



Residential Framework Agreement

**For the provision of long-and short-term personal care within a
care home or care home with nursing**

Lincolnshire County Council
and
<Provider Name>

SERVICE AGREEMENT TYPE	CALL OFF
SERVICE AGREEMENT REFERENCE No.	F22

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THIS CONTRACT is made on the day of 2022

BETWEEN

(1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YL (the “Council”)

and

(2) **[PROVIDER]** whose registered address is situated at [ADDRESS] (the “Provider”), [REGISTERED COMPANY NUMBER]

BACKGROUND:

(A) The Provider has agreed to provide the Service from the Commencement Date for the Contract Period subject to the terms and conditions set out in this Contract.

NOW IT IS HEREBY agreed as follows:-

1. DEFINITIONS

In this Contract the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:-

Accommodation	means the Resident’s allotted room within the Home as specified on an Individual Form of Agreement by way of room number or other means of identification as used in the Price Schedule.
Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event.
Approval	means the prior written consent of the Council.
Authorised Officer	means the Council’s Director of Adult Social Services or such other officer nominated by the Council and as notified to the Provider to act as authorised officer for the purposes of this Contract with responsibility for the overall management and control of the Contract or any part thereof.
Bribery Act	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Care File	means the document(s) that hold the records about the Resident. This includes personal profiles, assessments, Care and Support Plan, Provider’s Care Plan, Individual Form of Agreement, reviews, correspondence and financial arrangements.
Care Quality Commission or CQC	means the Care Quality Commission established under the Health and Social Care Act 2008.
Care & Support Plan	means a document to be produced by the Council and submitted to the Provider setting out in summary form the needs of the individual and how those needs should be met, including agreed outcomes for the Resident.
Carer	means a person of any age – adult or child – who provides unpaid support to a partner, child, relative or friend who couldn’t manage to live independently or whose health or wellbeing would deteriorate without this help.

Change	means any variation to this Contract including to any of the Services.
Change Control Procedure	means the procedure for changing this Contract as set out in clause 23.
Change of Control	means: (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in a majority or all of the shares in the Provider (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or (b) any other arrangements that have or may have or which result in the same effect as paragraph (a).
Choice Directions	The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014.
Commencement Date	means the date specified in clause 3.1 for the commencement of this Contract.
Confidential Information	means 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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all Personal Data.
Consents	means:- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or (ii) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract.
Continance Payment	means the payment determined by the Relevant Nursing Care Purchaser or otherwise agreed between the Relevant Nursing Care Purchaser and the Provider and notified to the Council and the Provider from time to time as being payable to the Provider in respect of the provision of continence aids.
Contract	means this written agreement between the Council and the Provider consisting of these clauses and the attached Schedules.
Contract Period	means the period of duration of the Contract in accordance with clause 3.
Contract Standard	means the standards as laid out under clause 4.
Contracting Authority	shall have the meaning specified in the Public Contracts Regulations 2015 from the date they come into force.
Controller	takes the meaning given in the UK GDPR.

Conviction	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988.
Council's Change Control Notice	means a notice served by the Council on the Provider requesting a Change in accordance with clause 23.
Council Contribution	means the Expected Cost less the Resident Contribution.
Council's Personal Data	means the Personal Data supplied by the Council to the Provider and/or Personal Data collected by the Provider on behalf of the Council for the purposes of or in connection with the Contract.
CQC	means the Care Quality Commission.
CQC Regulations	means the Care Quality Commission (Registration) Regulation 2009.
CQC Standards	means "Essential standards of quality and safety – what providers should do to comply with the section 20 regulations of the Health and Social Care Act 2008" issued by the Care Quality Commission in March 2010 as the same may be supplemented, amended or replaced from time to time.
Crown	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation	means (i) the UK GDPR; (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.
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
Data Protection Officer	takes the meaning given in the UK GDPR.
Data Subject	takes the meaning given in the UK GDPR.
Data Subject Request	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.
DBS	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

Default	means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract.
Determination	means the assessment carried out by a registered nurse of the Nursing Care needs of a Resident.
Disaster	means an unplanned interruption of, or inaccessibility to, the Services provided by the Provider.
Disaster Recovery and Business Continuity Plan	means the business continuity and disaster recovery plan as set out in Schedule 8 as amended from time to time.
DPA	means the Data Protection Act 2018.
Eligible Resources	means the resources from which under the law from time to time an Eligible Resident is entitled to make payments towards the difference between the Expected Cost and the Provider's Price.
Eligible Resident	means a Resident permitted under the law from time to time to make a contribution to the cost of Preferred Accommodation to meet the difference between the Expected Cost and the Provider's Price as at the Commencement Date.
Employment Checks	means the pre-appointment checks that are required by Law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks and the Provider shall ensure that these meet the Council's Disclosure and Barring Service Policy which is available at www.lincolnshire.gov.uk/employment-policies/criminal-records-policy/1
Enhanced DBS & Barred List Check	means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate) and the Provider shall ensure that these meet the Council's Disclosure and Barring Service Policy.
Enhanced DBS Position	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted as set out in the Council's Disclosure and Barring Service Policy.
Environmental Information Regulations	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
Equality Legislation	means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and non-discrimination and equality in employment.

Existing Resident	means any Resident in receipt of accommodation and personal care and or Nursing Care being purchased from the Provider by the Council immediately prior to the Commencement Date.
Expected Cost	means at all times prior to 1st April 2022 the Old Expected Cost and from and including 1st April 2022 the New Expected Cost.
First Party Contribution	means the amount specified as such on the Individual Form of Agreement being the financial contribution that an Eligible Resident shall have agreed to make towards the cost of provision of the Services (including the cost of Accommodation).
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this 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 Event	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, pandemic, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider or the Staff or any other failure in the Provider's or a Sub-Contractor's supply chain.
Force Majeure Notice	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.
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 Contract or defrauding or attempting to defraud or conspiring to defraud the Council.
Good Industry Practice	means standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking under this Contract under the same or similar circumstances.
Guidance	means any applicable local authority, health or social care guidance, direction or determination which the Council and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006.
Home(s)	means the Provider's care home(s) or other establishment set out in the Price Schedule.
Hospitalisation	means a Resident is absent from the Home due to being admitted to a hospital and shall include any period of absence immediately following discharge from hospital during which the Resident is in receipt of intermediate care otherwise than at the Home for the purpose of enabling the Resident to return to the Home.

Improper Conduct	means any conduct by the Provider or a member of its staff as defined in Schedule 6.
Individual Form of Agreement	means each agreement entered into between the Council and the Provider pursuant to section 9 of the Specification defining (where applicable) the category of care, start date, end date, Purchaser Contribution, Service User Contribution, Third Party Contribution, Nursing Price, Continence Payment and 1:1 hours applicable to each Individual Placement and which may during the Contract Period also be named the "Individual Purchase Order".
Individual Placement	means the agreed placement of a Resident in a Home of the Provider in accordance with this Contract and the Individual Form of Agreement.
Information	has the meaning given under section 84 of the FOIA and includes Personal Data as defined under Data Protection Legislation.
Information Commissioner's Office	means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in the DPA.
Intellectual Property Rights	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
Law	means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Provider is bound to comply.
Lessons Learnt	means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider's provision of the Services.
Long Term Placement	means a placement in a Home where there is an intention that the placement shall become the Resident's permanent residence.
Losses	means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements).
Month	means a calendar month.
National Institute for Health and Clinical Excellence or NICE	means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body).
National Standards	means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time.
NHS Act 2006	means the National Health Service Act 2006.

Nursing Care	means “nursing care by a registered nurse” as defined in section 49(2) of the Health and Social Care Act 2001.
Nursing Care Price	means the price determined from time to time by the Relevant Care Purchaser applicable to the Nursing Care purchased by the Relevant Nursing Care Purchaser and paid to the Provider on behalf of the Relevant Nursing Care Purchaser by the Council.
Party	means a party to this Contract and the term Parties shall be construed accordingly.
Patient Safety Incident	means any unintended or unexpected incident that occurs in respect of a Resident that could have led or did lead to, harm to that the Resident.
Persistent Breach	means a Default which has occurred on three or more separate occasions within a continuous period of three (3) Months.
Personal Data	takes the meaning given in the UK GDPR.
Personal Data Breach	takes the meaning given in the UK GDPR.
Personal Expenses Allowance	means the amount of allowable income as provided for under Section .14(7) of the Care Act 2014 and Regulation 6 of Care and Support (Charging and Assessment of Resources) Regulations 2014
Preferred Accommodation	means such accommodation as a Resident shall have requested as their choice.
Pricing Schedule	means the document attached hereto as Schedule 2.
Processing	takes the meaning given in the UK GDPR.
Processor	takes the meaning given in the UK GDPR.
Prohibited Act	<p>each of the following constitutes a Prohibited Act:-</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:- <ul style="list-style-type: none"> (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 Contract; (c) committing any offence:- <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

Protective Measures	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Part B of Schedule 7.
Provider's Care Plan	means a plan to be maintained by the Provider in accordance with the Service Specification detailing the care to be provided by the Provider to meet the requirements of the Care and Support Plan.
Provider's Change Control Notice	means a notice served by the Provider on the Council requesting a Change in accordance with clause 23.
Provider's Price	means the cost or costs specified as such in respect of the Provider's Home(s) in the Price Schedule.
Registration Certificate	means a current and valid certificate of registration issued in accordance with the Health & Social Care Act 2008.
Regulated Activity	A "regulated activity" is a prescribed activity related to care and treatment that needs to be regulated by the CQC. Regulated activities are set out in the Health and Social Care Act (Regulated Activities) Regulations 2010
Regulatory Body	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 Contract or any other affairs of the Council and "Regulatory Body" shall be construed accordingly.
Relevant Nursing Care Purchaser	means the relevant Clinical Commissioning Group or successor body thereto (under the Health and Social Care Act 2012 or otherwise) responsible for the commissioning of Nursing Care.
Replacement Provider	means any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of this Contract.
Request for Information	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).
Resident	means an individual who has been assessed by the Purchaser as having an eligible need for residential care and (where applicable) by the Relevant Nursing Care Purchaser as requiring Nursing Care and who is eligible to be accommodated at the Home under the terms of any Registration Certificate.
Resident Contribution	means such contribution as a Resident is from time to time assessed by the Council as being required to make to the cost of the Services including the cost of provision of his/her Accommodation.
Safeguarding Adults Review	means a review undertaken by the Safeguarding Adults Board.
Schedule	means a schedule attached to, and forming part of, this Contract.

Serious Incident	means an incident or accident or near-miss where a Resident (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death at a Home or where the actions of the Provider are likely to be of significant public concern.
Service(s)	means the services to be supplied by the provider as specified and detailed in the Service Specification.
Service Specification	means the description of the Services to be provided to the Resident by the Provider as set out in Schedule 1.
Short Term Placement	means a period of care where the intention is for the Resident to return to their own home or the community including respite care which may be required several times per year but which shall not normally exceed 2 weeks' duration within any single period.
Short Form of Agreement	means an agreement between the Council and the Provider incorporating these terms and conditions of contract and governing the Provider's provision of Services in accordance with these terms and conditions of contract.
Staff	means any person employed or engaged by the Provider on or in connection with the provision of the Services, whether paid or unpaid, including any persons hired through an employment agency, all directors, officers employees, agents, consultants, and contractors of the Provider and/or any Sub-Contractor.
Staff Vetting Procedures	means the Council's procedures for the vetting of Staff and as advised to the Provider by the Council available at www.lincolnshire.gov.uk/employment-policies/recruitment-policy
Sub-Contract	means any contract or agreement, or proposed contract or agreement between the Provider and any third party whereby that third party agrees to provide to the Provider the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.
Sub-Contractor	means the third parties that enter into a sub-contract with the Provider.
Sub-Processor	means any third party appointed to process Personal Data on behalf of the Provider related to this Contract.
Tender	means the document(s) submitted by the Provider to the Council in response to the Council's invitation to providers for formal offers to supply it with the Services under a framework governed by the terms of this Contract.
Third Party	means any individual other than either the Resident, Council or Provider.
Third/First Party Agreement	means an agreement between the Council, the Provider and a Third Party (Third Party Agreement) or Eligible Resident (First Party Agreement) in a form to be determined by the Council from time to time providing for the making of a Third Party Contribution by the Third Party or Eligible Resident.

Third Party Contribution	means the amount specified as such on the Individual Form of Agreement being the financial contribution that a Third Party shall have agreed to make towards the cost of provision of the Services (including the cost of Accommodation).
Trial Period	means the period of eight weeks from the commencement of the provision of Accommodation to a Resident by the Provider.
UK GDPR	means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4)).
Unjustified Refusals	means a refusal by the Provider to accept a Referral made in accordance with the Contract for some reason other than that there is no vacancy at the Home or in the reasonable opinion of the Provider either the Resident's assessed needs cannot be met at the proposed Home or the Resident is otherwise unsuitable to be accommodated at the Home.
Whistleblowing Procedure	means a procedure to enable the confidential raising of concerns about misconduct within the Provider's organisation or within an independent structure associated with it.
Working Day	means Monday – Thursday between the hours of 9am and 5pm and Friday between 9am and 4.30pm excluding Bank Holidays.
Year	means any period 1 April to 31 March

2. INTERPRETATION

2.1 The interpretation and construction of this Contract shall be subject to the following provisions:-

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to clauses and Schedules are to the clauses and Schedules of this Contract; references to paragraphs are to paragraphs of the relevant Schedule;
- (d) the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to the Contract includes the Schedules;
- (e) reference 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;
- (f) reference 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;

- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (h) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (i) Where there is any conflict or inconsistency between the provisions of this Contract such conflict or inconsistency shall be resolved according to the following order of priority:-
 - (i) the clauses of this Contract;
 - (ii) Schedule 1; and
 - (iii) the remaining Schedules to this Contract.

3. COMMENCEMENT DATE

- 3.1 The Contract shall commence on 1st April 2022 and shall remain in force until 31 March 2026 unless terminated earlier in accordance with clause 10 (or otherwise lawfully terminated).

4. CONTRACT STANDARDS

- 4.1 The Provider shall supply the Services during the Contract Period in accordance with the Council’s requirements as set out in the Service Specification and the provisions of this Contract. The performance of the Provider shall be monitored in accordance with Schedule 3.
- 4.2 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of this Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Council.
- 4.3 Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- 4.4 Throughout the Contract Period, the Provider shall deliver the Services:-
 - (a) in a safe, professional manner and in accordance with Good Industry Practice; and
 - (b) in accordance with such reasonable instructions as may from time to time be given by the Council.
- 4.5 The Provider shall ensure that all operations or activities carried out by the Provider, its officers, employees, agents and sub-contractors pursuant to this Contract shall comply at all times with all applicable Law.
- 4.6 The Provider warrants, undertakes and agrees that in the provision of the Services it shall:-
 - (a) provide the Services within any timeframes set out by the Council in accordance with the Specification or any other timeframes which the Council may reasonably notify to the Provider;
 - (b) ensure that the Services are delivered in accordance with the provisions within the Specification;
 - (c) at all times comply with the CQC Standards, and shall maintain registration with the CQC;
 - (d) perform its obligations under this Contract in accordance with the Law and Good Industry Practice;

- (e) cooperate with all reasonable requests by the Council in relation to the performance of its obligations under this Contract.
- 4.7 The Council shall conduct a review of performance of this Contract at least annually during the Contract Period. During this review, a performance report shall be agreed.
- 4.8 The Provider shall notify the Authorised Officer within twenty four (24) hours of any change in circumstances that the Provider has reason to believe will materially affect the Provider's ability to deliver the Services including but not limited to changes in registration status.
- 4.9 Save as provided for in this Contract the Council shall be under no obligation to the Provider to provide extra funding towards the costs of the Services.
- 4.10 The Provider acknowledges and accepts that it shall not be entitled to use any Resident Personal Data for its own commercial purposes except where a Resident requests the provision of Extras as described in clause 5.21.
- 4.11 The Provider shall not:
 - (a) canvas for business, unduly influence or coerce or exploit any Resident (including their families and Carers) with the aim to enhance or change the financial arrangements as set out in the Individual Form of Agreement or otherwise in an attempt to enhance their financial position in respect of a Resident;
 - (b) unduly influence or coerce any Resident (including their families and carers) with the aim to retain the Resident's' custom at termination or expiry of the Contract.
- 4.12 Any breach of clauses 4.10 and 4.11 shall be deemed to be a serious breach of the Contract which is incapable of remedy and entitle the Council to terminate the Contract in accordance with the relevant termination provisions and the terms governing the consequences of termination shall apply.

4A. CO-OPERATION

- 4A.1 The Parties shall at all times act in good faith towards each other.
- 4A.2 The Provider shall co-operate fully and liaise appropriately with:-
 - (a) the Council;
 - (b) any third party provider who the Resident may be transferred to or from the Provider;
 - (c) primary, secondary and social care servicesin order to:
 - (d) ensure that a consistently high standard of care for the Resident is at all times maintained;
 - (e) ensure a co-ordinated approach is taken to promoting the quality of care across all pathways spanning more than one provider;
 - (f) achieve a continuation of the Services that avoids the Resident placed in a position of being under duress or a position of financial exploitation to the benefit of the Provider or inconvenience to or risk to the health and safety of Residents, employees of the Council or members of the public.

4B. PARTNERSHIP WORKING

- 4B.1 The Provider shall ensure that if they operate more than one care home that they communicate effectively and in a timely manner with all registered managers as defined in the Health & Social Care

Act 2008 employed by the Provider. The Council reserves the right to communicate directly with home managers where a significant and important piece of information needs to be shared with them, such as the arrangements for dealing with a major public health issue such as a pandemic.

- 4B.2 The Provider shall have in place effective procedures which ensure that Staff are aware of other agencies who may be involved or have an interest in the Resident.
- 4B.3 In the event of the Provider's CQC rating reducing to "Inadequate" or "Requires Improvement" the Provider shall liaise with the Council, either via a contract monitoring meeting or a separate meeting to discuss the improvement actions required. The Provider shall undertake any necessary training or support that relates to the outcomes of the CQC report. This training shall be made available via the Council's strategic market support service.

4C. SERVICE QUALITY

- 4C.1 The Provider shall unless otherwise agreed (subject to the Law) with the Council in writing:-
- (a) comply, where applicable, with the registration and regulatory compliance requirements and guidance of CQC and any other Regulatory Body;
 - (b) respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
 - (c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report; and
 - (d) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE.

4D. SERVICE USER INVOLVEMENT

- 4D.1 The Provider shall engage, liaise and communicate with Residents, their Carers and legal guardians in an open and clear manner in accordance with the Law, Good Practice and their human rights.
- 4D.2 As soon as reasonably practicable following any reasonable request from the Council, the Provider shall provide evidence to the Council of the involvement of Residents, Carers and Staff in the development of Services.
- 4D.3 The Provider shall carry out Resident surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Council in relation to the Services. The form (if any), frequency and method of reporting such surveys shall comply with the requirements as agreed between the Parties in writing from time to time.
- 4D.4 The Provider shall review and provide a written report to the Council on the results of each survey carried out under clause 4D.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider shall implement such actions as soon as practicable. If required by the Council, the Provider shall publish the outcomes and actions taken in relation to such surveys.

4E. BEST VALUE

- 4E.1 The Provider shall provide to the Council all such assistance, information and documentation as the Council shall reasonably require for the purpose of compliance with its obligations of Best Value under Part 1 of the Local Government Act 1999.

4F. COMPLAINTS

- 4F.1 The Provider shall maintain an up to date, comprehensive and detailed written record of all complaints it receives regarding the Services. Such records shall contain all relevant details of the complaint

including the following details:-

- (a) the member of Staff or other person to whom the complaint was made and the name and job title of that person;
- (b) the name and address (if known) of the person making the complaint and in what capacity the complaint was made;
- (c) the nature and extent of the default of which complaint was made;
- (d) the date and time of complaint; and
- (e) any action taken to remedy the complaint, and if no action is to be taken, the reasons why no action is to be taken.

4F.2 Where a complaint is received regarding:-

- (a) the standard of Services;
- (b) the manner in which any Services have been supplied;
- (c) the manner in which work has been performed;
- (d) the materials or procedures used by the Provider; or
- (e) any other matter connected with the performance of the Provider's obligations under this Contract

then the Council shall notify the Provider, and where considered appropriate by the Council, investigate the complaint.

4F.3 Without prejudice to its other rights and remedies under the Contract, the Council may, in its sole discretion, uphold the complaint and take further action in accordance with clause 9 or clause 10.2(a) of this Contract.

4G. INCIDENTS REQUIRING REPORTING

4G.1 If the Provider is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Provider is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.

4G.2 If the Provider gives a notification to the CQC or any other Regulatory Body under clause 4G.1 which directly or indirectly concerns any Resident, the Provider shall send a copy of it to the Council within five (5) Working Days.

4G.3 The Parties shall comply with the arrangements for reporting, investigating, implementing and sharing the lessons learned from Serious Adult Reviews, Serious Incidents, Patient Safety Incidents and non-Resident safety incidents that are agreed between the Provider and the Council.

4G.4 Subject to the Law, the Council shall have complete discretion to use the information provided by the Provider under this clause 4G.

4H. CONSENT

4H.1 The Provider shall publish, maintain, and operate a Resident consent policy which complies with Good Practice and the Law.

4I. RESIDENT RECORDS

- 4I.1 The Provider shall create, maintain, store and retain Provider Care Plans and Care Files for all Residents. The Provider shall retain Provider Care Plans and Care Files for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
- 4I.2 The Provider shall:-
- (a) use Care Files solely for the execution of the Provider's obligations under this Contract; and
 - (b) give each Resident full and accurate information regarding his/her treatment and Services received.
- 4I.3 Subject to Guidance and where appropriate, the Resident records shall include the Resident's verified NHS number.

4J. SAFEGUARDING

- 4J.1 The Provider shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of vulnerable adults in the delivery of all aspects of the Services including but not limited to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.
- 4J.2 The Provider, if it has responsibility for the management and control of Regulated Activity (as defined under the legislation identified below), shall make the necessary arrangements to ensure compliance with the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).
- 4J.3 The Provider shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.
- 4J.4 To fulfil the commitment to safeguard and promote the welfare of vulnerable adults, as appropriate, the Provider shall have:-
- (a) Clear priorities for safeguarding and promoting the welfare of vulnerable adults explicitly stated in strategic policy documents;
 - (b) A clear commitment by senior management to the importance of safeguarding and promoting vulnerable adults' welfare;
 - (c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of vulnerable adults;
 - (d) Recruitment and human resources procedures in compliance with clause 9 in order to safeguard and promote the welfare of vulnerable adults;
 - (e) Procedures for dealing with allegations of abuse against members of Staff and volunteers;
 - (f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;
 - (g) Policies for safeguarding and promoting the welfare of vulnerable adults and procedures that are in accordance with guidance and locally agreed inter-agency procedures;
 - (h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of vulnerable adults including sharing of information;
 - (i) A culture of listening to and engaging in dialogue with vulnerable adults; and

(j) Appropriate whistle-blowing procedures.

4J.5 The Provider shall immediately notify the Council of any information it reasonably requests to enable it to be satisfied that the obligations of clauses 9 and 4J have been met.

5. CONTRACT PRICE & PAYMENT

Overall Payment Obligation

5.1 In consideration of the proper performance of the Services (including the provision of the Accommodation) by the Provider in accordance with the terms and conditions of this Contract, the Council shall:-

- (a) pay to the Provider the Council Contribution in accordance with clauses 5.6 to 5.10 inclusive
- (b) pay the Resident's Contribution in the circumstances set out in clauses 5.14 to 5.17 inclusive below
- (c) pay the Third Party/First Party Contribution in the circumstances set out in clauses 5.14 to 5.17 inclusive below; and
- (d) (acting on behalf of the Relevant Nursing Care Purchaser) payment of the Nursing Care Price and any Continence Payment in accordance with clause 5.18 below

in each case in respect of any Individual Placement which is in force at the time.

5.2 Where the Council places a Resident with the Provider at a Provider's Price in excess of the Expected Cost in circumstances where, in accordance with the Choice Directions, no Third Party or Eligible Resident can be required to make a Third Party/First Party Contribution the Council shall be responsible for:-

- (a) payment to the Provider of the Provider's Price less the Resident Contribution in accordance with clauses 5.6 to 5.10 inclusive
- (b) payment of the Resident Contribution in the circumstances set out in clauses 5.12 to 5.17 inclusive below; and
- (c) (acting on behalf of the Relevant Nursing Care Purchaser) payment of the Nursing Care Price and any Continence Payment in accordance with clause 5.18 below.

5.3 The Expected Cost for the first Year of the Contract is set out in the Price Schedule. The Council shall notify the Provider within one (1) Month prior to the 1st of April of each of the next Years of the Contract in writing what the Expected Cost for that Year shall be.

5.4 The Provider's Price shall automatically increase each Year in line with (at the same rate as) the Council's Expected Costs on the 1st of April. The Provider shall not be entitled to any other increase in the Provider's Price during the life of the Contract. This means that Third Party and First Party Contributions shall be fixed for the duration of the Contract. Subject to clause 5.3, the Council commits to review these Expected Costs if there is a material change in government policy that may affect the calculations on which the Expected Costs are based.

5.5 The Provider shall not be entitled to any payment in respect of the provision of the Services (including the Accommodation) in excess of the payments specified in clauses 5.1 and 5.2 and the Purchaser, the Resident and any Third Party or Eligible Resident shall not be required to make any payment in excess of the Council Contribution, the Resident's Contribution and the Third Party/First Party Contribution respectively.

Payments under clauses 5.1(a) and 5.2(a)

- 5.6 Payments by the Purchaser under clauses 5.1(a) or clause 5.2(a) will be made automatically by the Purchaser two weeks in advance and two weeks in arrears and the Provider shall not be required to submit an invoice. The first such payment after the Commencement Date will be made on the basis of the Individual Placements in force on the Commencement Date.
- 5.7 For the avoidance of doubt payment at two weeks in advance and two weeks in arrears means that the Provider shall receive payment for Services in the middle of any four week period for Services delivered in that four weekly period.
- 5.8 At the time of each payment a detailed remittance advice note (two copies) will be sent to the Provider. One copy of the remittance advice note shall be retained by the Provider and one copy shall be returned to the Council's Adult Social Care Finance Team within seven (7) calendar days signed and duly annotated by the Provider with any changes (including the date on which any such changes took effect) relating to the circumstances and Accommodation of any Resident which may affect the financial provisions of this Contract including the amount payable by the Council under this Contract. Failure to return the remittance advice note within the required timescale may result in a delay in the next payment due. In the event of any overpayment arising as a result of delay in the return of remittance advices or the provision of inaccurate information therein, the Council shall be entitled to deduct the full amount of such overpayment from the next payment under clause 5.1(a) or clause 5.2(a).
- 5.9 The Provider shall as soon as is reasonably practicable notify the Authorised Officer in writing of any changes to the Provider's nominated bank account.
- 5.10 Changes to the Council Contribution or any amount payable by the Council under clauses 5.1(a) or 5.2(a) caused by any change in the Resident Contribution or any other variation pursuant to this Contract shall be effected automatically by the Council as from the date of the finalisation of the assessment of the Resident Contribution or finalisation of the effect on the Council Contribution or amount payable by the Council under clauses 5.1(a) or 5.2(a) of any other variation giving rise to the change. The Provider agrees that no additional act on the part of the Council shall be necessary to make such a change a binding variation to this Contract taking effect on the date on which the change in the Council Contribution or amount payable by the Council under clauses 5.1(a) or 5.2(b) was effected by the Purchaser.

Resident Contribution

- 5.11 The amount of the Resident Contribution applicable at the commencement of any Individual Placement shall be the amount specified in the Individual Form of Agreement and the Council shall notify the Provider in writing within five (5) Working Days of any change to the Resident Contribution together with the date on which it took effect. From the date specified in the said notice the Resident Contribution to be collected pursuant to this clause 5 shall be the amount specified in the said notice.

Third Party/First Party Contribution

- 5.12 The Provider shall not accept any payment from a Third Party/First Party from a Third Party/First Party Contribution other than where a formal Third/First Party Agreement has been made between the Third Party/First Party, the Council and the Provider. Charges made outside the terms of this Clause 5.12 shall be viewed as a Default and without prejudice to the Council's other rights under this Contract:-
- (a) the Provider shall be required to repay any monies to the Third Party/First Party immediately; and
 - (b) the Provider shall be in breach of the Contract and the provisions of the Choice Directions and the Council shall be under no obligation to place the Resident in the Provider's home notwithstanding that it may be the Resident's preferred accommodation.

- 5.13 The Provider shall notify the Authorised Officer immediately if the Provider has any reason to believe that the effect of collecting any First Party Contribution from an Eligible Resident would be to cause that Eligible Resident to make such payment out of any resources other than Eligible Resources.

Collection by the Provider of Resident Contribution and Third Party/First Party Contribution

- 5.14 The Council and the Provider hereby agree that it shall be the responsibility of the Provider to collect:-
- (a) the amount of the Resident Contribution direct from the Resident or his/her representative as notified by the Council; and
 - (b) the Third Party Contribution direct from the Third Party or the First Party Contribution from the Eligible Resident as the case may be

in each case in accordance with and subject to the provisions of clauses 5.16 to 5.17 inclusive and so that the Resident Contribution or a Third Party Contribution, or First Party Contribution from an Eligible Resident shall not be collected in advance of the Resident receiving their benefits payment.

- 5.15 The Council may by notice in writing to the Provider alter the provisions of clause 5.14 whereby the Council shall make payment of the amounts set out in clause 5.14 directly to the Provider thereby removing any obligation on the Provider to collect such sums from the Resident or his/her representative or from the Third Party or Eligible Resident as the case may be.
- 5.16 If the Resident or their representative or a Third Party or Eligible Resident is unable, refuses, or otherwise fails to pay the whole or any part of the Resident Contribution or the Third Party/First Party Contribution the Provider shall send a reminder one (1) Month after any unpaid contribution became due and shall thereafter pursue the unpaid contribution with reminders in writing at not less than fortnightly intervals.
- 5.17 Subject to clause 5.16, if any Resident Contribution or Third Party/First Party Contribution remains unpaid in whole or in part for a period of twenty eight (28) calendar days after the first notification sent by the Provider under clause 5.16, the Provider shall be entitled to invoice the Council for the amount outstanding. The invoice must be accompanied by evidence of the amount outstanding.

Nursing Care Price

- 5.18 The Council shall at the same time as making payment under clauses 5.1 (a) or 5.2(a) pay to the Provider the amount of the Nursing Care Price and any amounts by way of Continence Payments payable in respect of the period to which the payment under clause 5.1(a) or 5.2(a) relates.

Extras

- 5.19 The Provider may charge the Resident for any facility not included in the Services such as the provision of hairdressing, dry cleaning services or outings ("Extras") provided that these have been agreed with the Resident. The provision of Extras shall be charged by the Provider to the Resident at the actual additional cost to the Provider of arranging the provision of or directly providing Extras to the Resident.
- 5.20 Where a Resident is required to attend hospital or the general practitioner (GP) for a planned appointment or in an emergency it is expected that the Provider shall ensure that they are accompanied.
- 5.21 For planned or emergency appointments, the Provider shall arrange for appropriate transport to relay the Resident to and from appointments. If transport is unavailable or there is no escort available then the Provider may request that a friend/relative transports and accompanies the Resident. If there is no appropriate escort and the Provider is required to escort a resident to an appointment then the Provider may charge the Resident. If there are concerns about financial hardship and the ability of a Resident to pay such charges, the Provider shall notify the Council who shall review the circumstances and make decisions about the funding of escort charges on a case-by-case basis.

- 5.22 The Provider shall clearly display the charges for Extras within the home and shall include this information in any literature presented to prospective residents prior to admission.
- 5.23 The Resident shall be liable for any charges made for Extras and the Provider shall be responsible for recovering any charges direct from the Resident. The Council shall have no liability for payment or recovery of such charges.
- 5.24 The Resident shall not be charged for anything provided to meet an assessed care need. The provision of continence aids to Residents assessed as needing them shall not under any circumstances whatsoever constitute an Extra.
- 5.25 The Provider shall provide daytime activities for Residents where these form part of the Provider's Care Plan. Neither the Resident or the Council will be charged additionally for such day activities provided. Whether or not such activity is included within the Provider's Care Plan the Provider shall not be entitled to charge the Council in respect of the attendance by the Resident at any day services funded by the Council.

Right to set-off

- 5.26 Wherever under this Contract or any other agreement between the Council and the Provider any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract or under the terms of any other agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Contract or under any other agreement or contract with the Council.
- 5.27 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 5.28 The Provider shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 5.29 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

Interest on Late Payments

- 5.30 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Contract such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged and the Parties hereby agree that such interest amounts to a substantial contractual remedy for late payment for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

Payment in case of absence

- 5.31 In the case of absence from the care of the Provider as set out in section 9 of the Service Specification and until the Resident returns or the Individual Placement is terminated:
 - (a) In the case of Hospitalisation the full amount of payments under clauses 5.1 (a) and 5.2(a) shall remain payable for the first forty two (42) days with the Resident and any Third Party or Eligible Resident continuing to be responsible to pay their full contribution. Thereafter the payments under clauses 5.1(a) and 5.2(b) and any Third Party/First Party Contribution will be adjusted to 80% of their former level.

- (b) In the case of other absences in excess of twenty one (21) days the payments under clauses 5.1(a) and 5.2(b) shall be payable for the first twenty one (21) days only and the Resident and any Third Party or Eligible Resident shall continue to be responsible to pay their contribution during that period but not otherwise.

VAT

- 5.32 The Council's payments under clauses 5.1(a) and 5.2(a) and the Nursing Care Price shall be exclusive of VAT and other duties or taxes.
- 5.33 No VAT shall be payable by the Council in respect of the payments referred to in clause 5.32.

6. RESIDENTS

- 6.1 The people who may receive the Services shall be those Residents whom the Parties agree can be accommodated at the Home, and whose individual care needs can be met by the Provider at the Home.
- 6.2 The Provider and the Council hereby agree that, in respect of Existing Residents and as from the Commencement Date those Residents shall be treated as having been placed and the Individual Forms of Agreement applicable to each of those Existing Residents shall be treated in all respects as if they had been made under clause 7 of this Contract and section 3 of the Service Specification and shall be subject to the terms and conditions of this Contract including but not limited to the price and payment conditions of this Contract from the Commencement Date.

7. REFERRALS AND PLACEMENT

- 7.1 Residents using the Services shall be referred to the Provider in writing by the Council in accordance with section 3 of the Service Specification.
- 7.2 Subject to clauses 7.3 and 7.4, a placement shall take effect from the date on which a written Referral is accepted by the Provider in accordance with section 3 of the Service Specification or such later date as shall be specified in the Care & Support Plan and the Provider shall commence provision of the Services to the Resident at the point at which the placement takes effect.
- 7.3 The Provider shall immediately notify the Council when it has reason to believe that the capital of a resident who is self-funding is likely within the following twelve (12) Months to fall below the limit set out for the time being in Law at which the Resident may become entitled to have his or her care arranged by the Council. Where the Council becomes aware (whether by way of notification by the Provider or otherwise) that the above circumstances are likely to apply, it will carry out a financial assessment and notify the Provider that a financial assessment is being carried out.
- 7.4 Where a financial assessment is carried out and concludes that a resident who is self-funding is entitled to have his or her care arranged by the Council, and where the Council makes a Referral in respect of that resident under clause 7.1, the Council shall specify in the Referral the date on which the Resident's entitlement first arose. Notwithstanding the provisions of clause 7.2, where the Referral is accepted and where the Council gave notice of its intention to carry out a financial assessment under clause 7.3 above, the placement shall take effect from the date on which the resident became entitled to have his or her care arranged by the Council as notified by the Council.
- 7.5 Subject to the Council providing to the Provider for signature a completed Individual Form of Agreement, the Provider shall enter into an Individual Form of Agreement and sign and return the Individual Form of Agreement for each individual Resident, within five (5) Working Days after placement with the Provider.
- 7.6 Payment by the Council under this Contract shall become due from the date any placement commences under clause 7.2 above but no such amount shall be payable by the Council unless and until an Individual Form of Agreement has been signed by the Provider.

- 7.7 Subject to clause 7.6 above, notwithstanding that an Individual Form of Agreement has not been entered into by the Provider, the placement shall be governed by the terms of this Contract (including as to termination) from the date the placement takes effect as if an Individual Form of Agreement had been entered into.
- 7.8 Each Individual Placement in relation to a Long-Term placement shall have an initial period, specified as a Trial Period more particularly described at section 3 of the Service Specification. During the Trial Period the Individual Placement may be terminated on the giving of not less than seven (7) calendar days written notice by either Party.
- 7.9 There is no obligation upon the Provider to accept any individual Resident following a Trial Period. The Provider accepts that at the end of the Trial Period a Resident may exercise their right to be placed in another care home
- 7.10 The Provider shall, within fourteen (14) calendar days of refusal of any Referral (whether on referral or at the end of the Trial Period), provide to the Council a statement in writing of its reasons for not accepting the Referral. Persistent Unjustified Refusals may be taken into account by the Council during reviews of the Contract.
- 7.11 Placements shall only be authorised by the Council in accordance with section 3 of the Specification. The Council accepts no financial responsibility for any unauthorised placements except to the extent that the unauthorised placement was caused by a failure by the Council to comply with its obligations under section 3 of the Service Specification.
- 7.12 For those Residents requiring Nursing Care it shall be the responsibility of the Council to ensure that a relevant Determination is undertaken by the Relevant Nursing Care Purchaser. Unless and until such a Determination has been undertaken any placement shall take effect as a placement for personal care. If the Provider believes that the Resident is in need of Nursing Care they may seek a review which will be governed by section 3 the Service Specification.

8. RELATIONSHIP BETWEEN THIS CONTRACT AND INDIVIDUAL PLACEMENTS

- 8.1 Each Individual Placement in respect of a Resident shall be a separate agreement between the Council and the Provider for the provision by the Provider to the Resident of the Services specified on the Care and Support Plan on the terms and conditions of this Contract and the Individual Form of Agreement.
- 8.2 Subject to clause 7.7, the Individual Placement shall commence on the date specified on the Individual Form of Agreement and notwithstanding the expiry or termination of this Contract shall remain in force for the period specified therein unless terminated early in accordance with this Contract.
- 8.3 Placement in existence prior to the commencement date of this contract will be treated as placements under this contract on and after the commencement date.

9. STAFF

- 9.1 At all times, the Provider shall ensure that:-
- (a) each of the Staff is suitably qualified, adequately trained (including any specialist based training that is required for the proper delivery of the Services) and capable of providing the Services in respect of which they are engaged;
 - (b) there is an adequate number of Staff to provide the Services properly;
 - (c) where applicable, Staff are registered with the appropriate professional regulatory body;
 - (d) all of the Staff comply with all of the Council's policies as notified to it from time to time; and

- (e) all of the Staff comply with the Law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working;
 - (f) Staff are aware of and respect equality and human rights of colleagues and Residents;
 - (g) Staff are approachable and non-confrontational to the Residents and Council's staff at all times and are aware of and respect equality and human rights of Residents and others;
 - (h) Staff shall be open and available for any observational Assessments by the Council to ensure that the Staff are providing the Services in accordance with the terms of this Contract;
 - (i) Staff keep up to date with changes within their specialism and adapt the Services appropriately;
 - (j) Staff keep up to date with the development of new standards within their area of specialism; and
 - (k) Staff shall not make any negative or disparaging comments about the Council or the Services which is being undertaken.
- 9.2 The Provider shall notify its entire Staff about the Provider's obligations under the terms of this Contract and about any applicable Law.
- 9.3 Upon receipt of a complaint against a member of Staff, the Council may, to the extent reasonably necessary to protect the standards and reputation of the Council, in consultation with the Provider, request that the Provider investigates the complaint and provides the Council with all requested information in relation to this investigation, in accordance with the Provider's own internal policy and procedures and Good Industry Practice.
- 9.4 In the event of industrial disputes or action by any of the Staff, it remains the Provider's responsibility to meet the requirements of this Contract. The Provider shall inform the Council immediately of impending or actual industrial disputes or action, which may affect the Provider's ability to deliver the Services and of the Provider's contingency plans for dealing with such disputes or action. It is for each Party to determine the best way to secure their respective interests relating to any such disputes or action.
- 9.5 The Provider shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:-
- (a) proper and sufficient continuous professional and personal development, training and instruction; and
 - (b) full and detailed appraisal (in terms of performance and on-going education and training),
- each in accordance with Good Industry Practice and the standards of any applicable relevant professional body.
- 9.6 Where applicable under section 1(F)(1) of the NHS Act 2006, the Provider shall co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- 9.7 The Provider shall carry out Staff surveys in relation to the Services at intervals and in the form as agreed in writing from time to time.
- 9.8 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

- 9.9 Subject to clause 9.10, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider shall without limitation, complete:-
- (a) the Employment Checks; and
 - (b) if appropriate such other checks as required by the Council's Recruitment and Selection Policy and all other policies and documentation referred to therein including the Council's Disclosure and Barring Service Policy referred to in this Contract.
- 9.10 Subject to clause 9.11, the Provider may engage a person in an Enhanced DBS Position (as applicable) pending the receipt of the Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Council.
- 9.11 Where clause 9.10 applies, the Provider shall ensure that until the Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards shall be put in place:-
- (a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - (b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - (c) the new member of Staff is accompanied at all times by either the appointed supervisor or a member of Staff who has already been subjected to the Staff Vetting Procedure whilst providing the Services under this Contract; and
 - (d) any other reasonable requirement of the Council.
- 9.12 The Provider shall (unless and to the extent agreed otherwise by the Council in writing) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.
- 9.13 Without prejudice to the provisions of this clause 9, the Provider shall not engage or continue to utilise in the provision of the Services involving or which are likely to involve access to vulnerable persons or other members of the public to whom the Council owes a special duty of care, any member of Staff whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.
- 9.14 If the Provider fails to comply with clause 9 and in the reasonable opinion of the Council, such failure may be prejudicial to the interests of the Council, then the Council may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 9.15 The Provider shall replace any of the Staff who the Council reasonably determines have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Staff 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 at no additional cost to the Council.
- 9.16 The Provider shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Staff. The Provider shall ensure at all times that it has the right to provide these records in compliance with the Data Protection Legislation.
- 9.17 The Provider shall use its best endeavours to ensure continuity of Staff and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

- 9.18 The Provider shall in its management of its Staff have in place and implement such policies processes and procedures (including as to the suspension of Staff from the provision of the Services) as shall ensure the compliance of the Services at all times with the CQC Regulatory Framework.
- 9.19 Any Improper Conduct on the part of the Provider or its Staff shall be considered to be a serious Default incapable of remedy and the Council shall have the right to immediately suspend or terminate the Contract upon the occurrence thereof.
- 9.20 The Provider shall ensure that it has a Whistleblowing Procedure which shall comply with the requirements of the Public Interest Disclosure Act 1998. The Provider shall also ensure that Staff are aware that they are able to disclose information through the Whistleblowing Policy. The following aims shall be incorporated into the policy:-
- (a) encouraging Staff to feel confident in raising concerns and to question and act upon concerns about practice;
 - (b) provide avenues for Staff to raise concerns in confidence and receive feedback on any action taken;
 - (c) ensure that Staff receive a response to their concerns and that they are aware of how to pursue them if they are not satisfied.
 - (d) reassure Staff that they will be protected from possible reprisals or victimization if they have a reasonable belief that they have made any disclosure which is in the public interest;
 - (e) ensure that whistle blowing is covered as part of the Staff induction process and continued to be discussed as part of team meetings and supervision processes; and
 - (f) ensure Staff have access to information at all times by displaying information in areas accessed by Staff.
- 9.21 The Provider confirms that the Council is authorised as a person to whom Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Staff making a protected disclosure (as defined by said Act) shall not be subjected to any detriment. The Provider shall make its Staff aware of this provision. The Provider further declares that any provision in any contract purporting to preclude a member of its Staff from making a protected disclosure shall be void.
- 9.22 The Provider shall inform the Council of the loss or impending loss of any key Staff such as the registered manager, nursing staff, clinical leads or any other Staff that is vital to the proper functioning of the Services.

10. PERFORMANCE DEFAULT

- 10.1 In the event of a Provider Default the Council shall be entitled to serve written notice on the Provider specifying the Default and requiring the Provider to remedy the Default in such reasonable timescales as the Council shall specify in the notice. If the Council considers the Default to be a serious Default giving rise to the consequences specified in clause 10.2(b) below it shall specify the Default as serious within the notice.
- 10.2 On service of written notice from the Council under clause 10.1:-
- (a) the Default shall be corrected by the Provider at no additional cost to the Council and within the timescales stipulated in the written notice by the Council; and
 - (b) where the Council has identified the Default in the notice as a serious Default the Council may:-

- (i) withhold payment of such part of the Council's payments under clauses 5.1(a) or 5.2(a) as may be reasonable having regard to the nature of the Default until the Default is corrected; and/or
 - (ii) suspend further placements whilst investigating the affairs of the Provider and the Provider shall co-operate with such investigation including giving access to the Council to all information reasonably required relating to the Performance Default; and/or
 - (iii) invoke clause 10.4 below
- 10.3 If the Default(s) are not remedied within the timescale specified in the notice, the Council may terminate this Contract in accordance with clause 11.2(a).
- 10.4 Without prejudice to the Council's right to terminate this Contract as referred to in clause 10.3, if the Provider fails to correct a serious Default, or fails to correct it within the time stated in written notice under clause 10.1, the Purchaser, acting reasonably, shall be entitled:-
 - (a) without terminating the Contract to perform or make arrangements for a third party to perform the affected part of the Services until the Provider has demonstrated to the Council's reasonable satisfaction that the Provider is once more able to perform that part of the Services. The Council shall be entitled to charge to the Provider any reasonable costs including administration costs reasonably incurred in taking any action under this clause 10.4(a) to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Service; and
 - (b) without prejudice to the generality of clause 10.4(a), the Council reserves the right to provide or procure, amongst others, the services listed below and charge back to the Provider the costs of so doing and such costs shall be owed as a debt:-
 - (i) Home manger
 - (ii) Senior Carer
 - (iii) Carer
 - (iv) Nurse
 - (v) Home administrator
 - (vi) Internal audit
 - (vii) Social worker/community care officer/occupational therapist.

11. TERMINATION

- 11.1 Either Party may terminate this Contract by giving to the other not less than ninety (90) calendar days written notice (or such lesser period as the Parties may agree in writing prior to the giving of such notice) to expire at any time. During the period of notice both Parties shall co-operate to ensure that the interests of Residents are met.
- 11.2 The Purchaser may terminate this Contract forthwith by notice in writing to the Provider if:-
 - (a) there has been on the part of the Provider a Default and either the Default is incapable of remedy or in the event that the Default is capable of remedy the Purchaser has served written notice on the Provider pursuant to clause 10.1 in respect of the Default and the Provider has failed to remedy the same in accordance with the provisions of such notice;

- (b) the Provider consisting of one or more individuals, if any one of them dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation, commits any act of bankruptcy or has a bankruptcy order made against him/her or enters into any arrangement, agreement or composition with and for the benefit of his/her creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986) or suffers any distress or process of execution to be levied on his/her goods or assets suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (c) the Provider consisting of a body corporate, either the Provider or any parent company thereof has a winding up order made or (except for a bona fide scheme of amalgamation or reconstruction) has a resolution passed for voluntary winding up or has an application made for the appointment of an administrator, administrative receiver or receiver or an administrator, administrative receiver or receiver is appointed over the whole or part of its business and/or assets or has a provisional liquidator, receiver or manager of the whole or any part of its business appointed or has possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge or suffers any distress or process of execution to be levied on its goods or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986 or ceases or threatens to cease to carry on business.

11.2A The Provider shall notify the Council immediately if the Provider undergoes a Change of Control. The Council may terminate this Contract by notice in writing with immediate effect within six (6) Months of:-

- (a) being notified that a Change of Control has occurred; or
- (b) 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 the Change of Control in writing prior to the Change of Control.

11.3 The Provider shall give the Council no less than ninety (90) calendar days' prior written notice of any planned closure of the Home and shall notify the Council of any unplanned closure of the Home as soon as reasonably practicable after the Provider becomes aware that the Home is to close or after the Home has closed where there is insufficient time to notify the Council in advance.

Notice and Termination of an Individual Placement

11.4 Subject to clause 11.5, the Council may terminate an Individual Placement by giving the Provider no less than twenty eight (28) calendar days' notice in writing or such other period as may be agreed between the Parties without the need to give any reason for the termination. In the event of termination pursuant to this clause 11.4, neither Party shall have any right or rights against the other arising out of or as a consequence of such termination.

11.5 Where an individual is not legally allowed to return to the Home after an absence, for example where a Resident has been instructed not to return to a Home by the Police, then a notice period of seven (7) calendar days will apply and the Council shall have no obligation to make any further payments to the Provider upon the lapse of the seven (7) calendar days' notice period and the Provider shall reimburse the Council with any monies paid by the Council in advance.

11.6 At any time after forty two (42) calendar days Hospitalisation or twenty one (21) calendar days for other absences, the Council or the Provider may terminate an Individual Placement on giving to the other not less than seven (7) calendar days written notice and the Council shall have no obligation to make any further payments to the Provider upon the lapse of the seven (7) calendar days' notice period and the Provider shall reimburse the Council with any monies paid by the Council in advance.

- 11.7 The Purchaser shall be entitled to terminate any Individual Placement if the Provider is guilty of a Default in relation to the Resident and either the Default is incapable of remedy or in the event that the Performance Default is capable of remedy if the Purchaser has served written notice on the Provider under clause 10.1 and the Provider has failed to remedy the same in accordance with such notice.
- 11.8 The Purchaser shall be entitled to terminate an Individual Placement if any of the matters set out in clauses 11.2(a) or 11.2(b) apply to the Provider whether or not the Purchaser terminates this Contract.
- 11.9 The Purchaser shall be entitled to terminate any Individual Placement forthwith by notice in writing if this Contract terminates for any reason. Any continuation of any Individual Placement after the termination of this Contract shall not prejudice the right of the Purchaser to terminate an Individual Placement subsequently in accordance with the provisions of this Contract notwithstanding the termination of this Contract.
- 11.10 If a Resident dies during the period of an Individual Placement, the Individual Placement shall terminate automatically three (3) calendar days after the date of death and the Council shall have no obligation to make any further payments to the Provider upon the lapse of the three (3) calendar days and the Provider shall reimburse the Council with any monies paid by the Council in advance.
- 11.11 If following a review, the needs of the Resident are assessed as requiring a package of services which the Provider is not able to supply, the Council shall be entitled to terminate an Individual Placement relating to that Resident provided the Council notifies the Provider in writing within no less than seven (7) calendar days.
- 11.12 If a Service Provider wishes to give notice of termination of an Individual Placement:-
- (a) the Provider shall demonstrate a rationale for the reasons having had due regard to respecting the Resident's placement as a secure home place for as long as this is safe and appropriate;
 - (b) on the grounds of a change in needs, the Provider shall provide appropriate evidence of such a change;
 - (c) the Provider shall provide evidence of engagement with the Resident and family/friends/unpaid carers through mediation and de-escalation attempts
- before a notice of termination shall be considered by the Council.
- 11.13 In the event of termination under clause 11.12 the Provider shall:-
- (a) where reasonably possible, the Provider shall explain to the Resident, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);
 - (b) the Provider shall inform the Resident of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so.
- 11.14 In the event that an Individual Placement is terminated, the Council and the Provider shall work together to ensure the Resident who is transitioning from one home to another shall have a quality transition, this includes visits and the sharing of appropriate Care and Support Plan information in accordance with Data Protection Legislation.

Consequences of Termination and Exit Provisions

- 11.15 Upon termination of this Contract the Council shall:-
- (a) where the termination is under clause 11.2:-

- (i) not be liable to make any payments to the Provider until any loss or damage arising directly from the termination have been calculated and it is apparent that a sum is due to the Provider; and
 - (ii) be entitled to deduct from any monies due to the Provider all Losses arising directly from the termination of the Contract (such loss or damage to include the Council's Staff's reasonable time spent on such termination and/or in making alternative arrangements for the provision of the whole or part of the Services); and
 - (iii) once the total costs (including the Losses referred to above) shall have been calculated, be entitled to recover any balance due to the Council which shall be recoverable as a debt or alternatively shall pay to the Provider any balance due.
 - (b) where the termination is under clause 11.1, neither Party shall have any liability to the other Party for any Losses suffered as a result of such termination without cause.
- 11.16 The Provider shall at the Council's written request pass to the Council all information and records held by the Provider (as a minimum each Resident's Care File) which the Purchaser reasonably requires in order to make any alternative arrangements for the provision of the Services to the Resident(s). The Provider shall provide all such assistance free of charge.
- 11.17 If the Provider fails to comply with clause 11.16, the Council may recover possession of the information and records referred to and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or sub-contractors where any such items may be held.
- 11.18 The Provider shall repay at once to the Council any moneys paid up to and including such date of termination other than moneys in respect of Services or part thereof properly performed in accordance with the Contract.
- 11.19 Termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 11.20 Nothing in this clause 11 relating to the provision by the Provider to the Council of information and records shall prevent the Provider from retaining copies of such information and records for the purposes of compliance with its regulatory obligations.
- 11.21 If in the opinion of the Council the Provider has terminated Individual Placements in circumstances where it should have given notice under clause 11.3 of a closure of the Home, the Council shall be entitled to recover from the Provider any additional costs incurred by reason of the Provider not giving to the Council notice under clause 11.3.
- 11.22 An Individual Placement relating to a Resident may be terminated by either Party giving twenty eight (28) calendar days written notice to the other (or such lesser time as may be mutually agreed between the Parties) except during the Trial Period where the Individual Placement may be terminated by either Party giving to the other not less than seven (7) calendar days written notice. Either party must detail the reason for termination.
- 11.23 Where the resident is no longer receiving Services from the Provider during the notice period identified in clause 11.22, the Council shall not make any further payments to the Provider. The Council will pay for 1:1 hours for a maximum period of fourteen (14) calendar days during twenty eight (28) calendar days notice period identified in clause 11.22, or for such a lesser period as the Parties shall agree in relation to a notice period of less than twenty eight (28) days.

- 11.24 If the Council terminates the Contract or any individual Placement, the Council shall be entitled to repossess any materials, clothing, equipment, vehicles or goods loaned or hired by it to the Provider.
- 11.25 All provisions of this Contract that due to their nature should survive termination of the Contract shall be deemed to so survive.
- 11.26 The Parties shall comply with the provisions set out in Schedule 9.

Suspension and Consequences of Suspension

- 11.27 A suspension event shall have occurred if:-
- (a) the Council reasonably considers that a breach by the Provider of any obligation under this Contract:-
 - (i) may create an immediate and serious threat to the health or safety of any Resident; or
 - (ii) may result in a material interruption in the provision of any one or more of the Services such as the any enforcement action by the CQC which would result in the Provider being unable to take placements; or
 - (b) clause 11.27 does not apply, but the Council, acting reasonably, considers that the circumstances constitute an emergency affecting provision of a Services; or
 - (c) the Provider is prevented, or will be prevented, from providing the Services due to the termination, suspension, restriction or variation of any Consent
- (each a **Suspension Event**).
- 11.28 Where a Suspension Event occurs, the Council:-
- (a) may by written notice to the Provider and with immediate effect suspend any affected Services, or the provision of any affected Services, until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to and shall perform the suspended Services to the required standard; and
 - (b) shall where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.
- 11.29 During the suspension of any Services under clause 11.28, the Provider shall 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 clause 11.28 has been referred to dispute resolution under clause 25 (*Dispute Resolution*).
- 11.30 During the suspension of any Services under clause 11.28, the Provider shall not be entitled to claim or receive any payment for the suspended Services except in respect of:-
- (a) all or part of the suspended Services the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause 11.28; and/or
 - (b) all or part of the suspended Services which the Provider continues to deliver during the period of suspension in accordance with clause 11.29.
- 11.31 The Parties shall use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Residents as a result of the suspension of the Services.
- 11.32 The Provider shall indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of any suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Services).
- 11.33 Following suspension of the Services, the Provider shall at the reasonable request of the Council and for a reasonable period:-
- (a) co-operate fully with the Council and any Replacement Provider of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of Residents, employees of the Council or members of the public; and

(b) at the cost of the Provider:-

- (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Replacement Provider; and
- (ii) deliver to the Council all materials, papers, documents and operating manuals owned by the Council and used by the Provider in the provision of the suspended Services.

11.34 As part of its compliance with clause 11.33 the Provider may be required by the Council to agree a transition plan with the Council and/or any alternative Replacement Provider.

11.35 If it is determined, pursuant to clause 25 (*Dispute Resolution*), that the Council acted unreasonably in suspending any of the Services, the Council shall pay to the Provider any Loss directly and reasonably incurred by the Provider in respect of that suspension provided always that the Provider shall at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to bring a claim against the Council pursuant to this Contract.

11.36 During any suspension of the Services, the Provider where applicable shall implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Services.

11A. DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

11A.1 The Provider shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms to ensure that the Services shall be maintained in the event of disruption (including disruption to information technology systems and the supply chain) to the Provider's operations and those of its Sub-Contractors however caused. Such contingency plans shall be available for the Council to inspect and to practically test at any reasonable time and shall be subject to regular updating and review throughout the Contract Period in accordance with Schedule 9.

11A.2 The Provider shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every twelve (12) Month period). The Council shall be entitled to participate in such tests as it may reasonably require.

11A.3 Following each test, the Provider shall send to the Council a written report summarising the results of the test within ten (10) Working Days of the completion of the test and shall promptly implement any actions or remedial measures which the Council considers to be necessary as a result of those tests.

11A.4 In the event of any significant changes to the Disaster Recovery and Business Continuity Plan, the Provider shall provide such updated plan to the Council within ten (10) Working Days of the implementation of the change.

11A.5 The Provider shall implement the Disaster Recovery and Business Continuity Plan in the event that the Services are not available for more than six (6) hours.

12. NOTICES

12.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

12.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail (confirmed by letter), or by letter (delivered by hand, first class post, recorded delivery or special delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given on the same Working Day if delivered by hand, two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail provided such notice is served no later than 1pm on any Working Day, otherwise such notice shall be deemed served the following Working Day, or sooner where the other Party

acknowledges receipt of such letters or item of electronic mail. Such letters and electronic mail shall be addressed to the other Party as per the details set out in the Short Form of Agreement.

- 12.3 Either Party may change its address for service by serving a notice to the other Party.

13. HEALTH AND SAFETY

- 13.1 The Provider shall take all necessary steps to secure the health and safety of its Staff, Residents and any visitor to the Home(s) and shall at all times comply with Law relating to health and safety.
- 13.2 The Provider shall certify to the Authorised Officer, prior to the commencement of the Contract, that they have a written health & safety policy in place.
- 13.3 The Provider shall have particular regard to Provision and Use of Work Equipment Regulations (PUWER) 1998 and Lifting Operations Lifting Equipment Regulations (LOLER) 1998 and shall ensure that all equipment including hoists are maintained in accordance with manufacturers' instructions by trained and competent personnel.
- 13.4 The Provider shall also ensure that risk assessments carried out for Residents needing to be hoisted are undertaken by trained personnel who are fully conversant with safe working loads for the equipment being used.
- 13.5 The Provider shall have particular regard for the following Health & Safety Executive publications:-
- (a) HSG220 – Health & Safety in Care Homes
 - (b) HSG268 – The Health & Safety Toolkit
 - (c) HSG65 – Managing for Health & Safety

14. ANTI-DISCRIMINATION

- 14.1 The Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any Law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 14.2 The Parties shall not discriminate between or against Residents on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- 14.3 The Provider shall provide appropriate assistance and make reasonable adjustments for Residents who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- 14.4 In performing this Contract, the Provider shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:-
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it.
- 14.5 The Provider shall take all reasonable steps to secure the observance of clause 14.1 by all Staff employed in performance of this Contract.

- 14.6 The Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination.
- 14.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Provider's performance of this Contract being in contravention of Equality Legislation or other any Law, enactment, order or regulation relating to discrimination, the Provider shall, free of charge:-
- (a) provide any information requested in the timescale allotted;
 - (b) attend any meetings as required and permit the Staff to attend;
 - (c) promptly allow access to and investigation of any documents or data deemed to be relevant;
 - (d) allow the Provider and any of the Staff to appear as witness in any ensuing proceedings, and
 - (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 14.8 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Provider, its agents, Sub-Contractors or Staff, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 14.9 The Provider shall ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 14.10 The Provider acknowledges that the Council may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Provider shall provide all necessary assistance and information to the Council as may be required in relation to the performance of an impact analysis by the Council. The Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Council.

15. PROTECTION OF INFORMATION

Data Protection

- 15.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council and the Provider are each a Controller.
- 15.2 Where Personal Data relating to a Data Subject are collected from the Data Subject, or, someone other than the Data Subject, by either of the Controllers, the Controller obtaining the Personal Data shall, at the time when Personal Data is obtained, be it from the other Controller, Data Subject or any other party provide the Data Subject with all of the following information:-
- (a) the identity and the contact details of the Controller and, where applicable, of the Controller's representative;
 - (b) the contact details of the Data Protection Officer, where applicable;
 - (c) the purposes of the processing for which the Personal Data are intended as well as the legal basis for the processing;

- (d) the legitimate interests pursued by the Controller or by a third party;
- (e) the recipients or categories of recipients of the Personal Data, if any;
- (f) the categories of Personal Data concerned (this relates to Personal Data obtained from someone other than the Data Subject only);
- (g) where applicable, the fact that the Controller intends to transfer Personal Data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or where a transfer requires safeguards under Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available; and
- (h) the existence of automated decision-making, including profiling, and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the Data Subject (this only relates when the Personal Data has not been obtained from the Data Subject).

15.3 In addition to the information referred to in clause 15.2 the Controller who has obtained the Personal Data from the Data Subject shall, at the time when Personal Data is obtained, provide the Data Subject with the following further information necessary to ensure fair and transparent processing:-

- (a) the period for which the Personal Data shall be stored, or if that is not possible, the criteria used to determine that period;
- (b) the existence of the right to request from the Controller access to and rectification or erasure of Personal Data or restriction of processing concerning the Data Subject or to object to processing as well as the right to Personal Data portability;
- (c) where the processing is based on the Data Subject having given consent, the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
- (d) the right to lodge a complaint with the Information Commissioner's office or any other relevant supervisory authority;
- (e) whether the provision of Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Data Subject is obliged to provide the Personal Data and of the possible consequences of failure to provide such Personal Data; and
- (f) the existence of automated decision-making, including profiling, and, at least in these cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the Data Subject.

15.4 Where the Controller intends to further process the Personal Data obtained from the Data Subject for a purpose other than that for which the Personal Data was collected, the Controller shall provide the Data Subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in clauses 15.2, and 15.3 and this clause 15.4 shall not apply where and insofar as the Data Subject already has the information.

15.5 The Controller who has obtained the Personal Data from someone other than the Data Subject shall provide the information referred to in clause 15.2 (a) to (h):-

- (a) within a reasonable period after obtaining the Personal Data, but at the latest within one (1) Month having regard to the specific circumstances in which the Personal Data are Processed;

- (b) if the Personal Data is to be used for communication with the Data Subject, at the latest at the time of the first communication to that Data Subject; or
 - (c) if a disclosure to another recipient is envisaged, at the latest when the Personal Data is first disclosed.
- 15.6 Where the Controller who has obtained the Personal Data from someone other than the Data Subject intends to further process the Personal Data for a purpose other than that for which the Personal Data was obtained, the Controller shall provide the Data Subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in clause 15.2 (a) to (h).
- 15.7 Clause 15.2 (insofar as it relates to Personal Data obtained from someone other than the Data Subject) and clauses 15.4 to 15.6 shall not apply where and insofar as:-
 - (a) the Data Subject already has the information;
 - (b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or in so far as the obligation referred to in Clause 15.2 of this Contract is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the Controller shall take appropriate measures to protect the Data Subject's rights and freedoms and legitimate interests, including making the information publicly available;
 - (c) obtaining or disclosure is expressly laid down by Union or Member State law to which the Controller is subject and which provides appropriate measures to protect the Data Subject's legitimate interests; or
 - (d) where the Personal Data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.
- 15.8 Without prejudice to the provisions set out in this Contract, the Provider shall indemnify the Council and shall keep the Council indemnified against all liabilities, losses, damages, costs or consequential losses or loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses suffered or incurred by the Council arising out of or in connection with any claim made against it in relation to any breach by the Provider of the DPA or UK GDPR or the Provider's obligations under this Contract.
- 15.9 The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:-
 - (a) a systemic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.10 Subject to clause 15.11, either Party shall notify the other Party and the point of contact identified in Part A of Schedule 7 immediately if it:-

- (a) receives a Data Subject Request (or purported Data Subject Request) including a request to rectify, block or erase any Personal Data any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation with the details of any such request;
 - (b) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
 - (c) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (d) becomes aware of a Data Loss Event.
- 15.11 The Provider's obligation to notify under clause 15.10 shall include the provision of further information to the Council in phases, as details become available.
- 15.12 The Party receiving a request as identified in clause 15.10, shall be responsible for responding to the Data Subject provided that the receiving Party shall at all times consult with the other Party with regards the response unless otherwise agreed between the Parties.
- 15.13 The Party who becomes aware of a Data Loss Event shall inform the other Party of the breach and the Parties shall identify which Party would be most appropriate to report the Data Loss Event to the Information Commissioner's Office and to inform the Data Subject(s).
- 15.14 Both Parties shall comply with their obligations under Article 30 of the GDPR and shall maintain complete and accurate records and information to demonstrate its compliance with this clause 15.1.
- 15.15 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 15.16 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 15.17 The Council may, at any time on not less than thirty (30) Working Days' notice, revise this clause 15.1 by replacing it with any applicable controller to controller standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 15.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 15.19 The Provider acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data, the Council may be irreparably harmed (including harm to its reputation). In such circumstances, the Council may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 15.20 In the event that through failure by the Provider to comply with its obligations under the Contract, the Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Provider.
- 15.21 The provision of this clause 15 shall apply during the Contract Period and indefinitely after its expiry.
- 15.21A The Provider shall agree to comply with the minimum information security controls detailed at Schedule 7 to this Contract at all time when processing Personal Data for the purposes or in connection with the delivery of the Services. Failure by the Provider to comply with this obligation shall constitute a Default and be dealt with in accordance with clauses 10 and 11.

Confidential Information

- 15.22 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:-
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 15.23 Clause 15.22 shall not apply to the extent that:-
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- 15.24 The Provider may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 15.25 The Provider shall not use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- 15.26 Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:-
- (a) to any Crown body or any other public body. All Crown bodies or public bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other public bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any public body;
 - (b) to any consultant, contractor or other person engaged by the Council or any person conducting an office of government commerce gateway review;
 - (c) on a confidential basis for the purpose of the exercise of its rights under this Contract including for auditing purposes, to a body to novate, assign or dispose of its rights under the Contract, to a Replacement Contractor and for the purpose of the examination and certification of the Council's accounts; or
 - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 15.27 The Purchaser shall use all reasonable endeavours to ensure that any government department, public bodies, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 15.26 is made aware of the Council's obligations of confidentiality.
- 15.28 Nothing in this Contract shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use

does not result in a disclosure of the other Party's Confidential Information or an infringement of intellectual property rights.

- 15.29 Any breach by the Provider of clauses 15.22 – 15.25 shall be a breach incapable of remedy for the purposes of clause 11.2(a) and shall entitle the Council (at its absolute discretion) to exercise its rights under the corresponding provisions of clause 11.15.
- 15.30 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

15A. TRANSPARENCY AND FREEDOM OF INFORMATION

- 15A.1 The Parties acknowledge that the content of this Contract, including any changes to this Contract agreed from time to time (the "Transparency Information") is not Confidential Information.
- 15A.2 Notwithstanding any other provision of this Contract, the Provider hereby gives its consent for the Council to publish to the general public the Transparency Information in its entirety (but with any Information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR redacted). The Council shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 15A.3 The Provider shall assist and co-operate with the Council to enable the Council to publish the Transparency Information.
- 15A.4 The Council acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication it shall provide a clear explanation to the Provider. If the Council believes that publication of any element of the Transparency Information would be contrary to the public interest, the Council shall be entitled to exclude such Information from publication. The Provider acknowledges that the Council would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.
- 15A.5 The Council shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Provider.
- 15A.6 The Provider agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Council on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Council may disclose such Information under the FOIA and the EIRs and may (except for commercially sensitive information, Confidential Information (subject to clauses 15.26 and 18) publish such Information. The Provider shall provide to the Council within five (5) Working Days (or such other period as the Council may reasonably specify) any such Information requested by the Council.
- 15A.7 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 15A.8 The Provider shall and shall procure that any Sub-Contractors shall:-
 - (a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

- (b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 15A.9 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 15A.10 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 15A.11 The Provider acknowledges that (notwithstanding the provisions of Clause 15A.7) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:-
- (a) without consulting the Provider; or
 - (b) following consultation with the and having taken their views into account;
- provided always that where 15A.11(a) applies, the Council 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.
- 15A.12 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

16. HUMAN RIGHTS

- 16.1 The Provider shall take all reasonable steps to ensure that the systems and procedures that it adopts in the performance of the Services comply with the provisions of the Human Rights Act 1998.

17. LIABILITIES

Liability, Indemnity and Insurance

- 17.1 Neither Party excludes or limits liability to the other Party for:-
- (a) death or personal injury caused by its negligence; or
 - (b) Fraud; or
 - (c) fraudulent misrepresentation; or
 - (d) any breach of any obligations under this Contract in relation to UK GDPR and/or DPA.
- 17.2 Subject to clauses 17.3 and 17.4, the Provider shall indemnify the Council and keep the Council indemnified fully against all Losses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under this Contract, including loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, all costs related to civil data

protection claims or regulatory fines issued by the Information Commissioner's Offices or any other loss which is caused directly or indirectly by any act or omission of the Provider.

- 17.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Contract.
- 17.4 Without prejudice to the Council's rights under this Contract, the Provider shall in respect of the performance of its obligations under this Contract effect and maintain the following insurances at the following indemnity levels with a reputable insurance company:-
- (a) public liability insurance to a minimum of five million pounds (£5,000,000);
 - (b) employer's liability insurance to a minimum of ten million pounds (£10,000,000); and
 - (c) any other insurances as may be required by Law.
- 17.5 The minimum amounts set out in clause 17.4 shall, in each case, apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of this Contract.
- 17.6 Subject always to clause 17.1, in no event shall either Party be liable to the other for any:-
- (a) loss of profits, business, revenue or goodwill; and/or
 - (b) loss of savings (whether anticipated or otherwise); and/or
 - (c) indirect or consequential loss or damage.
- 17.7 The Provider shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Provider.
- 17.8 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause 17 or a broker's verification of insurance to demonstrate that the appropriate cover is in place together with receipts or other evidence of payment of the latest premiums due under those policies.
- 17.9 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of this Contract, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 17.10 The Provider shall notify the Council immediately of any alteration, cancellation or change of cover in respect of the insurances required by this clause 17.
- 17.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.

Warranties and Representations

- 17.12 The Provider warrants and represents that:-
- (a) it has full capacity, authority and all necessary Consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Provider;
 - (b) in entering into this Contract it has not committed any Fraud;

- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of this Contract;
- (d) 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 shall or might have a material adverse effect on its ability to perform its obligations under this Contract;
- (e) 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 this Contract;
- (f) 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;
- (g) it owns, has obtained or is able to obtain, valid licences for all intellectual property rights that are necessary for the performance of its obligations under this Contract;
- (h) in the three (3) years prior to the date of this Contract:-
 - (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 this Contract.

18. RECORDS AND OPEN BOOK ACCOUNTING

18.1 The Provider shall (and shall procure that each Sub-Contractor shall):-

- (a) at all times maintain a full record of particulars of the costs of performing the Services;
- (b) upon request by the Council, provide a written summary of any of the costs referred to in clause 18.1(a), in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Provider of its obligations under the Contract;
- (c) provide such facilities as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 18.1(a); and
- (d) provide to the Council copies of its annual report and accounts within twenty (20) Working Days of publication.

18.2 Compliance with clause 18.1 shall require the Provider to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to the Contract, showing in detail:-

- (a) administrative overheads;
- (b) payments made to the Sub-Contractors and from the Sub-Contractors to their sub-contractors;

- (c) capital and revenue expenditure; and
- (d) such other items as the Council may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of the Contract,

and the Provider shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in sub-clauses 18.2(a) to 18.2(d) inclusive, available for inspection by the Council (and its advisers) upon reasonable notice pursuant to clause 19, and shall provide a copy of these to the Council as and when requested from time to time.

18.3 The Provider shall maintain that detailed records relating to the performance of the Services, in each case in accordance with Good Industry Practice and any applicable Law.

18.4 Without prejudice to clause 18.3, the Provider shall ensure that as a minimum the following are maintained:-

- (a) a full record of all incidents relating to health, safety and security which occur during the Contract Period;
- (b) full records of all maintenance procedures carried out during the Contract Period; and
- (c) full records of all staff matters including turnover, pay and disciplinary matters

and the Provider shall have the items referred to in clauses 18.4(a) to 18.4(c) available for inspection by the Council (and its advisers) upon reasonable notice, and shall provide copies of these to the Council as and when requested from time to time.

18.5 Upon termination or expiry of the Contract, and in the event that the Council wishes to enter into an agreement with any Replacement Provider, the Provider shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Council to provide information relating to the Provider's costs of providing the Services.

18.6 All information referred to in this clause 18 is subject to the obligations set out in clauses 15 and 15A.

18.7 The Provider shall immediately disclose to the Council any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

18.8 The Provider shall notify the Council immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Provider's financial viability.

19. AUDIT

19.1 The Provider shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council and all payments made by the Council. The Provider shall on request afford the Council such access to those records as may be requested by the Council in connection with this Contract.

19.2 The Council may at any time during the Contract Period and for a period of six (6) Months after the Contract Period, conduct an audit for the following purposes:-

- (a) to verify the accuracy of the monies that become due and payable by the Council to the Provider in respect of the Services or the costs of all suppliers (including Sub-Contractors) of the Services;

- (b) to review the integrity, confidentiality and security of the Personal Data;
 - (c) to review the Provider's compliance with the DPA, FOIA and other Law applicable to the Services;
 - (d) to review the Provider's compliance with its obligations under the Contract;
 - (e) to review any records created during the provision of the Services;
 - (f) to review any books of account kept by the Provider in connection with the provisions of the Services;
 - (g) to carry out the audit and certification of the Council's accounts;
 - (h) to carry out an examination of the economy efficiency and effectiveness with which the Council has used its resources; and
 - (i) to verify the accuracy and completeness of any management information delivered or required by this Contract.
- 19.3 The Council 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.
- 19.4 Subject to the Council's obligation of confidentiality, the Provider shall on demand provide the Council and any other Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:-
- (a) all Information requested within the permitted scope of the audit;
 - (b) reasonable access to any premises or sites controlled by the Provider in the performance of the Services;
 - (c) access to the Staff;
 - (d) access to software owned or licenced to the Provider including software which is or will be used by the Provider for the purposes of providing the Services; and
 - (e) accommodation (including desks) at the Provider's premises as reasonably required to conduct the audit.
- 19.5 The Council shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.
- 19.6 If an audit identifies that:-
- (a) the Council has overpaid any charges that became due and payable by the Council to the Provider in respect of the Services properly rendered, the Provider shall pay to the Council the amount overpaid within fifteen (15) Working Days. The Council may deduct the relevant amount from any further payment when due if the Provider fails to make the payment; and
 - (b) the Council has underpaid any charges that become due and payable by the Council to the Provider in respect of the Services properly rendered, the Council shall pay to the Provider the amount of the under-payment less the cost incurred by the Council of the audit if this was due to a Default by the Provider within twenty (20) Working Days.

20. EXCEPTIONAL AUDITS

- 20.1 The Provider shall permit the Council and/or its appointed representatives access to conduct an audit (an "Exceptional Audit") of the Provider in any of the following circumstances:-

- (a) actual or suspected impropriety or Fraud;
- (b) there are reasonable grounds suspect that:-
 - (i) the Provider is in Default under the Contract;
 - (ii) the Provider is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Provider financial distress and result in a risk of the Provider becoming insolvent or bankrupt; or
 - (iii) a breach of the provisions set out in Schedule 7
 (each an **Exceptional Circumstance**).

20.2 If the Council notifies the Provider of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Provider shall provide access in accordance with clause 19.4 as soon as reasonably practicable after such request and in any event within forty eight (48) hours of the request having been made.

21. AUDIT COSTS

21.1 The Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses 19 and 20 unless an audit identifies a material Default by the Provider in which case the Provider shall reimburse:-

- (a) the Council for all the Council's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
- (b) where the Council, a Regulatory Body and Auditor General appoint another body to conduct an audit, the Council shall be able to recover on demand from the Provider the identifiable, reasonable and properly incurred costs and expenses of the relevant body.

22. PREVENTION OF BRIBERY

22.1 The Provider:-

- (a) shall not and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

22.2 The Provider shall:-

- (a) 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;
- (b) within five (5) 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 22 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

- 22.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate).
- 22.4 The Provider shall immediately notify the Council in writing if it becomes aware of or suspects any Default of clause 22.1 or has reason to believe that it has or any Staff has:-
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or Default of clause 22.1(b);
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act or breach of clause 22.1(b).
- 22.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 22, the Provider must respond promptly and in any event within ten (10) Working Days to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for six (6) calendar years following the expiry or termination of this Contract.
- 22.6 The Council may:-
- (a) terminate this Contract by written notice with immediate effect and recover from the Provider the amount of any Loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period if the Provider breaches clause 22; and
 - (b) recover in full from the Provider any other Losses sustained by the Council in consequence of any Default of clause 22.
- 22.7 Any notice of termination under clause 22.6 must specify:-
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (c) the date on which this Contract shall terminate.
- 22.8 Despite clause 25 (Disputes), any dispute relating to:-
- (a) the interpretation of clause 22; or
 - (b) the amount or value of any gift, consideration or commission,
 - (c) shall be determined by the Council acting reasonably having given due consideration to all relevant factors and its decision shall be final and conclusive.
- 22.9 Any termination under clause 22.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
- 22.10 In exercising its rights or remedies under clause 22, the Council shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by clause 22.1 and the identity of the person performing that Prohibited Act/prohibited conduct.

23. CHANGE CONTROL PROCEDURE

Without prejudice to any other provision contained in the Contract:-

Council Change

- 23.1 The Council has the right to propose a change in the services in accordance with this clause 23.1. If the Council requires a change, it must serve a Council Change Control Notice on the Provider. The Council shall not propose a change that:-
- (a) requires the Services to be performed in a way that infringes any law or is inconsistent with good industry practice;
 - (b) would cause any consent to be revoked (or become unobtainable);
 - (c) would, if implemented, result in a substantial change in the nature of the Services; and/or
 - (d) would materially and adversely affect the Provider's ability to perform the Services or cause or be likely to cause loss of revenue or incur expenditure in a way that is not adequately compensated for.
- 23.2 The Council Change Control Notice shall:-
- (a) set out the Change required in sufficient detail to enable the Provider to calculate and provide an estimate of the variation in costs and or loss in revenue (the **"Provider's Change Control Response"**); and
 - (b) require the Provider to provide the Council within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) of receipt of the Council Change Control Notice with the Provider's Change Control Response.
- 23.3 As soon as practicable and in any event within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) after having received the Council Change Control Notice, the Provider shall deliver to the Council the Provider's Change Control Response. The Provider's Change Control Response shall include the opinion of the Provider on:-
- (a) whether relief from compliance with obligations is required, including the obligations of the Provider to meet the service levels contained in the Contract during the implementation of the change;
 - (b) any impact on the provision of the Services;
 - (c) any amendment required to this Contract as a result of the Change; and
 - (d) any loss of revenue or prospective revenue to the Provider or Sub-Contractor that results from the Change.
- 23.4 As soon as practicable after the Council receives the Provider's Change Control Response, the Parties shall discuss and agree the issues set out in the Provider's Change Control Response, including:-
- (a) providing evidence that the Provider has used all reasonable endeavours (including the use of competitive quotes) to oblige its Sub-Contractors (if any) to minimise any increase in costs and maximise any reduction in costs;
 - (b) demonstrating that the relevant Changes shall be implemented in the most cost effective manner; and

- (c) in such discussions the Council may modify the Council Change Control Notice, in which case the Provider shall, as soon as practicable, and in any event not more than five (5) Working Days (or such other reasonable period of time as the Parties shall agree) after receipt of such modification, notify the Council of any consequential changes to the Provider's Change Control Response.
- 23.5 If the Parties cannot agree on the contents of the Provider's Change Control Response then the dispute shall be determined in accordance with clause 25.
- 23.6 As soon as practicable after the contents of the Provider's Change Control Response has been agreed or otherwise determined pursuant to clause 25, the Council shall:-
 - (a) confirm in writing the Provider's Change Control Response (as modified); or
 - (b) withdraw the Council Change Control Notice.
- 23.7 If the Council does not confirm in writing the Provider's Change Control Response (as modified) within fifteen (15) Working Days (or such other reasonable period of time as the Parties shall agree) of the contents of the Provider's Change Control Response having been agreed in accordance with clause 23.4 above or determined pursuant to clause 23.6 above, then the Council Change Control Notice shall be deemed to have been withdrawn.
- 23.8 In the event that the Provider's Change Control Response has been confirmed by the Council, the relevant Change shall be implemented within five (5) Working Days of the Council's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the change.

Provider Change

- 23.9 If the Provider wishes to introduce a Change, it must serve a Provider Change Control Notice on the Council.
- 23.10 The Provider Change Control Notice shall:-
 - (a) set out the proposed Change in sufficient detail which detail shall include but not be limited to impact on service delivery and financial implications so as to enable the Council to evaluate it in full;
 - (b) specify the Provider's reasons for proposing the change;
 - (c) request the Council to consult with the Provider with a view to deciding whether to agree to the Change and, if so, what consequential changes the Council requires as a result;
 - (d) indicate any implications of the Change(s); and
 - (e) indicate if there are any dates by which a decision by the Council is critical.
- 23.11 The Council shall evaluate the Provider's proposed change in good faith, taking into account all relevant issues, including whether:-
 - (a) the Change affects the quality of the Services or the likelihood of successful delivery of the Services;
 - (b) the Change shall interfere with the relationship of the Council with third parties;
 - (c) the financial strength of the Provider is sufficient to perform the Change; and
 - (d) the Change materially affects the risks or costs to which the Council is exposed.

- 23.12 As soon as practicable after receiving the Provider Change Control Notice, the Parties shall meet and discuss the matter referred to in it. During their discussions the Council may propose modifications or accept or reject the Provider Change Control Notice.
- 23.13 If the Council accepts the Provider Change Control Notice (with or without modification), the relevant Change shall be implemented within five (5) Working Days of the Council's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.
- 23.14 If the Council rejects the Provider Change Control Notice, it shall give its reasons for such a rejection.
- 23.15 The Council cannot reject a Change that is required in order to conform to change in Law relating to the Services which was not reasonably foreseeable at the Commencement Date provided that such a Change does not materially affect the quality or performance of the Services as required under the Contract.

24. ASSIGNMENT AND SUBCONTRACTING

- 24.1 The Provider shall not transfer, assign or sub-let directly or indirectly, to any person or persons whatsoever any portion of this Contract, except for the hiring of agency staff in the cases of emergency and planned absences, without the prior written permission of the Authorised Officer, such consent not to be unreasonably withheld. The Provider shall be liable for the acts, omissions, defaults and/or neglect of any agency staff or any Sub-Contractor in all respects as if they were the acts, omissions, defaults and/or neglect of the Provider.
- 24.2 The Provider shall give the Purchaser twenty eight (28) calendar days' prior written notice of any circumstance in relation to any Home that would give rise to a requirement for a change to the identity of the person registered with CQC as the registered provider in relation to the Home. In the event of such circumstances arising and whether or not notified under this clause and notwithstanding registration of the new registered provider by CQC, the Council reserves the right to terminate the Contract forthwith by giving written notice, such action not to be unreasonably applied.
- 24.3 Subject to clause 24.5, the Council may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:-
- (a) any public body; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
 - (c) any private sector body which substantially performs the functions of the Council,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under this Contract.
- 24.4 Any change in the legal status of the Council such that it ceases to be a public body shall not, subject to clause 24.3, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.
- 24.5 The Council may disclose to any of its assignees Confidential Information of the Provider which relates to the performance of the Provider's obligations under this Contract. In such circumstances the Council shall authorise the assignee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the assignee gives a confidentiality undertaking in relation to such Confidential Information.

- 24.6 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 this Contract.

25. DISPUTE RESOLUTION

- 25.1 The Parties shall attempt in good faith to negotiate a resolution to any dispute between them arising out of or in connection with the Contract.
- 25.2 Either Party may initiate dispute resolution under this clause by notifying the other in writing of the dispute and requiring the other to engage in dispute resolution pursuant to this clause. On either Party initiating dispute resolution under this clause the matter shall be referred to Senior Representative on behalf of the Provider and the Senior Representative on behalf of the Purchaser to attempt to find a resolution. The method to be used shall be a matter for the Senior Representatives of the Provider and the Purchaser.
- 25.3 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 25.4 If the dispute cannot be resolved by the Parties pursuant to clause 25.1 within twenty (20) Working Days of this clause 25 being invoked the dispute shall be referred to mediation pursuant to the procedure set out in clause 25.6.
- 25.5 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider (or its employees, agents, suppliers or sub-contractors) shall comply fully with the requirements of the Contract at all times.
- 25.6 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- (a) A neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other reputable mediation body to appoint a Mediator.
 - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from Centre for Effective Dispute Resolution or other reputable mediation body to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

- (f) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

26. PRESS AND PUBLICITY

- 26.1 The Provider shall inform the Authorised Officer before providing any information to the media that may impact in any way on the Services or its Residents. The Provider's usual advertising methods and its development and maintenance of a relationship with the media to promote a positive image of the sector and the services it delivers to the public shall not be affected by this requirement.
- 26.2 The Provider shall not:-
- (a) make any press announcements or publicise this Contract or its contents in any way; or
 - (b) use the Council's name or brand/logo in any promotion or marketing or announcements of orders
- without the Approval of the Council which shall not be unreasonably withheld or delayed.
- 26.3 Both Parties shall take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 26.2.
- 26.4 If so requested by the Council, the notepaper and other written material of the Provider and Sub-Contractors relating to the delivery of the Services shall carry only logos and markings Approved by the Council.
- 26.5 All publicity and marketing material produced by the Provider and/or its Sub-Contractors in relation to this Contract shall be submitted to the Council for Approval and no such items shall be printed (other than for purposes of Approval) until such Approval is received.
- 26.6 The Provider must have a clear policy and procedure to outline the use of social media for promotional purposes. The Provider must ensure that their staff code of conduct clearly states that their staff must never use their individual social media accounts to share any information about the Services whether consisting of pictures of Residents or discussing any Residents. Where the Provider wishes to use social media to advertise and promote their services by posting on any digital media, they must ensure that any Resident involved has given clear consent for their picture to be posted on the Provider's social media site. This must include evidence that the Provider has considered whether the Resident had capacity to agree to this, and there is clear evidence that the Provider has explained the impact of their picture being made available on a public internet site. The Provider must ensure this is continually reviewed on a regular basis. The Provider must ensure that any images on social media are reviewed on a regular basis and only available for a limited time period.

27. FORCE MAJEURE

- 27.1 Subject to the remaining provisions of this clause 27 (and, in relation to the Provider, subject to its compliance with its obligations in clause 11A), a Party may claim relief under this clause 27 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Provider in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Provider.
- 27.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

- 27.3 If the Provider is the Affected Party, it shall not be entitled to claim relief under this clause 27 to the extent that consequences of the relevant Force Majeure Event:-
- (a) are capable of being mitigated but the Provider has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 27.4 Subject to clause 27.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 27.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 27.6 Where, as a result of a Force Majeure Event:-
- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:-
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to clauses 11.1; and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Provider fails to perform its obligations in accordance with this Contract the Provider shall be entitled to receive payment for Services rendered only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 27.7 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 Contract.
- 27.8 Relief from liability for the Affected Party under this clause 27 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 27.7.
- 27.9 In the event that any Force Majeure Event continues to affect the ability of either Party to fulfil their obligations under the Contract for a period of one (1) Month or more, either Party may serve notice of termination with immediate effect on the other Party.

28. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

- 28.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded and shall not apply to this Contract.

29. WAIVER

- 29.1 The failure by either Party to enforce at any time or for any period one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

30. SEVERANCE

- 30.1 If any provision of this Contract is declared by a court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Contract and shall be of no force and effect and this Contract shall remain in full force and effect as if such provision had not originally been contained in it. In the event of any such deletion, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in the place of the provision so deleted.

31. CARTELS

- 31.1 The Provider shall not be a party to a cartel involving or including any commercial or other arrangement between individuals and/or corporations which it is intended or organised so as to share or control marketing arrangements or prices (whether or not that arrangement is a concealed or hidden commercial venture) and in the event of the Provider being a party to such a cartel the Council shall be entitled to terminate the Contract and to recover the amount of any Losses, which it may directly or indirectly sustain by reason of such termination.

32. APPLICABLE LAW

- 32.1 Subject to the provisions of clause 25, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

SCHEDULE 1: SERVICE SPECIFICATION



Service Specification for the provision of:

Long-and short-term personal care within a Care Home or Care Home with Nursing

Contract Reference: F21-xxx

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Glossary

The definitions below are in addition to the other definitions identified in the terms of the Contract:-

Accessible Information Standard	The Standard sets out a specific, consistent approach to identifying, recording, flagging, sharing and meeting the information and communication support needs of patients, service users, carers and parents with a disability, impairment or sensory loss. www.england.nhs.uk/ourwork/accessibleinfo/
Advocate	A person who is independent of statutory services and supports someone to express their views and opinions.
Adult Social Care Outcomes Framework (ASCOF)	The Adult Social Care Outcomes Framework published by The Health and Social Care Information Centre or as amended from time to time.
Assessment	The process of working out the needs of a Resident.
Business Failure	An event such as the appointment of an administrator, the appointment of a receiver or an administrative receiver.
Care Certificate	The Care Certificate is an agreed set of standards that define the knowledge, skills and behaviours expected of specific job roles in the health and social care sectors developed jointly by Skills for Care, Health Education England and Skills for Health.
Care Home Trusted Assessor (CHTA)	A person/team appointed to undertake health and social care assessments on behalf of the Home, to prevent delays in hospital discharge.
CCG	Clinical Commissioning Group.
Court of Protection	The Court of Protection in English law is a superior court of record created under the Mental Capacity Act 2005 with jurisdiction over the property, financial affairs and personal welfare of people who lack Mental Capacity to make decisions for themselves.
Deprivation of Liberty (DOLS)	The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005. The Safeguards aim to make sure that people in care homes and hospitals are looked after in a way that does not inappropriately restrict their freedom.
Eligibility	The eligibility threshold for adults with care and support needs is set out in the Care and Support (Eligibility Criteria) Regulations 2014 based on identifying how a person's needs affect their ability to achieve relevant Outcomes, and how this impacts on their wellbeing.

Liberty Protection Safeguards (LPS)	The Liberty Protection Safeguards (LPS) shall be the legislative framework for authorising a deprivation of liberty (within the meaning of Article 5 of the European Convention of Human Rights) which shall replace the process which is called the Deprivation of Liberty Safeguards (DoLS), through the Mental Capacity (Amendment) Act 2019.
Mental Capacity	The ability of a person to make a decision or take an action for themselves at the time the action or decision needs to be taken, including those decisions that affect day to day life as well as more serious or significant decisions and decisions with legal consequences.
Mental Capacity Assessment	An assessment to determine whether a person lacks the Mental Capacity to make a decision or take an action in accordance with the Mental Capacity Act 2005.
Outcome	In social care, an 'outcome' refers to an aim or objective a Resident would like to achieve or need to happen – for example, continuing to live in their own home, or being able to go out and about with Residents able to say which outcomes are the most important to them, and receive support to achieve them.
Person Centred Care	Ensuring the person is at the centre of everything the Provider does with and for them taking into account their individual wishes and needs, their life circumstances and health choices and have flexible systems, processes and a culture to achieve this.
Quality Assurance	A process to measure whether the Services are meeting the required Outcomes and contractual requirements.
Referral	A request for an assessment of a person's needs, or for support from a social care organisation made by a general practitioner (GP), another health professional or anyone else who supports an individual with a person also able refer themselves or by a member of their family.
Review	A re-assessment of needs in which the Resident and the people in their life look at whether the Services they are in receipt of are meeting their needs and achieving Outcomes with changes made as required.
Service Interruption	An imminent jeopardy and there is no likelihood of returning to a "business as usual" situation in the immediate future, leading to the need for joint action by the Council and the Provider.
Specialist Services	This refers to services for Mental Health aged 18 – 64 Autism aged 18 – death Learning Disabilities 18 – death
Unpaid Carer	A person of any age, adult or child, who provide unpaid support to a partner, child, relative or friend who couldn't manage to live independently or whose health or wellbeing would deteriorate without this help. This could be due to frailty, disability or serious health condition, mental ill health or substance misuse.

Workforce Development Fund	<p>The Workforce Development Fund (WDF) is funding from the Department of Health and Social Care (DHSC) disseminated by Skills for Care. The fund allows the Provider to claim back money towards the costs of workers completing a broad range of adult social care qualifications, learning programmes and digital learning modules.</p>
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SECTION 1: INTRODUCTION & CONTEXT

1. Introduction

- 1.1 This specification sets out Lincolnshire County Council's requirements for the provision of care and support by registered care homes for eligible adults (aged 18 years and over, except in exceptional circumstances) funded by Lincolnshire County Council.
- 1.2 This specification will cover all forms of residential care, and the Provider shall have robust knowledge of the support needs of people who are placed within their service to include and/or who may have a combination of the needs outlined below;
- Older people including those with dementia
 - Older people with enhanced dementia needs
 - Adults with physical and sensory disabilities
 - Adults with mental health needs
 - Adults with autism or a learning disability
 - Adults requiring short breaks
 - Adults with NHS Continuing Healthcare needs
 - Palliative and 'End of Life' care
- 1.3 NHS continuing healthcare is available when an individual has been assessed and identified as having a 'primary health need' and therefore deemed eligible for healthcare funding. Lincolnshire CCG is responsible for commissioning the appropriate care package from the Provider. This includes fast track funding for people who have a rapidly deteriorating condition where the condition may be entering a terminal phase.
- 1.4 The purpose of the Provider is to provide 24-hour accommodation and care as set out in the Resident's Care and Support Plan to enable them to make their own choices with appropriate risk-taking to enable them to live as independently as possible. Services will be provided in a way that empowers and listens to people, being respectful of their beliefs, sexuality, personal and wider history, heritage and culture. Support will be provided in ways that enable people to develop and maintain their self-respect and feel valued members of the home and community. The Services will put wellbeing at the heart of care and support.
- 1.5 Residents can expect to receive care from Staff with the skills, knowledge and competence to deliver effective, quality care in a sensitive and respectful manner whilst maintaining dignity and giving regard to the individuality of the Resident to ensure a positive experience of care and support and which continually promotes the development of a Resident's abilities and motivation.
- 1.6 The Services shall be delivered with the aim of promoting health and wellbeing and enhancing quality of life for Residents. The Provider shall ensure Residents retain and enjoy maximum independence whether physical disabled, learning disabled and/or sensory impaired. Residents shall receive skilled and sensitive support whilst at the same time maintaining and developing abilities, skills and motivation. The support will be delivered with respect and dignity, giving regard to the individuality of the Resident to ensure a positive experience of care and support.
- 1.7 This specification does not replace but supports the legislative and quality requirements which are placed upon Providers by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the Care Quality Commission (Registration) Regulations 2009. The specification describes the key features of the Services.
- 1.8 The Council requires that the Provider is registered with the Care Quality Commission (CQC) and that care does not fall below the standards defined by the CQC's Standards.

2. National Context

2.1 The Provider shall meet applicable national and local standards as this specification does not replace but supports the legislative and quality requirements which are placed upon Providers by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; the Care Quality Commission (Registration) Regulations 2009 and CQC Standards.

2.2 **The Care Act 2014** requires local authorities to have responsibilities, which include ensuring that people who live in their areas:-

- Receive services that prevent their care needs from becoming more serious or delay the impact of their needs.
- Can get the information and advice they need to make good decisions about care and support.
- Have a range of provision of high quality, appropriate services to choose from.
- Have access to information and advice about services in a range of formats.
- Have an individual care plan to meet their needs.
- Have access to a personal budget, via a direct payment, if they require one.
- Have access to advocacy if they do not feel able to adequately express their views.

The Act gives local authorities responsibilities to assess Carers' needs and to put in place a care plan to meet identified needs.

The Care Act 2014 legislates to improve people's independence and wellbeing. It makes clear that local authorities must provide or arrange services that help prevent people developing needs for care and support or delay people deteriorating such that they would need more acute and on-going care and support or be admitted to hospital.

2.3 **The White Paper** (Feb 2021) sets out legislative proposals for a Health and Care bill, building on the NHS recommendations in the NHS Long Term Plan.

2.4 **Build Back Better: Our plan for Health and Social Care** (published 7.9.21 and updated on 5th January 2022) recognises social care as an integral part of our society and economy and sets out the Government's new plan for adult social care in England and new funding plan.

2.5 **People at the Heart of Care: Adult social reform** (published 1st December 2021 and updated 21st February 2022). This policy paper sets out an ambitious 10-year vision for how we will transform support and care in England[footnote 1]. Our vision puts people at its heart and revolves around 3 objectives:

- People have choice, control and support to live independent lives.
- People can access outstanding quality and tailored care and support.
- People find adult social care fair and accessible.

2.6 **The NHS Long Term Plan**¹ (published January 2019) aims to deliver world-class care for major health problems and supporting people to age well. This will be achieved by:

- Giving people more control over their own health and the care they receive; encouraging more collaboration between GPs, their teams and community services and; increasing integration and partnership working to meet the needs of communities.
- Increasing the NHS contribution to tackling some of the most significant causes of ill health, including smoking, drinking problems and Type 2 diabetes.

¹ NHS Long Term Plan: www.longtermplan.nhs.uk/

- Increasing the NHS workforce; training and recruiting more professionals, including clinical placements for undergraduate nurses; providing hundreds more medical school places and more routes into the NHS such as apprenticeships.
- Providing more convenient access to services and health information for patients, through improved use of technology.
- Identifying ways to reduce duplication in service delivery and make better use of the NHS' combined buying power to procure commonly used products at a lower cost and reduce spend on administration.

2.7 **The Five-Year Framework** for GP contract reform is a 10-year vision which has been published to support the implementation of the NHS Long Term Plan. This framework sets out the direction for primary care with x7 new national service specifications, of which x4 are specific to residential care home settings, to include:-

- Structured medication Review and optimisation
- Framework for Enhanced Health in Care Homes (EHCH)
- Anticipatory care requirements for high need patients with several long-term conditions
- Personalised care

This approach will ensure care home settings are supported by a consistent team of multidisciplinary professionals, delivering proactive and reactive care; organised by their corresponding Primary Care Network (PCN) which will deliver greater levels of consistent care to improve people's outcomes.

2.8 **Adult Social Care Outcomes Framework²** (ASCOF 2019) will be used to provide local priority setting for care and support service Outcomes, focusing on four domains:-

1. Enhancing quality of life for people with care and support needs
2. Delaying and reducing the need for care and support
3. Ensuring that people have a positive experience of care and support
4. Safeguarding adults whose circumstances make them vulnerable and protecting them from avoidable harm

2.9 **Enhanced Health in Care Homes Framework** (EHCH 2020)³ is a new care model published by NHS England and co-developed by care homes, health commissioners and social care partners. The EHCH Framework has seven core elements with x18 sub elements.

Core Element	Sub- Elements
Primary Care support	<ul style="list-style-type: none"> ▪ Align care homes to Primary Care Networks (PCN) ▪ Home rounds ▪ Personalised Care & Support Plans ▪ Structured Medication Reviews (SMRs) ▪ Access to Out of Hours/Urgent Care ▪ Oral Health ▪ Hydration & Nutrition Support ▪ Structured Medications Review

² Adult Social Care Outcomes Framework: www.gov.uk/government/publications/adult-social-care-outcomes-framework-handbook-of-definitions

³ NHS England Enhanced Health in Care Homes Framework: www.england.nhs.uk/publication/enhanced-health-in-care-homes-framework/

Multidisciplinary team support including coordinated health and social care	<ul style="list-style-type: none"> Contingence promotion & Management Flu Prevention & Management Leg & Foot Ulcer Management Navigating Health & Care Systems
Falls Prevention, Reablement and Rehabilitation including Strength & Balance	<ul style="list-style-type: none"> Reablement & Rehabilitation services Falls strength & balance Developing community assets to support resilience & independence
High quality Palliative & End of Life Care; Mental Health & Dementia Care	<ul style="list-style-type: none"> Palliative & End of Life Care Mental Health Dementia Care
Joined up commissioning and collaboration between health and social care	<ul style="list-style-type: none"> Co-production with providers of care homes Shared contractual mechanisms Access to appropriate housing options
Workforce development	<ul style="list-style-type: none"> Training & Development for Social Care Provider staff Joint Workforce Planning across all sectors
Data, IT and technology	<ul style="list-style-type: none"> Harnessing data with technology Linked Health & Social Care data sets Access to the care record and secure email Better use of technology in care homes

When implemented as a whole, the seven core elements can realise wider system benefits and result in tangible improvements in the quality and Outcomes for care homes residents. Implementation of the EHCH framework is a step towards more integrated and sustainable health and social care provision. The framework offers a collaborative whole system approach to provide care and support which is proactive, centred on the needs of residents, their families and care home staff.

3. Local Context

3.1 **Better Lives Lincolnshire Alliance** has been formed to bring together Lincolnshire health, care and third sector partners. This is the next step to embracing a shared approach to the delivery of health and social care provision, working towards the delivery of an Integrated Care System (ICS). Thus, moving provision from the acute sector to the community, to deliver:

- Better health and wellbeing for everyone
- Better care for all people, and
- Sustainable use of resources.

3.2 **Lincolnshire County Council (LCC) Corporate Plan** priority is to; *'Enable everyone to enjoy life to the full'* which sets the scene for the vision set out by Lincolnshire Adult Care and Community Wellbeing for *'People to stay as healthy, safe and independent as possible during all stages of their life'*.

To deliver this vision of personalised care there must be a shift in relationships between health and care professionals and people using the services, to move from asking *"what's the matter with you?"* to being asked *"what matters to you?"*. This will form the basis for developing future packages of care.

4. Service Vision

- 4.1 The vision for care is that fewer people will live in care homes but will instead be supported in their own homes, or in supported accommodation. There are times when a care home will continue to be the best place for an individual, either on a short- or long-term basis, and a care home will be considered when maintenance in the community is no longer a viable option, due to:
- The breakdown of existing care arrangements and/or community support is inadequate, so a care home presents the best solution
 - The individual lacks the ability or motivation to carry out personal care tasks which would allow them to remain in their own home, but appropriate or alternative accommodation is not yet available, so an interim short term stay in a care home will be considered while alternative arrangements are made
 - The individual lives at home with their family and a short break is required
- 4.2 When a care home is deemed the most appropriate accommodation for an individual, care provision must support the principles of enablement to encourage people to live as independently as possible; to have enriched, fulfilling lives and to continue to be a part of their local community. Lincolnshire County Council will continue to need care homes who can work with health and social care colleagues.
- The Provider will deliver care in line with the following principles:-
- Provide a fully inclusive service that meets the diverse needs of people in Lincolnshire who require residential supported living
 - Work in partnership with the Council's Adult Social Care to develop Care and Support Plans that are personalised to meet the needs of individuals living in a residential care setting
 - Deliver care that always maintains people's dignity and embodies the ethos of the principles set out in the 'Dignity in Care Campaign'
 - Support and enable the people to make independent choices, giving consideration to the Mental Capacity Act (MCA)
 - Promote community integration providing Residents access and engagement with local community services and service provision
 - Maintain a stable and consistent workforce by investing in Staff to ensure they have the appropriate knowledge, skills, and competence to continually deliver safe, effective, high quality and expert care
 - Be receptive and engaged in relation to the use of assistive technology, to promote new ways of working that support individual care needs and enhance independence
 - Work with partner agencies to enable timely discharge from hospital, 7 days per week including prompt admission from the community
 - Involve Residents in every stage of service improvement; promote a reflective listening culture and a workforce who continually seek to deliver effective, high-quality services that promote independence and support lifestyle choices and aspirations
 - Ensure Residents, and their family/friends/carers/advocates are confident that concerns will be listened to, and complaints will be dealt with appropriately and in a timely manner
- 4.3 For working age adults, needs will be met in the least restrictive environment. This means that long-term residential care will only be a consideration when all other options have been determined to be unsuitable.
- 4.4 Supportive work will take place with individuals and their families to help people to move out of long-term residential care homes and instead be supported in their own tenancies in supported living or extra care services, or in their own homes.
- 4.5 The Provider shall work with health and social care professionals to enable the achievement of personalised Outcomes, as defined in the Care and Support Plan of each Resident, making sure that:-
- Care and treatment are only provided with consent

- People are valued, involved, and remain more in control, are listened to, told what is happening (in language that is easy to understand), supported to make choices and remain at the centre of what is happening to them
- People retain their independence by ensuring that an individual's quality of life is maintained through keeping active and alert, maintaining mobility/physical health, maintaining hygiene and social contact to keep safe and secure
- A strengths-based approach is maintained and considered prior to interventions
- People are supported through changes in their lives, e.g. following a surgical operation, at the end of their lives and in situations where poor care or self-care has resulted in a reduction in their independence.
- People are safe through the provision of care services that are well managed and delivered by Staff who are appropriately trained and who understand about person centred approaches and know how to work with people to achieve the best Outcomes.

SECTION 2: COMPLIANCE

5. Legislation, Policy and Guidance

- 5.1 The Provider shall be registered with the CQC (or any successors) and will maintain registration throughout the Contract Period. 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 service specification.
- 5.2 The Care Act states that Provider should ensure that services:
- provide quality and choice.
 - are sustainable.
 - are flexible to incorporate any subsequent innovations within this market sector which will improve the Service and enable it to meet a diverse range of outcomes for people.
 - deliver a cost-effective service.
- 5.3 The Provider shall comply with the Care Act and in accordance with this, the Provider shall ensure that the Residents' wellbeing is assured, whilst supporting person-centred care and support. Wellbeing meaning as is defined as the following in the Care Act guidance:-
- personal dignity (including the way people are treated and helped)
 - physical and mental health and emotional wellbeing
 - protection from abuse and neglect
 - control over day-to-day life (including making choices about the way care and support is provided)
 - participation in work, education, training, and recreation
 - social and economic wellbeing
 - domestic, family, and personal relationships
 - suitability of living accommodation
 - the individual's contribution to society
- 5.4 In addition to the Care Act, the Services shall be delivered in accordance with, but not limited to, the following and any subsequent relevant Law and guidelines:-
- Health and Social Care Act 2012
 - Mental Capacity Act 2005 (including the Mental Capacity (Amendment) Act 2019: Liberty Protection Safeguards (LPS)

- Death by Indifference (2007); Healthcare for All (2008); and Six Lives (2009)
 - Confidential Inquiry into the Premature Deaths of Adults with Learning Disabilities (2013)
 - Health Equalities Framework for People with a Learning Disability (2013)
- 5.5 The Provider is required to deliver the service in such a way that it supports relevant Outcomes from the National Integrated Outcomes Framework for:-
- Adult Social Care Outcomes Framework 2020-2021 (and as updated): www.gov.uk/government/publications/adult-social-care-outcomes-framework-handbook-of-definitions
 - Public Health Outcomes Framework 2019-2022 (and as updated): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979976/Table of PHOF updates May 2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979976/Table_of_PHOF_updates_May_2021.pdf)
 - NHS Outcomes Framework (and as updated): <http://digital.nhs.uk/data-and-information/publications/ci-hub/nhs-outcomes-framework>
- 5.6 The following strategies/ guidelines are available to assist in achieving a high-quality service. The Provider shall demonstrate awareness and understanding of national strategy, policy, guidance, and best practice where applicable, including (but without limitation):
- National Institute for Health and Care Excellence (NICE): www.nice.org.uk/
 - National Social Care Institute of Excellence (SCIE): www.scie.org.uk/
 - Think Local Act Personal partnership (www.thinklocalactpersonal.org.uk/) provides guidance for social care and health
 - The UK Health Security Agency (www.gov.uk/government/organisations/uk-health-security-agency) and Office for Health Improvement and Disparities (www.gov.uk/government/organisations/office-for-health-improvement-and-disparities) provide guidance on matters such as infection control; Resuscitation Council UK and Royal Pharmaceutical Society Guidelines.
 - Adult Social Care Quality Matters: www.gov.uk/government/collections/adult-social-care-quality-matters.

SECTION 3: SERVICE DESCRIPTION

6. Service Overview:

- 6.1 For any Lincolnshire County Council funded placements, the Provider shall only accept a Resident if the Referral has come from Lincolnshire County Council.
- 6.2 The Provider shall provide Residential and/or Nursing Care to those individuals that are assessed by Adult Social Care and considered Eligible for needing 24-hour care.
- 6.3 Full written information relating to individual assessed needs for each Resident shall be provided in advance of services commencing. The Referral information will include the Outcomes/goals required for each Resident and will in many cases specify that this will be for a limited period of time and will clarify any special requirements.

7. Service Description

- 7.1 The Services provided in a Home shall comprise a single room (unless Residents wish to share), full board, including comprehensive onsite care by Staff over 24-hours 7 days per week, heating, lighting, food, laundry, furnishing and fittings and equipment.
- 7.2 The Provider shall retain overall responsibility for ensuring the Resident's living environment is maintained to a high standard of cleanliness and repair.

- 7.3 The Provider shall work with the Resident to support them carry out these tasks for themselves to as great a degree as is possible, appropriate and safe for the individual Resident, depending on their needs and abilities. This may include, assisting, supporting, and encouraging an individual with light meal preparation, maintaining the cleanliness of their living space and general tidying.
- 7.4 Strengths based and person-centred approaches should be practiced by the Provider to ensure all Staff deliver personal care to a consistently high standard including emotional support, engagement, and meaningful activities in a safe, flexible and comfortable environment.
- 7.5 Before a placement is made into a Care Home from Hospital and to ensure the Provider can meet the needs of the Resident, the Provider shall seek a comprehensive pre-admission assessment and where possible this will be delivered via the Care Home Trusted Assessor Service.
- 7.6 On accessing residential services, the new Resident and/or their family/Carer/Advocate must be issued with:
- a copy of the complaints procedure in an accessible easy to read format
 - a welcome pack about the service in an accessible format
 - any additional services to those described within this specification offered by the Provider.
- 7.7 Information must be accessible using a variety of formats and methods.

8. Level of Need

- 8.1 The Provider must provide the Services which are safely staffed 24-hours a day, 7 days per week for 365/6 days per year.
- 8.2 The Provider shall have a sound knowledge and understanding of the support needs of Residents and shall always refer to the Outcomes identified in their Care & Support Plan.
- 8.3 Residential and Nursing Care Home services (adults 18+ except in exceptional circumstances) are used by Residents with a diverse range of needs including those with complex health needs, behaviours that challenge, mobility needs, physical disabilities, and sensory impairment, including acquired brain injury (ABI).
- 8.4 It is also likely that, particularly amongst older adults, most Residents placed in residential care will display some form of cognitive impairment, including dementia and which may include behaviours that challenge.
- 8.5 The Resident will therefore require a Care and Support Plan to manage, reduce or prevent these behaviours, and this will require a high level of expertise amongst the Staff.
- 8.6 The Provider must have a Staff team who are well trained, experienced, and capable of using a range of person-centred, positive behaviour support approaches to enable the Resident over time to develop independent life skills and interests, where appropriate, and manage behaviours.

9. Referral Arrangements

- 9.1 The Referral process outlines how Residents will be placed with the Provider under this Contract.
- 9.2 Referrals will be made via telephone, email or letter but are always followed up in writing by the Council and an Individual Form of Agreement (IFA) will be raised as the final step in the process. When the Provider receives the Individual Form of Agreement, the Referral is made (except in the case of emergency Referrals which is described below).
- 9.3 The Council will send through the Resident's Care and Support Plan.
- 9.4 The Care and Support Plan will identify the Resident's assessed needs and the expected Outcomes to be achieved, plus any additional special requirements. This information will be provided by the

Authorised Officer and should be provided in advance or at the time of placement but no later than five (5) Working Days from admission.

- 9.5 The Provider/Care Home Trusted Assessor may agree with the Council to accept a Referral by telephone on an emergency basis.
- 9.6 The Council shall aim to provide written confirmation of such a Referral within seven (7) calendar days.
- 9.7 Until a Referral is accepted the Council may withdraw the Referral in writing and place the individual in alternative accommodation.
- 9.8 Following a period of hospital in-patient care, it is necessary for Assessments to be undertaken prior to discharge of individuals into Home settings to enable a safe discharge. This is typically undertaken by each residential or nursing home in accordance with its own process and Assessment requirements and based on timescales determined by the Home. However, in order to reduce delays in hospital discharge, the Provider should utilise the Care Home Trusted Assessor (CHTA).
- 9.9 The Provider or Care Home Trusted Assessor (on behalf of the Provider) shall indicate whether they accept a Referral, as soon as possible after the Referral has been made. The room number, or another form of identification, shall be recorded on the Individual Form of Agreement (IFA) and the Care and Support Plan at the time of placement.
- 9.10 Out of Hours Emergency Referrals shall be made by the Emergency Duty Team (EDT) of the Council and will be made by telephone. All enquiries regarding emergency Referrals out of normal office hours (0900-1700 hours, Monday to Thursday and 0900-1630 hours, Friday) must be referred to the EDT (telephone 01522 782333).
- 9.11 Emergency Referrals are also made by hospital teams to support admission avoidance and hospital discharge seven (7) days per week. Providers are expected to be able to receive Referrals seven (7) days per week.
- 9.12 Referrals authorised by the EDT are subject to Review by the appropriate Authorised Officer within two (2) weeks of placement.
- 9.13 Emergency admissions may also be requested by the Customer Service Centre or Adult Care Practitioners if replacement care is required due to a Carers Emergency Response (CERs) activation.
- 9.14 A Referral shall be treated as accepted when in the case of a written Referral or when the Council either:-
- (a) receives the Individual Form of Agreement signed by the Provider, or
 - (b) receives an oral acceptance of the Referral
- In the case of an emergency Referral, the Referral shall be treated as accepted when the Provider orally accepts the telephone Referral.
- 9.15 At the time of admission, the Provider will complete for all placement types including emergency and short term, an inventory of possessions and an initial risk assessments associated with the Resident's care needs, no later than forty eight (48) hours after admission to the Home, to include a documented plan to mitigate all risks identified. Risk assessments will include:-
- Baseline observations (temperature, pulse, blood pressure and oxygen saturation)
 - Intake of fluid and nutrition
 - Elimination of bowel and bladder
 - Skin integrity and risk of pressure damage – to include a full body map
 - Potential for falling
- 9.16 Following admission to the agreed accommodation, the Provider shall not move the Resident to another room within the Home or elsewhere without the prior consent of the Resident and the Authorised Officer. Such consent from the Council will not be unreasonably withheld or delayed.
- 9.17 Temporary movement of a Resident for the purposes of decoration or other maintenance is acceptable, but if a move is required in these circumstances the Resident shall not be expected to make any additional financial contribution.

- 9.18 To ensure prompt payment, the Provider must accept Referrals in writing by returning a signed copy of the Individual Form of Agreement.
- 9.19 All admissions of Residents to the Home setting which are to be funded in whole or in part by the Council must be authorised by the Council, including emergency Referrals.
- 9.20 At the discretion of the Purchaser, when making referrals the Purchaser may take into account any information available to the Purchaser relating to;
- (a) the potential Provider's performance in the delivery of services
 - (b) the potential Provider's financial status
 - (c) the potential Provider's standing with the Care Quality Commission
 - (d) any breaches of contract by the potential Provider or ongoing safeguarding investigations within the potential Provider's existing contractual arrangements with the Purchasers or otherwise brought to the attention of the Purchasers.

10. Carers Emergency Response Service (CERS)

- 10.1 The CERS supports people living in the community at times when their usual carer is suddenly unable to provide care for them.
- 10.2 If an emergency occurs, the CERS will source alternative services for the cared for person. This may include residential care.
- 10.3 The Council will be responsible for the total cost of any alternative service for the first 48 hours (or 72 hours if the emergency occurs over a bank holiday weekend).
- 10.4 Where the Provider is noted on an individual's CERS activation plan as a preferred place of care, the Provider is encouraged to work with the individual to draw up a plan which will include a summary of the persons needs in case the CERS plan is activated.
- 10.5 On occasions the CERS may need to make emergency referrals and the Provider is encouraged to support these referrals where capacity allows.

11. Eligibility

- 11.1 Residents will be placed through the categories of Standard Residential, High Dependency and Nursing as set out within this Contract following an Assessment. Further details are set out in the section below.

12. Standard Residential

- 12.1 Points (i), and either (ii), (iii) or (iv) must apply to the individual to satisfy the criteria for long term or short-term residential care.
- 12.2 Where independent living in the community can no longer be achieved because:-
- (i) Network Support/Carer Function:
 - Breakdown of care, domestic and/or environmental functions, support systems cannot be sustained
 - Community support inadequate for example existing accommodation is insufficient to meet the need, isolated location without access to local services
 - The person or carer networks unable or unwilling to sustain environment creating unacceptable levels of risk to self and others
 - (ii) Individual Ability:
 - The person lacks the ability to carry out personal care tasks

- which would allow them to remain in their own homes and their health or welfare is seriously at risk if residential care is not provided

(iii) Individual Motivation:

- The person requires support to care for themselves under their present circumstances and their health and/or welfare is seriously at risk if residential care is not provided

(iv) Individual Behaviour:

- The person's behaviour and actions is such that their health and/or welfare are seriously at risk if residential care is not provided

13. Higher Dependency

13.1 Older people who meet the requirements for standard personal care in a care home and having one or more of the following characteristics necessitating additional staff input as the result of a specific and substantial condition(s):

- (i) Problem of mobility requiring two staff on the majority of occasions to help with such activities as getting up or going to the toilet
- (ii) Degrees of wandering, especially at night and physical frailty that places the person at unacceptable risk, which requires particularly close supervision
- (iii) Behaviour which has not responded to staff and professional intervention which, if not supported by staff presence or input, would have an adverse effect for self or other residents.

14. Nursing Placement

14.1 In addition to meeting the requirements of residential care, the Resident can be referred and evaluated for NHS Continuing Healthcare (CHC).

14.2 NHS Continuing Healthcare means a package of ongoing care that is arranged and funded solely by the NHS for persons aged 18 or over, to meet needs that have arisen as a result of disability, accident or illness. To be eligible for NHS Continuing Healthcare a person must be assessed as having a Primary Health need.

14.3 To determine a person's eligibility for NHS Continuing Healthcare (CHC) a Decision Support Tool (DST) will need to be completed by a multi-disciplinary team, to include health and social care professionals to determine whether the resident has a 'primary health need' or their general health has deteriorated to a level that needs constant nursing care.

14.4 There are three types of funded Nursing Care:-

- (i) Fully-Funded Nursing Care

The Resident is assessed as having a 'Primary Health need', and the NHS will be responsible for providing all of the individual's assessed health and associated social care needs, including accommodation if that is part of the overall need.

- (ii) Funded Nursing Care (FNC)

Residential care is funded by the Council, but additional 'health' funding is provided by the NHS for the provision of nursing care by a registered nurse.

- (iii) Fast Track

Individuals with a rapidly deteriorating condition who may be entering a terminal phase may require 'fast tracking' for immediate provision of NHS Continuing Healthcare

Details of these processes can be found here: www.lascapp.co.uk/contents/#nhs

SECTION 4: CARE PLANNING

15. Care Planning and Review

- 15.1 Following an Assessment the Council must produce a Care and Support Plan that will be shared with the Provider.
- 15.2 The Care and Support Plan identifies key milestones or Outcomes for the Resident and it is essential the Provider uses the Care and Support Plan as the basis for the development of the Provider's Care Plan, along with own pre-admission assessments and information shared via providers who are jointly responsible for providing care and treatment.
- 15.3 The Provider will develop a bespoke strength-based care plan for each Resident; this includes developing care plans for Residents accessing the Services on a short term or respite basis.
- 15.4 As a minimum, all Provider Care Plans shall be completed within forty eight (48) hours of admission.
- 15.5 The Provider will use a care planning approach that:-
- is person-centred;
 - is based on nationally recognised evidence-based guidance;
 - is underpinned by risk assessments that balance needs and safety with rights and preference;
 - considers all the Resident's needs including health (including community health resources or appointments), personal care, wellbeing, emotional, social, cultural, religious and spiritual needs;
 - considers the Resident's life history and how this may impact on their behaviour and/or inform their care plan;
 - considers the Resident's strengths and their existing networks of social, emotional, cultural, religious and spiritual support;
 - includes the Resident's preferences for consistency and familiarity of Staff support;
 - allows meaningful choice and control to Residents, with daily routines suiting the individual rather than the care placement;
 - actively encourages and supports the involvement of the Resident in decisions about their care and treatment, involving them as much or as little as they themselves wish;
 - involves the Resident's family, Carer, Advocate or other representative, where the Resident wishes or where lawful to do so, respecting them as expert partners in a person's care;
 - obtains the informed consent of the Resident (or person acting lawfully on their behalf) to the proposed care and treatment, recognising that consent may be withdrawn at any time;
 - where a Resident lacks the Mental Capacity to make specific decisions about their care and treatment (and no lawful representative is appointed), establishes and acts on their best interests in accordance with the Mental Capacity Act 2005;
 - supports and maximises the Resident's decision making capacity;
 - supports and maximises the Resident's independence; providing opportunity for them (and/or person acting lawfully on their behalf) to manage as much of their care and treatment as they wish. This may include managing their medicines, managing or supporting their personal care including eating and drinking, or using appropriate equipment and technology;
 - sets clear goals and evidences clear and achievable Outcomes;
 - provides clarity for Residents about what they should expect from the Services;
 - provides clarity for care Staff about what support they should provide and how they should provide it;

- takes into account information from providers who share responsibility for providing care and treatment (through partnership working, integrated care and multidisciplinary Assessments);
- makes use of other sources of health and wellbeing support, including referrals to appropriate agencies, contact with specialist support services and signposting;
- draws information from Assessments, Reviews, daily notes and other monitoring information into the Provider's Care Plan, ensuring the Provider's Care Plan is a well-informed record consistent with all current information known to the Provider;
- responds appropriately and in good time to individual's changing needs;
- takes into account how meeting a Resident's needs and preferences may impact on other people using the Services.
- Evidence that choice is taken in a way that recognises a person's right to be part of their local community.

15.6 The Provider shall ensure that all records and Assessments are reviewed at least Monthly or sooner if there is a change (deterioration or improvement) in the Resident's physical or mental healthcare needs.

16. Care Files

16.1 As a minimum, all Care Files should include:-

- an advanced Care Plan
- evidence of how consent has been obtained;
- a pre-admission assessment;
- Assessments of all the Residents needs and their preferences; including health, personal care, emotional, social cultural, religious and spiritual needs, with consideration for end of life care e.g. ReSpec Form and/or advance care plan;
- assessments of issues common in the Provider's client group, including but not limited to;
 - (i) Hydration and nutritional Assessment (e.g. MUST Monitoring Tools - www.bapen.org.uk/pdfs/must/must_full.pdf)
 - (ii) Moving and Handling Assessment
 - (iii) Falls Risk Assessment
 - (iv) Pressure Area Assessment (e.g. Waterlow Tool - www.thecalculator.co/health/Waterlow-Score-Calculator-1116.html)
 - (v) Completed Body Map
 - (vi) Elimination (bowel and bladder)
 - (vii) Continence Assessment and
 - (viii) Dementia Assessment (e.g. DiADeM - [https://dementiapartnerships.com/resource/diadem-diagnosis-of-advanced-dementia-mandate-in-care-homes/#:~:text=%20DiADeM%20%28Diagnosis%20of%20Advanced%20Dementia%20Mandate%20in,feasible%20and%20For%20make%20a%20difference%20to%20ongoing%20management.\)](https://dementiapartnerships.com/resource/diadem-diagnosis-of-advanced-dementia-mandate-in-care-homes/#:~:text=%20DiADeM%20%28Diagnosis%20of%20Advanced%20Dementia%20Mandate%20in,feasible%20and%20For%20make%20a%20difference%20to%20ongoing%20management.)))
- Provider Care Plans to meet all the Residents needs and their preferences including health, personal care, emotional, social, cultural, religious and spiritual needs;
- Review documents;
- daily notes;

- any best interest decisions made by the Provider;
 - evidence of the Residents decisions, and/or involvement of another person in decision making where the Resident wishes or where legal to do so;
 - mechanisms in place to collect and act upon Resident, family, carer or representative feedback, which are well documented;
 - accident / incident records, including copies of body maps.
 - an up to date inventory of personal belongings.
- 16.2 The Provider shall ensure that all Provider Care Plans, Assessments, Reviews, daily notes and other monitoring information are dated, include Review dates or schedules, and are reviewed regularly (generally Monthly unless specifically stated), though in some cases risk assessments may be used to determine a bespoke timescale and/or whenever needed based on a change in the Resident's needs. This includes reviewing Provider Care Plans and Care Plans when Residents transfer between Services or are re-admitted or discharged from hospital.
- 17. Care Plan Reviews**
- 17.1 All care plan Reviews shall ensure the following information is evaluated:-
- achievement of Residents key milestones or Outcomes shall be identified and reviewed
 - the care planning approach outlined in this Service Specification is applied
 - the Provider shall evidence how Outcomes have been met and share all relevant evidence
- 17.2 Staff providing care must be kept up to date with any changes to a Resident's needs and preferences.
- 18 Care and Support Plan Review**
- 18.1 Reviews will enable the Provider and the Council to establish from the Resident and/or their representative whether or not the Outcomes in the Care and Support Plan are being achieved. They will capture their views in the first person, irrespective if these conflict with the views of others.
- 18.2 Each Resident will have a Review of their Care and Support Plan, arranged by the Council, (to include the Provider and the Council) which shall take place within eight (8) weeks of placement AND on a periodic basis thereafter (normally annually); and also by agreement or at the reasonable request of the Council, Provider, Resident and/or their carer/representative/advocate/Mental Capacity Act/Relevant Persons Representative.
- 18.3 The Care and Support Plan Review must consider the appropriateness of the Services, the suitability of the placement and incorporate clear outcomes/goals for the Resident to achieve.
- 18.4 Where the Provider believes a Resident's needs have changed and alerts the Council, a Review will take place within twenty eight (28) days of a Referral being made.
- 18.5 Should the Resident request the presence of their carer/representative during the Review of their needs, the Council shall invite the identified carer/representative and any appropriate Council staff to the Review and take reasonable steps to ensure their attendance.
- 18.6 The Provider will contribute to the formal Review of the Resident's needs in accordance with the Council's established Review procedures, including full participation in Review meetings. This will be annually or whenever a change in need is identified. When appropriate the Provider shall leave the Review to enable appropriate confidential discussion to take place. The Review may include financial matters including payments.
- 18.7 The Provider will make available suitable accommodation or provide appropriate technology where appropriate for the purpose of conducting the formal review.
- 18.8 Within fourteen (14) Working Days the Council will send copies of the Review to the Resident and their representatives in a timely and understandable format, with clear Outcomes and proposals.
- 18.9 The Provider shall inform the Council if it believes that a Resident may qualify for continuing healthcare care funding.

- 18.10 The Provider shall immediately notify the Authorised Officer with written confirmation within forty eight (48) hours of any significant incident or significant change of circumstance pertaining to a Resident that is reportable to the CQC under Regulations 16, 17 or 18 of the Care Quality Commission (Registration) Regulations 2009.
- 18.11 If following a Review, the needs of the Resident are assessed as requiring a package of Services which the Provider is not able to supply, the Council shall be entitled to terminate an Individual Placement relating to that Resident, ensuring the Provider is notified in writing within seven (7) calendar days.
- 18.12 Any agreed changes in the costs, resulting from a change in assessed level of Services (increase or decrease) required by a Resident shall be notified to the Provider in writing by the Council. Where a review was requested by the Provider, the change in fee shall be backdated to the point at which the review is requested provided that the Provider can evidence that those additional needs have been met through additional staffing. In the absence of sufficient evidence the change of fee shall take effect from the date that the Provider is notified of the change. Where a review was instigated by the Council, the change in fee shall be backdated to the point of review.
- 18.13 Following a review where a reduction in assessed need is identified that results in a reduction in 1:1 hours, the change in fee shall be applied from the point of the review.

SECTION 5: STANDARDS OF CARE

19. Dignity, Privacy and Respect

- 19.1 The following standards of care, provide a framework for care delivery which the Council requires from the Provider:-
- Residents must always be always treated with dignity and respect and in a caring and compassionate way.
 - Staff must respect people's personal preferences, lifestyle and care choices.
 - Residents should be addressed in the way they prefer.
 - Discussions about Resident's Care and Support Plan must take place where they cannot be overheard.
 - Residents shall have the option to hold private conversations.
 - Resident's relationships with their visitors, carers, friends, family or relevant other persons should be respected and privacy maintained as far as reasonably practicable during visits.
 - The Resident's needs and decisions regarding their privacy should be reflected in their care plan.
 - The Resident's privacy and dignity must be maintained at all times, including when they are asleep, unconscious or lack capacity

20. Personal Care

- 20.1 Personal care services attend to the physical needs of Residents.
- 20.2 Residents will be helped and/or prompted with intimate physical care and/or treatment in a sensitive and discreet manner, in a way that maintains their dignity and privacy and in line with the Resident's wishes and consent.
- 20.3 When providing personal care every reasonable effort should be made to respect people's preferences regarding their care.
- 20.4 To support personal care the Provider shall make available towels and toiletries, to include soap, shampoo, tissues, shaving equipment, teeth cleaning agents and sanitary products free of charge. However, if Residents wish to exercise their right to choose in respect of purchasing a particular brand with their personal expense allowance and/or from their own resources, this must be facilitated.

20.5 The Provider shall ensure the necessary support is available for continence care, as assessed by a health professional and/or detailed in the Care and Support Plan, to include the provision of continence aids and/or materials to suit the Resident's individual needs.

20.6 The Provider shall in accordance with good practice seek professional advice on continence problems and the provision of continence aids shall be arranged through the relevant Nursing Care Purchaser.

21 Oral Care

21.1 The Provider shall ensure that appropriate oral care is provided to all Residents.

21.2 All Residents who move into a Home shall have their oral care needs assessed on admission and recorded in their Care File.

21.3 All Residents shall be supported to maintain oral hygiene whether that is by supporting Residents to brush their teeth or to carry out daily care for their dentures.

22 Bariatric Care

22.1 The term bariatric is used to describe individuals who have a body mass index (BMI) greater than forty (40), and with a weight range of eighteen (18) to seventy (70) stone.

22.2 The Provider needs to consider and prepare for the admission of a bariatric Resident - however, this does not mean The Provider will have any and all equipment that may be necessary to deliver the best and most effective care. The Provider will instead familiarise themselves with what equipment is required and how to train/prepare Staff to safely support and care for bariatric Residents.

22.3 The Provider will ensure that it plans the following:-

- Equipment
 - Identify required bariatric equipment
 - Is the equipment available on a purchase, lease or service arrangement
 - What bariatric equipment should be funded by the Provider, and what is funded through other organisations
- Staff Training
 - Bariatric health care
 - Meal planning and food preparation
 - Elimination – bowels and bladder
 - Moving and handling
 - Bariatric skin, pressure damage and care
 - Any specific training as identified on a Resident's Assessment
- Accommodation
 - Identify a suitable room(s) to accommodate a bariatric Resident and associated equipment – it is not expected to remain exclusively for bariatric users
 - Select a room that will facilitate sufficient space for the Resident, visitors and the range and size of equipment required. In addition, allowing safe access for Staff to perform handling and care provision, and extra space for turning larger wheelchairs and operating lifting and turning equipment.

23 Social Contact, Activities and Community Contact

23.1 The importance of person-centred care shall include the provision of 'meaningful' activities that promote mental stimulation and improve general health.

23.2 Therefore, the Provider is required to plan, deliver and facilitate positive, person-centred activities and allow Residents to maintain hobbies and interests as far as possible. The aim should be to ensure that the activity or experience meets the needs, wishes and preferences of the Resident. In some instances,

this may require accompanying the Resident to activities outside of the Home. These activities should reflect personal preference including diversity characteristics.

- 23.3 Community support services are those that enable a Resident to access their local community and are supported to maintain involvement with community based services. These services could include assisting, advising, supporting, accompanying and encouraging individuals, with consent, to access:-
- Community activities (such as libraries, places of worship)
 - Social networks, to maintain relationships, including family
 - Enabling opportunities to develop life skills, hobbies and/or employment (this could be paid or voluntary work)
 - Supporting Residents to manage their finances.
- 23.4 Services provided both inside and outside the Home will be delivered in an atmosphere which takes into account the personalities, interests, lifestyle, as well as physical, sensory and mental health needs of each Resident.
- 23.5 Within the overall constraints of the care setting and the requirements of a Resident's Care and Support Plan, each Resident's age, disability, chosen gender, marriage or civil partnership, pregnancy and maternity, race, religion, or belief, sex and sexual orientation will be taken into account. Services will be designed to address the needs of individual Residents to ensure Outcomes in the Care and Support Plans are met.
- 23.6 The Provider will have a nominated activity coordinator, who will be responsible for the overall planning and coordination of activities, both inside and outside the Home.
- 23.7 In addition, the Provider will have a weekly timetable of activities available to the Residents in an accessible and easy to read format.
- 23.8 All costs of individual activities in the community e.g. visits to sports centres, cinema, concerts will be met from the Residents own personal money.
- 23.9 Information about leisure passes available for Council services should be given to each Resident alongside assistance with application forms as needed.
- 23.10 Where a care or support worker is required to attend an activity with the Resident, the additional cost of the care or support worker entering into the activity i.e., swimming entrance fee, will not be met by the Council.
- 23.11 All costs of Residents food and drinks when accessing activities in the community will be met from the Residents own personal money.
- 23.12 The Provider shall have a policy in place that stipulates how much the Resident will pay regarding the cost of a meal/drinks.
- 23.13 Residents should have the right to choose their refreshments whilst out in the community and these choices should be clearly detailed within their Care and Support Plan with receipts kept for financial recording and auditing purposes.
- 23.14 The Provider may also be required to support Residents to engage in employment, education, volunteering and training. This may also include using the Provider's networks in the community to identify opportunities for the Resident to make a contribution in the wider community.

24. Transport and Travel

- 24.1 The Provider is required to make arrangements to meet the transport and travel requirements of Residents and to promote person-centred solutions to transport which maximise independence, choice and control.
- 24.2 A variety of transport methods shall be considered by the Provider in seeking to make suitable arrangements to meet the travel and transport needs of each Resident as identified in their Care and Support Plan and associated risk assessment. The risk assessment should consider the number of support Staff needed when considering public and private transport.

24.3 Staff must not use their personal cars to take Residents to places unless they are appropriately licensed and insured to do so. Residents must be enabled to walk or use public transport with support if necessary.

24.4 Residents' travel costs will be met from their own personal money.

24.5 Where the Provider uses its own transport, for example a minibus, charges will be construed as an Extras as defined under clauses 5.19 - 5.25 of the terms and conditions of contract.

25 Nutrition and Hydration

25.1 The Resident shall have a nutrition and hydration Assessment completed and documented within forty eight (48) hours of admission (e.g., MUST Monitoring Tools - https://www.bapen.org.uk/pdfs/must/must_full.pdf).

25.2 The nutritional Assessment shall be reviewed on a Monthly basis - or sooner, as required.

25.3 Where a Resident's nutritional Assessment identifies a risk associated with nutrition and/or hydration, an appropriate care plan shall be in place and reviewed to ensure there is evidence that appropriate care has been delivered.

25.4 The Provider shall supply three healthy, balanced meals a day, with drinks and snacks which will be available and accessible throughout the day and night, appropriate to the needs of the individual as identified in the Care and Support Plan.

25.5 The Provider is required to provide a choice of food and drink that reasonably reflects the Resident's personal preferences, and dietary requirements. Meals shall be culturally specific to the Resident and be of sufficient portion size to maintain a healthy, balanced and consistent weight.

25.6 To ensure the Resident's weight is maintained the Provider will record a weight on admission with regular weight measurements documented (recommend Monthly minimum).

25.7 In accordance with the individual needs of Residents, the Provider shall:-

- operate a flexible approach to nutrition and hydration
- work with Healthcare Professionals to ensure nutritional needs are known and recognised
- use the Malnutrition Universal Screening Tool (MUST), the recognised NHS standard, and act on the outcome of the Assessment
- have a robust food first policy, rather than request prescriptions for dietary supplements for Residents
- seek advice from Healthcare Professionals with any areas of concern.

25.8 The Provider will be required to support Residents to eat and drink as independently as possible in line with what is recorded in their care and support plan. The Provider will ensure that meals and mealtimes are flexible to meet the preferences of the Resident.

SECTION 6: CARE DELIVERY

26. Meeting Communication Needs

26.1 The Provider must ensure it meets the communication needs of all Residents.

26.2 Communication both verbal and written shall be conducted in a way that is understandable to the Resident and in a way in which the Resident can make themselves understood.

26.3 The communication needs of each Resident shall be identified and include recognition of visual, hearing and cognitive difficulties. The Provider shall ensure it finds sources of information and advice and understands how to deal with any difficulties relating to communication.

26.4 Communicating in inclusive ways will be dependent upon:-

- An individualised care plan using accurate information on how to get communication right for each Resident.

- Staff awareness and knowledge of a range of resources that support inclusive communication approaches
 - Having and using a range of resources that support inclusive communication
 - Enabling the use of digital media e.g., SKYPE or other similar communication method
 - Support from management and senior Staff
 - Use of relevant external support when required, e.g. speech and language therapy
 - Understanding primary language if English is not the individual's first language
- 26.5 The Provider and Staff shall communicate and provide written information in a format that each Resident and/or their representative can understand.
- 26.6 Residents shall be supported to interact with others and express themselves.
- 26.7 The Provider shall adapt and facilitate activities, meetings, menus, and feedback and complaints procedures in order to include Residents.
- 26.8 Referrals shall be made to advocacy services where this is necessary.
- 26.9 The Provider shall apply the Accessible Information Standard to all communications where the person comes within the scope of the standard.
- 26.10 The Provider shall have due regard for the duty on public authorities to ensure that employees who work in a public facing role speak a level of English which is sufficient to enable them to effectively carry out their role. Contained in Part 7 of the Immigration Act 2016, and known as the 'Fluency Duty', the duty will not initially apply to the voluntary sector or private sector providers of public services. However, part 7 of the Immigration Act 2016 gives the power to extend the duties to these sectors at a later date.
- 27. Continence**
- 27.1 The Provider shall conduct effective bladder and bowel Assessments for all Residents, to include incontinence and constipation.
- 27.2 The Provider shall make referrals in a timely manner to the Specialist Services where appropriate.
- 27.3 The provision of continence aids will be arranged through the relevant Nursing Care Purchaser, but the Provider will provide necessary individual continence care as assessed by a health professional and/or detailed in the Care and Support Plan of a Resident, and provide continence aids and/or materials to suit the Resident's individual need.
- 28. Pressure Area Care, Tissue Viability and Wound Management**
- 28.1 The Provider will ensure that all policies and procedures have regard to the current guidelines available via the National Institute for Health and Care Excellence (NICE) specifically regarding tissue viability.
- 28.2 The Provider shall undertake a tissue viability Assessment on admission using a recognised tool such as Waterlow - <https://www.thecalculator.co/health/Waterlow-Score-Calculator-1116.html>.
- 28.3 The Provider shall monitor and record all pressure ulcers within the Home, according to grade and take appropriate remedial action, to include seeking support from primary and/or community clinicians.
- 28.4 The Provider shall monitor, record and report all Grade 3 and 4 pressure ulcers on a Monthly basis to the Purchaser.
- 28.5 The Provider shall have a pressure ulcer prevention strategy which shall include a policy for the prevention of pressure ulcers utilizing a body map to identify areas of concern and grading as per scales.
- 29. Falls**
- 29.1 Falls resulting in injury are the leading cause of accident-related mortality among older people.

- 29.2 After a fall, an older person has a 50% chance of having seriously impaired mobility and a 10% chance of dying within a year.
- 29.3 The Provider shall have in place and implement a falls prevention policy, and shall monitor, record and report the number of falls within the Home on a Monthly basis to the Council in accordance with Schedule 3.
- 29.4 The Provider will make available to the Council upon request evidence, regular analysis of falls data, with associated action plans demonstrating a reduction in falls in the Service.

30 Medicines Management

- 30.1 The Provider shall adhere to the 'Lincolnshire Health and Care – Care Homes Medication Policy' (which will be hosted here <https://professionals.lincolnshire.gov.uk/adult-social-care/adult-social-care-providers/4>) (or equivalent) as notified to it by the Council from time to time which sets out the minimum policy standards for medication administration and support to be implemented by all CQC regulated care homes commissioned by the Council.
- 30.2 The Provider will demonstrate safe storage and accounting for all controlled drugs.
- 30.3 All incidents with controlled drugs shall be reported on a Monthly basis in accordance with Schedule 3. Reporting shall also be in line with the NHS England Serious Incident Framework, which can be found at;
www.england.nhs.uk/wp-content/uploads/2020/08/serious-incident-framework.pdf
- 30.4 Oxygen is a medical gas. It must be treated as a medicine and the Provider shall have a written policy outlining how and when oxygen can be administered and how oxygen must be stored.
- 30.5 Staff must be regularly trained in the administration of oxygen to ensure they are familiar with normal oxygen saturation parameters and safe delivery of oxygen concentration according to an individual prescription and appropriate use of mask or nasal cannulae.
- 30.6 Further guidance can be found www.cqc.org.uk/guidance-providers/adult-social-care/managing-oxygen-care-homes
- 30.7 The Provider shall ensure that all new admissions will have their medicines listed on the day of admission.
- 30.8 Residents shall be supported to self-administer their medicines if they wish to and if it does not put them or others at risk.
- 30.9 The Providers shall ensure that Residents receive medication reviews at least once a year and these reviews shall be undertaken by a multi-disciplinary team.
- 30.10 Residents that have been assessed as lacking capacity may only be administered medicine covertly if a management plan is agreed after a Best Interest Meeting. This shall be fully documented and included in the Resident's Care File.

31. Palliative and End of Life Care

- 31.1 The Provider shall offer the Resident an early discussion and document preferences for end of life care, ideally within three (3) Months of admission, to include family/carers where appropriate.
- 31.2 The Provider will use a recognised care planning tool, such as ReSPECT to document each Resident's preferences for palliative and end of life care which should be reviewed with any significant change in the Resident's condition.
- 31.3 The Provider will have formal processes in place for appropriate onward referral to primary care, community health teams and continuing healthcare when appropriate.
- 31.4 Following the identification of significant change or deterioration in the Resident's health condition it may be appropriate to escalate the changes to the Council to request a Review to consider the increased care needs and if necessary, the continued appropriateness of the placement.

- 31.5 The Provider must have processes in place to identify and address the training needs of all Staff to include registered nurses and Carers to ensure they have the right skills, knowledge and competence to care for Residents with palliative and end of life care needs; to include communication skills, continual Assessment, symptom management and care planning.
- 31.6 The Provider will ensure referral to specialist palliative care services where required to ensure Residents receive effective palliative care symptom management at end of life.
- 31.7 The Provider shall ensure that the Residents individual wishes for end of life care are clearly documented and appear clearly in the Provider's Care Plan and other relevant records. It will be the responsibility of the GP providing care to the Resident to ensure that any orders are clearly documented, appropriately discussed and agreed with the Resident and/or family or legal representative.
- 31.8 The Provider shall ensure that timely referrals are made to other agencies to manage individual need and associated risk; working closely primary care networks, neighbourhood teams and community services to avoid hospital admissions where possible and to also support safe hospital discharges.
- 31.9 Staff shall have awareness of and be competent with the care needs of Residents at end of life, and work effectively with specialist palliative care services to achieve dignity at end of life with and for the Resident. This includes reducing the risk of avoidable admissions to hospital or further moves of accommodation, so reducing the risk of a Resident's experience of death in a place not of their choosing and without familiar people and surroundings.
- 31.10 The Provider will work with the national framework for palliative and end of life care, details of which can be found at the following link:-

<https://learninghub.nhs.uk/catalogue/ambitionspartnership>

32. Serious Incidents

- 32.1 Where relevant, the Provider shall comply with the NHS England Serious Incident Framework:

www.england.nhs.uk/wp-content/uploads/2020/08/serious-incident-framework.pdf

33. Equipment

- 33.1 The Provider shall adhere to the Lincolnshire Guidelines for the Provision of Community Equipment within Care Homes and Care Homes with Nursing Provision Policy' (which can be found here: <https://professionals.lincolnshire.gov.uk/adult-social-care/adult-social-care-providers/4>) as notified to by the Council from time to time.
- 33.2 The Provider will ensure that all equipment and services relating to the provision of accommodation, (including bathing, seating and sleeping), heating, lighting, food, laundry, furnishings, and fittings is provided.
- 33.3 All equipment including those loaned from the Lincolnshire Community Equipment Service (LCES) must be serviced, kept clean and maintained to a fitness for purpose standard, with records to evidence compliance. In instances where servicing and repairs are the responsibility of the LCES provider every effort must be made to facilitate such arrangements.
- 33.4 If a Resident has been assessed as in need of standard equipment, this is to be provided by the Provider at the point of entry to a Home or the point at which the equipment is required. Standard equipment is to be provided in accordance with the regulations (including but not limited to Regulations 12 and 15) set by the Care Quality Commission (CQC).
- 33.5 If bespoke or specialist equipment is required to respond to exceptional need, this could be provided through the Lincolnshire Community Equipment Service (LCES) contract following discussion between the Council and the Provider.
- 33.6 Any equipment loaned through the LCES contract must be documented on receipt to identify as a minimum date of receipt, Resident's name, room number, type of equipment, serial number.
- 33.7 If equipment is obtained through LCES, when the equipment is no longer required it must be cleaned and stored in a clean and dry environment in preparation for collection. The Provider must inform LCES

at the earliest opportunity that the equipment is available for collection. The Provider is responsible for maintaining appropriate documentation to ensure all loaned equipment is easy to locate and track.

- 33.8 Any equipment damaged whilst in the Provider's care due to negligence or improper use shall be the responsibility of the Provider and the Council shall be able to recover the cost of repair from the Provider.
- 33.9 All equipment issued via LCES is for the individual use of the Resident it is issued to, and cannot be used by other Residents or for communal purposes.
- 33.10 As part of the accepting of equipment from LCES, the Provider must allow access to the LCES Team, or their representatives, for auditing and review of the equipment in line with the Provision of Community Equipment within Care Homes and Care Homes with Nursing Provision Policy.

34. Digital Maturity and use of Assistive Technology

- 34.1 The Council and health partners in Lincolnshire are working together to develop digital capabilities across the health and care sector. This is to ensure that the county's residents can benefit fully from available technologies.
- 34.2 Assistive technology can be used to avoid hospital admissions through early intervention and allow Homes to meet safeguarding concerns for Residents. The Provider shall consider the use of technology to support the Resident to maintain and/or improve their level of independence and quality of life whenever possible and appropriate, such as:-
- a call system which enables a Resident to summon help
 - sensors linked to the call system, which alert staff when a Resident is at risk and may be out of bed or out of their room
 - equipment that supports the monitoring and recording of physiological observations when a Resident is unwell
 - video conferencing to enable remote clinical support to be provided to Staff when they have concerns about a Resident, to inform and update the clinician of the Residents health status
 - Technology that can enable Residents to keep in touch with friends and family such as video calling.
- 34.3 Throughout the term of the Contract, new technological developments will be introduced, which will have the potential to improve care delivery and support for Residents, through improved connectivity and communication to deliver greater partnership working.
- 34.4 The Provider shall work with the Council and health commissioners to implement and develop technological solutions which may support Residents towards greater independence, and which may ultimately lead to a reduction in the care needs of Residents.
- 34.5 The Provider shall ensure Staff are trained and supported to develop their IT capabilities and implement technological developments, including assistive technology, to support care delivery.
- 34.6 The Provider shall ensure that it meets any standards for digital maturity or for social care records as introduced by the Government's Department of Health and Social Care throughout the lifetime of the Contract.
- 34.7 In order to meet standards and to fully utilise technologies as described in this section the Provider shall ensure that connectivity, hardware and software used are as up to date as possible.

SECTION 7: RISK MANAGEMENT

35. Promoting safety and positive risk taking

- 35.1 The Provider shall empower Residents to take appropriate risks, in accordance with individual needs by:-

- ensuring Residents are supported by a ‘trusted team’ and not receiving care from numerous care workers, unless there are clear staffing shortages within the Service;
- recognising that continuity of support is important in building trusting relationships; identifying, assessing and then managing risks whilst understanding that risk is a normal everyday experience;
- assessing risk dynamically, understanding that decision-making can be enhanced through positive collaborations;
- understanding that risks can be minimised, but not eliminated;
- taking responsibility in encouraging a no-blame culture whilst not condoning poor practice;
- working with the Council to understand and meet the changing needs and expectations of Residents and their families and supporting them to have more control over their health and care;
- conducting risk assessments where there is potential for significant harm, self-neglect injury or death. Examples could be, but are not limited to, the following: - choking - falling - scalding - transfers (hoisting) - not following specialist instruction - skin integrity - infection control - Control of Substances Hazardous to Health (COSHH) - labelling and signage to assist Residents living with dementia;
- The Provider will comply with all health & safety regulations and legislation and make their policy and procedures available to the Council on request; and
- The Provider shall adapt the physical layout and facilities, day to day routines and Staff culture within its service so it allows for a suitably flexible and stimulating environment for each Resident and supports their individuality, their sense of reality, and their mental and emotional wellbeing.

36. Behaviour that Challenges

- 36.1 The Provider will apply person centred and positive support to Residents whose behaviour challenges and shall ensure that Staff are suitably trained and competent.
- 36.2 Behaviour support shall be planned in a way that reduces the likelihood of challenging behaviour happening, identifies early warning signs and shows how to support Residents in a way that suits them.
- 36.3 Interventions used shall be the least restrictive possible and any physical restraint and medical intervention shall be a last resort.
- 36.4 Policy and best practice guidance should always be considered to reduce the need for restrictive interventions and ensure any restrictive interventions are used in a transparent, legal and ethical manner (e.g., Positive and Proactive Care: reducing the need for restrictive interventions – DoH 2014 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300293/JRA_DoH_Guidance_on_RP_web_accessible.pdf).
- 36.5 The Care and Support Plan will be based on a “Functional Assessment” carried out by a clinical psychologist or behaviour specialist or, if a Functional Assessment has not been done, the Care and Support Plan will identify what behaviours need to be managed based on what is important for the Resident and an assessment of risk. An understanding of the reasons for these behaviours shall be determined with the Resident and others involved in their life.
- 36.6 Residents shall be supported in the learning of skills to communicate their wishes and feelings and involved, wherever possible, in planning their care.
- 36.7 Guidance to Staff will show how to react in a situation where the Resident is likely to behave in a way that challenges Staff.
- 36.8 The Care and Support Plan shall include procedures to be followed after an incident of challenging behaviour to include a description of how the Resident is likely to look and behave as they recover.

- 36.9 The Provider will ensure that those providing support use a consistent approach including but not limited to:-
- a description of the Resident's challenging behaviour
 - a summary of the most probable reasons underlying the Resident's challenging behaviour
 - proactive and preventative strategies
 - reactive strategies
 - incident briefing
 - monitoring and Review arrangements
 - implementation arrangements
 - who was involved in devising the plan
- 36.10 Separate plans will be devised as necessary for specific situations (e.g. car journeys, around food). Plans shall be reviewed and updated on a regular basis and at other times when there is a change that may impact on them or an incident of challenging behaviour.

37. Fire & Safety

- 37.1 The Provider will have a current fire risk assessment that has been completed by a competent person.
- 37.2 The Provider shall seek the guidance from a competent person to develop an emergency plan to deal with a fire situation. This will be bespoke to each Home.
- 37.3 The emergency plan shall be based on the outcome of each Home's individual fire risk assessment and the needs of the Residents as outlined in their personal evacuation emergency plan (PEEPs).
- 37.4 PEEPs need to be regularly reviewed and maintained to include the individual needs of the Resident, to identify how much assistance they require in an emergency and alternate evacuation aids to facilitate a safe evacuation, for example slide sheets and evacuation chairs.
- 37.5 The emergency plan will assist the Provider to identify the minimum staffing levels required to operate safely.
- 37.6 The Provider shall ensure that Staffing levels are sufficient and available at all material times to facilitate safe movement of Residents within the determined evacuation timescale whilst taking into account other Staff actions required by the emergency plan.
- 37.7 The Provider will conduct fire training at regular intervals throughout each Contract the year as identified by the Provider's fire safety policy and will be conducted in such a way as to ensure all Staff on all shifts are included. The training will include:-
- (a) evacuation drills to demonstrate the emergency plan is effective and Staff are familiar with evacuation procedures; and
 - (b) identifying that Staff are aware of the location of the fire alarm panel, firefighting equipment and be competent in their use.
- 37.8 The Provider will maintain detailed records to demonstrate when fire drills have been conducted and which Staff have been engaged. For further guidance please see the following guide for residential care premises <https://www.gov.uk/government/publications/fire-safety-risk-assessment-residential-care-premises>

38. Health Protection / Infection Prevention & Control

- 38.1 The Provider shall demonstrate compliance with 'The Code of Practice for Health & Social Care and the associated prevention and control of infections' (www.gov.uk/government/publications/the-health-and-social-care-act-2008-code-of-practice-on-the-prevention-and-control-of-infections-and-related-guidance) and other related guidance.
- 38.2 The Provider will ensure a clean, hygienic, and tidy home environment.

- 38.3 The Provider shall carry out an annual infection prevention audit and supply the findings of this audit to the Council.
- 38.4 The Provider is encouraged to use the Council's infection control self-assessment audit tool, available at <https://professionals.lincolnshire.gov.uk/health-resources/care-settings>
- 38.5 The Provider shall identify a named infection prevention champion to support and promote infection prevention.
- 38.6 The infection prevention champion is required to attend quarterly link practitioner meetings to share best practice. In the event the link champion is not available to attend, the Provider will send another representative to the meeting.
- 38.7 In the event of an outbreak of an infectious disease e.g. Covid-19, influenza, diarrhoea & vomiting, the Provider shall inform the Council via e-mail healthprotectionteam@lincolnshire.gov.uk and shall provide daily updates until the conclusion of the outbreak. The daily updates submitted by the Provider will confirm the number of Staff and Residents affected by the outbreak and any actions taken to manage the outbreak.

39. Harm Free Care

- 39.1 On admission, the Provider will undertake a baseline Assessment to determine a Resident's risk of acquiring healthcare associated infection (HCAI). This Assessment will be documented and on file and will be regularly reviewed with other care plans and Assessments.
- 39.2 The Provider will take all practicable steps to minimise infections within the setting.
- 39.3 The Provider will consciously take action to provide antimicrobial stewardship within the setting. This will include working with other allied health professionals.

40. Workforce Risk

- 40.1 The Provider will ensure that Staff working in the setting have undertaken occupational health screening. The Provider will be required to provide evidence of Staff occupational health vaccination schedules.
- 40.2 The Provider will ensure that all Staff receive infection prevention and control training upon induction and thereafter through mandatory annual training programmes.
- 40.3 The Provider is encouraged to engage with the Council's health protection education programme.

41 HIV/AIDS safe practice

- 41.1 The Provider shall ensure the sensitive and safe care of Residents diagnosed with HIV or AIDS or other blood borne infectious diseases.

SECTION 8: SAFEGUARDING & MENTAL CAPACITY

42. Mental Capacity Act and Liberty Protection Safeguards

- 42.1 The requirements of the Mental Capacity Act 2005 are integral to the Providers policies and procedures e.g., consent policy, restraint policy, medicines management policy, safeguarding adults policy (this list is not exhaustive) and this is evident in any risk assessments, care plans that are produced.
- 42.2 The Provider has nominated champions for Mental Capacity, restraint and consent.
- 42.3 The Provider will ensure that all members of Staff have a good working knowledge of, and demonstrate competence in, the application of the Mental Capacity Act 2005 (www.legislation.gov.uk/ukpga/2005/9/contents).
- 42.4 The Provider can demonstrate that capacity assessments which adhere to the requirements of the Mental Capacity Act 2005 are carried out where a Resident's behaviour or presentation indicates

concern about their ability to make an informed decision about an issue at the time the decision needs to be taken.

- 42.5 The Provider shall demonstrate use of the statutory checklist and weighing of options in reaching a best interest decision for a Resident.
- 42.6 The Provider will also ensure that best interest decisions made by Staff on behalf of a Resident will have taken into account:-
- The Resident's past and present wishes and feeling
 - Anyone named by the resident as someone to be consulted with on the matter in question
 - Any beliefs and values that would have influenced their decision making
 - The view of family, carers and professionals involved in the Resident's care and support including any done of a Lasting Power of Attorney and any relevant Deputy appointed by the court
 - Anyone engaged in caring for the person or interested in the person's welfare.
- 42.7 The Provider meets statutory duties to refer to an Independent Mental Capacity Advocate (IMCA) and to work with the IMCA enabling them to carry out their duties on behalf of the Resident.
- 42.8 The Provider will ensure that all members of Staff have a good working knowledge of DoLS/LPS and know how to implement local procedures for making a DoLS/LPS application.
- 42.9 The Provider has robust systems in place to identify and record the use of restrictions which includes managerial scrutiny to ensure the least restrictive practice for Residents and the Service as a whole.
- 42.10 The Provider has robust systems for managing DoLS/LPS applications and their outcomes which will include ensuring compliance with any conditions that have been placed on a DoLS/LPS authorisation. The Provider will be required to complete a return on their management of conditions when requested to do so by the DoLS/LPS team.
- 42.11 The Provider will inform the DoLS/LPS team of the transfer to hospital, discharge or death of any Resident for whom a DoLS/LPS application has been made and no outcome has yet been given or for whom a standard authorisation is in place.
- 42.12 The Provider will ensure that all Staff are fully educated, trained and have a good working knowledge of the requirements of the Mental Capacity Act 2005 and the Liberty Protection safeguards in line with its Staff competency framework.

43. Supporting People Living with Dementia or Mental Health Problems

- 43.1 People with cognitive impairment or mental health problems frequently experience emotional and/or perceptual changes resulting in depression, anxiety and disorientation, which may also affect their normal pattern of behaviour and functional ability. People with a diagnosis of dementia, experience a progressive decline in multiple areas of functioning including memory, reasoning, communication skills and the skills needed to carry out daily activities. Some people may also develop behavioural and psychological symptoms such as depression, psychosis, aggression, withdrawal and 'walking with purpose', which may complicate care and can occur at any stage of the illness.
- 43.2 The Provider shall ensure Staff are aware of difficulties experienced by Residents relating to emotional and perceptual changes, depression, anxiety and disorientation, which may also affect their normal pattern of behaviour and functional ability.
- 43.3 The Provider will work towards and provide a physical environment that is supportive of Residents with dementia in accordance with best practice.

- 43.4 Symptoms of aggression, confusion and disorientation may be the result of dementia or mental disorder of a delirium/toxic confusion state due to infection, dehydration, constipation or the side effects of medication. The Provider shall monitor these aspects on a systematic basis to assist with differentiating between symptoms and as necessary Residents shall be referred to a GP for a specialist mental health assessment, diagnosis and treatment.
- 43.5 The Provider's care and support planning processes shall take account of the impact of symptoms and direct Staff how to meet a Resident's Outcomes and needs.
- 43.6 Staff shall accept and uphold Residents' sense of reality from moment to moment and respond in a way that is meaningful to them and support them to safely express themselves.
- 43.7 Interrupting a Resident's sense of reality shall only occur if their wellbeing, or the safety of another, is likely to be adversely affected, and the least restrictive interruption shall be used by the Provider.
- 43.8 Staff shall monitor for changes presented by the Residents and look for behavioural cues that may indicate a change being required in the way care and support is provided or a deterioration that may require a referral by the Provider to a GP or mental health service.
- 43.9 The Provider shall ensure Staff work as part of any multi-agency team that supports the Residents and this shall necessitate effective liaison with primary mental health services and the Residents' GP on an ongoing basis.
- 43.10 The Provider shall be responsible for identifying when the Services may need additional support or a more specialised service to meet the needs of Residents and in such instances, shall refer this to the Council to enable a Review to be instigated in a timely manner.
- 43.11 The Provider shall ensure that the layout and facilities will help Residents to understand and make use of all spaces and facilities and support Residents' abilities, limit the impact of their disabilities and minimise confusion and distress.
- 43.12 The Provider shall ensure that security and other safety arrangements installed within the Home including the garden and other areas and the provision of activities will encourage and enable Residents with cognitive impairment or mental health problems to freely use facilities whilst being protected from harm. Relevant documented risk assessments will be stored in the Care File and shall be regularly reviewed.
- 43.13 The Provider shall organise Staff to allow time for supporting Residents in groups or one-to-one to include, where relevant, connections to social network, community facility or external environment that is meaningful to them. Evidence of this shall be clearly recorded.
- 43.14 The Provider shall arrange for the physical environment, daily routine and the way Staff behave to uphold the mental and emotional wellbeing of Residents to include reducing barriers and separation.
- 43.15 The Provider shall organise staffing to ensure that the following practices are carried out competently:-
- Interpersonal skills in communication including non-verbal;
 - Adapting own behaviour to promote relationships;
 - Build meaningful interactions to include promoting empathy and unconditional positive regard, maintaining Residents' personal world, identity, personal boundaries and space;
 - Recognise the signs of anxiety and distress resulting from confusion, frustration or unmet need and respond by understanding the events the Resident is experiencing and diffusing their anxiety with appropriate therapeutic responses;
 - Monitoring and effectively reviewing the effects and side effects of anti-psychotic medication;
 - Meaningful occupation/activities and stimulation as a part of effective therapeutic intervention and care and avoiding isolation i.e. physical exercise. Understanding the changing nutritional care

needs of those with dementia and providing services and support in a flexible, person-centred manner;

- Being flexible about the physical layout, facilities and routines;
- Effective management of behaviours that challenge and how agitation and aggression is a method of communicating unmet need;
- Risk assessment and management, emphasising freedom of choice and reasonable risk taking;
- Promoting social and community networks and relationships.

43.16 The Provider will ensure that Staff have the necessary training, skills and knowledge of Residents' individual needs and behaviour in order to deliver effective person-centred care.

43.17 The Provider shall ensure that the Home has a lead, e.g. a dementia champion to role model, coach and embed training into practice, and to monitor the quality of dementia care.

44 Provider Generated Quality Concerns

44.1 The Provider shall monitor, and keep a record of, low-level incidents and near misses which could have a negative impact on Residents. Low level incidents are incidents where shortfalls or errors in care practice are apparent but do not constitute abuse or neglect. They include, but are not limited to:

- Resident-on-resident altercation which does not result in harm and action is taken to reduce risk
- A one-off medication error that has resulted in no harm
- Inadequate staffing levels which are not on-going and has no significant impact upon care provided

44.2 The Provider shall keep records in a format that allows themes and trends to be identified. Records shall be reviewed to identify patterns of quality concerns and to inform change in practice where appropriate.

44.3 The Council may review these records during a Contract Management Visit and the Provider will send copies of these records to the Council on request.

SECTION 9: KEY AREAS OF INFORMATION

45 Hospital admissions/ discharge

45.1 Avoiding unnecessary hospital admission and facilitating swift discharges are key priorities for national and local government. Therefore, the Council requires an effective multi-agency approach, to ensure that Residents receive a co-ordinated approach to support. A positive relationship and open communication with NHS services will be maintained to prevent unnecessary attendances at A&E departments and crisis admissions to acute care.

45.2 If a Resident is admitted to hospital for any reason, the Provider is required to ensure a smooth transition between the Home and hospital, by providing all relevant information on the Resident at the point of admission to the hospital. The Provider shall actively seek to reduce preventable emergency admissions to hospitals however, the Resident retains the right to seek medical advice and take actions independently of the Provider.

45.3 The Provider shall record the number of emergency admissions per Month as set out in Schedule 3.

45.4 The Provider shall support discharge from hospital for known Residents clinically assessed as ready to leave hospital (who are already placed with the Provider, and are funded by the Council) seven (7) days per week, where there is no change in need and the Council does not need to reassess the needs of the

Resident. This will be on the same day unless agreed otherwise with the integrated discharge team in consultation with the Home and ward manager.

45.5 The Resident shall return to the Home unless it has been agreed by the clinical lead otherwise. In these circumstances the Resident and the Provider shall still be able to access the same support from the Council via the then current channels. While the Resident is an inpatient, the Provider will:

- inform the Council; follow the Resident's progress through the acute pathway by communicating directly with the hospital ward and Resident, promoting self-care for some needs from the outset (where appropriate);
- the Provider will utilise the Care Home Trusted Assessor based in hospitals to minimise any delays;
- have guidance in place and work with hospital staff to determine when the Resident is fit for a safe discharge;
- ensure they are aware of all that has happened, which shall be relevant to the Resident's continued care and shall either visit the Resident in the acute setting or speak to them via the telephone or video call to ensure they keep in contact;
- be pro-active in making formal requests for multi-disciplinary case discussions where there are concerns or issues developing. The Provider shall keep the Council informed whilst a Resident is in hospital and upon their discharge, as the Care and Support Plan may need to be altered to reflect any changes in needs.

46. Absence, Discharge, Holidays

Temporary Absence

46.1 Where a Resident becomes absent for a continuous period from the care of the Provider for more than forty two (42) calendar days in the case of hospitalisation or twenty one (21) calendar days in the case of other absences or such other period as may be agreed between the Parties the Individual Placement shall be reviewed, or as soon as possible once potential change of situation is known.

46.2 The Provider shall notify the Council's 'Adult Social Care Finance Team' (whose contact details shall be supplied by the Council on the Individual Funding Agreement) promptly by telephone or e-mail, an Authorised Officer and family member/next of kin of the hospitalisation or absence of a Resident. Where notification is made by telephone, confirmation in writing shall be made within five (5) Working Days. For the purposes of this clause "promptly" means the same day or, if the occurrence happens outside of normal working hours or at the weekend, the Council's 'Adult Social Care Finance Team' shall be notified as soon as possible on the next Working Day.

46.3 The Provider and the Council may not let or otherwise use the Accommodation during any temporary absence without the written agreement of all Parties to the Individual Placement.

Holidays

46.4 In the event of a Resident, or their support network, requesting a holiday the Council requires the Provider to assist individuals to explore opportunities of funding for holidays/trips (e.g. group holidays with shared support, seeking additional funding from charities), and where necessary and with their agreement, the Resident contributing towards the cost of any additional support hours that may need to be provided whilst on holiday. Where a Resident is asked to contribute towards their holiday, clear agreement from them will need to be obtained. Where they lack Mental Capacity to make such a decision, decisions must be made in "best interests" in consultation with those required to be consulted under the Mental Capacity Act 2005.

Death or Discharge of a Resident

- 46.5 The Provider shall notify the Council's 'Adult Social Care Finance Team' immediately by e-mail or telephone, an Authorised Officer and family member/next of kin of the death or unplanned discharge of any Resident in respect of whom an Individual Funding Agreement has been entered into.
- 46.6 Where notification is made by telephone, confirmation in writing shall be made within five (5) calendar days of date of death or discharge.
- 46.7 The Provider shall ensure that all property and monies belonging to the Resident is catalogued and secured pending collection by the person duly appointed to deal with the Residents estate. The Provider shall not offset any debt relating to the Resident's Contribution by using a Resident's assets.
- 46.8 In the case of a deceased Resident, where no suitable arrangements have been made for the aftercare of the body, the Provider shall be responsible for contacting the relevant district council and then inform the Council that this was completed. It is the responsibility of the Provider to ensure that they are aware of the chosen undertaker or funeral director of the relevant local authority. The Council shall not be liable for any costs if the incorrect undertaker or funeral director is used.
- 46.9 On the day of discharge, arrangements shall be made wherever possible for the Resident to be discharged by no later than 2.00pm and the Council shall inform Residents of this requirement prior to the date of discharge. Where there is good reason why discharge cannot be made before 2.00pm then an additional half-day payment shall be made on request by the Council where the Provider has reasonably incurred additional costs.

47. Diversity, Equality, and Individuality

- 47.1 The Services will be provided in a non-discriminatory and professional manner that demonstrates courtesy and respect for Residents and Staff, sensitivity to their personal situation and experiences, and takes into account protected characteristics and the Resident's needs in a dignified and confidential manner.
- 47.2 The Provider shall reflect an approach to dignity which reflects the ten point Dignity Challenge:
- Have zero tolerance approach to all forms of abuse;
 - Support people with the same respect you would want for yourself or a member of your family;
 - Treat each Resident as an individual by offering a personalised service;
 - Enable Residents to maintain the maximum possible level of independence, choice and control;
 - Listen to, and support Residents to express their needs and wants;
 - Respect the Residents right to privacy ;
 - Ensure the Resident feels able to complain without fear of retribution;
 - Engage with family members and Carers;
 - Assist Residents to maintain confidence and a positive self-esteem;
 - Act to alleviate Residents' loneliness and isolation.
- 47.3 The Provider will understand and be committed to promoting a culture for both Residents and Staff which reflects and demonstrates that diversity, equality and individuality is embedded in the beliefs and values of the Services adhering to the Equality Act 2010.
- 47.4 The Services will be delivered in a way that acknowledges respects and responds positively to diversity, including, but not limited to, the protected characteristics, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 47.5 The range, quality and effectiveness of the Services provided should continually improve through innovation and new initiatives developed from a continual evaluation of working practices and learning from performance, Resident experiences and feedback, up to date research, evidence and models of good practice.

- 47.6 The Provider will be innovative in the use and development of technology to promote Resident independence.
- 47.7 The Provider will work with the Resident in partnership with families, Carers, health and social care professionals, other professionals and/or other agencies or organisations from the public, private or third sector as required, to ensure that the care and support a Resident receives is joined up and delivered effectively and efficiently.

48. Information Management

- 48.1 The Provider will ensure that all records relating to Residents are accurate, up to date, held securely, and can be accessed by those providing care.
- 48.2 The Provider will ensure that information relating to the care, wishes and needs of the Resident collected by Staff is appropriately captured, recorded and informs care planning.
- 48.3 The Provider will ensure that the Resident is able to see their Care File in accordance with the Data Protection Legislation and that they have been informed in writing that these files may be reviewed as part of the inspection and regulation process.
- 48.4 The Provider will hold accurate, up to date records on all Residents. Accurate information will be gathered to facilitate effective planning and delivery of Services and support.

49. Safeguarding

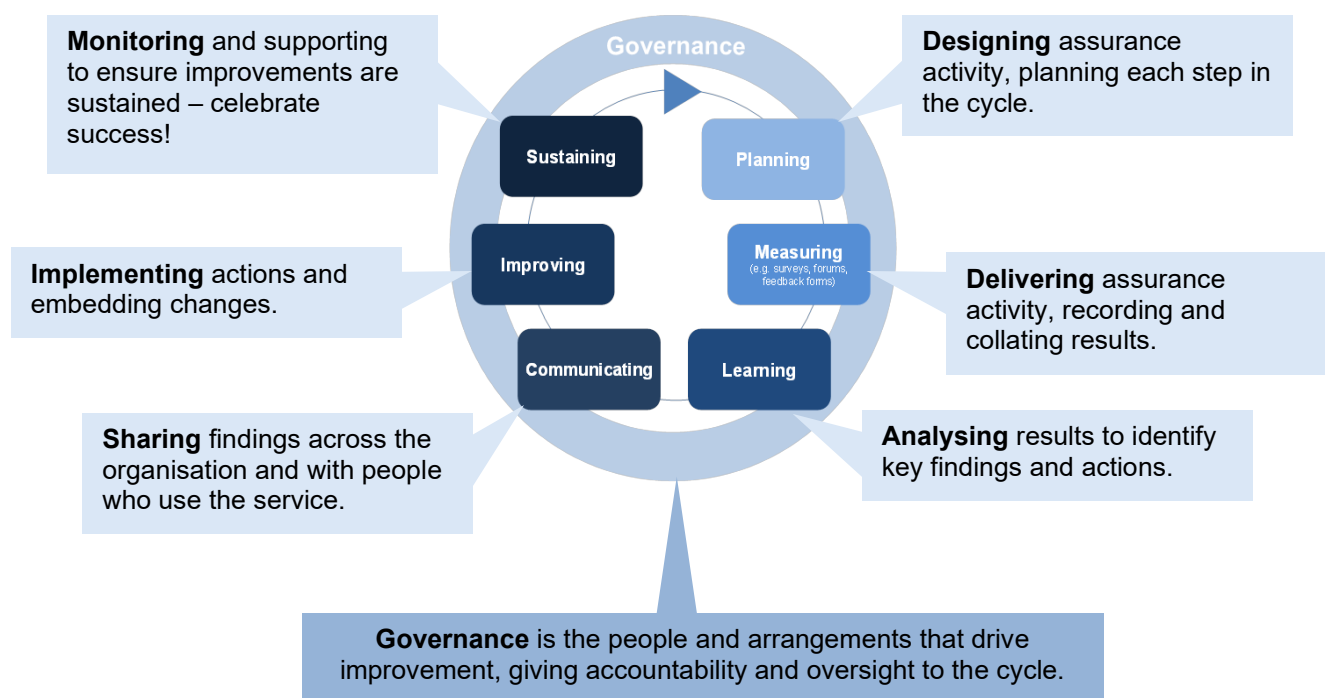
- 49.1 Safeguarding is everyone's responsibility and the prevention of adults and children from neglect or abuse is a key responsibility of the Provider as well as the commissioner of these services regardless of contractual obligations.
- 49.2 The Provider will take action to identify and prevent abuse from happening in the Services and respond appropriately when it is suspected that abuse has occurred or is at risk of occurring.
- 49.3 The Provider shall have clear safeguarding policy and procedures, that clearly explain how to identify, respond to, manage and report safeguarding concerns which all Staff shall be made aware of, understand and adhere to. This should be reviewed at least annually to ensure it is compliant with the 'Lincolnshire Safeguarding Adult Board's Safeguarding Policy' as notified by the Council to the Provider from time to time and incorporate learning from safeguarding enquiries.
- 49.4 The Provider's policies and procedures will promote a making safeguarding personal (MSP) culture and practice in line with national and local guidance.
- 49.5 The Provider's safeguarding policies and procedures will reflect good practice guidance in relation to safe recruitment practice;
- 49.6 The Provider's safeguarding policy should include a named safeguarding lead, well known within the organisation, who has a defined role and responsibilities in relation to safeguarding adults and children. The Provider shall have a clear structure charts, demonstrating lines of accountability for safeguarding.
- 49.7 The Provider should ensure that they have a named person that is competent to complete Section 42 adult safeguarding enquiries in line with the 'Lincolnshire Adult Safeguarding Boards (LSAB) Policy' and procedure and relevant training and guidance.
- 49.8 The Provider's policies and procedures shall support the reduction or removal of safeguarding risks, as well as secure any support to protect the adult and consider potential risk to others. Professional curiosity must form an integral part of the Provider's safeguarding practice, involving exploring underlying concerns, additional questioning and reflective practice techniques. A partnership approach

must be evident, involving the Resident and their representatives in decision making, to encourage proportionate responses, improve outcomes for the Resident concerned, and ensure their involvement in prevention and developing resilience for themselves.

- 49.9 Information about safeguarding policy and procedure and guidance on raising concerns about abuse must be shared with Residents, those close to them, their Advocates, those lawfully acting on their behalf, and Staff.
- 49.10 The Provider will give Residents, Carers and representatives adequate information about how to identify and report abuse, as well as sources of support outside the Services, including the Council and actively support and encourage Residents, staff, volunteers, the public to raise issues and concerns in a timely manner.
- 49.11 The Provider shall have a clear and accessible whistle blowing policy that is reviewed regularly and shared with Residents, those close to them, their Advocates, those lawfully acting on their behalf and Staff.
- 49.12 The Provider will ensure that national or local alerts (e.g. National Patient Agency (NPSA) or Medicines and Healthcare Regulatory Authority (MHRA) alerts, local alerts or safeguarding recommendations) will be acted upon where necessary within the required timescales.
- 49.13 The Provider shall ensure that policies and procedures are covered in induction and fully understood by Staff.
- 49.14 All Staff shall have an initial understanding of safeguarding duties under the Care Act 2014 within their first week of employment, including recognising signs and symptoms of abuse and neglect and understanding their role in reporting concerns and the organisational mechanisms for doing so.
- 49.15 Comprehensive training on awareness and prevention of neglect and abuse (including domestic abuse) shall be given to all Staff as part of their core induction within three (3) months. This training must be completed at least every two (2) years. In addition, update training shall be provided in light of new policies and procedures introduced either locally or nationally.
- 49.16 The Provider must nominate named safeguarding ambassadors.
- 49.17 The Provider will ensure that Residents human rights are promoted and protected through the Assessment and delivery of care.

50 Quality Assurance and Continuous Improvement

- 50.1 A continuous improvement cycle is key to effective Quality Assurance, ensuring assurance activities generate learning and lead to improvement.



- 50.2 The Provider shall have documented assurance processes in place to assess, monitor and drive improvement in service quality. The Provider's assurance processes must involve Residents, their families, Carers and Advocates.

50.3 Feedback

The Provider's assurance process must include seeking feedback, the Provider shall:-

- Actively seek feedback through appropriate structured assurance mechanisms such as surveys, active listening session, workshops and forums.
- Seek feedback at least annually, from people who use the service, their family, unpaid Carer or Advocate.
- Ensure feedback mechanisms capture Residents' Outcomes, experiences and satisfaction and support evaluation of safety, effectiveness, and experience of the Services.
- Ensure clear comparison can be made against NICE statements to assure the Services meets good practice. The Provider may need to design or adapt their feedback mechanisms to capture information for this comparison.

- 50.4 The Provider shall actively seek the views and experiences of Residents who are unable or find it difficult to communicate due to disability, impairment or sensory loss. Some Residents may need extra help to reflect upon and express their views and the Provider shall support them in compliance with the 'NHS England Accessible Information Standard'. Appropriate adjustments will be specific to the Resident but may include:

- Accessible formats e.g. audio, braille, easy read, large print, pictorial
- Support from a communication professional e.g. British sign language interpreter
- Communication support tools
- Observational techniques

- 50.5 The Provider shall also seek the views of other stakeholders as part of their assurance practice – i.e. Staff, visiting professionals, professional bodies, purchasers, local user groups and other sector relevant bodies/groups.
- 50.6 As and when instructed by the Council, the Provider shall facilitate and support Residents' completion of surveys specified by the Council (e.g. statutory social care user surveys).
- 50.7 The Council reserves the right to complete their own assurance activities regarding the Services.

51. Audits

- 51.1 The Provider's assurance processes must include regular audits that identify where safety, effectiveness and experience of the Services may be compromised. Such audits (where applicable) shall include:-
- Premises
 - Equipment
 - Care Files
 - Accident and injury reporting
 - Medicines management
 - Infection Prevention
 - Food hygiene
 - Supervision and appraisal
 - Safeguarding

52. Continuous Improvement and Governance

- 52.1 The Provider shall ensure their assurance processes (as described in section 47 and 48) are supported by effective governance arrangements. The Provider shall ensure:-
- Governance arrangements include agreed roles and responsibilities to ensure people with the correct skills, competencies and level of responsibility, consider local findings, identify local risk, demonstrate continuous learning and drive continuous improvement of the Services.
 - All assurance information is localised or disaggregated to provide information on the experience and performance of the Services in Lincolnshire. Assurance information aggregated by the Provider's wider area of Services will not fulfil the requirements of this Contract.
 - It takes proportionate action without delay in response to any failure the Provider identifies through its assurance processes.
 - Continuous learning and improvement takes place from any assurance activity delivered by the Provider or others (e.g. complaints, performance reviews, safeguarding enquiries).
 - Findings are considered and reported with comparison to recognised guidance and benchmarks that shape expectations of the service, including NICE.
 - Findings from its assurance processes and the action taken as a result are documented. Information on assurance activity, local findings and action taken shall be made available to the Council upon request, in line with Schedule 3.
 - In the case of assurance mechanisms that seek feedback from Residents, their family, unpaid Carer or Advocate (e.g. surveys, workshops, forums), the Provider will communicate its findings and action taken with Residents, their family, unpaid Carer or Advocate, with regard to the NHS England Accessible Information Standard.
- 52.2 The Provider shall regularly review and amend its assurance processes in response to:-
- The changing needs of Residents.

- The introduction of new national guidance and best practice, recognising that expectations and standards change over time as new practices are introduced.
 - Other changes that may increase risk (i.e. construction work, a large intake of new Staff).
- 52.3 The Provider shall ensure that managers are supported to develop and lead improvements;
- 52.4 The Provider will notify the Council within five (5) Working Days when there is any change in the registered manager of the Home.
- 53. Working with others in matters of Quality Assurance**
- 53.1 The Provider shall apply the same robust approach to governance and continuous improvement of other sources of assurance, internal and external.
- 53.2 The Provider will inform the Council of any internal or external assurance, such as an internal review or a CQC report, ensuring findings and actions are similarly incorporated into a service improvement plan and shared with the Council. This includes but is not limited to:-
- CQC reports, action plans and decisions
 - Council notices, recommendations and actions, including those from the Council's safeguarding teams
 - Where relevant fire and rescue, environmental health and any other bodies who provide best practice guidance relevant to the Services.
 - Provider generated quality concerns
- 53.3 The Council reserves the right to complete its own assurance activities regarding the Services or undertake a service review at any time during the Contract Period, using provisions within the Contract to access a variety of information held by the Provider.
- 53.4 The Provider will comply with requests from the Council to investigate specific concerns the Council may have.
- 54. Poor Practice Concerns**
- 54.1 A 'Poor Practice Concern' is a form that is completed by social workers, visiting professionals and other partner agencies to alert the Council to a potential deficit in the provision of the Services.
- 54.2 The purpose of the Poor Practice Concern process is to try and identify early concerns about Service delivery so that they can be collated and used as intelligence to inform the contract management and quality monitoring of the Contract and to enable continuous improvement of the Services.
- 54.3 If a Poor Practice Concern suggests that harm may have come to a Resident or there is the risk of harm or there is the potential for abuse to have occurred then it may be dealt with in accordance with clauses 11.22 – 11.31 of the terms and conditions of contract.
- 54.4 When a Poor Practice Concern is received by the Council it shall be sent by e-mail to the registered manager of the Home to investigate and respond.
- 54.5 The Provider shall respond to Poor Practice Concern within ten (10) Working Days. The response shall provide details of the action taken to investigate the concern and any action taken as a result. This shall include details of the Provider's response to the Resident and/or the originator of the alert.

54.6 Failure to respond to a Poor Practice Concern Form may be considered a performance default under clause 10.

55. Managing Complaints

55.1 The Provider's assurance processes shall include a complaints, compliments and comments policy. The policy shall clearly document how people can complain, compliment and comment to the Provider and to the Council, the timescales for response and resolution, and how the Provider manages and learns from complaints, compliments and comments.

This is important to aid the early resolution of concerns. The Provider may be best placed to respond to the Resident. However, the Resident/family member/representative must always be informed that they can contact the Council at any time, but always if initial concerns are unresolved by the Provider.

55.2 The Provider's complaints, compliments and comments policy shall reflect the guiding principles of the Council's Complaints Policy (www.lincolnshire.gov.uk/directory-record/63761/complaints-policy) and local procedures which can be found on the Council's website. These principles include:-

- put the Resident at the heart of the process, showing understanding and responding appropriately to the circumstances
- resolve complaints as early as possible
- keep the Resident informed about the complaints progress
- apologise if we have made a mistake, or when something has gone wrong we will put it right as soon as possible
- make sure our response addresses all elements of the complaint and provide explanations for any decisions made or actions taken
- use complaints information in a positive way to prevent similar occurrences in the future

55.3 The Local Government and Social Care Ombudsman provide resources to support care providers complaints policy and practice - <https://www.lgo.org.uk/adult-social-care/resources-for-care-providers?sm=IHV7JM4nPbFbqbTtkVCfNKQ00FK82>

55.4 The Provider shall ensure it:-

- Informs, enables, supports and empowers Residents, their families, Carers, Advocates and others, to make a complaint, compliment or comment verbally and in writing;
- Allow people to make a complaint, compliment or comment to any Staff and that Staff know how to progress a complaint;
- Offer the Councils contact details, these must always be available and can be used as an alternative to the Provider if the Resident so wishes;
- Support people who may find it difficult to make a complaint, compliment or comment due to disability, impairment or sensory loss, in compliance with the NHS England Accessible Information Standard;
- Record and acknowledge all complaints, compliment or comment;
- Investigate all complaints;
- Take proportionate action without delay in response to any failure identified;
- Respond to all complaints within the timescale described in its policy;
- Record and inform the complainant of the outcome of all complaints;
- Inform complainants of how to escalate their complaint if they are not satisfied with the response or action taken, referring complainants to internal routes of escalation and appropriate external agencies – i.e. The Council or Local Government and Social Care Ombudsman;

- Collate and monitor complaints over time, looking for trends and areas of risk;
- Act in a non-discriminatory way: Residents' care and treatment must not be affected if they make a complaint, or if somebody complains on their behalf;
- Support Residents, their families, Carers and Advocate to understand that making a complaint will not prejudice the support they receive;
- Report complements and complaints, including remedial action and service developments, to their assigned contracts officer in line with Schedule 3.

56. Governance Arrangements

- 56.1 The Provider shall demonstrate good governance arrangements.
- 56.2 Where the Provider operates more than one Home, they shall ensure that there is effective communication with all Registered Managers and there are adequate systems in place to assure the quality of service at all Homes.

SECTION 10: RECRUITMENT, TRAINING AND WORKFORCE PLANNING MANAGEMENT AND LEADERSHIP

57. Management and Leadership

- 57.1 The Provider's management will demonstrate effective leadership through evidence of a performance culture that inspires Staff to achieve and deliver safe, high quality and person-centred care.
- 57.2 The Provider shall demonstrate it operates with a capable, confident and skilled workforce, at all levels particularly in leadership and management where value based approaches set cultural standards equally alongside high standards of regulatory and quality activity throughout the home.
- 57.3 The Provider will promote, adopt and implement a caring and compassionate culture, which is evidenced through feedback from Residents, their Carers, family members, representatives and stakeholders.
- 57.4 The Provider management shall ensure that all new managers in Health and Social Care must undertake the Qualifications and Credit Framework (QCF) level 5 Diploma in Leadership and Management within one year of being appointed, if they do not already have a relevant transferable management qualification.
- 57.5 The Provider's management shall ensure there are workable, fair and published disciplinary, grievance, appeals and sickness absence policies and procedures in place and these are used effectively to manage Staff performance.
- 57.6 The Provider's management will promote maximising independence and promoting positive occupation within Home settings to increase Residents' feeling of security, belonging, continuity, purpose, achievement and significance.
- 57.7 The Provider will ensure that all Staff are trained in positive behavioural support.
- 57.8 The Provider will promote the uptake of appropriate vaccinations for Staff who have regular contact with Residents. The Provider shall provide evidence via the staff Occupational Health Vaccination Schedules.

58. Staff appraisals

- 58.1 The Provider management shall ensure that systems for supervision and Staff appraisal are clear, appropriate and in place and these are consistency applied in all cases.

58.2 The Provider is expected 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.

59. Staff Retention

59.1 The Provider management shall work proactively to retain good quality managers and Staff. In the event of a change in management succession planning shall be robust and evident.

60. Staff Induction

60.1 The Provider will ensure that all Staff and volunteers, regardless of their position in the home receive comprehensive induction into the home, covering at the minimum:

- All policies and procedures relevant to the staff group;
- Safeguarding, using the Care Act 2014 Safeguarding duties;
- Person centred care and support;
- Relevant and targeted training for the resident group the Home supports (i.e. autism, dementia, sensory impairment);
- Care planning;
- Health & Safety;
- Moving and handling;
- Mental Capacity Act & Liberty Protection Safeguards;
- Equalities;
- Dignity in care
- HR policies
- Data Protection Legislation

60.2 The Provider shall ensure Staff receive a comprehensive induction that takes account of the Skills for Care, care and that incorporates safeguarding principles.

61. Staffing Levels

61.1 The Provider shall clearly demonstrate how it ensures adequate and appropriate staffing levels to meet the assessed dependency and other needs of the Residents.

61.2 As far as is reasonably practicable, the Provider shall ensure the Home's staffing establishment in terms of Staff to Resident ratio and skill mix reflect dependency levels of Residents in the Home, not simply occupancy levels. Staffing rotas will provide appropriate cover at all times to ensure that Resident needs are met in a timely and person-centred way.

61.3 The Provider shall ensure that the use of agency staff is minimised by ensuring permanent staffing levels are maintained as much as possible and regularly reviewed. Where agency staff are utilised, the Provider ensures that agency staff are subject to robust screening ensuring they are qualified to work in the Home and that their training is up to date.

61.4 The Provider shall ensure that Staff vacancies, including managerial, nursing staff, care staff and auxiliary staff are kept to a minimum through robust recruitment and selection processes, opportunities for professional / career progression and consistent management and development practices.

61.5 The Provider shall ensure that Staff groups work coherently and supportively as a team to ensure that Resident needs are met in a timely and person-centred way.

61.6 The Provider shall ensure that Staff handovers between day and night shifts include discussion on changes to Resident needs between care and nursing staff and ensure a strong focus on continuity of care.

- 61.7 The Provider will ensure that Staff are encouraged to build in positive interaction with Residents during the running of the Home and routines, i.e. discussions and conversation during personal care routines enhancing the quality of life for Residents.

62. Staff Training

- 62.1 The Provider shall have an appropriate and deliverable training matrix in place that clearly identifies and timetables the training and development needs of nursing, care and ancillary staff within the Home.
- 62.2 The Provider will ensure that all Staff are trained and developed to the specific set of standards set out in the Care Certificate (introduced in April 2015) and has been assessed for the skills, knowledge and behaviours to ensure that they provide compassionate and high quality care and support. Supervisors of care Staff will be responsible for assessment against the standards of the Care Certificate. The Care Certificate is not a replacement for role and workplace specific induction training
- 62.3 The Provider is expected to put in place and maintain systems, structures and practices that enable learning, reflection and continuous improvement by all Staff.
- 62.4 The Provider is expected to develop their own annual Training Needs Analysis and is encouraged to engage with the Councils Strategic Market Support Service provider to inform the development and implementation of an annual training programme.

63 The Adult Social Care Workforce Data Set (ASC-WFD)

- 63.1 The Adult Social Care Workforce Data Set (ASC-WDS) is a data collection service, run by Skills for Care but commissioned and funded by the Department of Health and Social Care. It is the leading source of intelligence for the adult social care workforce. The Council and other key stakeholders use the data to gain insight on the local labour market, future demand for care services, and trends and patterns in workforce issues such as turnover and pay rates.
- 63.2 The Provider must hold an account and update the data set at the frequency specified by the ASC-WFD to assist with workforce planning, enable access to Workforce Development Funding and to support strategic decision making.

64 IT and Telephony

- 64.1 The Provider shall:
- (a) have a networked IT system in place to support the day-to-day operation of the Services, communication between Staff, and maintenance of Service information;
 - (b) maintain a secure NHS Mail e-mail account;
 - (c) shall inform the Council of any disruption or network faults that affect communication to or from the Home;
 - (d) immediately inform the Council of any changes to e-mail addresses or phone numbers.

SECTION 11: FINANCIAL ARRANGEMENTS

65. Financial Procedures and Personal Finances

- 65.1 Where individuals are admitted who are self-financing, it is good practice for the Provider to assure themselves that the individuals can continue financing themselves for a minimum of a rolling twelve-month period.

65.2 Where appropriate, the Provider should advise the individual or their representative to seek advice and assistance from the Purchaser prior to admission to ensure they meet eligibility for Adult Social Care funding. LCC will provide the Provider with up-to-date roles and responsibilities of relevant staff contact details.

65.3 Where a Resident that was previously self-financing believes that they are close to falling below the financial threshold to qualify for Council funding, a financial assessment will be undertaken. The Council shall inform the Provider in writing at the time that the assessment is requested and, an Individual Form of Agreement shall be put in place from the date that the Provider is informed of the assessment or the date that the Resident qualifies for Council funding, whichever is the latter. The Provider shall not take any steps to attempt to safeguard its financial position where an individual was self-financing but becomes eligible for Council funding including inducement of the Resident to enter into a deferred payment arrangement with the Provider.

66. Third Party/First Party Contributions

66.1 Third Party/First Party Contributions should be agreed in line with Schedule 2. Third Party/First Party Contributions apply to room types only, not categories of care.

66.2 Where a Referral or placement is made on the basis that a Third Party/First Party Contribution is payable, such Third Party/First Party Contribution shall not exceed the difference between the Expected Cost and the Provider's Price and shall be the subject of an agreement between the Purchaser, the Provider and the Third Party ("Third Party Agreement") or Eligible Resident ("First Party Agreement") concerned in a form prescribed by the Council.

66.3 Each Third Party/First Party Contribution shall be fixed for the duration of the Contract and shall not exceed the amount stated on Schedule 2 – Pricing Schedule.

66.4 It is the responsibility of both the Provider and Council to ensure that a Third/First Party Agreement is completed and signed by the Provider, the Third Party or Eligible Resident and the Purchaser at the time that a placement is made.

66.5 Where the Provider chooses to charge a lower Provider's Price than that stated in Schedule 2 this shall be fixed for the duration of the Contract.

66.6 Where the Provider chooses to charge a lower Provider's Price than that stated in Schedule 2 and thus remove the need for a Third Party/First Party Contribution, the Council shall issue a "Third/First Party Waiver Form" to the Provider which shall be signed by the Council and the Provider. This Third/First Party Waiver Form shall remain in place for the duration of the Contract.

67. Deferred Payments

67.1 A deferred payment is an arrangement with the Council that enables Residents to use the value of their homes to help pay care home costs. If a Resident is eligible, the Council will help to pay care Home bills on their behalf. The Resident can delay repayment until they choose to sell their home, or until after their death as specified in the Care Act 2014.

67.2 There are two types of Deferred Payment Agreements (DPA):-

1. Traditional DPA – this is used where the Council has arranged the care and pay the Provider directly at the Council's Expected Cost rate, deferring payments owed to the Council to a later date.
2. Loan DPA – this is used where an individual has made their own care arrangements and contract directly with the Provider at the cost agreed between the individual and the Provider. In these circumstances the Council loans to the individual the cost of their care in instalments and they pay the Provider directly.

67.3 The Provider shall under no circumstances approach or entice a Resident to enter into or request that a Resident enter into deferred payment arrangement with the Provider directly. If the Provider acts in breach of this provision and any other provision in the Contract relating to the same, such breach shall be deemed to be a material Default incapable of remedy and shall entitle the Council to exercise its right under the Contract in relation to such Default.

68. Resident Finances

68.1 It is expected that Residents shall be supported to retain the right to handle their own money and keep their own valuables.

68.2 The Provider should only become involved when this is not possible. Where Residents bring money or valuables into the Home, the Provider shall provide suitable lockable facilities for this purpose. If requested by the Resident, the Provider shall arrange for the safekeeping of monies and valuables and ensure appropriate records are made to support this.

68.3 The Provider must be able to provide a service or arrange for a service to be provided if requested/needed by the Resident to:-

- develop personal budgeting skills;
- access their own personal financial records;
- consult about their finances in private;
- obtain professional, impartial advice about personal insurance;
- ensure the safe-keeping of their own money and valuables.

68.4 The Provider is responsible for maintaining appropriate records of all financial transactions undertaken on behalf of Residents in line with the Provider's record keeping policy.

68.5 Residents should wherever possible receive support in the management of their own personal finances, for example, by being able to sign for their own personal benefits.

68.6 Where staff undertake shopping for a Resident, the Staff member must not use any of their own personal loyalty cards, collect vouchers for their own personal use, or otherwise seek to benefit financially.

69. Appointeeship for welfare benefits and applications to the Court of Protection

69.1 Where the Resident is assessed as lacking the Mental Capacity to manage his or her benefits and where no Lasting Power of Attorney exists for their property and financial affairs and there is no one to assist with any welfare benefits application, a request must be made to the Council for the Council to become their appointee. Where a Resident has resources over and above their welfare benefits such as property or other assets and lacks capacity to manage their affairs, a family member should be encouraged to apply to the Court of Protection to become appointed as the individual's deputy for property and financial affairs unless there is a valid Lasting Power of Attorney for finances already in place. Where there is no one able or willing to take on this role, the Council, as a last resort, will consider making an application to the court to become their financial deputy

69.2 Staff shall alert their line manager to suspected financial abuse or if the mental deterioration of the Resident brings risk of abuse. A record of the Mental Capacity Assessments must be available to evidence that the Resident does not have the Mental Capacity.

70. Care / Support Workers and Resident Finances

- 70.1 The Provider shall issue clear guidance regarding the care / support Staff accepting gifts or hospitality from Residents, their families and friends, and training shall be available to improve care / support Staff awareness of financial abuse.
- 70.2 Care / Support Staff must not:-
- Act as deputy or appointee without the Council's written consent;
 - Hold a joint account with a Resident;
 - Use personal credit cards to purchase items on behalf of a Resident;
 - Collect points from loyalty schemes for themselves when shopping on behalf of a Resident.
- 70.3 The Provider shall keep and maintain financial records including:-
- A basic accounting record for each Resident recording all amounts received and spent, including audits;
 - Dates and signatures for each transaction;
 - Receipt and payments entries supported by verifiable documentation;
 - Details of deposits/withdrawals from bank account;
 - Tippex or correction fluid shall not be used on any financial recording sheet. Where an error has been made a line should be put through the figure and the correct amount entered alongside and the person making the correction should then initial the entry;
 - Under no circumstances shall cheques be pre-signed.
- 71. Other transactions**
- 71.1 These include depositing money in a bank, building society or similar account, paying of bills at post offices (or similar) and taking valuables such as jewellery for repair. The Provider shall record the date and details of cash, items, etc. being taken from the Resident, the purpose of taking it and obtain a signature. Receipts and receipted accounts booklets shall be returned as soon as possible and a signature obtained from the Resident to confirm the return.
- 71.2 Cash point cards and pin numbers belonging to the Resident shall not be used by the Provider, Staff or any other person, unless it is agreed by the Council and the Resident.

SCHEDULE 1A – ADDITIONAL SCHEDULE FOR NURSING PLACEMENTS

In addition to the requirements of Schedule 1, where a Resident is assessed as requiring nursing care and support over a 24-hour period and, the following:-

1. Named Clinical Lead

- 1.1 All Registered Nursing Homes will identify and nominate a named Clinical Lead
- 1.2 The Nursing Home Provider shall advise the Council, on request, of the named clinical lead, to include;
 - Name
 - Nursing & Midwifery Council (NMC) Pin No.
 - Nursing Qualifications
 - Date of annual Registration
 - Date of last Revalidation
- 1.3 The clinical lead will be registered on sub part 1 of the NMC Nurse Register (ideally RN1 / RNA: Adult Nurse).
- 1.4 The nominated clinical lead shall have a high level of skill, knowledge, and competence; with an in-depth knowledge of long-term conditions (LTC) associated with ageing, managing complex multiple morbidities and frailty, acting as the 'clinical expert' to advise and support Staff in the delivery of the Services.
- 1.5 The nominated clinical lead will act as the Clinical Supervisor to evaluate and support other Registered Nurses and Nursing Associates, contributing to Revalidation processes.
- 1.6 The Clinical Lead will maintain an accurate data base for all Registered Nurses and Nursing Associates to include:-
 - Annual NMC Registration dates
 - NMC Revalidation dates
 - Training delivered

2. Registered Nurse Workforce

- 2.1 The Provider shall employ Registered Nursing Staff who are suitably qualified and have received appropriate training to enable them to plan, deliver and evaluate care to meet the individual and collective assessed needs of Resident(s) who require nursing care and support.
- 2.2 The Registered Nurses will support the assessment and review of all Residents referred to and/or receiving Continuing Health Care funding.

3. Role / Registered Nurse Responsibilities

- 3.1 In the provision of Services, the Registered Nurse Team shall be responsible for but not limited to:-
 - Adhering to the Nursing & Midwifery Council (NMC) 'Code of Conduct' and guidance within the NMC 'Scope of Professional Practice';

- Retaining and renewing professional NMC registration on an annual basis
- Completing NMC revalidation every three years to maintain NMC registration
- Ensuring they are up to date with their own professional practice
- Administering, recording and dispensing medications in a safe, evidence based way, aligned to local and national policy
- Reporting all Controlled Drug Incidents
- Administering and participating in health care initiatives for Residents to include immunisation and vaccination programmes
- Implement practice that will reduce the risk of infection
- Promoting practice that will ensure the prevention and control of infections
- Acting as a leader and role model for non-registered staff to promote effective, high quality care
- Liaising with health and social care professionals to ensure that each Resident has their individual care needs met
- Ensuring that all accidents and incidents are accurately and contemporaneously recorded
- Conducting continence assessments to promote continence for all Residents
- Only delegating tasks and duties that are within the other persons scope of competence in accordance with 'Accountability and delegation : Royal College of Nursing' (www.rcn.org.uk/professional-development/accountability-and-delegation)
- All aspects of their practice, including accountability for what they chose to delegate, and agreement, or not, to undertake activities delegated to them.
- Declaring and/or informing the Registered Manager / Responsible Person of any and all issues that may impact on the Homes ability to provide quality care

3.2 Any conduct issues should be reported to the NMC.

4. Enhanced Health in Care Homes (EHCH)

4.1 The Registered Nurse workforce will lead and drive the implementation of the Framework for EHCH, focussing on the delivery of care needs to improve outcomes for Residents.

SCHEDULE 1B – ADDITIONAL SCHEDULE FOR SPECIALIST PLACEMENTS

In addition to the requirements of Schedule 1, where a Resident is assessed as having a Learning Disability or requires a Specialist Service, the following provisions shall apply:-

1. Level of Need

- 1.1 Residential and Nursing Care Home services (adults 18+ except in exceptional circumstances) are used by people with a diverse range of needs including those with complex physical and/or mental health needs, behaviours that challenge, mobility needs, physical disabilities, and sensory impairment, including acquired brain injury (ABI).
- 1.2 For some people, the Home will not be a permanent home, but will have a transitional function while the Resident is enabled to become more independent, at which point the Resident will move into alternative accommodation e.g. Supported Living, Extra Care or being cared for in their own home.
- 1.3 Residents may have needs relating to cognitive impairment and mental health, which may demonstrate behaviours that challenge; often experiencing emotional and/or perceptual changes which can impact on daily functioning and ability to perform self-care safely. These behaviours may include but are not limited to aggression/violence, passive non-aggressive behaviour, severe dis-inhibition, intractable noises or restlessness and resistance to necessary care and treatment (this includes non-compliance). Severe fluctuations in mental state, disorientation, auditory and visual stimuli, disordered thought processes and impaired cognition can cause extreme frustration associated with communication difficulties and inappropriate interference with others. Mood disturbances or anxiety, periods of stress which have an impact on the persons health and wellbeing. In some cases, these behaviours may include:
 - Self-harm
 - Harm to others
 - Regular persistent damage to property, disruption or noise
 - The potential to abscond with a consequent significant risk
 - Smearing of faeces or other activity e.g. PICA which is at a frequency and intensity to cause significant risk to self and others
- 1.4 In many cases these behaviours may be caused or exacerbated by communication difficulties associated with autism and other conditions, or by rigidity of thought or ritualistic behaviours similarly associated.
- 1.5 The Providers must be able to respond to behaviours which are challenging with compassion and understanding in the context of the Resident's unique experience. Where aggression is present this should be understood in terms of the Resident's known life experience to be able to understand triggers for relapse and coping mechanisms.
- 1.6 Any changes in presentation could be associated with a physical health condition or infection and the Provider shall monitor these aspects of health to assist with differentiating between symptoms to be able to refer for specialist advice and treatment as necessary, e.g. the General Practitioner for a specialist physical/mental health assessment, diagnosis and treatment.
- 1.7 The Provider shall organise Staff to allow time for supporting Residents in groups or one-to-one to include, where relevant, connections to social network, community facilities or external environment that is meaningful to them. Evidence of this shall be clearly recorded.
- 1.8 The Provider shall ensure the physical environment, daily routine and the way Staff behave upholds the mental and emotional wellbeing of Service Users to include reducing barriers and separation.

2. Pricing Schedule requirements

- 2.1 The Council may agree to purchase additional 1:1 support hours detailed in the Contract but these hours will need to be recorded separately by the Provider and will be monitored as part of the overall contract management framework.

- 2.2 1:1 hours may be required to meet a change in need and will be subject to regular Review by the Provider and the Purchaser to assess if they are still required or can be reduced.
- 2.3 It is expected that the Provider will contact the Council where a Review shows the potential for a reduction in support provided.
- 2.4 The final decision to reduce any commissioned support hours shall be taken by the Council.
- 2.5 For individuals subject to S117 mental health provision the Provider should invoice the Council for its proportion as notified to the Provider from time to time, the remaining costs should be invoiced to the Lincolnshire Clinical Commissioning Group (CCG).

3. One to One Support

- 3.1 The Council may require 1:1 or 2:1 support for individual Residents following an Assessment by an Authorised Officer and where there are eligible needs to be met which will be defined in the Care and Support Plan. The Provider will provide a Resident with a timetable of support in an accessible format.
- 3.2 1:1 or 2:1 support is defined as one or two appropriately trained and competent member/s of Staff to one Resident for a specified number of hours each day or specified days. The member/s of Staff will be expected to keep the Resident within sight at all times (with exception of when privacy is required) and have an awareness of any risks identified in the Care and Support Plan.
- 3.3 The member/s of Staff must not be responsible for any other Resident or be engaged with any other tasks in the Home when providing additional support as set out in this Schedule. There must be cover provided when the member/s of Staff is on a break so that the Resident is always supported by one or two member/s of Staff within the specified times. Where possible there will be consistency of Staff providing the 1:1 or 2:1 support.
- 3.4 1:1 or 2:1 support is provided for a specific and assessed need. This must be well documented in the Care and Support Plan and Provider's Care Plan. Where there is an assessed risk that a Resident could make an attempt to harm themselves or others or where there is an immediate risk of absconding, support Staff must be within intervention distance at all times.
- 3.5 1:1 or 2:1 support can be required to support a Resident to manage behaviours through engagement and to enable the Resident to improve their life skills and support independence. This could be within the Home environment or in the community. Any identified Outcomes from 1:1 or 2:1 support must be clearly recorded in the Resident's Care and Support Plan and Provider's Care Plan.
- 3.6 All 1:1 or 2:1 support that is delivered must be recorded in full and be in line with the Residents' needs identified in their Care and Support Plan. This must include any episodes of behaviour that challenges, what were the triggers and how this was managed along with any identified Outcomes that have been achieved. These records need to be made available as part of any Review of the Residents' needs and will be used to support any future funding.
- 3.7 When there is a change of shift, there must be a robust handover to the next member/s of Staff picking up any 1:1 or 2:1 support. This must include any relevant information including the current mood, behaviour of the Resident and what triggers or de-escalation techniques used by the Staff member handing over. During handover, the Resident must continue to receive their 1:1/2:1 support by identified member/s of Staff until the handover is complete.
- 3.8 Any under delivery of 1:1 or 2:1 support hours should only occur in extenuating circumstances. Any such instances shall be notified to the named Practitioner and the Council.
- 3.9 Under delivery of commissioned 1:1 or 2:1 support hours shall be recorded and made available to the Council.

4. Maximising Health and Wellbeing

4.1 Included within the Contract Price are the cost of the following items and services:

- Travel to and from medical appointments (if NHS transport not available).
- Staff escorts on all 999 emergency trips to hospital
- Support those eligible for an annual health check to attend and ensure that any identified health issues are fed into health action plans;
- In partnership with other health professionals, contribute to the development of individual health action plans and ensure these are kept up to date and are relevant in citizens' lives;
- Support the individual in attending general practitioner (GP), hospital, dental appointments, optician etc. when/if required;
- Ensure that health needs are included in Support Plans;
- Promote the importance of and support individuals to maintain good health
- Assist with accessing information on health related matters;
- Support during periods of challenging behaviour, episodes of mental health difficulties and periods of illness;
- Support in managing continence issues;
- Support individuals to access other health services as necessary.

4.2 Staff members will have the specific knowledge and skills to work with Residents to achieve optimal wellbeing. Members of Staff will be expected to demonstrate to the Council their understanding of health promotion and how they work with Residents to maintain health and wellbeing.

4.3 The Provider will ensure that Staff have access to learning and development opportunities that includes public health messages and an understanding of the Services that can support them. Delivery of training courses should include self-advocates and family carers.

4.4 Staff shall have a good understanding of how to maintain good health, local health services and initiatives and a general knowledge of common health conditions and health risks for people with a learning disability. The Provider shall consider how its local community learning disability service can support this:

- Interpersonal skills in communication including non-verbal;
- Adapting own behaviour to promote relationships;
- Build meaningful interactions to include promoting empathy and unconditional positive regard, maintaining Residents personal world, identity, personal boundaries and space;
- Recognise the signs of anxiety and distress resulting from confusion, frustration or unmet need and respond by understanding the events the Resident is experiencing and diffusing their anxiety with appropriate therapeutic responses;
- Monitoring and effectively reviewing the effects and side effects of prescribed medication;
- Meaningful occupation/activities and stimulation as a part of effective therapeutic intervention and care and avoiding isolation. Understanding the changing nutritional care needs of those with dementia and providing services and support in a flexible, person-centred manner;
- Being flexible about the physical layout, facilities and routines;
- Effective management of behaviours that challenge and how agitation and aggression is a method of communicating unmet need;
- Risk assessment and management, emphasising freedom of choice and reasonable risk taking; and
- Promoting social and community networks and relationships.

4.5 The Provider will recognise the importance of supporting annual health checks for the Resident and where this has been arranged, support and prioritise attendance over social activities. The Provider will provide appropriate Staff to support the Resident in attending their annual health check and will ensure

that information available from annual health checks is used effectively to plan for, and respond to, the health needs of Residents as part of the Resident's Care and Support Plan, including the Provider using its best endeavours to ensure Residents are up to date on all necessary vaccinations (COVID-19, Flu, etc.).

- 4.6 Any Staff member supporting a Resident to attend a health appointment of any type should have permission from the Resident; have a good understanding of any health conditions; be able to advocate on behalf of the Resident and be prepared to support the Resident to feed relevant information back to others. Prior to a health appointment, the Staff member will meet with the Resident to agree the purpose of the appointment and to understand the Residents' expectations regarding how they wish to be supported.
- 4.7 Where possible Services must always be provided in the least restrictive way that enables the Resident to maximise their independence, health and wellbeing and supports their social, spiritual, emotional and healthcare needs.
- 4.8 The Provider will also demonstrate a commitment to preventative care as a means of reducing the number of emergency admissions and understands the specific service requirements of people with a learning disability. The Provider and its Staff will be aware that certain conditions, such as epilepsy, constipation and conditions related to dysphagia or swallowing (such as chest infections, pneumonia and gastro-oesophageal reflux disease) have been identified as in the top five reasons for hospital admissions for people with learning disabilities (IHaL) and as such will invest in appropriate support and training, to help reduce admissions from these conditions.
- 4.9 People with a learning disability often have poor standards of oral hygiene which can lead to a number of serious health conditions including heart disease. Therefore Providers will ensure staff have a robust understanding that pain as a result of toothache can also cause behaviour that challenges, and to make sure that staff do not overlook oral hygiene when providing Residents with care services and support but actively promote working with Residents to understand and maintain good oral hygiene with access to the dentist at least annually.
- 4.10 The Provider will ensure that the Services comply with the requirements of the 7 principles as detailed and explained in "A Vision for adult social care: Capable Communities and Active Citizens (November 2010) namely:-
- Prevention
 - Personalisation
 - Partnership
 - Plurality
 - Protection
 - Productivity
 - People

http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/publicationsandstatistics/Publications/PublicationsPolicyandGuidance/DH_121508

- 4.11 When providing the Services, the Provider will be mindful of the following national policy and guidance:-
- Death by Indifference (2007); Healthcare For All (2008); and Six Lives (2009)
 - Confidential Inquiry into the Premature Deaths of Adults with Learning Disabilities (2013)
 - Health Equalities Framework for People with a Learning Disability (2013)
 - Public Health Outcomes Framework 2013 – 16
 - Adult Social Care Outcomes Framework 2015 – 16
 - NHS Outcomes Framework 2015 – 16

5. Health Action Plans

- 5.1 In respect of Residents with the Services must promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms and respect for their inherent dignity. Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
- 5.2 The Provider will be a part of a multi-disciplinary team (MDT) approach to developing and supporting a health action plan for Residents with learning disabilities which holds information about the Resident's health needs, the professionals who support those needs, and their various appointments. The health action plan shall be based on a full health check.
- 5.3 The health action plan shall cover the full range of Services and support the person needs, including medication taken, dentistry, eye care, speech therapy, occupational therapy or physiotherapy.
- 5.4 The Provider will act as the Resident's facilitator to support them to develop, act on and keep the health action plan under Review.
- 5.5 As part of the Contract, the Provider is required to draw up a 'Plan for Improving Health' which shall evidence:-
- the leadership within their organisation for supporting Residents with disabilities to have better health and wellbeing;
 - an effective and comprehensive workforce training programme;
 - staff supervision and support models;
 - partnership and professional links with local primary care, preventative health and specialist learning disability services;
 - support to access annual health checks and both mainstream as well as specialist health services;
 - appropriate support to implement health action plans;
 - delivery of health promotion information;
 - support and planning for end of life care;
 - evidence of improvement or maintenance of Residents' health and wellbeing on an annual basis.
- 5.6 A senior manager of the Provider will have responsibility for drawing up, implementing and reporting on the organisation's 'Plan for Improving Health'.
- 5.7 Any Staff member supporting a Resident to attend a health appointment of any type should have permission from the individual; have a good understanding of any health conditions; be able to advocate on behalf of the person and be prepared to support the individual to feed relevant information back to others.

SCHEDULE 2 – PRICING SCHEDULE

Lincolnshire County Council's Expected Costs 2025/26 (per week)

With effect from 1st April 2025

Service Categories	Cost (£)
Older People Standard Residential	729
Older People Higher Dependency	805
Older People Nursing	806
Mental Health Standard	754
Mental Health Nursing	801
Physical Disability	938
Learning Disability	See table below

Expected Costs for Learning Disability Placements

Learning Disability Residential placements shall be contracted for against the following cost model.

Each package will be assessed against the needs of the Resident regarding the complexity of the care needs and the requisite staffing.

Further to this the size of the Residential establishment will be considered as part of the Usual Cost.

	Band 3	Band 2	Band 1
	Very intensive, high levels of care, very complex needs by exception	Medium for substantial needs	Moderate for appreciable needs:
Staffing Ratio	Total Number of Hours		
1:7			21
1:5		29	
1:3	45		

Learning Disability Expected Costs 2025/26

Unit Rates – Per Week (£)	Band 3	Band 2	Band 1
Standard 13+ beds	1,253	989	854
Smaller 7-12 beds	1,313	1,049	914
Smallest 1-6 beds	1,373	1,109	974

One to one hours may also be commissioned in addition to the core band at the following hourly rate:

2025/26
£15.97

SCHEDULE 3: CONTRACT MANAGEMENT AND MONITORING ARRANGEMENTS

1. STATEMENT OF INTENT

- 1.1 The Council has a duty to ensure that value for money is achieved in all services commissioned. Under the Contract is a requirement that value for money is demonstrated through delivering positive Outcomes for Residents in receipt of the Services. The Council and the Provider must ensure that robust contract management is taking place in order to achieve value for money and positive Outcomes.
- 1.2 Contract management for residential & nursing care will be undertaken at the individual Home level.

2. RESPONSIBILITIES OF THE AUTHORISED OFFICER

- 2.1 The Provider acknowledges and agrees that:-
- Contract management meetings shall be chaired and directed by the Authorised Officer
 - Contract management meetings shall be arranged for the forthcoming year on a rolling basis. Frequency of contract management meetings will be dependent upon a risk analysis assessment of the Services.
 - Contract management meetings shall be properly recorded and areas for improvement and action points with reasonable timescales shall be entered onto an improvement plan which will be shared with the Provider. Compliance with the improvement plan will be monitored by the Authorised Officer. Failure to comply with the improvement plan may lead to a Performance Default.
 - Contract management shall challenge the performance of the Services and compliance with the Service Specification.
 - Information made available by the Provider shall be scrutinised, analysed and challenged by Authorised Officer
 - The Authorised Officer shall be informed of issues with regard to the performance and/or conduct of a Provider to ensure compliance with the Contract and Service Specification
 - The Authorised Officer shall be asked for support and advice as and when required
- 2.2 Contract management meetings will be held between the Council and the Provider with an initial contract management meeting being held in the first year and, as a minimum, annually thereafter, providing there are no risks associated with the Contract.
- 2.3 The Council may request a contract management meeting with the Provider at any time or may increase the frequency of contract management meetings if any concerns in the following areas are identified:-
- Service level
 - Contract compliance
 - Contract value and payments
 - Quality
 - Issue of a Default
 - Complaints
 - Risk to the Council
 - Risk to the Residents
- 2.4 The frequency of the contract management meetings is subject to change throughout the duration of the Contract.
- 2.5 The Provider shall be issued with an agenda prior to the contract management meeting. The standard agenda items are subject to change throughout the duration of the Contract.

3. RESPONSIBILITIES OF THE PROVIDER

- 3.1 The Provider shall at all times co-operate with the processes of the Council for monitoring, evaluation and quality audit in whatever way reasonably requested, and shall provide copies of any documents that are reasonably requested by the Council.
- 3.2 The Provider shall review the quality of its own provision (in accordance with Regulation 10 of the Health & Social Care Act 2008 as amended) utilising systematic processes and shall take timely action to address and remedy any concerns which have been identified. This may be determined by the following methods:-
- seeking the views of Residents;
 - ensuring that the Services delivered are effective and efficient and delivers positive Outcomes for Residents, empowering them to live their life as they wish.
 - checking that all records are properly maintained and updated;
 - regular monitoring and evaluation of complaints/concerns, in addition to the requirements of the Provider's complaints procedure;
 - an annual service review of performance and Resident satisfaction with the Service provided.
- 3.3 The Provider shall maintain regular communication with the Authorised Officer in whatever way reasonably required by the Council.
- 3.4 The Provider shall allow the Authorised Officer or his representatives reasonable access to the premises where the Services are provided, including access to all documents relating to the performance of the Services under this Contract.
- 3.5 The Provider shall make available relevant information concerning Residents on request from the Council.
- 3.6 The Council retains the right to canvass confidentially the views of the Resident(s) and/or their representative in relation to the Services.
- 3.7 An annual service review shall be undertaken by the Authorised Officer with the Provider following receipt of the information as detailed below.
- 3.8 Reviews of contract management meetings shall consider the Provider's ability to deliver the Services and whether it is compliant with the Contract.
- 3.9 Reviews of contract management meetings shall determine whether any alterations are required to the Service Specification, the monitoring arrangements as detailed in this Schedule 3, or any other parts of the Contract.
- 3.10 The Provider shall provide the Monthly contract monitoring information via an online form within seven (7) calendar days of the end of each Month.
- 3.11 The Council shall also access information from the following sources to inform discussions at Contract management meetings:-
- Contract spend
 - CQC ratings and reports
 - Business status (e.g., if the home is in administration or is up for sale)
 - Safeguarding alerts
 - Poor practice concerns
 - Fire & Rescue
 - Health protection team

- 3.12 The Council will operate a risk based approach to inform the appropriate contract management response. Contract management meetings will be held according to the risk level of each Home:

High Risk – Monthly meetings

Medium Risk – Quarterly meetings

Low Risk – Annual meetings

- 3.13 Where a Provider is in Default of the contract a Performance Default will be issued in accordance with clause 10 accompanied by an improvement plan with agreed timescales. The improvement plan may be drawn up by the Authorised Officer. The Provider will be set reasonable timescales to respond to the improvement plan detailing how and when they will correct the Default. Compliance with the improvement plan will then be monitored by the Authorised Officer.

4. MANAGEMENT INFORMATION SCHEDULE

- 4.1 The Provider must make information available to the Purchaser via the methods detailed within this schedule and at the frequencies specified.

- 4.2 The information submitted by the Provider shall be used by the Council for the following purposes:-

- To inform strategic planning and future commissioning decisions
- To provide market oversight and support intelligence sharing
- To inform risk assessment within individual services and across the sector
- To support emergency planning and response to risks arising
- To support contract management and inform discussions at contract management visits/calls with the Provider enabling effective prioritisation and targeted support to the Provider
- To promote the Services and available capacity and provide accurate information to those looking to make placements
- To streamline requirement where possible and improve multi-agency information sharing

- 4.3 The Provider shall ensure that any information asked for has been developed based upon the requirements of the Contract with the ability for it to be analysed and for making sure that the Services are meeting the Outcomes targeted, and positively influencing the lives of the Residents. The Provider shall ensure that the information is provided promptly and accurately.

- 4.4 The Council is committed to reducing the burden in relation to data collection and submission where possible.

- 4.5 Where information is available to the Council from the North of England Commissioning Support Unit (NECS) National Capacity Tracker, the Council will commit to using that data. In the event that the National Capacity Tracker is no longer able to meet the needs of the Council, the Council reserves the right to initiate local data collection methods with the Provider.

NECS National Capacity Tracker

- 4.6 The Provider must be registered on the North of England Commissioning Support Unit (NECS) National Capacity Tracker (<https://capacitytracker.com/>).

- 4.7 The Provider must ensure that the capacity tracker is up to date at all times in relation to details of the Services, including (but not limited to): address details, contact directory, room details, accessibility, classification, funding profile and Services offered.

- 4.8 The Provider must update the capacity tracker on a regular basis in relation to bed capacity, occupancy, and the number of vacant beds by vacancy type. The capacity tracker shall be updated by the Provider daily or as and when occupancy changes, however, this must be updated every seven (7) calendar days as a minimum.

- 4.9 The Provider shall ensure that following information will be accessed by the Council via the capacity tracker to provide market oversight and information of Provider engagement, support and contract management.

Information	Frequency
Provider Details and Services <ul style="list-style-type: none"> • Address Details • Contact Directory • Service profile, classification and funding 	As and when changes occur
Costs and Vacancies <ul style="list-style-type: none"> • Admission Status • Total number of residents today • Accepting out of hours admissions Yes/No • Number of vacancies by vacancy type • Current status (overall RAG status) 	Expected daily, minimum weekly
Workforce <ul style="list-style-type: none"> • Total number of Staff employed, including: <ul style="list-style-type: none"> ○ Registered nurses ○ Care providing staff ○ Non-care providing staff ○ Agency/Bank Staff • Workforce Status (RAG rating based upon staffing capacity) 	Expected daily, minimum weekly

- 4.10 The Council will also make use of additional information captured via the capacity tracker to support greater market intelligence, particularly in response to national initiatives and data collected in response to local and national sector developments, including but not limited to:-
- COVID-19 business continuity information
 - COVID-19 and flu vaccination data
 - Infection, prevention and control fund data submissions and ad-hoc surveys

- 4.11 In the event that the national capacity tracker is no longer able to meet the needs of the Council, the Council reserves the right to initiate local data collection methods to collect the above detailed information at the same frequencies as detailed above from the Provider.

Adult Social Care Workforce Data Set (ASC-WDS)

- 4.12 The Provider must update the ASC-WDS at the frequencies determined by Skills for Care.
- 4.13 The Capacity Tracker and Skills for Care teams meet regularly to minimise any duplication between the two data collection services.

Data Requirement

- 4.14 The Provider shall make available relevant information concerning Residents on request from the Council.
- 4.15 The Council retains the right to canvass confidentially the views of the Resident(s) and/or their representative in relation to the Services.
- 4.16 The Provider shall send to the Council the monitoring information at Home level as detailed below via an online form, to be submitted Monthly within seven (7) calendar days of the end of each Month.

Information
Current Occupancy Profile; <ul style="list-style-type: none"> • Current total number of residents • Current number of residents by funding type: <ul style="list-style-type: none"> ○ Fully funded by the Council ○ Fully funded by Lincolnshire health services ○ Jointly funded by the Council and Lincolnshire health services ○ Fully funded by another local authority or other health authority ○ Privately funded residents living in Lincolnshire prior to admission ○ Privately funded residents living outside of Lincolnshire prior to admission
Resident Flow <ul style="list-style-type: none"> • Number of new Residents admitted to the Home within the reporting period • Number of Residents leaving the Service within the reporting period
Outstanding Individual Form of Agreements (IFA) <ul style="list-style-type: none"> • Current number of outstanding IFAs
Staff Turnover <ul style="list-style-type: none"> • Number of new starters in the reporting period • Number of leavers in the reporting period • Current number of Staff vacancies in relation to the provision of residential care: <ul style="list-style-type: none"> ○ Registered nurses ○ Care providing Staff ○ Non-Care providing Staff • Number of hours during the reporting period that have been covered by agency workers or other
Notifiable incidents , within the specified reporting period; <ul style="list-style-type: none"> • Number of falls • Number of grade 3 or 4 pressure sores • Number of urinary tract infections (UTIs) • Number of controlled drug incidents • Number of deaths that occurred whilst Services were being delivered • Any other incidents notifiable to the CQC under regulations 16, 17 & 18
Hospital Admissions and Discharges within the specified reporting period; <ul style="list-style-type: none"> • Number of emergency transfers to hospital that resulted in admission • Number of emergency transfers to hospital that did not result in admission • Number of inappropriate hospital discharge forms completed

- 4.17 In order to securely collect data and management information from the Provider, the Council will utilise an online form and case management system.
- 4.18 In contracting with the Council, the Provider will be registered onto the case management system to enable submission of data returns at Home level.
- 4.19 The Provider will receive automated system emails when data submissions are due. Automated emails will include the full information needed to enable the Provider to access and submit data, including a direct link to the case management system and access information.
- 4.20 The Provider must ensure that the correct contact email address for data submission reminders is provided to the Council at all times to ensure that reminders are issued to the correct email inbox.
- 4.21 Data must be submitted seven (7) calendar days following the end of the Month. For example, management information for April 2022 must be submitted no later than the 7th May 2022. Failure to provide management information by the Provider within the given timescales could lead to a Default.

- 4.22 Once management information has been completed within the online form, the Provider will have the opportunity to review the data submission before pressing the 'Submit' button. In submitting data, the Provider acknowledges that the data submitted is accurate and up to date.
- 4.23 Once a data return has been submitted, the Provider will receive an automated email confirmation to the registered email address containing all of the information submitted for their records.
- 4.24 The Council reserves the right to share information with partners as appropriate and remains committed to reducing the burden of duplication.

Annual Service Monitoring

- 4.25 On an annual basis the Provider shall confirm that the contact details contained in Schedule 4 and 5 remain accurate.
- 4.26 Prior to an annual contract management visit the Provider shall submit, on request by the Authorised Officer, the following information:
- Business Continuity Plan
 - Recruitment policy
 - Evidence of Insurance Policies required under clause 17
 - Training matrix
 - Annual Business Plan
 - Any further evidence available to support discussion of the agenda items

Strategic Contract Management

- 4.27 If the Provider operates more than one Home, the Provider may request quarterly strategic contract management meetings to review the performance of the Provider across all of its settings. The standard agenda for these meetings will be provided in advance.

SCHEDULE 4 - KEY CONTACTS

As specified in the Short Form of Agreement

SCHEDULE 5 - NOTICES

As specified in the Short Form of Agreement

SCHEDULE 6: IMPROPER CONDUCT

The following are defined as Improper Conduct involving the Provider or any of its staff:-

- (a) The serious non-compliance with the provisions of the Health and Safety at Work Act 1974
- (b) Operation of a Care Home without insurance cover
- (c) Non-compliance with the requirements of race relations legislation, equal opportunities legislation and disability discrimination legislation
- (d) Deliberate misuse of drugs and/or medicines when delivering Services to the Resident
- (e) Abuse or neglect of the Resident
- (f) Taking or attempting to take dishonest or illegal financial advantage of the Resident
- (g) Offering improper inducements or exerting unreasonable pressure upon any person to encourage them persons whom they represent to receive long term personal care
- (h) Being convicted under the provisions of the Health & Social Care Act 2008
- (i) Imposing charges on the Resident that are not permitted by the Contract
- (j) Any other act or offence that could pose a risk or actual harm to Residents

SCHEDULE 7 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Council and the Provider are each Controllers.
2. The point of contact for Data Subjects is Amy Jaines, Data Protection Officer, Lincolnshire County Council, or her successor.

A. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Description	Details
Identity of the Council and the Provider	The Parties acknowledge that for the purposes of the Data Protection Legislation that they are each a Controller.
Subject matter of the processing	The processing is needed in order to ensure that the Provider can effectively deliver the Contract.
Duration of the processing	Duration of the Contract
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).</p> <p>The purpose of the processing of Personal Data is to enable the provision of public services which includes:</p> <ul style="list-style-type: none">• provision of Long and Short Term Personal Care within a Care Home or Care Home with Nursing• maintaining the Council's own accounts and records• supporting and managing employees• promoting services provided by the Council• carrying out health and public awareness campaigns• managing property• licensing and regulatory activities• the provision of social services• corporate administration and all activities we are required to carry out as a data controller and public authority
Type of Personal Data	<p>The type of Personal Data which is Processed under this Contract may include:</p> <ul style="list-style-type: none">• Personal details e.g. name, address, date of birth, NI number, telephone number, images, biometric data;• family detail e.g. personal details of relatives, legal guardians and friends;• financial details e.g. pay, bank details, credit/debit card details• lifestyle and social circumstances e.g. physical or mental health details, racial or ethnic origin, trade union membership, political

	<p>affiliation, political opinions, offences (including alleged offences), religious or other beliefs of a similar nature, criminal proceedings, outcomes and sentences;</p> <ul style="list-style-type: none"> • employment and education details; • student and pupil records; • business activities; • case file information.
Categories of Data Subject	<p>Categories of Data Subject may include:</p> <ul style="list-style-type: none"> • Residents • suppliers • staff • temporary workers • persons contracted to provide a service • claimants • volunteers • agents • Residents • patients • complainants, enquirers or their representatives • professional advisers and consultants • students and pupils • carers, representatives or legal guardians • landlords • recipients of benefits • witnesses • offenders and suspected offenders • licence and permit holders • traders and others subject to inspection • people captured by CCTV images • representatives of other organisations • members of the public • users of a particular website
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>Upon termination or expiry of the contact all Personal Data shall be dealt with by the Provider in accordance with its own data retention policies.</p>

B. MINIMUM INFORMATION SECURITY CONTROLS

The minimum security controls detailed within this Schedule are to be in place at all times when processing Information for the purpose of or in connection with the delivery of the Services. Such Information includes Personal Data and other Confidential Information or data.

1. GENERAL

1.1 The Provider shall have a security policy in place which sets out management commitment to information security, defines information security responsibilities, and ensures appropriate governance.

1.2 All Staff shall complete data protection and information security training commensurate with their role.

2. ICT INFRASTRUCTURE

Boundary Firewall and Internet Gateways

2.1 Information, applications and devices shall be protected against unauthorised access and disclosure from the internet, using boundary firewalls, internet gateways or equivalent network devices.

Secure Configuration

2.2 ICT systems and devices shall be configured to reduce the level of inherent vulnerabilities and provide only the services required to fulfil their role.

User Access Control

2.3 User accounts shall be assigned to authorised individuals only, managed effectively, and they shall provide the minimum level of access to applications, devices, networks, and Personal Data.

2.4 Access control (username & password) shall be in place. A password policy shall be in place which includes provisions to ensure:-

- (a) avoidance of the use of weak or predictable passwords;
- (b) all default passwords are changed;
- (c) robust measures are in place to protect administrator passwords; and
- (d) account lock out or throttling is in place to defend against automated guessing attacks.

2.5 End user activity shall be auditable and include the identity of end-users who have accessed systems.

Malware Protection

2.6 Mechanisms to identify detect and respond to malware on ICT systems and devices shall be in place and shall be fully licensed, supported, and have all available updates applied.

Patch Management and Vulnerability Assessment

2.7 Updates and software patches shall be applied in a controlled and timely manner and shall be supported by patch management policies.

2.8 The Provider shall adopt a method for gaining assurance in its organisation's vulnerability assessment and management processes, for example by undertaking regular penetration tests.

2.9 Software which is no longer supported shall be removed from ICT systems and devices.

Cloud Services

- 2.10 The Provider shall ensure that the controls applied to the use of cloud services satisfactorily supports the relevant security principles set out in the National Cyber Security Centre Cloud Security Principles: www.ncsc.gov.uk/guidance/implementing-cloud-security-principles

3. PROTECTING INFORMATION

Electronic Information

- 3.1 Electronic copies of Information shall be encrypted at rest to protect against unauthorised access.
- 3.2 When transmitting Information over the internet, over a wireless communication network e.g. Wi-Fi, or over an untrusted network the Provider shall use an encrypted communication protocol.
- 3.3 The Provider shall only use ICT which is under its governance and subject to the controls set out in this Schedule.

Hard Copy Confidential Information

- 3.4 Hard copy Confidential Information shall be stored securely when not in use and access to it shall be controlled.
- 3.5 Hard copy Confidential Information shall be transported in a secure manner commensurate with the impact a compromise or loss of information would have and which reduces the risk of loss or theft.

Secure Destruction of Information

- 3.6 Electronic copies of Information shall be securely destroyed when no longer required, including Information stored on servers, desktops, laptops or other hardware and media.
- 3.7 Hard copy Information shall be securely destroyed when no longer required.
- 3.8 Secure destruction means destroying Information so it cannot be recovered or reconstituted.
- 3.9 A destruction certificate may be required by the Council to provide the necessary assurance that secure destruction has occurred.

4. SECURITY INCIDENTS/PERSONAL DATA BREACH

- 4.1 The Provider shall notify the Council immediately of any fact or event which results in, or has the potential to result in, the compromise, misuse, or loss of Information, ICT services or assets.
- 4.2 The Provider shall notify the Council immediately of any Personal Data breach if the breach relates to Personal Data Processed in respect of this Contract.
- 4.3 The Provider shall fully co-operate with any investigation that the Council requires as a result of such a security incident or Personal Data breach.

5. COMPLIANCE

- 5.1 The Provider shall inform the Council of any non-compliance with the controls set out in this Schedule. Any deficiencies in controls shall be subject to a documented risk management process and where appropriate a remediation plan shall to be implemented with the aim of reducing, where possible, those deficiencies.
- 5.2 Independent validation which has been used as evidence of appropriate security controls by the Provider shall be maintained by the Provider for the duration of the Contract.

- 5.3 The Provider shall inform the Council of any expired or revoked evidence used as independent validation.

SCHEDULE 8 - DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

CONTENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

1. The Provider shall ensure that the Disaster Recovery and Business Continuity Plan includes:-
 - (a) details of how the Provider shall implement the Disaster Recovery and Business Continuity Plan;
 - (b) details of how the Disaster Recovery and Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Council (as notified by the Council from time to time);
 - (c) details as to how the invocation of any element of the Disaster Recovery and Business Continuity Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the Services;
 - (d) identification of all reasonably possible failures of or disruptions to the Services;
 - (e) In respect of any software used in the Services, the back-up methodology, data verification procedures, hardware configuration details, network planning and invocation rules and procedures, data centre site audits, possible areas where system critical elements can be "dual sourced" so as to eliminate or minimise single points of failure and business continuity maintenance;
 - (f) identification of all potential disaster recovery scenarios;
 - (g) provision of appropriate levels of spares, maintenance equipment and test equipment;
 - (h) responsibilities of the Sub-Contractors in the event of a Disaster; and
 - (i) Council obligations and dependencies.
- 1.2 The Provider shall ensure that the Disaster Recovery and Business Continuity Plan identifies and details the processes and activities which it shall implement upon the occurrence of business-critical emergency situations. In particular, the Disaster Recovery and Business Continuity Plan shall include:
 - (a) identification of Service priorities in the event of a Disaster;
 - (b) risk analysis of key business risks (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis). Key business risks could include the loss of Staff, key contacts, premises, key resources and key Sub-Contractors and/or suppliers;
 - (c) details of business processes, procedures (including procedures for activation, escalation and recovery) and responsibilities;
 - (d) a communications strategy for Staff, the media and key internal and external stakeholders;
 - (e) identification of key internal and external interdependencies;
 - (f) identification of essential resources and equipment needed during a Disaster;
 - (g) a contact list that contains details of all Staff, Sub-Contractors and anyone to be relied upon by the Provider to provide the Services; and

(h) procedures for reverting to normal Service delivery.

2. REVIEW AND AMENDMENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

2.1 The Disaster Recovery and Business Continuity Plan shall be reviewed by the Council and the Provider annually, or at such other times as may be requested by the Council or the Provider.

SCHEDULE 9 – EXIT STRATEGY

EXIT STRATEGY REQUIREMENTS

1. Without prejudice to the provisions set out in the Contract, upon notification of this Contract terminating, howsoever caused, or at least twelve (12) Months prior to the expiry of this Contract, the Parties shall meet to discuss a timetable for drawing up and shall draw up a handover plan covering the performance of the obligations of both Parties during the handover period. In any event, the Provider shall, at no cost to the Council, provide such cooperation, information and assistance to the Council as may be reasonably required by the Council to transfer and to enable a smooth migration of the Services being supplied by the Provider including enabling the Council and/or a Replacement Provider to perform services the same as or substantially the same as the Services in a similar manner as required under this Contract.
2. The Provider and the Council shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the transition of the Services to the Council or a Replacement Provider.
3. The Provider agrees that if it is requested by the Council it shall use all reasonable endeavours to assign or novate any existing contracts which the Provider has entered into with third parties in connection with the provision of the Services including the leasing of any equipment used in the delivery of the Services to the Council or to any Replacement Provider.
4. The Provider shall not in the twelve (12) Month period prior to the expiry of this Contract (or such period remaining where a notice of termination has been issued) (the "**Applicable Period**") in relation to the Services except with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed:-
 - 4.1 incur any expenditure or enter into any commitments other than in the ordinary course of trading;
 - 4.2 dispose of or agree to dispose of or grant any option in respect of any part of any land, buildings, equipment, spare parts, tools books, records, revenues, intellectual property rights, other than stock in the ordinary course of trading;
 - 4.3 materially vary the terms of any contracts with any provider of goods and/or services already entered into;
 - 4.4 enter into any long-term (being twelve (12) Months or longer), unusual or abnormal contract or commitment;
 - 4.5 enter into any leasing, hire purchase, contract hire or other agreements or arrangements for payment on deferred terms;
 - 4.6 grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future incomes or assets affecting this Contract and/or the provision of the Services;
 - 4.7 permit any of its insurances to lapse or do anything which would make any policy of insurance void or voidable;
 - 4.8 in any way depart from the ordinary course of its day to day business either as regards the nature or scope or the manner of conducting the same;

- 4.9 pay any fees or commissions to any persons other than fees payable on arm's length terms to third parties who have rendered bona fide service or advice required in the ordinary course of business;
- 4.10 release, waive or modify any warranty or guarantee given by any supplier of goods or services;
- 4.11 cause or permit any item comprised in the records relating to the Services to be removed or destroyed or any programs or data held on the computer systems of the Provider and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with the DPA or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site.