing or an apartment to include the Service User and contain clear goals and identify how the outcomes will be achieved within a specified timeframe, where appropriate. This will be reviewed after 6 weeks and adjusted to reflect the presenting

need.

- h. Ensure that the Care and Support Plan is provided in a way that reflects the Service User's level of engagement, strengths, abilities and interests and enables them to meet their needs.

3.12 Contingency

3.12.1. The Council and the Provider will consider the Service User's care & support history to take account of potential needs, fluctuation of needs (frequency & degree to determine a flexible, responsive care & support plan, with associated any requirement and agreement for contingency strategies and plans).

3.12.2. This will take into account what fluctuations might be reasonably expected, based on experience of others with a similar condition, or life circumstances to mitigate the impact of the fluctuation, preventing or delaying, as far as possible, the development or escalation of further needs in the future.

3.12.3. The Council agrees the outcomes the Provider is required to support for each Service User. The Provider has the flexibility to arrange Care and Support services when they are needed in line with the agreed Care and Support Plan this may result in an agreement between the Provider and Service User to reduce and increase levels of support to enable Service Users to participate in planned events.

Examples of a Contingency are:

- i. Continue existing arrangements for safeguarding people.
- ii. Managing responses to fluctuating needs
- iii. Manage known risks including behaviours which challenge
- iv. To support periodic events eg attending social event

3.12.4. The sum of a provider's claims for payment in any financial year cannot exceed the value of one week of care and support (i.e. 1/52nd of the annual cost of care and support for the individual).

3.12.5 The Provider shall agree to take responsibility for arranging the provision of Contingency services as required by the Service Users Care and Support Plan and are responsible for claiming Contingency Hours in a timely manner.

3.12.6 The Councils and onward Providers Care and Support plan will reflect a Contingency plan including the actions to be taken if a predictable anticipated risk takes place which requires the Provider to deliver additional support. The Provider is required to maintain a record of the number of hours used under this Contingency provision in accordance with KPI 5.

3.13 Managing Individual Service Funds – Managing Money

3.13.1. Where a Service User chooses to take 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 Service User's agreed Care and Support Plan. The Provider will provide direct care and support identified within the Service User's Care and Support Plan in a flexible and person-centred way to meet their individual needs and outcomes.

3.13.2. Where the Service User chooses to take payment of some of their Personal Budget as a Direct Payment, the Provider will assist the Service User to manage their money in accordance with the service user's agreed Care and Support Plan.

3.13.3. The Provider will ensure that the Service User retains the maximum degree of choice, control and flexibility over how the Provider provides direct care and support within the Care and Support Plan using funds. To meet this expectation, the Provider will need to communicate with the Service User on an ongoing basis to agree the details of care and support provision in relation to service inputs (service times and tasks) to meet agreed Care and Support Plan outcomes as flexibly as possible.

3.13.3. In agreeing with a Service User any changes to their care and support arrangements, the Provider must have regard to the requirements set out in 3.11 above.

3.13.4. The Provider may agree to directly contract external formal paid for Services and/or Informal Services and universal support on the behalf of Service Users using funds from within their Individual Service Fund provided these arrangements are documented within the Service User's Care and Support Plan. Where the Provider does so, it will be responsible for monitoring and managing any such services, and will be the contracting party to all such contracts and agreements.

3.14 Business transition

The Provider must cooperate with the Council, work with outgoing Providers and under the direction of the Council take a lead and proactive role to the service transfer, including but not limited to:

- a. Ensuring Service continuity for current Service Users and the new arrangements are established in a safe, timely and sensitive manner.
- b. Managing any workforce transfers as required under TUPE Regulations and ensuring the approaches to recruitment, retention and training are robust during the transition.
- c. Working with the Council and outgoing Providers to develop and implement a clear and effective communication strategy to ensure information is managed to provide continuity of care to Service Users throughout the hand over period.
- d. Ensuring information, finance, premises, management and other systems are in place.
- e. Appointing a designated lead contract manager to provide a readily available contact point for the Council throughout this phase.

3.14.1. The Provider must also cooperate with the Council and incoming Providers in circumstances where existing Service Users' Care Packages need to be transferred to another Provider.

3.14.2 The Provider must produce and maintain an implementation and mobilisation plan for the entirety of the transition phase. This will cover changes in the delivery hours and the key

activities to achieve the required volume in a planned way. It will include details such as:

- Recruitment, induction and retention of staff
- Any management restructure required
- Any capital expenditure e.g. IT systems, additional offices.

3.15 Referrals and commencement of the Service

The Provider will in the main receive and respond to referrals to match to vacancies in shared households or apartment schemes from and to the Council's Care Navigation Service using the Oracle Sourcing system or equivalent. Care and support for new services will be sourced via mini competitions or direct award.

The Provider must keep a record and report these to contract management of any occasional referrals received outside of this process e.g. direct from the Council's social work staff, Emergency Duty Team.

3.16 Transition pathway (requirements if the Provider has chosen to provide the Service to young people as they transition to adulthood)

Young adults typically 16+ with long term care and support needs may find their needs can be met by a Provider/s delivering under this Schedule. It is envisaged this will be on a case specific basis.

3.16.1 Part 3 of the Children and Families Act places a duty on the Council to develop for children and young people with more complex needs, a coordinated assessment of needs and a new 0 - 25 Education, Health and Care (EHC) plan and the Provider is expected to assist the Council in the development of such a plan. The Provider must comply with the requirements of the Children and Families Act 2014 and work with education and health services to ensure a smooth transition to Adult Services. Where appropriate, the Provider must make use of EHC plans as a basis for arranging and agreeing support for young people with ongoing care and support needs into adulthood. The Provider must contribute to meeting these aims:

- i. High expectations and aspirations for what young people with Specialist Educational Need and Disabilities including those with a diagnosis of an Autistic Spectrum Disorder (including autism, high-functioning autism and Asperger syndrome).can achieve, including paid employment, living independently with choice and control over their lives and support and participating in society
- ii. Education, health and social care partners collaborate so that coordinated and tailored support can be provided to young people and their families
- iii. Clarity of roles and responsibilities to ensure that collaboration goes hand in hand with accountability to fulfil duties.

3.17 Risk assessment and management

The Provider must have a Risk Management Policy and must operate systems to ensure it can

complete an assessment of risk and provide a risk management plan where necessary on all aspects of Services carried out by its staff. A copy of the policy must be available to the Council on request.

3.17.1 For Staff

The Provider must maintain clear policies, procedures and guidance for all staff on safety precautions that must be taken relating to risk, including lone working, and will ensure that staff are familiar with the guidelines and their application in the work situation. The policy must be comprehensive and include care tasks, community based activities, moving and handling, use of equipment and environmental hazards. The Provider must have clear monitoring procedures to ensure its staff work to these standards.

3.17.2 For Service Users

Responsible risk taking is a normal part of living. Service Users must not be discouraged from participating in activities solely on the grounds that there is an element of personal risk. Service Users must be encouraged to discuss and judge risk for themselves and make their own decisions where the safety of others is not unreasonably threatened and where the Service User has the mental capacity to do so.

- a. Where a Service User lacks mental capacity, a best interest decision must be made, recorded and retained. A risk assessment must be undertaken in all circumstances where a risk has been identified and maintained on the Service User's care records for staff reference, and for inspection by the Council if required.
- b. Risk assessments must be reviewed as changes arise, and in line with good practice guidance. All Support Workers must have access to the risk assessment and have read and understood its content prior to undertaking any care provision. Refer to section 3.5.9.2 above

3.17.3 For Housing

Whilst the Housing Provider must have appropriate measures in place to deal with its landlord responsibilities, the Provider has a duty of care when operating within the property.

In meeting their respective obligations, both the Housing Provider and the Provider must produce and review risk assessments relating to all aspects of landlord functions and responsibilities.

3.17.3.1 New accommodation will meet nationally recognised standards e.g. lifetime homes or equivalent to ensure accommodation is suitable to manage the life course changes anticipated to be required for Service Users with disabilities and care and support needs.

3.17.3.2 For existing property:

"The property" should meet the requirements of the Decent Homes standards. The property must be warm, weatherproof and have reasonably modern facilities:

- A reasonably modern kitchen (20 years or less)

- Kitchen with adequate space and layout
- A reasonably modern bathroom (30 years or less)
- An appropriately located bathroom and w/c
- Adequate insulation against external noise
- Adequate size and layout of common area in block of flats
- Provide a reasonable degree of thermal comfort through effective insulation and effective heating system

A home lacking in two or few of the above is still classes as 'Decent'

A Housing Provider cannot make a home 'Decent' against the tenants wishes (waiver should be signed)

"the property" must "have in place":

- A valid gas safety certificate (annually)
- A valid electrical safety certification (every 5 years with PAT test annually)
- An up to date 'Fire Risk Assessment' for the shared property (not apartments)

The Provider must ensure that they have copies of relevant risk assessments. As a minimum these must include:

- a. Fire and personal evacuation plans and associated arrangements
- b. Any other risk assessments required during the course of carrying out its functions which may affect the building or buildings related control measures.
- c. Assessment of risks in respect of the application of Decent Homes standards^[1] by the Provider and Housing Provider.

3.18 Health and safety

To ensure staff are informed and deal confidently with accidents, injuries and emergencies, the Provider is required to ensure that:

- a. There is a comprehensive health and safety policy with clear written procedures for the management of health and safety, which comply with all current and relevant Health and Safety legislation, and define individual and organisational responsibilities
- b. There is a detailed policy covering the risks and support for lone workers
- c. Infection control procedures are in place when a Support Worker or Service User has a known transmittable disease or infection
- d. Protective clothing is worn where appropriate
- e. Procedures for managing violence and aggression to staff are in place

^[1] <https://www.gov.uk/government/publications/a-decent-home-definition-and-guidance>

- f. One or more competent persons, depending on the Service provided, are nominated to assist in complying with health and safety duties and responsibilities, including:
- g. Identifying hazards and assessing risks;
- h. Preparing health and safety policy statements;
- i. Introducing risk control measures;
- j. Providing adequate training and refresher training; and,
- k. Ensuring all records relating to health and safety are accurate and kept up to date.
- l. Any accidents or injuries to a Service User that require hospital treatment or GP attendance are reported to the Provider's Service Manager and noted on the Service User's care records .
- m. All staff know the Provider's procedures for dealing with emergencies.
- n. All staff have first aid training and manual handling training where appropriate.
- o. Identity cards are worn by Support Workers.
- p. They promote an understanding of the risk of fire and other hazards among their staff and the Service Users they support. This will particularly apply to those whose behaviour or environment may pose particular fire risks e.g. smoking or open fires. This will include taking account of advice from, and agreements reached with, the Lancashire Fire and Rescue Service to ensure risk assessments are completed and advice is followed.

3.19 Health/medical care

The Provider is required to ensure that Support Workers have access to the contact details of the GP with whom the Service User is registered. The GP, the NHS 111 service or 999 (depending on and appropriate to the circumstances) must be contacted without delay whenever a Service User requests assistance to obtain medical attention, or appears unwell and unable to make such a request. The Service User's next of kin must be informed in line with agreements set out in the Care and Support Plan.

3.19.1. Where the meeting of health care needs has been specifically agreed by a health clinician, the Service

Provider will support the health care needs of the Service User under the direction of the clinician.

3.19.2. When the relevant Support Workers have received appropriate training and have been deemed sufficiently competent by a health care professional to complete health care clinical activities and actions e.g. administer rescue medication for epilepsy or managing the nutritional needs of individuals via a peg or button. This will not ordinarily include any care requiring a medical or professional qualification, but will require appropriate training and refresher training. A record of all applicable training shall be maintained by the Provider.

3.19.3. The Provider must ensure that Support Workers who are required to assist Service Users to take prescribed medication, as directed by the prescriber, receive appropriate instruction and written guidance. This will be in accordance with the Provider's policies and procedures and supported by appropriate training and

assessment of staff competency.

3.19.4. The Provider must sign up to the Public Health England and VODG (the Voluntary Organisations Disability Group) updated Health Charter 2017 - Tackling health inequalities for people with learning disabilities and pledge to adhere to a clear framework for improving practice, they have not already done so.

3.19.5. The Provider will liaise with hospital service team when a Service User is admitted to hospital to receive health care to determine if reasonable adjustments are required by the medical team to meet the needs of Service Users during their health care interventions.

3.19.6. The Provider may be asked to continue to deliver care and support during a period of hospitalisation this will need to be agreed by the hospital service as they will be required to authorise the funding of this care.

3.20 Partnership working

Partnership working is at the heart of successful delivery of the Service and the Provider must work in collaboration and develop effective working relationships with key local partners; this applies to the relationship with the Council, but also with other significant agencies supporting individuals, including other services commissioned by statutory organisations.

The Provider must cooperate and work in partnership with other organisations or individuals to: develop robust information-sharing arrangements; signpost the individual to other relevant services; contribute to the prevention, reduction or delay of the development of individuals' needs; and improve the quality of person-centred and joined-up support.

The Provider must work with the community health teams, and other partners to prevent inappropriate admissions to hospital at the point of crisis:

e.g. Fire safety - personal evacuation plans which set out how evacuation from buildings will be managed providing assurance to the fire service, landlord and Service User.

This includes, but is not limited to, the following partners:

- CQC
- General Practitioner (GP) Practices
- Community Health Services
- Community Mental Health Teams / Services
- NHS Trusts
- Clinical Commissioning Groups (CCGs)
- North West Ambulance Services
- Lancashire Fire & Rescue Service
- District/Borough Councils
- Voluntary, community and faith sector organisations
- Other Registered Care Providers
- Carers' Services
- Family members/informal carers
- Health practitioners to manage and minimise the risks for Service Users with swallowing assessments and identified needs in this area
- CAMHS and Family Services to ensure a smooth transition to Adult Services.

The Provider must make appropriate use of local networks to obtain information and resources, including advice and advocacy, to ensure that Service Users' needs are met holistically and resources are used effectively.

3.21 Supporting the wider care system

- 3.21.1 The Provider must contribute to prevention strategies developed by Public health England, the Local Authority and NHS commissioners which are aimed at:
- i. New initiatives to change behaviour, increasing public awareness of risk factors and health promotion, especially with vulnerable groups.
 - ii. Reducing numbers of unplanned admissions to hospital.
 - iii. Supporting the safe and timely discharge of patients from hospital.
 - iv. Keeping people in community settings rather than institutional care and support.
 - v. Developing integrated care pathways.
 - vi. Identifying and meeting the needs of vulnerable Service Users at the earliest possible stage.
 - vii. Reporting any observed poor and/or unsafe care.
- 3.21.2 The Provider will work closely with local organisations, across the health and social care system to continually improve the Service to Service Users, by reviewing incidents or changes in need and or circumstances in accordance with identified or fluctuating needs and taking into account changes in national and local legislation, guidance and policy. This may involve working with a range of statutory, voluntary and community sector organisations to deliver the required outcomes and developing information sharing protocols to enhance partnership working where needed.
- 3.21.3 The Provider will be required to assist when care and support is coordinated by a health professional. As such, the Provider will liaise with adult social care services, community mental health and therapy teams, voluntary agencies, acute trusts and other allied health professionals and agencies to ensure seamless nursing and personal care provision to Service Users.
- 3.21.4 System escalation - there will be times when the health and care system is in a period of escalation, for example in emergency situations such as: floods; civil emergency; health outbreak or pandemic; periods of heatwave or cold weather; and periods of severe system pressure, including service closures/suspensions and potential closure or temporary cessation of hospital services.

In these circumstances, the Provider may be asked to:

- a. Take urgent actions in partnership with other organisations.
- b. Reprioritise delivery of the Service.
- c. Flex their workforce and the Service.
- d. Increase welfare checks in neighbourhoods.

3.22 Social value

The Provider must give consideration to the employment needs within their local community when recruiting and selecting staff and as such must give consideration to how their recruitment processes support the local economy.

In accordance with the Council's social value policy⁶, the Provider is expected to meet the following social value outcomes:

- More local people in work.
- Thriving local businesses.
- Responsible businesses that do their bit for the local community.
- A local workforce that is fairly paid and well supported.
- Communities supported to help themselves.
- A reduction in poverty, health and education inequalities.
- Reduction in costs by investing in prevention.
- Protecting our environment and reducing climate change.

The Provider will work with the community and voluntary sectors to ensure that people who use the Service are signposted to support which address all identified needs.

The Provider will work with the supported employment service or other local employment initiatives to enable Service Users to seek and maintain employment.

4.0 Workforce requirements

4.1 Data and intelligence

The Provider shall register with the Skills for Care Adult Social Care Workforce Data Set (ASC-WDS) previously National Minimum Data Set for Social Care (NMDS-SC) and complete the following:

- The ASC-WDS organisational record and update this data at least once per financial year
- Fully complete the ASC-WDS individual staff records for a minimum of 90% of staff, including updating these records at least once per financial year
- Apply for funds to support workforce development from Skills for Care.

The Provider shall retain records that ensure they can demonstrate their performance under this Service Contract by using templates and or systems as directed by the Council. Records must be fully compliant with the Data Protection 1998, Caldicott Guidance and Practice and Information Commission Guidance and Practice.

In relation to overall compliance, the provider will be expected to:

- i. Comply with the contract management strategy that support this specification. The provider will ensure that all parts of the system keep within any national and locally set targets.
- ii. Provide financial, performance and governance (inc. safeguarding) functions. An important element of this will be the collection, collation and reporting of whole supply chain.
- iii. Make full use of performance information as part of continuous service development.
- iv. Assist commissioners in servicing strategic commissioning functions.

Records will show resource inputs, organisational processes and outcomes related to the

⁶ <http://www.lancashire.gov.uk/council/strategies-policies-plans/corporate/approved-social-value.aspx>

Service and Service Users.

The Provider must participate in any survey of Adult Social Care employees organised by the Council or Skills for Care and actively encourage its staff based in Lancashire to respond.

The Provider will be required to provide to the Council, as required and within reason, additional workforce-related data not covered by the ASC-WDS and other established methods of data collection.

4.2 Planning and management

The Provider must identify a suitable person or persons with full knowledge and understanding of workforce issues pertaining to the delivery to be responsible for workforce planning for the Service.

The Provider must develop workforce plans to be updated at least annually or more often as appropriate to ensure that arrangements are in place to maintain the workforce capacity and capabilities required to deliver the Service for the duration of the Service Contract.

Specific plans must be developed for the following:

- a. Recruitment and retention of staff.
- b. Management of sickness and other absences.
- c. Learning and development.

The Provider should develop separate documents for the following:

- a. Succession plans for key management posts and/or posts requiring scarce skills.
- b. Specific plans for issues identified locally/organisationally.

The Provider must have in place an effective sickness absence management and monitoring system, and must inform the Council at the earliest opportunity if staff absence will impact upon their capacity to deliver the Service.

4.2.1 Staff supervision and annual appraisals

The Provider must ensure that all staff have regular, planned and documented practice-based supervision sessions at a minimum every 3 months and identify any development needs to be addressed.

The Provider must ensure that all staff have a documented annual appraisal and a plan for learning and development and should include, where possible, feedback from Service Users and carers.

The Provider must ensure that staff know when and how to raise an issue, comment, concern or complaint with their manager.

4.2.2 Leadership and management

The Provider must be able to evidence that it is developing effective leadership at all levels of the organisation by encouraging and supporting staff to develop leadership skills and competencies through training, supervision and reflective learning.

The Provider must be able to evidence that its managers, including registered managers, hold or are working towards the appropriate management level qualification, as recommended by Skills for Care, and continue to refresh their learning regularly.

The Provider must ensure that individual registered manager(s) complete the Manager Induction Standards within six months of taking up a management role.

4.2.3 Enabling care and support

The Provider must ensure that learning and development activities for Support Workers focus on maintaining and promoting independence. Support Workers should be confident in enabling Service Users to make their own choices and supporting them to achieve these. They should treat Service Users, their family and carers as equals and partners in care.

4.2.3 Core skills, induction and the Care Certificate

The Provider must ensure that all staff possess the core skills their role requires.

The Provider must be able to evidence that at recruitment they have assessed the core skills of Support Workers and that they are supported in further developing their core skills. As such, a values based recruitment and retention process should be adopted to create and maintain a workforce which embraces workplace values in line with national guidance⁷.

The Provider must ensure that all Support Workers are supported to overcome any cultural communication barriers between Service Users, carers and other professionals.

The Provider must ensure that all Support Workers receive a thorough induction to their new role, the organisation and the care sector.

The Provider must ensure that all new Support Workers achieve the Care Certificate within the time period defined by Skills for Care.

The Provider must be able to evidence that they are working to bring all Support Workers to a standard of knowledge and skills as required by the Care Certificate, whether individuals are new starters, or who have previously worked in care or existing members of staff.

4.3 Qualifications and learning

The Provider must ensure that its staff are supported to maintain their training with regular refresher training, qualifications and continued professional development as appropriate to their role, the people they are supporting and in accordance with the requirements of regulations and the role they are carrying out.

In accordance with The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 which set out the required standards, the Provider must provide sufficient numbers of suitably qualified, competent, skilled and experienced staff to meet the needs of Services Users at all times. Staff must receive the support, training, professional development, supervision and appraisals that are necessary for them to carry out their role and responsibilities effectively.

⁷ <http://www.skillsforcare.org.uk/Recruitment-retention/Values-based-recruitment-and-retention/Values-based-recruitment-and-retention.aspx>

They should be supported to obtain further qualifications.

As a minimum, staff should be working towards, or have achieved, a relevant qualification as advised by Skills for Care:

Registered Managers

Level 5 Diploma in Leadership for Health and Social Care and Children and Young People's Services.

Support Workers

Care Certificate for staff new to health and social care.

Level 2 Diploma in Health and Social Care.

From time to time partners (other Providers, NHS bodies) of the Council may offer free training. Partners often incur significant expense and planning overheads to provide training in this way and consequently the Provider is expected to demonstrate reasonableness in accessing the training and ensuring staff attendance.

4.3.1 Specific skills and knowledge

The Provider must ensure that all staff have access to learning and development opportunities which enable them to meet the needs of all those using the Service. The learning requirements of staff are therefore expected to go beyond the level of induction and the Care Certificate.

The Provider will be expected to work within the Skills for Care Common Core Principles for Dementia where appropriate⁸:

The Provider must consider what specific skills and knowledge staff require to ensure that the diverse needs of Service Users are met and must put in place plans to enable this within the Service. The following non-exhaustive list of specific skills and knowledge is relevant to the delivery of the Service:

- a. Communication
- b. The Mental Capacity Act 2005 and consequent deprivation of liberty safeguards
- c. Safeguarding adults
- d. Combating loneliness and isolation
- e. Fire safety in a community setting
- f. Challenging behaviour
- g. Assistive technology
- h. Continence care
- i. Falls prevention

⁸ <http://www.skillsforcare.org.uk/Documents/Topics/Dementia/Common-core-principles-for-dementia.pdf>

- j. Dignity in care
- k. The requirements and responsibilities under the Equality Act 2010 and the Human Rights Act 1984
- l. Working with carers - carers' awareness, assessment and support.
- m. Promoting the choice, wellbeing, self-care and safety when supporting people with personal relationships and sexuality

In addition, the following non-exhaustive list of specific skills and knowledge are relevant to the delivery of the Service:

- i. Person Centred and Recovery Based Approaches/values based practice
- ii. Speaking up, empowerment, advocacy and how people who use the Service are involved
- iii. The Mental Capacity Act 2005 and consequent deprivation of liberty safeguards
- iv. The Mental Health Act 1983 and 2007(Specifically including conditionally discharged patients and CTO's)
- v. Valuing People (2001) and Valuing People Now (2009)
- vi. Supporting people with learning disabilities and or autism
- vii. Supporting people with Mental Health
- viii. Supporting people with physical Disabilities including skin & postural care
- ix. Positive behavioural support and standards of good practice using a British Institute of Learning disabilities (BILD) accredited Physical Intervention Model
- x. Epilepsy and behaviour, autism, borderline personality disorder, anxiety disorders and other mental health issues; self-injury
- xi. Dementia Care
- xii. A flexible, person centred, empathetic, non-confrontational and non-judgemental approach, which is important for maintaining an appropriate intervention programme
- xiii. A recovery based approach
- xiv. Multi-Disciplinary working and practice - Trusting and supportive relationships with clinical or social work professionals
- xv. An understanding of the chronology of the disorders and maintaining a holistic focus in addressing the substance misuse, psychological, social and physical health problems
- xvi. Support to give Service Users the motivation to deal with substance problems and other associated difficulties
- xvii. An abstinence and recovery approach to substance misuse in the first instance
- xviii. Advice and information about the impact of substance use.

The Provider must identify and train and refresh the workforce to enable the use of a positive behaviour support framework in responding to the needs of a Service User with challenging behaviour/s. See section 3.5.9.1 above

The Provider will ensure Support Workers receive specialist training in autistic spectrum disorders and the Support Worker will be able to:

- a. Use appropriate communication skills when supporting a Service User with autism i.e. make reasonable adjustments to develop the most effective ways of understanding and

communicating the Service User's experience, help others to understand them and find ways of responding

- b. Support families and friends, and make best use of their expert knowledge of the Service User
- c. Recognise when a Service User with autism is experiencing stress and anxiety and support them with this
- d. Recognise sensory needs and differences of a Service User with a diagnosis of an Autistic Spectrum Disorder (including autism, high-functioning autism and Asperger syndrome) and support them with this
- e. Support the development of social interaction skills
- f. Provide support with transitions and significant life events
- g. Understand the issues which arise from co-occurrence of mental ill health and autism.

4.4 Business continuity management

4.4.1 The Provider must have a business continuity plan in place to ensure the delivery of the Service is continuous and consistent for the benefit of Service Users. Under this agreement the Provider must:

- a. Develop and maintain a business continuity plan;
- b. Review the business continuity plan on a regular basis, but not less than once every 3 years; and,
- c. Provide the Council with a copy of this plan if requested to do so.

4.4.2 The business continuity plan must include:

Identification of service critical functions and the resources required to deliver them, including but not limited to:

- a. Premises
- b. People
- c. ICT Hardware & Software
- d. Telecommunications equipment
- e. Vehicles
- f. Suppliers/Contractors
- g. Any other critical equipment/supplies.

4.4.3. Identification and assessment of risks that could limit the availability of the above resources and potentially lead to a disruption in the delivery of services

Appropriate continuity solutions should an impact be experienced

Supporting information such as key contact numbers, generic and hazard specific action plans, incident management procedures.

4.4.4. The Council shall have the right to carry out an open audit of the business continuity plan with no less than 24 hours' notice.

4.4.5 The Provider shall also develop and maintain and implement a Business Continuity Plan which shall include (without limitation) the following:

- a) plans to explore use of temporary management resources from the Council to assist the Provider to maintain Services provision;
- b) plans to be developed by both Parties for any wider assistance available to maintain the provision of Services;
- c) procedures and evidence to be provided by the Provider confirming that any regulatory bodies have been informed and approve the temporary measures being utilised to maintain service provision;
- d) plans to provide the Council with reasonable access to Service Users records pertaining to the Agreement to allow confirmation of the details of the provision of Services to individual Service Users and establish if any local arrangements have been agreed between the Service User and the Provider for the manner and timing of the service they receive; and
- e) plans to provide such data required in respect of Service Users to assist in the potential reallocation of service provision to the Successor Provider.

Upon exit, and pursuant to clause 18 of the agreement to which this Schedule relates, should the Provider fail to provide to the Council all material information and data relating to the delivery of the Services to the Service User, the Council 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 Council to obtain the information required in an efficient manner.

5.0 Quality and safeguarding

5.1 Quality standards and assurance

The Service must be provided by appropriately qualified/experienced staff, in line with the standards set by the CQC.

The Provider must ensure that they meet the registration requirements for delivery of the appropriate regulated activities and must include correct information within their Statement of Purpose submitted to CQC. The Provider must at all times achieve and maintain Good or Outstanding overall ratings from CQC inspections. In the event the Provider fails to achieve this, the Applicable Terms of the Approved Provider List and provisions of clause 7 of the Service Contract shall apply.

The Provider should understand NICE guidance⁹ and quality standards¹⁰ on Home Care and Transition between inpatient hospital settings and community or care home settings for adults

⁹ <https://www.nice.org.uk/guidance/ng21> <https://www.nice.org.uk/guidance/cg142>

¹⁰ <https://www.nice.org.uk/guidance/qs123/chapter/using-the-quality-standard>

with social care needs¹¹ and operate the Service in line with evidence and recommendations contained within them. The Provider should also adhere to the Skills for Care Code of Conduct for Healthcare Support Workers and Adult Social Support Workers in England¹².

As part of an approach to promoting better terms and conditions for Support Workers, the Provider must:

- i. Commit to and implement stages 1 and 2 of Unison's ethical care charter¹³ on commencement of the first year of the Services Agreement with the exception of the requirement relating to zero hours contracts
- ii. Ensure that from the commencement of the second year of the Services Agreement they do not use zero hours contracts in place of permanent contracts, unless a Support Worker specifically requests to be employed on such terms due to their personal wishes and circumstances; and
- iii. Cooperate to explore the feasibility of implementing stage 3 within future contracts

The Provider must be committed to achieving and maintaining high quality services. This will be a key factor in their own business success, for the Service Users they support and also in the achievement of the success of the wider care system.

The Provider must ensure that continuous quality improvement systems are in place to ensure the Service is run in the best interests of Service Users, and demonstrates the quality and consistency of information, measures Service User outcomes and ensures that risks to Service Users are minimised. The Council encourages the use of the Care Improvement Works guides, tools and resources produced by Skills for Care and the Social Care Institute for Excellence to maintain CQC ratings, and collaboration with Approved Provider List requirements Partners to share good practice and learning.

The Provider will be expected to follow the Skills for Care 'Principles to Practice'¹⁴ which defines the principles and the key areas to support good mental health.

All staff should be actively involved in the quality assurance and monitoring processes. Quality services will be recognised as a motivating force and staff must strive for continuous improvement and best practice.

The Provider's quality assurance system must demonstrate:

- a. Measurable organisational improvement
- b. The quality and standards of the Service provided
- c. Training that provides staff with the skills and tools to promote quality improvement
- d. Staff are empowered and supported to make positive changes
- e. Positive attitudes and working relationships

¹¹ <https://pathways.nice.org.uk/pathways/transition-between-inpatient-hospital-settings-and-community-or-care-home-settings-for-adults-with-social-care-needs>

¹² <http://www.skillsforcare.org.uk/Documents/Standards-legislation/Code-of-Conduct/Code-of-Conduct.pdf>.

¹³ <https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220142.pdf>

¹⁴ <http://www.skillsforcare.org.uk/Documents/Topics/Mental-health/Principles-to-Practice-good-mental-health.pdf>

- f. Early warning systems
- g. Learning from complaints, serious incidents and safeguarding alerts/investigations
- h. Continuous building on good practice
- i. Introduction of new procedures.

The Provider will be required to cooperate with the Council in evaluating and improving quality, not only of the care to individual Service Users but also compliance with the Service Agreement, and in the Annual Service Development Plan to improve or maintain the quality of the Service.

The Provider must have a clear set of policies and procedures to support good practice and meet the requirements of legislation and this specification. These policies and procedures should be dated and monitored as part of the Provider's quality assurance system. They should be reviewed at a timescale that is appropriate to the content of the policy and at least annually.

The Provider must ensure that all policies and procedures in place have a person-centred emphasis, which promote feedback of Service User experience, and which ensure safe and appropriate working practices.

5.2 Complaints, Concerns and Compliments

The Provider shall ensure that it has in place a written compliments procedure in addition to a written complaints procedure that complies in all respects with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009/309 and any other applicable legislation from time to time in force (the "Complaints Procedure").

The 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.

The 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.

The Provider shall ensure that it has an effective system in place for recording all compliments received regarding the Services.

The Provider shall acknowledge all complaints and concerns immediately upon receipt and will provide a comprehensive reply within 28 days of the complaint being received.

In addition to complying with regulation 16 of the 2014 CQC Regulations, for the duration of the term the Provider shall operate equivalent arrangements for reporting complaints and compliments received regarding the Services to the Council, including an obligation to provide the Council with the following information within 28 days of receiving a request to do so:

- a. details of compliments received;
- b. details of complaints made;
- c. details of the Provider's responses to complaints and compliments along with any further correspondence with the individual submitting the complaint or compliment;
- d. learning, outcomes, or action plans developed and delivered by the Provider as a result of

any complaints or compliments; and

- e. any other information as the Council may request regarding any complaints or compliments received by the Provider.

The Provider shall maintain comprehensive records of all complaints made and compliments received, including all associated correspondence and shall maintain such records, including any investigation records, for period of at least [6] years following the expiry of the Service Contract.

A copy of the Provider's complaints and compliments procedure shall be provided to the Council on request.

A record of compliments received should be retained by the Provider and shared with all staff to promote good practice and an understanding of what can make a difference to Service Users.

5.3 Safeguarding

The Provider must ensure that robust arrangements are in place to safeguard Service Users from any form of abuse or exploitation in accordance with Regulation 13 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Care Act 2014, and the government guidance: Working Together to Safeguard Children 2015. The Provider must have in place policies and procedures for identifying and dealing with the abuse of vulnerable people which are complementary to the Pan Lancashire Policies and Procedures for Safeguarding Adults¹⁵ and Children¹⁶.

The Provider must also comply with The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20 – Duty of Candour to ensure its safeguarding practice promotes openness, transparency and trust.

The Provider must ensure that policies and procedures are covered in induction and fully understood by staff. All staff must be given an initial understanding of their safeguarding duties within their first week of employment. Comprehensive training on awareness and prevention of abuse must be given to all staff as part of their core induction within 3 months and updated at least annually. In addition, update training will be provided in light of new policies and procedures introduced either locally or nationally.

The Provider will minimise the risk and likelihood of incidents occurring by:

- a. Ensuring that staff and Service Users understand the aspects of the safeguarding processes that are relevant to them
- b. Ensuring that staff understand the signs of abuse and raise this with the right person when those signs are noticed
- c. Ensuring that Service Users are aware of how to raise concerns of abuse
- d. Having effective means to monitor and review incidents and demonstrate the Service recognises when further action is required to manage and respond, concerns and complaints that have the potential to become an abuse or safeguarding concern
- e. Having effective means of receiving and acting upon feedback from Service Users and any other person to make changes to the way/s in which care and support is delivered

¹⁵ <http://plcsab.proceduresonline.com/chapters/contents.html>

¹⁶ <http://panlancashirescb.proceduresonline.com/>

- f. Having a whistleblowing policy and procedures in place
- g. Having a medicines management policy and procedures in place
- h. Taking action immediately to ensure that any abuse identified is stopped and suspected abuse is addressed by:
 - I. having clear procedures that are followed in practice, monitored and reviewed, and take account of relevant legislation and guidance for the management of alleged abuse
 - II. separating the alleged abuser from Service User and others who may be at risk or managing the risk by removing the opportunity for abuse to occur, where this is within the control of the Provider
 - III. reporting the alleged abuse to the appropriate authority
 - IV. reviewing the Service User's Care and Support Plan to ensure that they are properly supported following the alleged abuse incident
- i. Using information from safeguarding concerns to identify non-compliance, or any risk of non-compliance, with the regulations and take any necessary action to ensure compliance
- j. Working collaboratively with other services, teams, individuals and agencies in relation to all safeguarding matters and having safeguarding policies that link with the Council's policies
- k. Having clear procedures followed in practice, monitored and reviewed in place about the use of restraint and safeguarding
- l. Taking into account relevant guidance set out by the CQC
- m. Ensuring that those working with Service Users wait for a full Disclosure and Barring Service disclosure before providing the Service
- n. Training and supervising staff in safeguarding to ensure they can demonstrate the necessary competences.

The Provider must also have policies and procedures in place on the safe handling of money and property belonging to Service Users.

Appendix 1

Housing, Care and Support Specification within a Supported Housing Environment

		Responsibility of Support Provider	Provided via Core Service and/or Individual Planning Time	Provided via Planned Support Time
	Personal Care	✓		✓
	Health and Well Being	✓	✓	✓
	Practical Support	✓	✓	
	Planned Purposeful Activities	✓	✓	✓
	Social Networks and Relationships	✓	✓	✓
	Financial Planning and Budgeting	✓		
	Personal Administration	✓	✓	✓
	Welfare, Emergencies and ad hoc support	✓	✓	
	Managing own home	✓	✓	

Apartment Based Scheme

	Practical Support	Responsibility of Support Provider	Provided via Core Service and/or Individual Planning Time	Provided via Planned Support Time
	Supporting tenants to develop skills to access finances and benefit entitlement	✓	✓	✓ Specified time-limited intervention as part of agreed skills acquisition
	Supporting tenants to plan and complete shopping	✓	✓ Planning	✓ main shop
	Supporting tenants to plan and prepare meals	✓	✓ Advice, prompt,	✓ Preparation of meals

			reminder, or encouragement needed	
	Providing advice and practical support with changing bedding	✓	✓ Advice, prompt, reminder, or encouragement needed	✓ Practical support needed to acquire a skill or complete task
	Supporting tenants to use household IT and entertainment systems when part of planned activities	✓	✓ Short intervention to assist with usage of equipment	✓ Specified time-limited intervention as part of agreed skills acquisition
	Providing advice and practical support with washing up	✓	✓ Advice, prompt, reminder, or encouragement needed	✓ Practical support needed to acquire a skill or complete task
	Providing advice and practical support with food storage	✓	✓ Advice, prompt, reminder, or encouragement needed	✓ Practical support needed to acquire a skill or complete task
	Providing advice and practical support with laundry, vacuuming and ironing	✓	✓ Advice, prompt, reminder, or encouragement needed	✓ Practical support needed to acquire a skill or complete task

	Personal Care	Responsibility of Support Provider	Provided via Core Service and/or Individual Planning Time	Provided via Planned 1 to 1 Support Time
	Supervision and physical assistance with moving and handling needs	✓	✓ Additional person support to meet an ad hoc need requiring 2 to 1 support	✓ Physical assistance required to meet the assessed need
	Supervision and physical assistance with washing, undressing, dressing, bathing, support to use the toilet	✓	✓ Advice, prompt, reminder, or encouragement needed or Additional person	✓ Physical assistance for an assessed need

			support to meet an ad hoc need requiring 2 to 1 support	
	Supervision and physical assistance with ensuring adequate nutrition including meal planning, preparation, cooking and if required support with eating and drinking	✓	✓ Menu Planning	✓ Physical assistance required to meet the assessed need
	Supervision and physical assistance to go to bed / get out of bed	✓	✓ Additional person support to meet an ad hoc need requiring 2 to 1 support Or support during night hours	✓ Physical assistance required to meet the assessed need
	Providing a response to regular or unpredictable care needs and developing contingency plans for when additional support is required	✓	✓	

Core Support- Day

The Service will provide physical, emotional and social care support (including personal care) and associated domestic services to groups of people with identified Care and Support needs in supported housing. The Service will support individuals to enhance their quality of life and to develop and maintain maximum independence.

The identified need and specific outcomes for individuals and the group and contract value and duration will be specified at mini competitions and call off arrangements.

Core Support – Night

Support might include waking night support, sleep in support or on call systems, or a combination of these models (including personal care). Support may be delivered flexibly in supported housing or across a number of properties, available peripatetically. The Provider may be required to work in partnership with other agencies, including those providing assistive technology solutions.

The identified needs and specific outcomes for individual(s) and contract value and duration will be specified at mini competitions and call off arrangements.

Agreed changes to night support may require a smooth transition into day time support, and the Provider will be required to facilitate effective partnership working with Service Users, carers and other agencies as required to manage this change.

Schedule 2 - Service Levels / Key Performance Indicators

Part 1. Service Levels

Service	Method of calculating service delivery	Service level
Service User outcome measures (Outcomes being achieved)	As detailed in KPI 1 of the Key Performance Indicators	Minimum Performance Level 75%
Spot check visits	As detailed in KPI 2 of the Key Performance Indicators	Minimum Performance Level 50%
Complaints and Concerns	As detailed in KPI 3 of the Key Performance Indicators	Minimum Performance Level 80%
Supporting people to obtain or retain employment	As detailed in KPI 4 of the Key Performance Indicators	Minimum Performance Level 75%
Delivery of Commissioned Hours	As detailed in KPI 5 of the Key Performance Indicators	Minimum Performance Level 75%
Staff turnover	As detailed in KPI 6 of the Key Performance Indicators	Less than 20%

Part 2. Key Performance Indicators

The Contracting Body will require Providers to evidence service delivery and quality of service through a programme of contract management. This will include a combination of contract management approaches including annual reports, contract reviews, contract monitoring and key performance indicators.

The below key performance indicators will be required to be sent to the Contracting Body by the Providers in order to measure the effectiveness of service delivery by the Provider, and wider market performance, on key objectives.

The Contracting Body may review the minimum performance levels set below. Any changes to key performance indicator targets will be reviewed in engagement with Providers and will be set at no more than 10% above or below the benchmark of KPI performance prior to the review.

Ref	Title	Providing Organisation	Collection Interval
KPI 1	Service User outcome measures (Outcomes being achieved)	Provider	Six Monthly
KPI 2	Spot check visits	Provider	Quarterly
KPI 3	Complaints and Concerns	Provider	Quarterly
KPI 4	Supporting people to obtain or retain	Provider	Annually

	employment		
KPI 5	Delivery of Commissioned Hours	Provider	Quarterly
KPI 6	Staff turnover	Provider	Quarterly

KPI 1 Service User outcome measures (Outcomes being achieved)

Rationale	The Contracting Body requires Providers to evidence that they are committed to improving the quality of the Service they provide. Monitoring the Provider's performance in terms of achieving outcomes agreed with Service Users will ensure that Providers are working to improve in this area.				
Definition	% Service Users that have achieved one or more outcomes.				
Numerator	A – Number of Service Users with care commissioned by the Contracting Body that have achieved one or more outcomes when reviewed.				
Denominator	B – Number of Service Users with care commissioned by the Contracting Body who have been reviewed during the period.				
Formula	$(A \div B) \times 100 = \% \text{outturn}$				
Good Performance	Good performance is typified by a higher percentage	Collection Interval	Six Monthly	Data Source	Care and Support Plan
Return Format	Numerator Denominator and Percentage	Target	75%	Reporting Organisation	Provider

KPI 2 Spot check visits

Rationale	<p>The Contracting Body requires Providers to evidence that they are committed to assessing, monitoring and improving the quality and safety of the Service they provide.</p> <p>The Provider will be required to spot check staff during service delivery to ensure care is being delivered as commissioned in the care and support plan, and to ensure quality of care being delivered.</p>				
Definition	% Support Workers providing support commissioned by the Contracting Body that have received a spot check during the provision of support				
Numerator	A – Number of Support Workers providing support commissioned by the Contracting Body that have received a spot check during the reporting period				
Denominator	B – Total number of Support Workers				
Formula	$(A \div B) \times 100 = \% \text{outturn}$				
Good	Good performance	Collection	Quarterly	Data Source	Provider records

Performance	is typified by a higher percentage	Interval			
Return Format	Numerator, Denominator and Percentage	Target	50%	Reporting Organisation	Provider

KPI 3 Complaints and Concerns

Rationale	The Contracting Body requires Providers to evidence that they are committed to Service User involvement and empowerment, fair access, diversity and inclusion. In addition to reviewing complaints and Concerns during contract monitoring, monitoring the Provider's performance in dealing with all formal written and verbal complaints and concerns that have been received during the reporting period, relating to Service Users whose support is commissioned by the Contracting Body, in a timely manner will evidence that a Provider ensures that Service Users' views are taken seriously.				
Definition	% of complaints and concerns that have been completed /resolved within 28 days				
Numerator	A– Number of complaints and concerns that have been completed/resolved within 28 days B – Number of complaints and concerns that have been received in the reporting period				
Denominator	C – Number of complaints and concerns that have been completed/resolved within the reporting period				
Formula	$(A \div C) \times 100 = \% \text{ outturn}$				
Good Performance	Good performance is typified by a higher percentage	Collection Interval	Quarterly	Data Source	Provider records
Return Format	Numerator, Denominator and Percentage	Target	80%	Reporting Organisation	Provider

KPI 4 Supporting people to obtain or retain employment

Rationale	<p>The Contracting Body must assure itself that care and support delivered within its footprint is person-centred, outcome focused, adaptable and supports adults to access employment where this is a desired outcome.</p> <p>The vision for this KPI is to assure that adults have the opportunity, and receive the right support, to gain access to paid or unpaid employment in order to: find employment when they want, maintain a family and social life, contribute to</p>				
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	community life and to avoid loneliness or isolation. This will provide for increased skills, independence, and community engagement and will ensure care and support is targeted at improving the lives of supported adults.				
Definition	The number of service users with either paid or voluntary work identified as a care and support outcome in their support plan and have been successfully supported into either paid or voluntary work, excluding circumstances where the supported adult completes unpaid work within the provider's own company/ organisation.				
Numerator	A - The number of supported adults in paid employment B - The number of supported adults in voluntary employment, excluding circumstances where the supported adult completes unpaid work within the provider's own company/ organisation				
Denominator	C - The number of supported adults with either paid or voluntary work identified as a care and support outcome in their support plan				
Formula	$(A + B) \div C \times 100 = \% \text{ outturn}$				
Good Performance	Good performance is typified by a higher percentage	Collection Interval	Annually	Data Source	Provider records
Return Format	Numerator, Denominator and Percentage	Target	75%	Reporting Organisation	Provider

KPI 5 Delivery of Commissioned Hours	
Rationale	Service Users should expect to receive care in accordance with their Care and Support Plan. The KPI Measures the reliability of provision, by capturing care delivered within the reporting period, Contingency hours used and identifying hours not delivered.
Definition	The percentage of hours commissioned by the Contracting Body that were delivered as planned.
Numerator	A= Number of hours commissioned by the Contracting Body delivered in reporting period B= Number of Contingency hours used by the Provider in reporting period C = Number of hours commissioned by the Contracting Body not delivered due to provider non-delivery in reporting period D = Number of hours commissioned by the Contracting Body not delivered due to service user cancellation in reporting period
Denominator	E = The number of hours commissioned by the Contracting Body in reporting

	period				
Formula	$(A \div E) \times 100 = \% \text{ outturn}$				
Good Performance	Good performance is typified by a higher percentage	Collection Interval	Quarterly	Data Source	Provider records
Return Format	Numerator, Denominator and Percentage	Minimum Performance Level	75%	Reporting Organisation	Provider

KPI 6 Staff turnover					
Rationale	Monitoring staff retention within the organisation will evidence if Providers are improving the stability and reliability of the workforce. Staff turnover information should give a rounded picture of the Provider's ability to retain staff, have low sickness rates, good induction and training.				
Definition	Percentage of Care Workers who are leaving the Provider during the reporting period.				
Numerator	A – Number of Care Workers that have left the Provider during the period.				
Denominator	B – Number of Care Workers in post at start of reporting period C – Number of Care Workers in post at end of reporting period.				
Formula	$(A \div ((B+C)/2)) \times 100 = \% \text{ Staff turnover}$				
Good Performance	Good performance is typified by a lower percentage	Collection Interval	Quarterly	Data Source	Provider records
Return Format	Numerator, denominator and Percentage	Minimum Performance Level	Less than 20%	Reporting Organisation	Provider

PART 3. CONSISTENT FAILURE

In this agreement, **consistent failure** shall mean: the Contracting Body serving 4 Default Notices in a rolling 12 Month period.

Schedule 3 Provider's Tender

Schedule 4 - Service Contract Data

Service Contract Data

PART ONE – CONTRACTING BODY AND PROVIDER

1 Parties

The Contracting Body is: *[Name & Address of Contracting Body]; (the "Contracting Body")*

The Provider is: *[name of 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 contract is: *[include a definitive description:

a specified number of units, including circumstances where services for compatible needs are to be delivered in a number of apartments, tenancies or hybrid provision within a building is the requirement;

groups of specified numbers of units, including circumstances where services for compatible needs are to be delivered in a number of apartments, tenancies or hybrid service provision, within a number of buildings is the requirement;

a group of named or unnamed individuals (or a combination of named or unnamed individuals), including circumstances where specialist services for complex behaviours or needs is the requirement; or

a single named or unnamed individual including circumstances where specialist services for complex behaviours or needs is the requirement.

Or combination thereof]*

Core Support delivery is: *As per X.x of the Specification.
[with the exception of the following requirements:
• X.x.x Xxxxxx]*

- X.x.x Xxxxxxx
- X.x.x Xxxxxxx]

Individualised
delivery is:

Support

- As per X.x of the Specification.*
[with the exception of the following requirements:
- X.x.x Xxxxxxx
 - X.x.x Xxxxxxx
 - X.x.x Xxxxxxx]

The Premises subject to this Service Contract are:

Premises Name	Street address	Associated Location	Nominated

The Commencement Date is:

The Initial Term is:

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

in addition to the Initial Term.

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

Service volumes may increase by:

Service volumes may decrease by:

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

The Accommodation is

The special accommodation requirements included are:

[e.g. describe any special access requirements, adaptations and/or bathing facilities]

The termination provisions are:

[as per the 30 & 31 of the Service Contract save for...]

3 Contracting Model

The Charges will be:

[based upon actual service volumes delivered, and/or, have fixed elements that are not based upon actual service volumes delivered;]

The basis for the Charges is:

*[(i) hourly rates,
(ii) weekly rates,
(iii) annual rates,
(iv) fixed rates,
(v) flexible rates,
(vi) performance related,
(vii) being set by the Contracting Body,
(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.]*

The Annual Service Development Plan:

*[is included at Appendix A to this Service Contract Data]
[is not required]*

Nomination rights are:

*[Options...
• Held exclusively by the Council for a period of... from the Commencement Date
• Held by the Council for a period of... from the date a vacancy arises.
• Held exclusively by the Council for the term of the Service Contract
• Held exclusively by the Provider for a period of... from the Commencement Date
• Held exclusively by the Provider for the term of the Service Contract
• Held exclusively by a third party [identified as the landlord / the Service User / the family member] for the term of the Service Contract
• To be governed by the Allocations Policy that shall be...
• To be surrendered by the Council to the Provider immediately upon the Council providing notice to the Provider of its intent to do so.
• Specified by Premises as follows...]*

Costs associated with support voids are:

*[Options...
• The responsibility of the Council for the term of the Service Contract.*

- *The responsibility of the Council for a period of... from the Commencement Date.*
- *The responsibility of the Council for a period of... from the date the support void arises.*
- *The responsibility of the Provider for the term of the Service Contract.*
- *The responsibility of the Provider for a period of... from the Commencement Date*
- *The responsibility of the Provider for a period of... from the date the support void arises.*
- *Specified by Premises as follows...*

4 Notices

Contracting Body email
address for
communications:

Contracting Body postal
address for
communications:

Provider email address for
communications:

Provider postal address for
communications:

5 Key Personnel

The Contracting Body's
initial Key Personnel is:

The Provider's Key
Personnel is:

6 Special Conditions

Special Conditions are:

Appendix A: Annual Service Development Plan

1. Context & Background

- 1.1. This Annual Service Development Plan will focus upon service efficiency and improvement, and will be jointly developed and agreed between the Contracting Body and the Provider.
- 1.2. The achievement of the targets set out in the Annual Profile of this Annual Service Development Plan will be linked to contractual performance as set out in the Service Contract
- 1.3. This Annual Service Development Plan may be varied at any time by mutual agreement of the Contracting Body and Provider.
- 1.4. The Provider may append any detailed proposal at Appendix 1.

2. Scope

2.1. Broad Savings Objectives

The following savings objectives identified by the Contracting Body are to be prioritised by the Provider when they undertake their options appraisal:

- 2.1.1. Decommissioning one, two and three bed or otherwise high cost tenancies;
- 2.1.2. Reducing costly or unnecessary under-occupancy;
- 2.1.3. Moving Service Users into supported housing from residential services where appropriate;
- 2.1.4. The introduction of apartment accommodation or other suitable accommodation types;
- 2.1.5. The appropriate reduction, removal or reconfiguration of night time support;
- 2.1.6. Any other appropriate reduction in care and support volumes;
- 2.1.7. The introduction of technology;
- 2.1.8. Effective collaboration between Providers

2.2. The Premises in the following table are subject to this ASDP:

Premises	Person(s) supported	Opportunity	Baseline weekly cost per SU

2.3. Exclusions

The following Services are outside the scope of this ASDP:

- 2.3.1. [X]
- 2.3.2. [X]
- 2.3.3. [X]

3. Objectives

3.1. The Provider will deliver the following objectives with regard to the objectives at 2.1 and Services at 2.2.

Premises	Person(s) supported	Summary of Proposal	Target Date	Target weekly cost per SU

4. Performance

4.1. Performance will be measured as set out in the table, with targets agreed within restrictions.

Measure [delete measures not applicable]	Agreed Target	Target Restrictions
<i>Average weekly cost at commencement</i>		-
<i>Ratio of 1 to 1 hours cost in relation to the total weekly cost</i>		-
<i>Number of service users assisted to move on from shared housing to apartment Premises at lower weekly cost</i>		-
<i>Number of service users assisted to have more affordable care – reduction in weekly cost (these are IPC Brooks 6 steps proposals)</i>		-
<i>The proportion of adults with a learning disability who should be offered a programme to assist them achieve a higher level of independence.</i>		Target is at least 30%
<i>The proportion of adults recovering from mental ill-health who should have a programme to support their long term recovery that includes helping to both self-manage their symptoms and includes peer-support.</i>		Target is at least 70%
<i>The proportion of older people (over 65) in supported housing whose care needs have decreased from their initial assessment/latest review.</i>		Target is at least 15%
<i>The proportion of younger adults (18-65) in supported housing whose care needs may have decreased from their last review.</i>		Target is at least 66%
<i>The proportion of adults living in supported housing who are receiving individualised care and support with reduced levels of 1:1 support per week.</i>		Target is 10% or less of the total number

4.2. Year 1 Savings Targets

This summary provides an annual profile for the ASDP, identifies risks particular to the delivery of the ASDP, highlights dependencies on partners and confirms what, if any, services concerned by the Service Contract are to be excluded from this ASDP.

4.2.1. Year 1 Savings Target

Premises	Core Support Hours @ £	Sleep Hours @ £	Waking Watch Hours @ £	Individualised hours @ £	Other	Weekly Total	Weekly Cost per SU

4.2.2. Year 2 Savings Target

Premises	Core Support Hours @ £	Sleep Hours @ £	Waking Watch Hours @ £	Individualised hours @ £	Other	Weekly Total	Weekly Cost per SU

4.2.3. Year 3 Savings Target

Premises	Core Support	Sleep Hours	Waking Watch	Individualised hours @ £	Other	Weekly Total	Weekly Cost per SU

	Hours @ £	@ £	Hours @ £				

4.3. Risks

RAG & Ref	Risk	Mitigation Actions
#1		
#2		
#3		
#4		

4.4. Dependencies

The following dependencies have been identified:

- 4.4.1. [X]
- 4.4.2. [X]
- 4.4.3. [X]

4.5. Exclusions

The following Options for in-scope Services were considered and rejected:

- 4.5.1. [X] and reason for rejection.
- 4.5.2. [X] and reason for rejection.
- 4.5.3. [X] and reason for rejection.

5. Basis for Calculations

- 5.1. [agreed explanation of approach to calculating savings]

6. Benefits Realisation

6.1. Benefits for people receiving care & support:

- 6.1.1. [Accommodation]
- 6.1.2. [Care & Support]
- 6.1.3. [Health Wellbeing]

6.2. Benefits for the Contracting Body:

- 6.2.1. [Service User satisfaction]
- 6.2.2. [Savings]

6.3. Benefits for the Provider:

- 6.3.1. [Service User satisfaction]
- 6.3.2. [Savings]
- 6.3.3. [Workforce]

49 Appendix 1

50 [Provider's detailed proposal] or [Not used]

Care Services in Supported Housing Contract Management Strategy

'To ensure effective contract delivery and performance with a supportive approach'

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15. COMMISSIONING, PROVIDER AND CONTRACT MANAGEMENT - ROLES & RESPONSIBILITIES

15.1 Commissioners

Commissioners are responsible for the current service design/specification, and the forward planning for the ongoing service requirements.

Commissioners will be kept informed of contract performance and delivery via internal meetings and contact with relevant Contract Officers.

Commissioners will have the opportunity to attend contract reviews and be involved in the discussions regarding contract performance and delivery.

Commissioners will identify and propose variations to the contract/specification based on evidenced contract usage, and/or contract performance information.

Commissioners will lead on the collation of information required to inform any future commissioning intentions and will liaise directly with the provider to obtain relevant information where applicable.

15.2 Provider

The Provider is responsible for delivery of the contracted service.

The Provider will submit KPI/monitoring returns as outlined in contract and specification – and within this document.

The Provider will maintain regular contact with Contract Officers to ensure they are up to date with any matters which may affect their ability to deliver the contract as specified.

The Provider will respond to requests for investigation/action as required by Contract Officers.

The Provider will respond to proposed variations and their ability/willingness to amend as suggested.

The Provider will ensure any agreed variations are signed and returned in a timely manner.

The Provider will deliver outcomes that demonstrate:

- That Individuals have real control over their care and support and are involved in the planning of their care and support.

- That staff have the experience, knowledge and skills to support a wide range of support requirements including those with complex behaviours and dual diagnosis.
- That they enable Individuals to develop friendships and networks of support in their local communities wherever practical and possible and increase community connections and involvement.
- That they continually review and update support plans to reflect a person's change in needs and aspirations
- That they ensure that support is culturally sensitive and relevant to diverse communities that they operate in.

15.3 Contract Management

Contract management is the process of effectively and efficiently managing activity performed under the Care in Supported Housing contract to maximise operational performance and minimise any risks.

The aim of contract management is to ensure:

- The arrangements for service delivery continue to be satisfactory to both parties, LCC and the Provider, and the expected service delivery, efficiency and value for money are being realised.
- The associated risks (to people, reputation and finances) are being managed.
- The provider is co-operative and responsive.
- Both parties understand the obligations under the contract.
- Potential disputes are minimised.
- A professional and objective approach to arising changes and issues can be taken.

The Contract Management Team ensures that commissioned services within Lancashire County Council (LCC) are being delivered in line with their contractual obligations and service specifications. The team ensures that the County Council is receiving good quality services and value for money ensuring effective contract delivery and performance with a supportive approach'.

Contract Officers will identify and propose variations to the contract/specification based on evidenced contract usage, and/or contract performance information. Any proposed variations will be discussed with the lead commissioner in the first instance and the provider prior to any changes. This may include agreeing, issuing and administering contract variations and/extensions and arranging for them to receive the appropriate authorisation with LCC and the provider.

16. Care in Supported Housing

This document sets out the Contract Management Team's approach to performance monitoring and the quality assurance of the Care in Supported Housing contract.

Lancashire County Council has adopted a systematic approach to each contract which is assigned to one of four strategic tiers.

Each tier will align to a prescribed Contract Management Strategy, suitable to the importance and risk perceived. The strategy will indicate the time, effort and activities each contract will have applied to it.

16.1 Strategic Tiers

The following sets out the criteria to assign a contract to a tier:

1. Assess level of supply complexity, considering the delivery model, the impact of non-performance and the supplier delivering the service, supplies or works contract(s).
2. Assess the value of the contract(s).
3. Assign the contract(s) to the tier appropriate for its value and supply complexity.

The tiers can be broadly described as:

- Tier 1 contracts may involve a high degree of supply complexity or be high in value, or both. Tier 1 contracts are those contracts of key strategic importance to the Authority in its role of delivering services to the public.
- Tier 2 contracts are the contracts that do not qualify to be Tier 1 but retain sufficient strategic importance to warrant a meaningful degree of contract management activity.
- Tier 3 contracts are the contracts that may not require active management, are likely to be low risk or low impact in the case of contract failure.
- Tier 4 contracts are the contracts that require no active contract management, likely due to the low risk and/or low financial value.

The Care in Supported Housing contract has been assigned a Tier 2 Contract & Quality Management strategy, however individual providers may have their tiering changed as required by any change in circumstances.

17. KPIs

The Provider must submit a range of 6 KPI's to allow the Authority to ensure compliance with the requirements of the contract.

Ref:	Title:	Regularity:
KPI 1	Service User outcome measures (Outcomes being achieved)	Six Monthly
KPI 2	Spot check visits	Quarterly
KPI 3	Complaints and Concerns	Quarterly
KPI 4	Supporting people to obtain or retain employment	Annually
KPI 5	Delivery of Commissioned Hours	Quarterly
KPI 6	Staff turnover	Quarterly

Submission of KPIs must be made to the Contract Management Team using the designated process. Full details of this process, including any required templates, will be provided by the Contract Management Team at the start of the contract.

The Contract Management Team will review and analyse KPI/monitoring data, and be responsible for addressing any areas of non-compliance, failure to meet, or submit within time frames, agreed KPI's.

18. Performance Monitoring, Contract Reviews and Site Visits

Performance monitoring and quality assurance is a regular process undertaken by Lancashire County Council to ensure that providers comply with the requirements of the contract and are performing effectively. The provision of regular information gives LCC an ongoing understanding of the quality and effectiveness of the services.

Performance monitoring will take place continually throughout the lifespan of the contract and will be used to:

- Analyse key performance indicator (KPI) returns and identify areas of good practice and areas for improvement.
- Work with the providers towards service delivery improvements.
- Hold contract review meetings with providers.
- Carry out on site contract monitoring with providers

The objectives of performance monitoring and quality assurance are to ensure:

- Service users are safe.
- Services are meeting the required quality standards.
- Services are delivering value for money.
- Trend analysis and continuous improvement.

18.1 Quality Monitoring

Services commissioned within the Care in Supported Housing Contract will be subject to a quality monitoring exercise estimated to take place annually. Contract management will conduct annual site visits to review service delivery. The site visits will consist of a combination of office visits, where validation of business and management arrangements will take place, as well as visits where service is delivered, where environmental and service delivery checks will take place. These checks will be ensuring that relevant policies, procedures, and plans are in place, but also that they are of sufficient quality and person centred.

In the event of negative intelligence, that gives LCC cause for concern, or a CQC inspection has resulted in a provider being rated as 'requires improvement' or 'inadequate' in one or more areas. The Contract Management Team may look to carry out a reactive quality monitoring exercise using this tool, working with the provider and CQC to improve the quality of services being delivered.

It is a contractual obligation that, at any time during the term of the Care in Supported Housing contract, if the provider is inspected by the CQC as "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, the provider shall inform the Authority immediately.

The Contract Management Team may also need to consider whether there needs to be a suspension of new commissions implemented, pending the quality assurance review.

Providers are expected to engage in this process and supply the Authority with any information requested pertinent to contract delivery.

18.2 Contract Review Meetings

Following implementation, contract review meetings will be on a six-monthly basis. This may be subject to change depending on risk, volume of business or relevant activity. Meeting frequencies may increase or decrease to ensure resources are targeted appropriately.

Contract management will arrange and hold the required contract review meetings (to review and assess contract performance and delivery to identify and look to address issues impacting on contract performance and/or delivery).

Contract management will receive a management report, from the provider, prior to the meeting to enable them to collate the information relating to contract performance for discussion/action at forthcoming contract review. This will include a performance update for the last period, as well as an update on the Annual Service Development Plan where applicable.

Should issues or concerns arise outside of the planned contract review meetings, providers should raise these with the Contract Management Team to ensure resolution can be sought by Lancashire County Council in a timely manner.

APL Care in Supported Housing – Contract review report

Date/Time/Venue:

Attendees:

Apologies:

AGENDA

ID	ITEM
1	Introduction's & apologies-
2	Minutes from last meeting/matters arising.
3	KPI's
4	Management report and service update
5	Staff recruitment and training
6	Complaints/Compliments
7	Safeguarding
8	Information governance
9	Finance
10	Any other business
12	Date of next review

4.3 Ad hoc quality and compliance checks

Contract management may request, on an ad hoc basis, information from the provider in order to validate performance and ensure the service is being delivered in line with their contractual obligations and the service specification.

This may include, but not limited to:

- KPI Validations
- Staff Rota'ing & Daily Records
- Medication Processes, Support Planning and Administration
- Service User Finances
- Safeguarding Adults Policies, Procedures and Practise
- Policies, Procedures and Practise
- Audit of Actuals (actual care delivered) submitted via the Oracle Care Portal
- Review of ISF monies and their management
- Internal Quality Assurance

19. Contract Management Timeframes

KPI Submission - Timeframes		
KPI Submission	Period	Submission date
Quarterly		
Quarter 1	1 April to 30 June	15 July
Quarter 2	1 July to 30 September	15 October
Quarter 3	1 October to 31 December	18 January

Quarter 4	1 January to 31 March	15 April
Six Monthly		
Six-month period 1	1 April to 30 September	15 October
Six-month period 2	1 October to 31 March	15 April
Annually		
Annual period 1	1 April to 31 March	15 April

In order to reduce the number of KPI return dates, KPI return periods will be consistent across all service contracts. This will enable market benchmarking and avoid providers reporting on multiple KPI return dates. Contract management will take into consideration any impact this will have on KPI returns where only a partial period is being reported.

20. Addressing Poor Performance

Where it has been identified that a 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 contractual action will be taken.

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

Any action taken will be in accordance with the Adult Social Care Policy and Procedure for Managing Service Provider Quality and Performance in Commissioned Services. See service contract appendix 10.

21. Contact List for Providers

Contact	Contact Details
Contract Management Team	Telephone - 01772 531293 Email -contractmgmt.care@lancashire.gov.uk

Care and Public Health Procurement	Email – caphprocurement@lancashire.gov.uk
Care Navigation	Phone – 01772 538450 Email: - carenavigation@lancashire.gov.uk
Care Data Team	Phone – 01772 530200 Email – caredatateam@lancashire.gov.uk
Customer Access Service	Procurement Customer Access Phone 0300 123 6710 Adults Social Care Customer Access Phone 0300 123 6720 Adults Safeguarding Customer Access Phone 0300 123 6721 Emergency Duty Team Customer Access Phone 0300 123 6722 Email CSC.ACScustomerservices@lancashire.gov.uk
Adult Care Payments	Phone – 0300 123 6785 (Option 2) Email - EXCH.AdultsPayments@lancashire.gov.uk
Procurement Information Management	Phone – 01772 534966 Email – PIM@lancashire.gov.uk

Schedule 6 SUPPLIER INCENTIVE SCHEME

[THIS WILL BE INCLUDED WHERE THE PROVIDER INDICATES THAT THEY WISH TO BE A MEMBER OF THIS SCHEME]

1. DEFINITIONS

In this Schedule the following words and expressions have the following meanings unless the context otherwise requires:

“Debt” the gross amount (including, without limitation, all fees, charges, expenses and other sums invoiced, including any applicable VAT and other taxes), that is invoiced to the Council by the Provider, or otherwise due to the Provider under the terms of this agreement.

“Rebate” shall have the definition given to it in clause 3.1.1 of this Schedule 6.

51 TERM

This Schedule 6 shall be in force for a minimum period of two (2) years from the Commencement Date and will continue thereafter unless and until:

(a) terminated by either party giving not less than six (6) months' written notice to that effect to the other party, such termination to be effective no earlier than the date that is two (2) years from the Commencement Date; or

(b) This agreement as a whole is terminated or expires in accordance with its terms.

52 PARTICIPATION IN SUPPLIER INCENTIVE SCHEME

3.1 The parties agree that the terms in this Schedule 6 take precedence over those terms of the agreement which relate to payments (and the timing of payments) as follows:

3.1.1 the Provider acknowledges and agrees that in consideration of the Council paying a Debt owed to the Provider under or in connection the agreement prior to the date by which such payment would otherwise be required to be made under the terms of the agreement, the Council shall be entitled to deduct and retain from that Debt, for its own benefit, such percentage of that Debt (the **“Rebate”**) that is calculated in accordance with clause 7.5 of this Schedule 6.

3.2 For the avoidance of doubt, nothing in this agreement shall:

3.2.1 affect the date by which payment of a Debt is required to be made by the Council; or

3.2.2 require the Council to make early payment to the Provider in respect of any Debt.

3.3 The terms of this Schedule shall continue to apply to all Debts that remain unpaid up to and including the date of expiry or termination of the agreement (including where the agreement has terminated or expired). The terms of this agreement shall survive termination in respect of such Debts until payment has been effected.

53 INCORRECT APPLICATION OF REBATES

21.16 In the event the Provider, acting reasonably, considers that the Council has incorrectly applied a Rebate it shall raise a query in respect of that Rebate with the Council's accounts payable team (whose details will be provided to the Provider by the Council, as updated from time to time) within seven (7) days of the relevant payment being received by the Provider.

21.17 If the Provider does not raise a genuine query under clause 4.1 within seven (7) days of the relevant Rebate being applied, the Council shall be deemed to have applied the Rebate correctly in that instance and shall be entitled to retain that Rebate.

21.18 The parties shall use reasonable endeavours to resolve any query raised in accordance with clause 4.1 in a timely manner, including making relevant personnel available for the purpose.

54 E-INVOICING

The Council may make proposals to implement e-invoicing with the Provider and the Provider agrees to consider such proposals in good faith and not refuse reasonable amendments to this Schedule to reflect such proposals.

55 SET OFF

The Council may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under the agreement.

56 REBATES WHICH THE CUSTOMER MAY DEDUCT AND RETAIN

21.19 For any undisputed Debt received by way of an invoice, the Calculation Trigger Date shall be the date the relevant invoice is received by the Council, such date being the date recorded in the Council's accounts payable system as the registration date. For any other Debt the Calculation Trigger Date shall be the last day of the month in respect of the relevant Service received. For any disputed Debt, the Calculation Trigger Date shall be the date on which the dispute has been resolved to the mutual satisfaction of the parties.

21.20 The **Payment Date** shall be the date on which the Council executes its payment run in respect of the relevant Debt.

Calculation of the Rebate

21.21 The Rebate is calculated by establishing the number of days that have elapsed between the Calculation Trigger Date and the Payment Date and comparing the number of days elapsed within the first column of the table below to determine the Rebate to be applied to the invoiced amounts. The Rebate percentage (%) is calculated to 14 decimal places and it is this value that is applied in all calculations. However, for simplicity, the Rebate % displayed in the table below has been rounded to 2 decimal places.

21.22 Rebates applied to invoices are calculated at an invoice line item level. Rebates are applied in the manner described at clause 7.3, against the value of each line item. The result of

this calculation is rounded to the nearest pence. Once the Rebates for all line items have been calculated, they are aggregated to provide the total Rebate value to be deducted from the Supplier's invoice on early payment of the invoice.

21.23 The Council shall issue a debit note indicating the value of the Rebate that has been applied.

Number of days elapsed between the Calculation Trigger Date and the Payment Date	% of the amount owed that may be deducted and retained by the Customer as the Rebate
0	[.]%
1	[.]%
2	[.]%
3	[.]%
4	[.]%
5	[.]%
6	[.]%
7	[.]%
8	[.]%
9	[.]%
10	[.]%
11	[.]%
12	[.]%
13	[.]%
14	[.]%
15	[.]%
16	[.]%
17	[.]%
18	[.]%
19	[.]%
20	[.]%
21	[.]%
22	[.]%
23	[.]%
24	[.]%
25	[.]%
26	[.]%
27	[.]%
28	[.]%
29	[.]%
30	[.]%

Schedule 7 Change control

1. GENERAL PRINCIPLES

1.1 Where the Contracting Body or the Provider sees a need to change this agreement, the Contracting Body may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.

Until such time as a Change is made in accordance with the Change Control Procedure, the Contracting Body and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.

1.2 Any discussions which may take place between the Contracting Body and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

1.3 Any work undertaken by the Provider and the 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 7, shall be undertaken entirely at the expense and liability of the Provider.

2. PROCEDURE

2.1 Discussion between the Contracting Body and the Provider concerning a Change shall result in any one of the following:

- (a) no further action being taken; or
- (b) a request to change this agreement by the Contracting Body; or
- (c) a recommendation to change this agreement by the Provider.

2.2 Where a written request for an amendment is received from the Contracting Body, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Contracting Body within three weeks of the date of the request.

2.3 A recommendation to amend this agreement by the Provider shall be submitted directly to the Contracting Body in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The Contracting Body shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;

- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Contracting Body and the Provider.

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

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

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

Schedule 8 – Escalation Policy

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	Ann Smith		
1) Officer, position	Head of Service Patient Safety and Safeguarding.		
Document Author	Katherine Holt	Date	18 November 2016
Status	Draft	Version	0.5
(Draft/Live/Withdraw			
Last Review Date	N/A new	Next Review Due date	
Approved by	Ian Crabtree	Position	Head of Service Policy, Information and Commissioning Age Well
Signed		Date Approved	

Document Reviewers	Title/organization	Issue Date
Jane Brennan	Greater Preston and Chorley and South Ribble CCG	15 November 2016
Margaret Williams	Lancashire North CCG	15 November 2016
Paul Tipping	Lancashire North CCG	15 November 2016
Adele Thornburn	East Lancashire CCG	15 November 2016
Peter Chapman	East Lancashire CCG	15 November 2016
Nick Medway	Fylde and Wyre CCG	15 November 2016
Alison Lumley	West Lancashire CCG	15 November 2016
Janet Barnsley	Midlands and Lancashire Commissioning Support Unit	15 November 2016
Amanda Atkins	Midlands and Lancashire CSU	15 November 2016
Paul Simic	Lancashire Care Association	15 November 2016
Marie Hill	Lancashire Care Association	15 November 2016
Rachel tanner	Head of Procurement LCC	19 November 2016
Paul Fairclough	Service Manager Procurement LCC	19 November 2016
Arif Khan	Legal Services LCC	19 November 2016
	Legal Services LCC	19 November 2016

Document Change History			
Version	Date	Issues by	Reasons for Change
0.2	6/9/16	Katherine Holt	Tracked changes to draft accepted
0.3	18/10/16	Katherine Holt	Added in CSU badge and references within document
0.4	28/10/16	Katherine Holt	Removed CSU and CCG to be Lancashire County Council only policy initially
0.5	4/11/16	Katherine Holt	<p>P1 – updated name of policy</p> <p>P2 – added reviewer table</p> <p>Section 1 - additions and alterations made</p> <p>Section 2 – reworded first 2 paragraphs and added Care Act responsibilities</p> <p>Section 3 – 6th row addition in table</p> <p>Section 4 – categories renamed</p> <p>Section 5 – level of concerns renamed to match risk assessment</p> <p>Section 6 - formatting altered</p> <p>Section 7 - added link to appendix 6</p> <p>Section 8 – removed 2nd set of bullet points; reformatted and removed LCC responsibilities information</p> <p>Section 10 – Added in Legal requirements and removed Contract Officer section</p> <p>Section 11 – removed</p> <p>Appendix 4 – letter removed</p> <p>Appendix 5 – Risk Assessment clarity on the definitions provided</p>

Amendment Notes

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

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

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

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1 Definitions/Glossary

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

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

2 Scope of Policy

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

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

The policy relates to:

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

Defines what we mean by poor performance

Defines poor performance indicators and the trigger points for action

Defines the range of possible responses to poor performance

Defines roles and responsibilities

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

Suspension Policy

LCC Managing Provider Failure Policy

NHSE Standard Operating Procedure (SOP)

NHSE [ManagingCareHomeClosures](#) and associated [managementchecklist](#)

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

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

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

3 Principles of the Policy

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

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

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

4 Definition of Poor Performance

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

The provider is not providing a good quality of service to the people using it and/or
It is placing the health, well-being and safety of service users at risk. Poor performance can be categorised under the following headings:

Low risk Moderate
risk High risk
Extreme risk

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

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

Indications of Poor Performance

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

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

Information from CQC:

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

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

Increase in volume

Emerging patterns or trends in the nature of issues being raised

Issues where outcomes have not been fully resolved or are inconclusive – for example: where people have retracted allegations; where there is a lack of evidence to substantiate or refute allegations

Cases where service providers do not co-operate with investigations

Outcomes where it is evident that there has been a risk to the safety, health and well-being of service user(s)

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

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

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

General:

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

Enforcement actions taken by any regulatory body

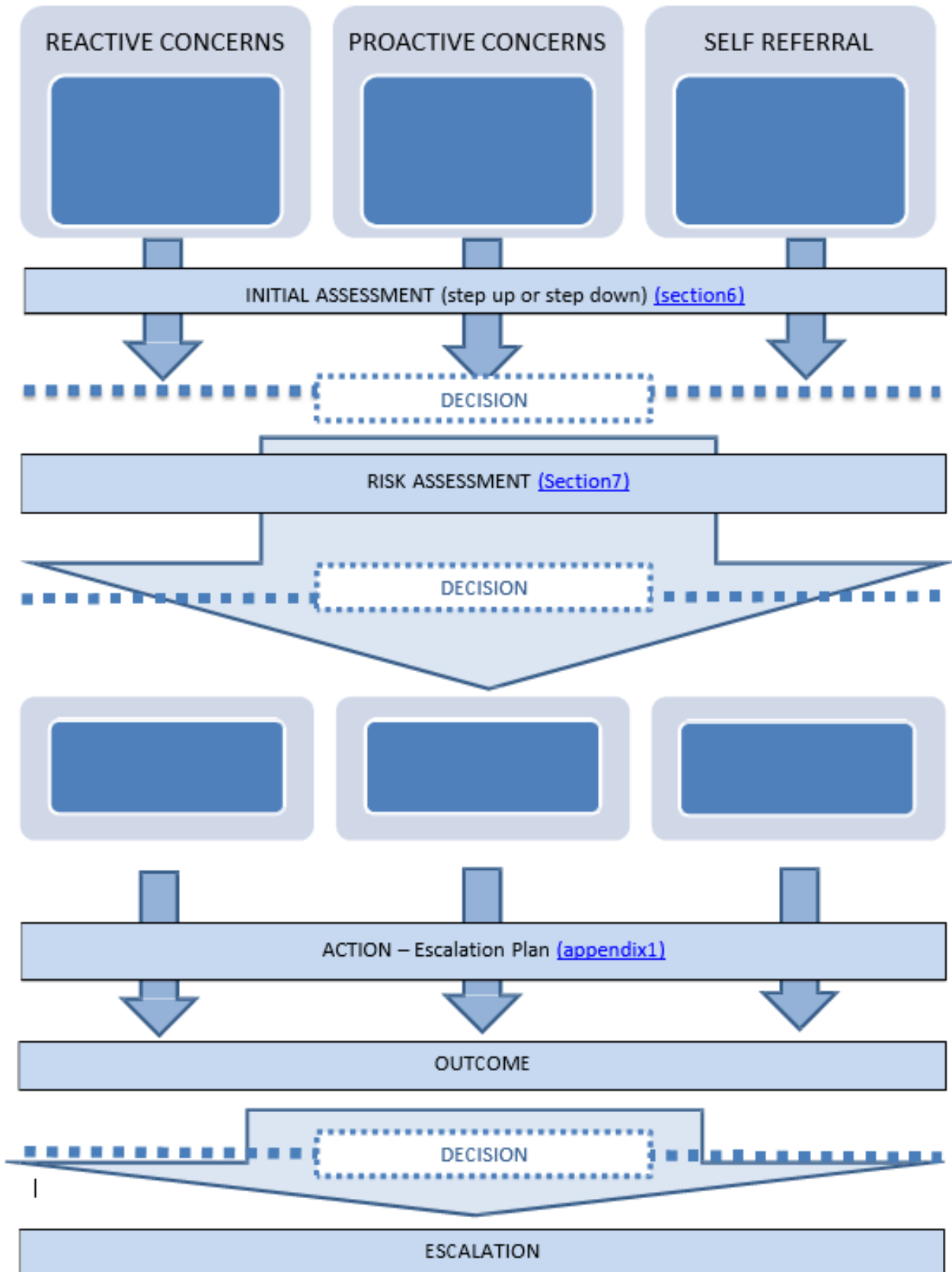
Loss of formal accreditation from a recognised body i.e.: Investors in People, RDB, ISO

Radical changes in service design, delivery or usage.

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

Service outcomes differ from other similar local services

5 The Managing Service Provider Performance Process



6 Initial Assessment

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

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

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

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

The extent of the poor performance is not sufficient to warrant implementing poor performance procedures.

The extent of the poor performance is not sufficient to warrant implementing poor performance procedures but the situation should be monitored through continued monitoring of monthly and quarterly provider returns and or Contracts Performance Management Meetings and or included in the next Contract Review meeting with the provider, depending on the Service Provider type and contractual requirements.

Should the Initial Assessment have been inconclusive further discussions with other Professionals will be undertaken as required, this could be through RADAR meetings.

Where the extent of the poor performance or quality is sufficient to warrant implementing poor performance and quality procedures. A template for Initial Assessment of Concerns can be found at [appendix3](#)

7 Risk Assessment

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

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

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

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

8 Determining Action To Be Taken

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

Managing Service Provider performance

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

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

Decisionmaking

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

Monitor the situation via routine monitoring arrangements and review within specific timescale. Increase the frequency of monitoring activity and Contract Review Meetings. (Specific procedures will be maintained for enhanced monitoring.)

Review the risk rating of the Contract

Provide advice and information to the service to facilitate improvements.

Arrange a Level 1 Quality and Performance Improvement Planning (Level 1 QPIP) meeting, a Level 2 Quality and Performance Improvement Planning (Level 2 QPIP) meeting or a Professionals meeting with involved agencies

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

Level 1 and Level 2 Quality and Performance Improvement Planning

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

Level 1 and 2 QPIP include:

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

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

Request the removal of specific staff members from direct contact with service users – as per

Contract. Could be used in cases of suspected abuse, or misconduct. And report to professional body where appropriate.

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

Arrange alternative services for existing service users. See [Section 10](#) below for further information.

Cease commissioning new placements to facilitate a planned termination of the contract with the service provider.

Validation visit

Issuing a warning letter or Default Notice to the provider

Renegotiation of contract within the contract terms available

Termination of Contract

Decommissioning

Lancashire County Council will develop and maintain specific procedures for Service Provider Quality and

Performance Improvement

Meetings. Actions taken will:

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

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

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

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

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

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

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

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

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

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

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

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

Process charts showing decisions and actions can be found at [Appendix 6](#).

9 Improvement/Action Plans

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

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

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

An Improvement/Action Plan template be found at [Appendix 7](#)

10 Termination of Contract

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

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

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

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

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

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

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

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

Level 0 outside the scope of this procedure:
 individual safeguarding cases – managed through safeguarding procedures
 minor concerns - managed through action plan from provider, improvements confirmed via monitoring

Level 1 Quality and Performance Improvement Planning Meetings
 Important concerns uncovered, provider asked to attend meeting
 Chair summarises concerns
 Provider agrees to produce Level 1 Quality and Performance Improvement Plan covering urgent actions, within agreed timeframe.

Outcome of Level 1 and Quality and Performance Improvement Plan

- Further meetings and feedback show good progress on all urgent actions and start on developmental actions
- No further Action required under procedure
or
Chair requires further monitoring at level 0

- Meetings show little progress on urgent actions
or
- Provider called in again because of further concerns identified within 12 Months

Level 2 Quality and Performance Improvement Planning Meetings

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

Outcome of Level 2 Quality and Performance Improvement Plan

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

Either

- End process or
- Continue monitoring over agreed

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

Either

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

Level 3 Decommissioning of Service

Appendix 2 Care Home Provider - Professional Observation Checklist

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

Please complete this form after every visit and return to: ContractMgmt.Care@lancashire.gov.uk

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

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

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

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

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

Appendix 4 Risk Assessment Tool

Step 1

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

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

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

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

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

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

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

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

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

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

Step 2

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

Step 3

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

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

Continue on separate sheet if required

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

Step 4

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

ACTION PLAN

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

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

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

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

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

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

26.	Other								
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Appendix 6 Flow Charts

Chart 1 – Initial Assessment

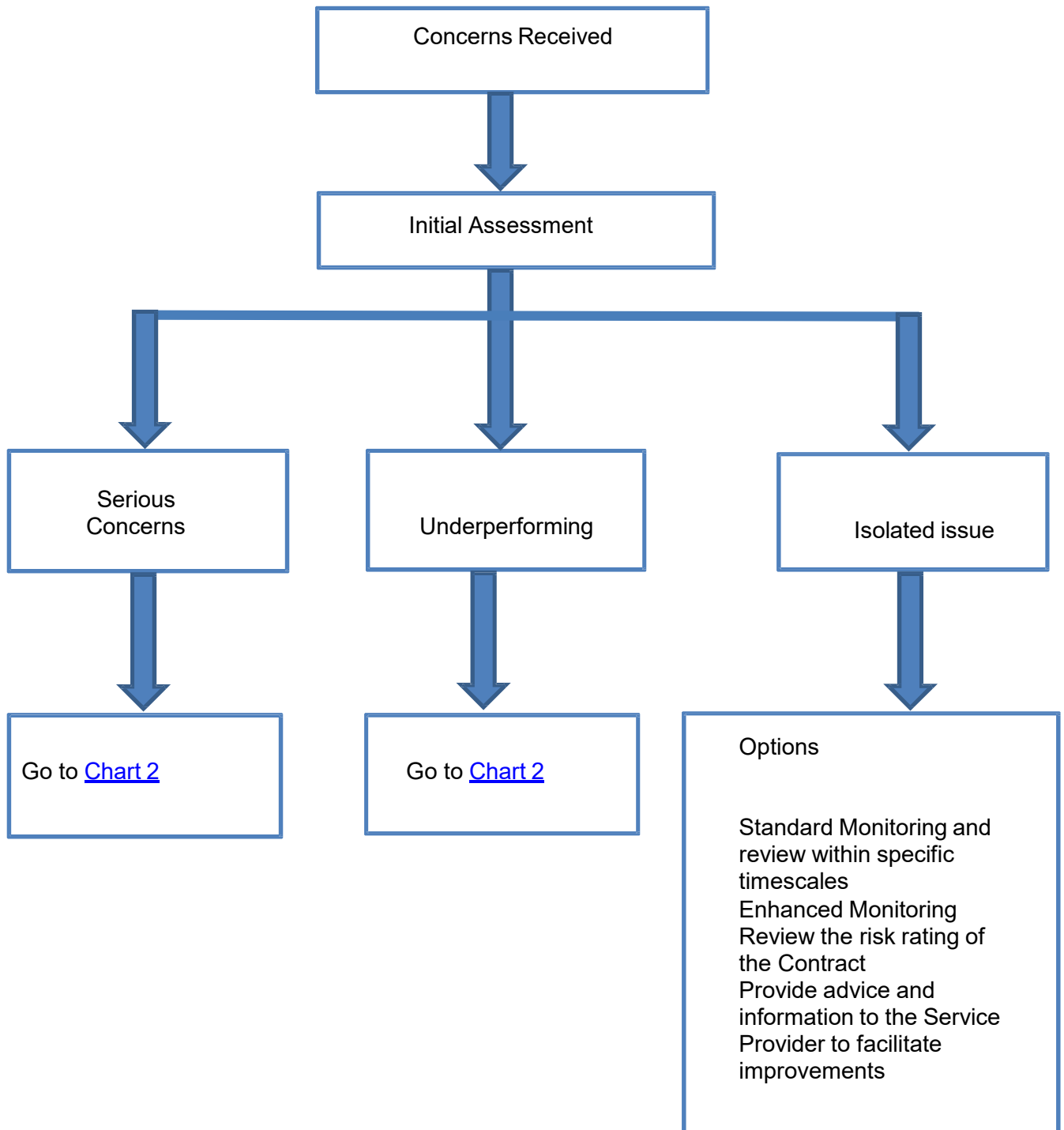


Chart 2 – Serious Concerns or Underperforming

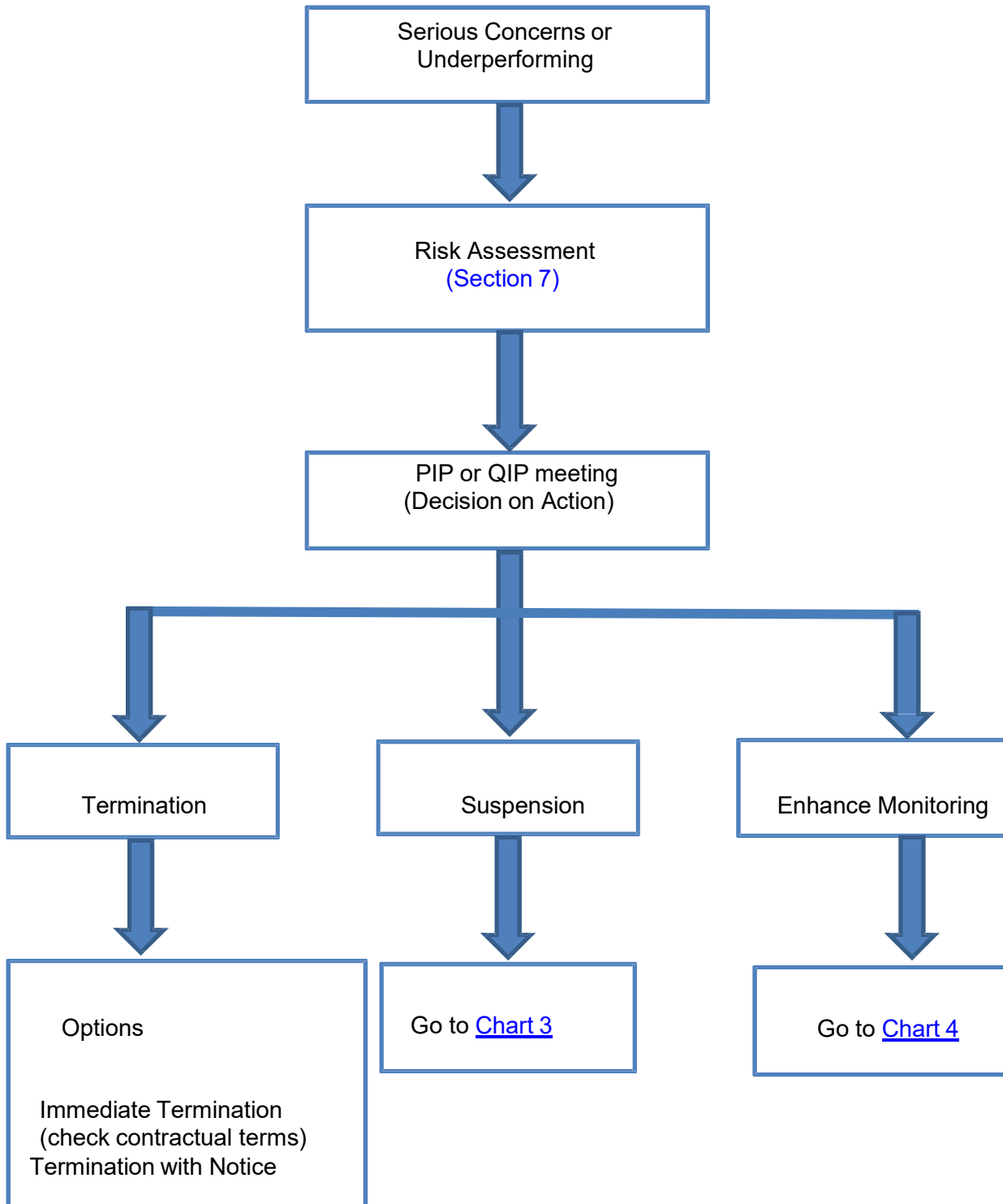


Chart 3 - Suspension

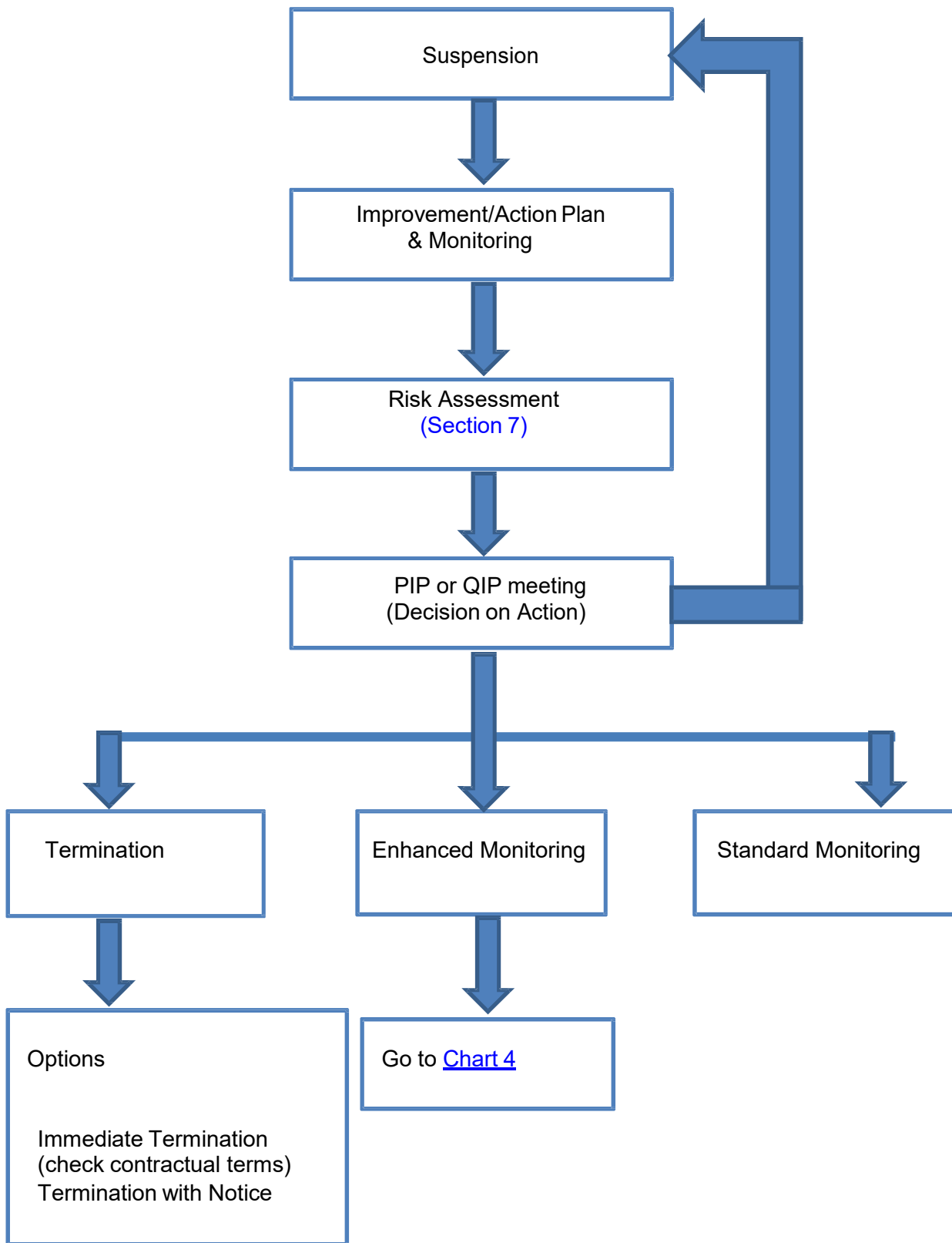
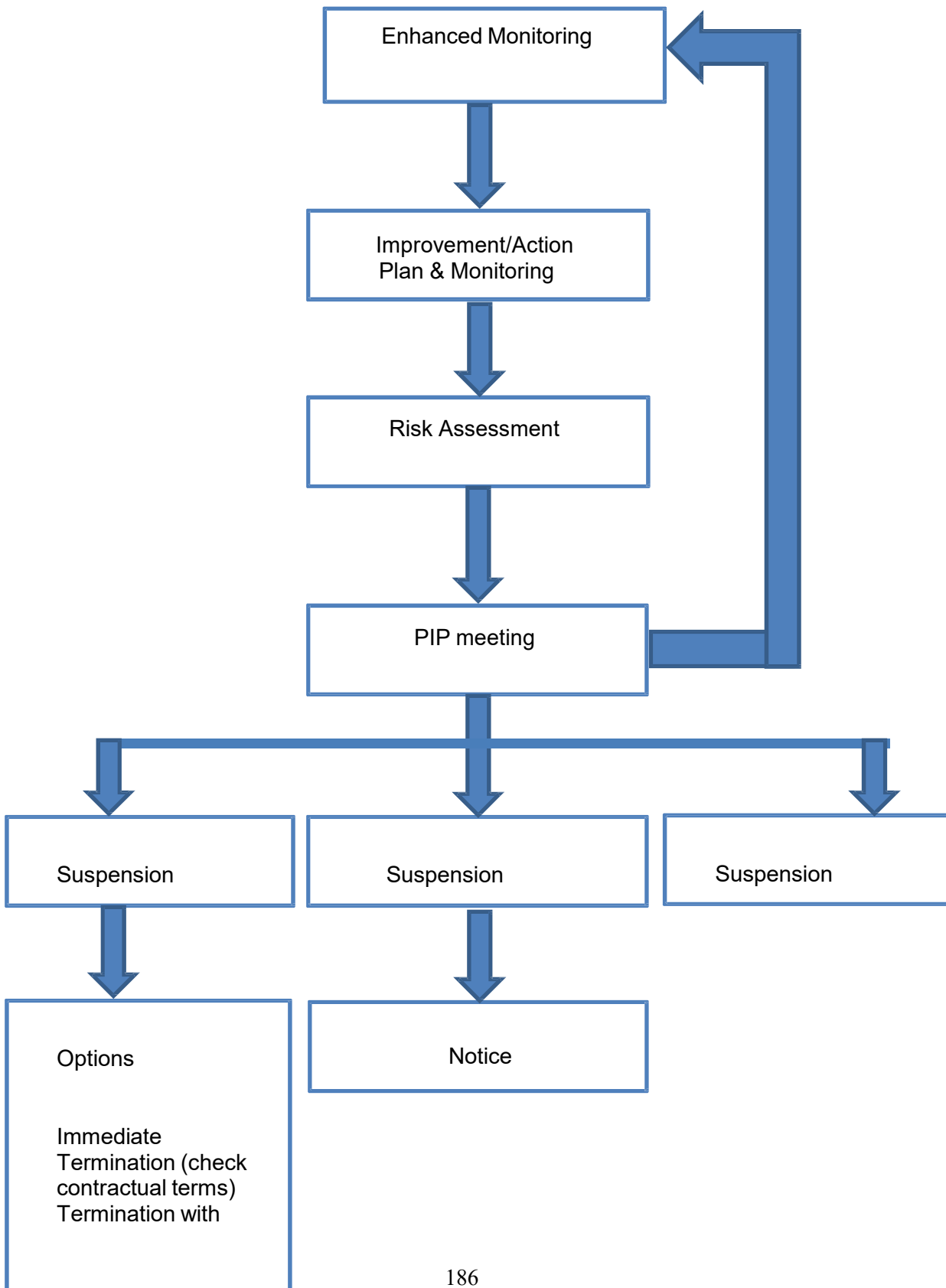


Chart 4 – Enhanced Monitoring



Appendix 7

Action Plan Template

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

Schedule 9 Exit Management 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 Contracting Body 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 Contracting Body 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 Contracting Body;
 - 2.5 plans for communication with the Provider (and the Provider's Personnel) and the Contracting Body's staff and suppliers and Service Users, to avoid any detrimental impact on the Contracting Body'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 Contracting Body or a Successor Provider for a reasonable period after transfer for the purposes of providing services replacing the Services.
3. Business Continuity Plan
 - 3.1 The Provider shall comply with the provisions relating to Business Continuity, in particular those provisions contained at paragraph 4.4 of the Specification.
 - 3.2 Upon exit, should the Provider fail to provide to the Contracting Body all material information and data relating to the delivery of the Services to the Service User, the Contracting Body 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 Contracting Body to obtain the information required in an efficient manner.

1. DEFINITIONS

The definitions in this paragraph apply in this Schedule 10:

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body to provide [some of the] Services to the Contracting Body and whose employees will transfer to the Provider on the Effective Date.

Transferring Employees: employees of the Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Provider, as required by TUPE. The Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body 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 Contracting Body, including information as to the application of TUPE to the employees. The Provider shall notify the Contracting Body 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 Contracting Body and/or, at the direction of the Contracting Body, 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 Contracting Body 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 Contracting Body'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 Contracting Body full particulars of such proposed changes and the Contracting Body shall be afforded reasonable time to consider them.

3.8 The Provider shall indemnify and keep indemnified in full the Contracting Body and at the Contracting Body'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 Contracting Body 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 11 Commercially sensitive information

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

Schedule 12 – Suspension Policy

In the event that this policy is reviewed it will be superseded by any new policy implemented by the Council

GUIDANCE ON SUSPENSION OF CONTRACTING ARRANGEMENTS

57 INTRODUCTION

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

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

58 REASONS FOR TEMPORARY SUSPENSION

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

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

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

59 CRITERIA FOR SUSPENDING NEW PLACEMENTS/COMMISSIONS

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

The criteria for suspension would be:

- Reasonable grounds for considering a provider cannot provide services that are at the normal expected standards and as a result may materially prejudice the health, safety or wellbeing of a service user.
- Reasonable grounds to consider the provider cannot comply with and are in breach of the terms and conditions of the contract that they have signed.

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

CRITERIA FOR ENDING SERVICES TO EXISTING SERVICE USERS

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

The criteria would be:

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

60 PROCEDURE FOR THE SUSPENSION OF SERVICES

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

- A report to the Head of Service, Patient Safety and Safeguarding and the Head of Service with budgetary responsibility for the service, setting out the following:
 - Description of the situation.
 - Assessment of risks for continuing of work.
 - Assessment of risk for ceasing use of provider.
 - Recommendation for action including proposed timescale of the suspension.
 - Be presented in circumstances where a suspension has been seriously considered but not recommended
- Action by Contracts Manager (operations and delivery)
 - Following liaison with the budget holder, confirmation and signing off of the suspension agreement by Head of Service, patient safety and safeguarding

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

- Letter signed by Head of Service, PSS to provider setting out the areas where the contract has been breached and the actions required to rectify the position and including timescales if appropriate.
- Information sharing protocol to be used to pass information to other local authorities.
- Confirmation of suspension sent to Contracts staff, care navigation and Commissioners and any other staff who need to be aware of the position.
- Notification to service users, carers or next of kin if appropriate to the circumstances of suspension and to include alternative arrangements provision of the service.
- Once an investigation has been completed and a review of the suspension indicates that this can be lifted then all the above need to be notified of the change in the position.

Schedule 13 – ISF Governance Principles and Template Tripartite Agreement

(to be inserted if ISF provision is to continue, following formal consultation process)

Schedule 14 – Disturbed Sleep Payments

1. The Provider may claim payment for a Disturbed Sleep in increments of 15 minutes. Claims for Disturbed Sleep payments shall be limited to a maximum of four hours per night (such period being further particularised in the Service Contract Data) per Premises.
2. The payment for a Disturbed Sleep shall amount to the difference between the sleep-in element of the Standard Rate, and the waking element of the Standard Rate.
3. Claims for payment for Disturbed Sleep shall be payable irrespective of alternative payment mechanisms established by the Service Contract in respect of the Charges.
4. To claim payment for a Disturbed Sleep the Provider must initially submit a request, in respect of the Service User concerned, via the Oracle Care Portal (or such other system as the Contracting Body may specify) to set up the Disturbed Sleep payment levels upon the first occurrence of a Disturbed Sleep.
5. Claims for payment against the Disturbed Sleep payment levels for a particular Service User must be claimed during each Payment Period using the pro-forma to be supplied by the Contracting Body.
6. In submitting a claim for payment for Disturbed Sleep the Provider shall be deemed to have complied with clause 11.6 of this Service Contract and have made an accurate record of the Sleep Disturbance(s) which will be made available to the Contracting Body upon request.
7. Payment of claims for Disturbed Sleep shall be made in accordance with the provisions of clause 11.6 of this Service Contract

SCHEDULE 2- CALL-OFF PROCEDURE

1. Service Contracts shall be awarded in compliance with the principles of equal treatment and transparency. This Call-Off Procedure necessarily provides flexibility in the way the Contracting Body will formulate and award Service Contracts with the intention of providing the best possible care and support to Service Users.
2. Service Contracts awarded will be based upon the Specification and Service Contract. Using the Call-Off Procedure the Contracting Body will refine specific requirements in terms of:
 - 2.1 The scope, where the terms of the Call-Off;
 - (a) Will establish what services are to be included in the proposed Service Contract and what services are to be excluded from the proposed Service Contract.
 - (b) Will establish Service Contracts that consist of;
 - (i) a specified number of units, including circumstances where services for compatible needs are to be delivered in a number of apartments, tenancies or hybrid provision within a building is the requirement;
 - (ii) groups of specified numbers of units, including circumstances where services for compatible needs are to be delivered in a number of apartments, tenancies or hybrid service provision, within a number of buildings is the requirement;
 - (iii) a group of named or unnamed individuals (or a combination of named or unnamed individuals), including circumstances where specialist services for complex behaviours or needs is the requirement; and/or,
 - (iv) a single named or unnamed individual including circumstances where specialist services for complex behaviours or needs is the requirement;
 - (v) long term services where it is not intended that the Service User(s) will move on, short term services where it is intended the Service User(s) will move (such as a crisis type provision) or a mixture of long and short term service provision.
 - (c) May establish Service Contracts with defined provision to flexibly increase or decrease service volumes beyond the changing needs of Service User(s) based on criteria communicated at the point of call-off, taking the form of a percentage of value, number of units, number of Service Users or other defined measure;
 - (d) May establish Service Contracts for accommodation based services that are not associated with specific accommodation;
 - (e) May establish Service Contracts for services that are associated with identified accommodation. Where the proposed Service Contract concerns services provided at identified accommodation the associated accommodation will be identified prior to the Call-Off Procedure commencing;

- (f) May establish Service Contracts for services that are contingent upon accommodation (identified or unidentified) that is fit for purpose, for example referencing special access requirements, adaptations and/or bathing facilities.
- (g) Will establish a Service Contract Commencement Date as occurring at a point within 36 months of the call off procedure concluding;
- (h) Will establish a Service Contract with any length of Initial Term and any number of extension provisions provided at all times that the length of time the Service Contract is in effect, including any extensions, does not exceed 10 years;
- (i) May establish a Service Contract with extension provisions dependent upon the Providers' performance against requirements with regard to service efficiency, improvement, and/or development of service delivery, and/or;
- (j) Will establish the Service Contracts principal termination event in circumstances where this is not expiration of the Service Contract term. Alternate principal termination events may include:
 - (i) circumstances where Service User(s) no longer require the Services;
 - (ii) circumstances where the specified accommodation is no longer fit for purpose or longer in use;
 - (iii) circumstances where the specified Service is no longer fit for purpose; or,
 - (iv) circumstances where the Contracting Body, Service User or Provider may give notice.

2.2 The contracting model, where the terms of the Call-Off;

- (a) Will establish the basis upon which the Charges would be paid for specific services. This could include;
 - (i) Where Charges to be paid are based upon actual service volumes delivered, and/or,
 - (ii) Where Charges to be paid have fixed elements that are not based upon actual service volumes delivered;
- (b) May establish the basis for the Charges as;
 - (i) hourly rates,
 - (ii) weekly rates,
 - (iii) annual rates,
 - (iv) fixed rates,
 - (v) flexible rates,
 - (vi) performance related,
 - (vii) being set by the Contracting Body,
 - (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.

- (c) May incorporate an Annual Service Development Proposal, with regard to service efficiency and improvement, developed and agreed between the Contracting Body and Provider, in respect of;
 - (i) Decommissioning some 1, 2 and 3 bed or otherwise high cost tenancies;
 - (ii) Reducing costly or unnecessary under-occupancy;
 - (iii) Moving Service Users into supported housing from residential services where appropriate;
 - (iv) The introduction of apartment schemes or other suitable accommodation types;
 - (v) The appropriate reduction, removal or reconfiguration of night time support;
 - (vi) Any other appropriate reduction in care and support volumes;
 - (vii) The introduction of technology;
 - (viii) Effective collaboration between Providers
 - (ix) The implementation of a time bound savings objective or objectives of between 1% and 20% of value depending on opportunity assessments; and,
 - (x) Any other measures the Contracting Body considers appropriate.

It is acknowledged that the proposed outcomes of each Annual Service Development Proposal are likely to be different from one Service Contract to the next;

- (d) May establish the proposed Service Contract as being inclusive of appropriate incentive arrangements inclusive of reasonable and attainable targets that are unambiguously agreed between the parties, focussing upon mutually beneficial improvements to the efficiency and efficacy of service delivery;
- (e) May establish governance for nomination rights in respect of:
 - (i) The period of time for each the Contracting Body may hold exclusive nomination rights for the units concerned;
 - (ii) The Allocations Policy that may be applied to nominations; and/or;
 - (iii) The arrangements for payments concerning support or housing voids.
- (f) May establish the call-off contract with any combination of the above elements.

2.3 Any specific requirements, where the terms of the Call-Off;

- (a) May identify the Services to be provided with or without a description of the specific Service User(s) and their needs;
- (b) May identify the type or types of accommodation where the Services are to be provided by the Provider(s);
- (c) May identify the location or geographical area where the Services are to be provided by the successful Provider(s); and/or,
- (d) May identify additional selection criteria including relevance of CQC registration information, specialist experience, training or qualifications, in the context of commissioning services for Service Users with complex behaviours or other requirements such as criteria relating to the culture and identity of the Service User.

2.4 Any other aspect of the proposed Service Contract notified at the point of Call-Off.

2.5 Service Contracts under this arrangement are intended to be awarded in one of three ways:

2.6 Mini-Competition

- (a) Save where Direct Award or Service User Choice applies Service Contracts will be awarded pursuant to a Mini-Competition.
- (b) For every Service Contract to be awarded by Mini-Competition, the Contracting Body shall contact in writing the Providers capable of performing the contract and the Mini-Competition documents will be made available to them.
- (c) For the avoidance of doubt, a Provider may be deemed not capable of performing the contract and therefore not invited to participate where the Provider is subject to the 'Addressing Poor Performance' provisions referred to in the Contract Management Strategy, the Escalation Policy or is presently subject to other comparable sanctions in respect of any failings in regard to the Service Standards of any Service Contract held by the Provider.
- (d) The proposed Service Contract will substantially be in the form advertised at the outset of the Approved Provider List, though the Mini-Competition documents will provide clarity in respect of:
 - (i) The scope
 - (ii) The contracting model
 - (iii) Any specific requirements
 - (iv) Any other aspect of the Service Contract or Mini-Competition as appropriate
- (e) The Contracting Body shall fix a time limit which is sufficiently long to allow responses for each specific Service Contract to be submitted, taking into account factors such as the complexity of the subject-matter of the Service Contract and the time needed to prepare responses. This time limit shall be not less than 10 days.
- (f) Providers' responses shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired.
- (g) The Contracting Body shall award each Service Contract to the Provider that has submitted the best tender on the basis of the award criteria set out in the Mini-Competition documents.
- (h) Ordinarily the quality weighting will range from 0-60%. Exact weightings will depend on the complexity and nature of the Services to be delivered and will be published with each Mini Competition. Quality weightings will comprise of:

Quality Criteria	Weighting
Service Outcomes & Delivery	Weighted at/between 0 and 20%
Service User Transition	Weighted at/between 0 and 20%
Workforce Requirements	Weighted at/between 0 and 20%

Quality, Safeguarding and Risk Management	Weighted at/between 0 and 20%
Enablement / Independence	Weighted at/between 0 and 20%
Social Value	Weighted at/between 0 and 20%
Service Improvements	Weighted at/between 0 and 60%
Other criteria as identified at mini-competition stage	Weighted at/between 0 and 60%

- (i) The Price Criteria weighting will range from 40-100%.
- (j) Alternatively, in the event that the Contracting Body determines the value of the Charges, the Mini-Competition evaluation will be conducted on the basis of 100% Quality Criteria.
- (k) Participating Providers will then be informed of the outcome of the Mini-Competition.

2.7 Service User Choice

- (a) For the avoidance of doubt Service User Choice includes a decision taken by the Service User, their family, or a recognised advocate or guardian of the Service User.
- (b) Where a Service User or group of Service Users has indicated a choice of Provider to supply all or an element of the Services, and the Contracting Body is satisfied that the proposed Service Contract;
 - (i) Will be held by a Provider that will meet the needs of the Service User(s);
 - (ii) Delivers Services which in the absolute discretion of the Contracting Body are proportionate to the needs of the Service User; and,
 - (iii) Identifies and refines the contract Scope and the Contracting Model as described by this Call-Off Procedure;
a Service Contract may be agreed.
- (c) The Contracting Body may only rely upon Service User Choice as a method to award a Service Contract in the event that agreement can be reached between the Contracting Body and Provider in respect of the Scope and the Contracting Model, and in particular any Annual Service Development Proposal.
- (d) The Charges for any Service Contract established through Service User Choice will be set by the Contracting Body or mutually agreed by the Contracting Body and Provider on the basis of an open book costing exercise.

2.8 Direct Award may be utilised

- (a) If any service specific factors or operational reasons apply including:
 - (i) Where, at the sole determination of the Contracting Body, it would be significantly detrimental to the health or well-being of one or more Service Users to have a change in Provider, a direct award may be made to their

existing Provider for the services that concern their care and support. It is anticipated that generally, a Service User may exercise their rights to personal choice of Provider but in the event that they do not, the Contracting Body reserves the right to directly appoint a Provider, acting reasonably at all times.

- (ii) A Provider's previous knowledge of the Service User;
 - (iii) A Provider's specialism means it can be evidenced there is only one Provider that is capable of meeting the Service User's requirements;
 - (iv) Location of Provider's service means it can be evidenced there is only one Provider that is capable of meeting the Service User's requirements.
 - (v) A Provider is chosen in line with a Court Order or Best Interests Decision made by the active professional(s) involved; with regards to a Best Interests Decision;
 - (A) It has been established in accordance with the Mental Capacity Act that the person lacks capacity to make an informed choice about their specific care provider; and
 - (B) The Best Interests Decision must take all relevant factors into account and be recorded formally (including justifiable reasons for choosing a specific Provider and evidence as to why other Providers are unable to meet the Service User's needs) and in accordance with the definition for Best Interests Decisions.
 - (vi) Where a Mini-Competition has taken place and the successful bidder has withdrawn from the Service Contract, or the successful bidder fails to commence the Service Contract, the Contracting Body reserves the right to directly award the contract to the next highest ranking provider.
 - (vii) Where no response, or no suitable response, has been submitted in response to a Mini-Competition, provided that the initial conditions of the Service Contract are not substantially altered; and/or,
 - (viii) Insofar as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the Contracting Body, there is insufficient time to undertake a Mini-Competition.
- (b) The Charges for any Service Contract established through Direct Award will be set by the Contracting Body or mutually agreed by the Contracting Body and Provider on the basis of an open book costing exercise.
3. A Mini-Competition as described at paragraph 3.1, or the application of refined selection criteria as described at 2.3(d) may be used to establish a Sub-List of Approved Providers, arranged by the Contracting Body to undertake special projects.
- 3.1 A Sub-List may be open or closed to new entrants.
 - 3.2 Any process used to establish a Sub-List may stipulate the minimum, maximum or actual number of Approved Providers to be appointed.
 - 3.3 Mini-Competitions held among invited Sub-List members or Service User Choice may be used to award Service Contracts.
 - 3.4 A Sub-List may be established for a period of up to four years.

- 3.5 The creation of any Sub-List is to be undertaken in accordance with the principles of equal treatment and transparency. Furthermore, the Contracting Body will on each occasion record the basis on which it has made its decision to narrow down the field in order to create a Sub-List.

SCHEDULE 3- SERVICE SPECIFICATION

See Appendix 1 to the Service Contract at Schedule 1

SCHEDULE 4- INFORMATION SHARED WITH OTHER LOCAL AUTHORITIES

This Protocol is under review and will be superseded by any updated protocol in the future.

NOTIFICATION UNDER THE PROTOCOL FOR SHARING INFORMATION ABOUT SERVICE PROVIDERS BETWEEN LOCAL AUTHORITIES

61 About SERVICE PROVIDERS between LOCAL AUTHORITIES

Instructions:

Please type into ALL relevant grey boxes. Use an X to indicate a tick in a box

This notice has been issued by	Lancashire County Council
Nominated Officer	
Telephone number	01772 531293
Date of Notified Event	Date of Notification

62 The notice relates to the following Service Provider	
63 Name	
Address	
Host Local Authority (if not issuing Authority)	

Nature of Services provided under contract:

Care Home / Care Home with Nursing	Dom. Care	Supported Living	Floating/ Visiting Support	Other	Specify Services	'Other'

The Information being made available is indicated below:

- 1. Change of ownership []
- 2. Closure of business []
- 3. Voluntary withdrawal from contract by Provider []

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 4. Successful prosecution under any Health and Safety Legislation, including Food Hygiene Regulations 1970 (post hearing) | <input type="checkbox"/> |
| 5. Adverse findings in any formal investigation by Commission for Racial Equality or any finding of unlawful racial discrimination by a court or industrial tribunal | <input type="checkbox"/> |
| 6. Successful prosecution of Directors, Trustees, Committee Members or management under the Disability Discrimination Act 1995 | <input type="checkbox"/> |
| 7. Proceedings for bankruptcy or similar proceedings currently pending | <input type="checkbox"/> |
| 8. Outstanding obligations in relation to payment of social security contributions or taxes | <input type="checkbox"/> |
| 9. Successful prosecution of Directors, Trustees, Committee Members or management under the Children's Act 1989, Disqualification from Caring for Children (England) Regulations 2002, Protection of Children Act 1999, Schedule 1 of the Children and Young Persons Act 1933 | <input type="checkbox"/> |
| 10. Successful prosecution of Directors, Trustees, Committee Members or management under the Crime and Disorder Act 1998, Care Standards Act 2000, or Education Acts of 1944,1981 and 1993 | <input type="checkbox"/> |
| 11. Successful prosecution of Directors, Trustees, Committee Members or management for Housing and Council Tax Benefit Fraud | <input type="checkbox"/> |
| 12. Successful prosecution in relation to any offences under the Food Safety Act (1990) or Food Hygiene (General Regulations 1970) | <input type="checkbox"/> |
| 13. Accreditation refused for the following client groups (SP specific) | <hr/> |
| Older People with Support Needs | <input type="checkbox"/> |
| Older People with Mental Health Problems/Dementia | <input type="checkbox"/> |
| Frail Elderly | <input type="checkbox"/> |
| People with Mental Health Problems | <input type="checkbox"/> |
| People with Learning Disabilities | <input type="checkbox"/> |
| People with a Physical or Sensory Disability | <input type="checkbox"/> |
| Single Homeless with Support Needs | <input type="checkbox"/> |
| People with Alcohol Problems | <input type="checkbox"/> |
| People with Drug Problems | <input type="checkbox"/> |
| Offenders or People At Risk of Offending | <input type="checkbox"/> |
| Mentally Disordered Offenders | <input type="checkbox"/> |
| Young People At Risk | <input type="checkbox"/> |
| Young People Leaving Care | <input type="checkbox"/> |
| Women At Risk of Domestic Violence | <input type="checkbox"/> |
| People with HIV/Aids | <input type="checkbox"/> |
| Homeless Families with Support Needs | <input type="checkbox"/> |
| Refugees | <input type="checkbox"/> |
| Teenage Parents | <input type="checkbox"/> |
| Rough Sleeper | <input type="checkbox"/> |
| Traveller | <input type="checkbox"/> |

- Generic
- 14. Accreditation for non SP service refused
 Name / Type of service
- 15. Temporary suspension of purchasing arrangements
- 16. Removal of temporary suspension of purchasing arrangements
- 17. Temporary restriction of purchasing arrangements
- 18. Removal of temporary restriction of purchasing arrangements
- 19. Permanent ending of contractual arrangements

64 <i>For further information about this notification, please contact</i>	
Name	
Position	
Tel. Number	

The information has been distributed to the nominated officers in the following Authorities:
[This list is for illustrative purposes only]

Blackburn with Darwen	Oldham MBC
Bolton MBC	Rochdale BC
Blackpool	Salford
Bury MBC	Sefton
Bradford	St Helens
Calderdale	Stockport MBC
Cheshire East	Tameside MBC
Cheshire West	
Cumbria	Trafford MBC
Halton	Warrington BC
Knowsley MBC	Wigan
Liverpool CC	Wirral MBC
Manchester	

Please note that it is the responsibility of each Authority receiving this information to decide how to use it. This may include contacting the Authority that sent the notice, obtaining further information independently or seeking legal advice.

The information given above is information for the exclusive use of the Authorities receiving it.

In no circumstances should an Authority receiving information pass this information to other Authorities, agencies etc who are not members.

Confirm that a copy of this form has been sent to the Provider	
Method of delivery please state: email/fax/recorded delivery/first class post	Email
Name of person completing this form	
Date	