

**Framework Agreement
relating to adults placed
in care homes and care
homes with nursing**



THIS AGREEMENT is made the day of

20

BETWEEN:

- (1) THE BOROUGH COUNCIL OF BOLTON of Town Hall Bolton BL1 1RU (hereinafter called "the Authority")
- (2) **[INSERT PROVIDER]** of **[insert address]** (Registered Company Number: **[insert if relevant]**) (hereinafter called the "Provider")

WHEREAS:

- (1) The Authority requires the delivery of care home and care home with nursing services to those individuals nominated by the Authority ("Services").
- (2) The Provider has agreed to deliver the Services, which are more particularly detailed in the specification attached at Schedule 1 to the terms and conditions annexed to this Agreement at Appendix 1 ("Terms and Conditions").
- (3) The Provider shall deliver the Services under an Individual Service User Placement Agreement (ISUPA) and in accordance with the terms and conditions of this Agreement.
- (4) Nothing shall require the Authority to purchase a particular volume of the Services under an ISUPA.

IT IS NOW AGREED as follows:-

1. This Agreement shall commence on 1st December 2018 and, unless terminated in accordance with the Terms and Conditions, shall continue for a term of four years ("Agreement Period"). The Authority may upon written agreement with the Provider extend the Agreement Period for a further period not exceeding two years. Any extended term agreed shall form part of the Agreement Period.
2. The Provider shall, as and when required by the Authority during the Agreement Period, deliver the Services to the Authority in accordance with this Agreement under a ISUPA.
3. As and when the Services are required, the Authority will enter into an ISUPA with the Provider in accordance with the procedures detailed in the Specification.
4. In consideration of the provision of the Services, the Authority shall pay to the Provider the care fees detailed in each ISUPA and calculated in accordance with the Specification ("Care Fees") on those payment terms detailed in this Agreement.
5. The Provider shall, as required under clause 21.2 of the Terms and Conditions, take out and maintain for the period ending no earlier than the expiry of the final ISUPA in operation under this Agreement:

- 5.1 Public liability insurance in an amount of not less than £10,000,000 for any one occurrence or series of occurrences arising during each policy year;
 - 5.2 Employers' liability insurance in an amount of not less than £10,000,000 for any one occurrence or series of occurrences arising during each policy year;
 - 5.3 Professional Indemnity Insurance in an amount of not less than £5,000,000 for any one occurrence or series of occurrences arising during each policy year.
 - 5.4 Comprehensive motor insurance in respect of any transport used by any member of the Provider's Staff; and
 - 5.5 Any other such insurance as the Provider is required to hold in delivering the Services.
6. The Authority and the Provider shall each have the right to terminate the Agreement on no less than six months' written notice to the other.
7. The term "Agreement" shall mean the terms and conditions contained herein together with:
- (1) the Terms and Conditions (attached at Appendix 1) and any other document agreed between the Authority and the Provider under the Terms and Conditions;
 - (2) the Specification (attached at Schedule 1 to the Terms and Conditions)
 - (3) each ISUPA entered into by the Authority and the Provider under this Agreement
8. In the event of conflict the following order of priority shall apply:
- (a) The terms and conditions contained herein;
 - (b) The Terms and Conditions and any document agreed between the Authority and the Provider under the Terms and Conditions;
 - (c) The Specification; and
 - (d) Each ISUPA entered into by the Authority and the Provider under this Agreement.
9. Neither the Authority nor the Provider shall be liable for any statement, representation, promise, inducement or understanding made unless expressly contained or incorporated into this Agreement.

IN WITNESS whereof the Authority and the Provider have executed this Agreement as a Deed the day and year first before written

Executed as a deed by THE
BOROUGH COUNCIL OF
BOLTON affixing its Common
Seal in the presence of:

Authorised Sealing Officer

Executed by []
acting by

.....
Director signature

.....
Director/Secretary/Witness signature

.....
Witness Name

.....

.....
Witness Address

APPENDIX 1

TERMS AND CONDITIONS



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1. DEFINITIONS & INTERPRETATION

1.1 In these terms and conditions the following expressions shall have the following meanings: -

“Acquired Rights Directive” shall mean the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States of the European Union relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

“Agreement” shall have the meaning afforded to it in the main body of the Agreement

“Agreement Manager” the person appointed from time to time by the Authority and the person appointed from time to time by the Provider to manage the Agreement on their behalf and shall include any deputy appointed

“Agreement Period” shall mean the term specified in paragraph 1 of the main body of the Agreement

“Appropriate Pension Provision” shall, in respect of Eligible Employees, mean membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer

“Authority” shall have the meaning afforded to it in the main body of the Agreement

“Bolton Brand” shall mean:

- (a) Bolton Council (registered trade mark number: 2443977)
- (b) Part of the Bolton Family (registered trademark number: 2443967)
- (c) any other phrase which the Authority develops from time to time in relation to the trademarks detailed at (a) and (b) above or in relation to the operation or functions of the Authority

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

“Business Continuity” shall mean the ability to maintain operations and services in the face of a disruptive event

“Business Continuity Exercise” shall mean an activity in which the Business Continuity Strategy is rehearsed in part or in whole to ensure that the same contains the appropriate information and produces and achieves the desired result when put into effect

“Business Continuity Plan” shall mean a documented collection of procedures and information that is developed, compiled and maintained in readiness for use in an incident to enable the Provider to continue to deliver its critical activities at an acceptable pre-defined level

“Business Continuity Strategy” shall mean the strategy to be developed and implemented by the Provider which details how the Provider will ensure its recovery and continuity in the face of a disaster or other major incident or business disruption

“CCA” shall mean the Civil Contingencies Act 2004

“Change of Control” means a change in Control of the Provider or a sub-contractor of the Provider

“Commencement Date” shall mean the date on which the Agreement commences as specified in **paragraph 1** of the main body of the Agreement

“Confidential Information” shall mean all confidential information relating to the Purpose which the Authority or its contractors/sub-contractors or their representatives directly or indirectly discloses, or makes available, to the Provider before, on or after the Commencement Date. This includes but is not limited to:

- (a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- (b) the existence and terms of this Agreement;
- (c) all confidential or proprietary information relating to:
 - (i) the business, affairs, contractors/sub-contractors, partners, suppliers, plans, intentions, or market opportunities of the Authority; and
 - (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Authority;
 - (iii) any information, findings, data or analysis derived from Confidential Information; and
 - (iv) any other information that is identified as being of a confidential or proprietary nature

but excludes Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Provider in breach of the Agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- (b) it was available to the Provider on a non-confidential basis prior to disclosure by the Provider;
- (c) it was, is, or becomes available to the Provider on a non-confidential basis from a person who, to the Provider’s knowledge, is not under any confidentiality obligation in respect of that information;

- (d) it was lawfully in the possession of the Provider before the information was disclosed by the Provider;
- (e) it is strictly required to enable a determination to be made under clause 18 below;
- (f) the parties agree in writing that the information is not confidential.

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise)

“Data Protection Legislation” shall mean:

- (a) the Data Protection Act 1998 and the EU Data Protection Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 until repealed;
- (b) the General Data Protection Regulation (Regulation (EU) 2016/679);
- (c) the Data Protection Act 2018;
- (d) the Law Enforcement Directive (Directive (EU) 2016/680);
- (e) the Regulation of Investigatory Powers Act 2000;
- (f) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000;
- (g) the Privacy and Electronic Communications (EC Directive) Regulations 2003, implementing the Electronic Communications Data Protection Directive 2002/58/EC; and
- (h) all other applicable laws and regulations relating to protection, processing and sharing of personal data and privacy (as amended), including where applicable the guidance and codes of practice issued by the Information Commissioner

“DBS” shall mean Disclosure and Barring Service

“DPA 1998” shall mean the Data Protection Act 1998

“DPA 2018” shall mean the Data Protection Act 2018

“EIR” shall mean the Environmental Information Regulations 2004

“Employment Liabilities” shall mean all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of

settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses

“Exempt Information” shall mean any information or class of information (including but not limited to any document, report and contract or other material containing information) relating to the Agreement or otherwise relating to the Provider which falls within an exemption to FOIA (as set out therein)

“Existing Intellectual Property Rights” shall mean those Intellectual Property Rights vested in the Authority or the Provider prior to the Commencement Date

“Fees” shall have the meaning afforded to it in the main body of the Agreement

“FOIA” shall mean the Freedom of Information Act 2000

“Force Majeure Event” shall mean an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and
- (e) strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labour not employed by the affected Party, its subcontractors or its suppliers and which affect an essential portion of the works but excluding any industrial dispute which is specific to the performance of the works or this contract

“GDPR” shall mean the General Data Protection Regulation (Regulation (EU) 2016/679)

“Improvement Notice” shall mean a written notice served by the Authority on the Provider detailing the improvements which the Authority requires the Provider to make in relation to the delivery of the Agreement

“Intellectual Property Rights” shall mean patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of

the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

“ISUPA” shall have the meaning afforded to it in the main body of the Agreement

“Law” shall mean any 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;

“LED” shall mean the Law Enforcement Directive (Directive (EU) 2016/680)

“Losses” shall include but not be limited to actions claims losses demands proceedings damages costs and expenses

“Material Breach” shall mean a substantial failure to perform any term or condition of the Agreement, as determined at the Authority’s sole discretion

“Party” shall mean a party to the Agreement and **“Parties”** shall mean all the parties to the Agreement

“Personal Data” shall have the meaning afforded to it in GDPR

“Prohibited Act” shall mean the following:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;
- (c) to commit any offence:
 - (i) under the Bribery Act; or
 - (ii) under section 117(2) of the Local Government Act 1972
 - (iii) under legislation creating offences concerning fraudulent acts;
 - (iv) at common law concerning fraudulent acts relating to the Agreement or any other contract with the Authority; or
 - (v) defrauding, attempting to defraud or conspiring to defraud the Authority

“Provider” shall have the meaning afforded to it in the main body of the Agreement

“Provider’s Final Staff List” shall mean the list of information specified in Part 2 of Schedule 3 to these terms and conditions, detailing all the Provider’s and Sub-Contractor’s staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date

“Provider’s Provisional Staff List” shall mean the list of information specified in Part 1 of Schedule 3 to these terms and conditions, prepared and updated by the Provider of all the Provider’s and Sub-Contractor’s staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list

“Regulatory Body” shall mean any government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Authority

“Relevant Employees” shall mean those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Provider by virtue of the application of TUPE

“Relevant Transfer” shall mean a relevant transfer for the purposes of TUPE

“Replacement Provider” shall mean any third party supplier of any services that are fundamentally the same as any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of the Agreement Period, whether those services are provided by the Authority internally or by any Replacement Provider

“Services” shall mean those services to be delivered to the Authority by the Provider under the Agreement as more particularly described in the main body of the Agreement

“Service Transfer Date” shall mean the date on which the Services (or any part of the Services), transfer from the Provider or Sub-Contractor to the Authority or any Replacement Provider

“Specification” shall have the meaning afforded to it in the main body of the Agreement

“Staff” shall mean employees, volunteers and agency staff

“Staffing Information” shall mean, in relation to all persons detailed on the Provider’s Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE and details of whether the staff are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services

“Sub-Contractor” shall mean the contractors or Providers engaged by the Provider to provide goods, services or works to, for or on behalf of the Provider for the purposes of providing the Services to the Authority.

“SVGA” shall mean Safeguarding Vulnerable Groups Act 2006

“Third Party Employer” shall mean a Provider engaged by the Authority to provide some or all of the Services to the Authority before the date(s) on which the Services (or any part of the Services), transfer from the Authority and/or any Third Party Employer to the Provider or Sub-Contractor and whose employees will transfer to the Provider on the date(s) on which the Services (or any part of the Services), transfer from the Authority and/or any Third Party Employer to the Provider or Sub-Contractor

“TUPE” shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

“Working Day” shall mean Monday to Friday in any week, excluding public holidays in England

1.2 In the Agreement:

1.2.1 Whenever required by the context the singular includes the plural and vice versa and words importing the masculine shall include the feminine and vice versa;

1.2.2 The headings used in these terms and conditions are for ease of reference only and shall not affect the interpretation or construction of the Agreement;

1.2.3 Unless the context otherwise requires reference to a clause or sub-clause is a reference to a clause or sub-clause of these terms and conditions; and

1.2.4 References to a specific statute include any statutory extension or modification, amendment, replacement or re-enactment of such statute and any regulations or orders made under such statute.

2. TERM OF AGREEMENT

The Agreement shall commence on the Commencement Date and continue for the Agreement Period unless terminated earlier in accordance with these terms and conditions.

3. THE CARE FEES

3.1 The Authority shall pay the Care Fees to the Provider in sterling, in accordance with current legislation and within 30 days of receipt of a valid undisputed invoice. For the avoidance of doubt the Authority shall not be liable to pay the Provider for the provision of unauthorised services.

3.2 Each invoice of the Provider shall be delivered to such address as may be notified from time to time by the Authority.

3.3 Where any monies are or shall become due or recoverable from the Provider by virtue of the Agreement or any other agreement with the Authority the Authority may deduct or offset those monies from the Care Fees payable from time to time. The Authority's rights under this clause 3.3 are without prejudice to any other rights or remedies available to the Authority under the Agreement or otherwise.

4. THE SERVICES

- 4.1 As and when required, the Provider shall provide the Services to the Authority during the Agreement Period in accordance with the Agreement and any ISUPA entered into from time to time.
- 4.2 The Authority and the Provider shall enter into each ISUPA in accordance with the Specification and the main body of the Agreement.
- 4.3 The Provider and the Authority shall both appoint an Agreement Manager and inform the other of his name within 3 Working Days of the Commencement Date. In the event that an Agreement Manager is replaced the relevant Party shall inform the other of the name of his replacement as soon as is reasonably practicable.
- 4.4 The Provider shall comply with:
 - 4.4.1 all those reasonable directions and monitoring requirements imposed from time to time by the Authority and those requirements detailed in the Specification; and
 - 4.4.2 all reasonable guidance relating to the provision of the Services issued by the Authority and other regulatory bodies which the Provider is made aware.
- 4.5 The Provider shall permit the Authority and those authorised by it including but not limited to any regulatory body to observe the Provider's delivery of the Services at any time and to interview those members of the Provider's Staff directly or indirectly involved in the provision of the Services.
- 4.6 The Provider shall attend review meetings with the Authority at such times and at such locations as agreed between the Authority and the Provider to discuss the operation of the Agreement and any other relevant matters.
- 4.7 The Provider will develop and deliver to the Authority on request a written assessment of the quality of the Services being provided from time to time under the Agreement.
- 4.8 In the event that the Authority has concerns regarding the Provider's delivery of or ability to deliver the Services:
 - 4.8.1 The Authority shall be entitled to serve an Improvement Notice on the Provider; and
 - 4.8.2 The Provider shall comply with each Improvement Notice served within the timescales detailed therein.
- 4.9 The Authority shall, where necessary, permit the Provider and those authorised by the Provider to enter onto such Authority premises as agreed between the Parties for the purpose of delivering the Services. The Provider shall require those of its Personnel using Authority premises to comply with any site rules or policies communicated to the Provider. The Authority shall have the right to refuse entry to, and remove any of the Provider's Personnel from Authority Premises if they fail to comply with any site rules or policies or if they otherwise present a security risk.
- 4.10 The Provider shall not at any time during the Agreement Period knowingly act in any capacity for any person(s), partnership, organisation or company in circumstances where a conflict of interest would or might exist between its professional duties towards

such person(s), partnership, organisation or company and its duties to the Authority under the Agreement. The Provider shall inform the Authority immediately if any potential conflict arises.

- 4.11 The Provider shall at all times comply with any statutory requirements relating to the Provider's obligations under the Agreement whether such statutory requirements are in force at the Commencement Date or enacted at any time during the Agreement Term.
- 4.12 The Provider shall not do anything by reason of which the Authority may incur or become liable to pay any penalty damages compensation costs fees or expenses.
- 4.13 The Provider shall inform the Authority promptly and in writing of any problems encountered by the Provider in delivering the Services which the Provider is unable to resolve within a reasonable period of time.

5. WARRANTIES AND REPRESENTATIONS

- 5.1 The Provider warrants and represents that in providing the Services:
 - 5.1.1 it will exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent person experienced in the provision of services which are similar in nature to the Services; and
 - 5.1.2 it will meet any targets and service levels detailed in the Specification within the timescales detailed therein; and
 - 5.1.3 it will comply with the Law including but not limited to the legal requirement to pay the National Minimum Wage.
- 5.2 The Provider further warrants that:
 - 5.2.1 it has full capacity and authority and all necessary rights and consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform the Agreement and to grant the rights to be granted hereunder and that the Agreement is executed by a duly authorised representative of the Provider;
 - 5.2.2 there are no material facts or circumstances in relation to the financial position or operation or constitution of the Provider which have not been fully and fairly disclosed to the Authority in writing and which if so disclosed might reasonably have been expected to affect the decision of the Authority to enter into the Agreement;
 - 5.2.3 in entering into the Agreement it is not in breach of clause 11 (Fraud and Irregularity and Corrupt Gifts);
 - 5.2.4 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights and all permissions, authorisations, consents and permits that are necessary for the performance of its obligations under the Agreement;
 - 5.2.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and

belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;

5.2.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Agreement;

5.2.7 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; and

5.2.8 in the three 3 years prior to the Commencement Date:

(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

(i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Agreement.

5.3 The Authority shall at any time be entitled to assign or transfer the benefit of the warranties given under the Agreement by way of legal assignment without the Provider's consent.

5.4 Except as expressly stated in the Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

6. HEALTH & SAFETY

6.1 The Provider shall notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement.

6.2 The Provider shall:

6.2.1 comply with all relevant health and safety legislation and any relevant guidance issued by the Authority or a government or regulatory body;

6.2.2 co-operate with and provide information to the Authority, as requested, to give assurance that adequate arrangements exist to ensure the health and safety of any members of the public affected by the provision of the Services, to enable the Authority to review any incidents involving members of the public and to assist the Authority to comply with its health and safety policies;

- 6.2.3 carry out health and safety risk assessments in respect of the provision of the Services, as and when necessary;
- 6.2.4 in relation to the environment in which the Services will be delivered, ensure that risks have been reduced to the lowest risk practicable;
- 6.2.5 ensure that it employs a sufficient number of Staff competent in health and safety to meet its obligations under the Agreement;
- 6.2.6 maintain adequate records in relation to health and safety, including but not limited to:
 - 6.2.6.1 assessments of Staff/environment suitability;
 - 6.2.6.2 agreements or commitments on health and safety with Staff;
 - 6.2.6.3 information relating to harm to any members of the public affected by the delivery of the Services;
 - 6.2.6.4 records of assessments, monitoring and reviews of its compliance with clause 6.2.5 above;
- 6.3 In the event that any part of the Services is provided in an environment outside the direct control of the Provider, the Provider shall carry out a risk assessment of the environment to ensure its suitability.

7. STAFF

- 7.1 The Provider shall at all times employ (or procure the employment) at its own expense sufficient Staff for the purpose of providing the Services.
- 7.2 The Provider shall ensure that all Staff engaged in the provision of the Services are suitably skilled and experienced.
- 7.3 The Provider shall set up and maintain written personnel policies and procedures for all Staff engaged in the provision of the Services covering all relevant matters (including but not limited to discipline, grievance, equal opportunities and health and safety). The Provider shall procure that the terms and implementation of such policies and procedures comply with legislation and best practice and that they are made available to the Authority on request.
- 7.4 In the event that the Authority is at any time during the Agreement Period of the reasonable opinion that any member of the Provider's Staff is unable or unfit to deliver the Services or any part of the Services the Provider will:
 - 7.5.1 Provide written details of the issue or issues to the Authority;
 - 7.5.2 Deliver to the Authority a written action plan detailing the way in which the Provider proposes to deal with the issue or issues; and
 - 7.5.3 Comply with any reasonable guidance or instructions issued by the Authority in relation to the action plan; and
 - 7.5.4 Comply with the action plan and any timescales detailed therein.

7.6 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Provider's Staff and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the delivery of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs and otherwise from and including the Commencement Date.

8. AUDIT AND RECORD KEEPING

8.1 The Provider will at all times and on reasonable notice permit for the purposes of audit the Authority and any nominated auditors access to documentation relating to the provision of the Services.

8.2 The Authority reserves the right, at any reasonable time, and as it may deem necessary to require the Provider at its own cost to:

8.2.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform its obligations under the Agreement;

8.2.2 provide a copy of the Provider's latest audited accounts;

8.2.3 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the Authority; and

8.2.4 provide any additional evidence to support payments made under the Agreement as the Authority shall reasonably require.

8.3 The Provider shall at all times during the Agreement Period and for 12 years thereafter, keep and maintain full and detailed records relating to the delivery of the Services delivered under the Agreement and provide copies of the same to the Authority upon request.

9. DISCRIMINATION AND THE PROMOTION OF EQUALITY

9.1 The Provider will:

9.1.1 not unlawfully discriminate directly or indirectly by way of victimisation or harassment within the meaning of any law, enactment, order, regulation or other similar instrument relating to discrimination in employment (whether in relation to race, age, gender, religion, disability, sexual orientation or otherwise);

9.1.2 comply with all relevant anti-discrimination legislation, have proper regard to any relevant codes of practice and treat people fairly and equally;

9.1.3 inform the Authority forthwith of any finding of unlawful discrimination against the Provider by any Court, Tribunal, the Equality and Human Rights Commission and as soon as reasonably practicable:

9.1.3.1 take all necessary steps to prevent a reoccurrence of such unlawful discrimination; and,

9.1.3.2 provide to the Authority full details of all steps taken.

- 9.2 The Provider shall not treat a person less favourably than another on grounds of trade union membership or trade union activities, in contravention of The Employment Relations Act 1999 (Blacklists) Regulations 2010) and, in particular, the Provider will not:
- 9.2.1 compile, supply, sell or use a Prohibited List (as defined in The Employment Relations Act 1999 (Blacklists) Regulations 2010);
 - 9.2.2 refuse employment to a job applicant, to dismiss an employee, or to subject an employee to any other detriment for a reason related to a Prohibited List; and
 - 9.2.3 engage with an employment agency which refuses to provide its services to an individual for a reason related to a Prohibited List.
- 9.3 The Provider shall, on request, provide to the Authority such written evidence as the Authority reasonably requires that the Provider has not breached clause 9.2 above.
- 9.4 The Provider recognises that the Authority is bound to comply with the Human Rights Act 1998 ("HRA") and that those duties imposed on it under the HRA must be met in the delivery of the Services. As a result, the Provider shall comply with the provisions of the HRA as if it were a public authority (as defined under the HRA).
- 9.5 The Provider shall at all times have a written equalities policy which shall as a minimum cover race, age, gender, religion, disability, sexual orientation and provide a copy of the same to the Authority on request ("Equalities Policy")
- 9.6 The Provider shall provide all reasonable assistance to the Authority to enable it to meet any duties imposed on it in relation to the prevention of discrimination and the promotion of equality.
- 9.7 In the event that the Provider enters into any sub-contract in connection with the Agreement it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this clause 9.

10. SAFEGUARDING AND PROMOTING WELFARE

- 10.1 In the event that a Regulated Activity is to be delivered by the Provider under the Agreement the Provider shall be a Regulated Activity Provider for the purposes of the SVGA with ultimate responsibility for the management and control of the Regulated Activity.
- 10.2 The Provider shall ensure that all Staff engaged in the provision of a Regulated Activity are:
- 10.2.1 subject to a valid enhanced disclosure check undertaken through the DBS;
 - 10.2.2 subject to a check against the adults' barred list or the children's barred list, as appropriate; and
 - 10.2.3 monitored to ensure the level and validity of the checks under this clause 10.2.

- 10.2 The Provider shall renew no less than 10% of enhanced disclosure checks each year during the Agreement Period on a random sample basis, and undertake other renewals, where deemed appropriate by the Provider.
- 10.3 The Provider warrants that at all times for the purposes of the Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the SVGA and any regulations made thereunder, as amended from time to time.
- 10.4 The Provider shall upon immediate request provide such information to the Authority as the Authority reasonably requires in order satisfy it that the obligations of this clause 10 have been met.
- 10.5 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to service users.
- 10.6 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users, children or vulnerable adults.
- 10.7 In delivering the Services the Provider shall have due regard to all relevant parts of:
- 10.7.1 The Authority's Framework for Action for all children, young people and families in Bolton, which is available at:

<http://boltonsafeguardingchildren.org.uk/documents/2013/10/framework-for-action-2.pdf>
- 10.7.2 The Greater Manchester Safeguarding Children Procedures Manual, which is available at:

<http://greatermanchesterscb.proceduresonline.com/chapters/contents.html>
- 10.7.3 Bolton's "Safeguarding Adults Board Procedures Manual" which is available at:

<http://www.proceduresonline.com/bolton/asg/>
- 10.8 The Provider shall where required by the Authority have and comply with a child protection policy during the Agreement Period and supply a copy of the same to the Authority upon request.
- 10.9 The Provider shall as and when required work with other agencies and share information with the same to ensure the safeguarding and promotion of the welfare of children and vulnerable adults subject always to the duty of the Provider to comply with all relevant laws statutory instruments rules regulations orders or directives.

11. FRAUD AND PROHIBITED ACTS

11.1 The Provider shall notify the Authority immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Agreement including, but not limited to, cases of:

11.1.1 collusion with Authority Staff;

11.1.2 computer fraud;

11.1.3 the submission to the Authority of inaccurate, incomplete, misleading or falsified management information; and

11.1.4 fraud involving awarding bodies

provided that nothing in this clause 11.1 shall require the Provider to do anything which may cause it to infringe any law.

11.2 Where the Authority has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and any payments made under the Agreement or in relation to any other agreement made between the Authority and the Provider, the Authority shall have the right:

11.2.1 of access to any premises of the Provider at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview any Staff of the Provider engaged to deliver the Agreement; and

11.2.2 to suspend payments of the Care Fees or any monies owed under any other agreement made between the Authority and the Provider until such time as the Authority's concerns are abated.

11.3 The Provider warrants that no commission has been paid or agreed to be paid by the Provider or on the Provider's behalf or to the Provider's knowledge unless, before the Agreement was made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof were disclosed in writing to and authorised by the Authority.

11.4 The Provider shall not offer nor give nor agree to give any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Agreement or any other agreement with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement.

11.5 The Provider:

11.5.1 shall not, and shall procure that any Staff, agents, contractors or sub-contractors of the Provider shall not, in connection with the Agreement commit a Prohibited Act;

11.5.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Agreement.

- 11.5.3 shall, if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - 11.5.4 shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff, agents, contractors or sub-contractors of the Provider from committing a Prohibited Act and shall enforce it where appropriate.
- 11.6 If any breach of this clause 11 is suspected or known, the Provider shall notify the Authority immediately and respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.
- 11.7 The Provider acknowledges and agrees that the Authority shall be entitled to share information relating to the Provider or the Agreement with any department, office or agency of the Government or any auditor appointed by the Authority or the aforementioned public bodies for the purpose of data matching and fraud prevention (as more particularly described at www.bolton.gov.uk/website/Pages/Privacynotices.aspx) or otherwise.
- 11.8 Despite clause 18 (Dispute Resolutions), any dispute relating to:
- 11.8.1 the interpretation of this clause 11; or
 - 11.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.

12. CORPORATE REQUIREMENTS

Corporate Policies

- 12.1 The Authority shall, where appropriate, supply to the Provider details of any relevant policies (including but not limited to any safeguarding policies) and rules and on receipt of the same the Provider shall have due regard to the same in delivering the Services.

The CCA

- 12.2 The Provider recognises that the Authority is subject to legal duties under the CCA and agrees that, on receipt of a reasonable request from the Authority, it shall assist the Authority in meeting its duties under the CCA, such assistance may include but not be limited to:
- 12.2.1 developing and operating a Business Continuity Strategy during the Agreement Period;
 - 12.2.2 developing and adopting a Business Continuity Plan (taking into account the CCA);
 - 12.2.3 providing the Authority with a copy of those documents referred to at clauses 12.2.1 and 12.2.2 on request;

- 12.2.4 undertaking regular risk assessments and business impact analysis in relation to the Agreement;
 - 12.2.5 implementing a Business Continuity Exercise on a regular basis (for the avoidance of doubt, the Authority shall be entitled to attend any such test); and
 - 12.2.6 providing the Authority with a written report on request which summarises the results of each Business Continuity Exercise carried out, which summary shall highlight any actions or remedial measures necessary as a result of the said exercises.
- 12.3 The Authority shall have the right to carry out a review of the Provider's Business Continuity arrangements subject to the Authority giving the Provider not less than 24 hours' notice of any such review. The Provider warrants that the Authority shall have unfettered access to and the ability to reproduce and retain any pertinent documentation deemed appropriate by it during such a review.

The Bolton Brand

- 12.4 In the event that the Provider is authorised to use the Bolton Brand it shall comply with all instructions issued from time to time by the Authority. The Provider shall not be entitled to reproduce or copy the Bolton Brand without written consent.

13. EFFICIENCY SAVINGS

- 13.1 The Provider recognises that the Authority is under a continuous duty to achieve savings and hereby agrees to carry out a savings review as and when reasonably requested by the Authority to, where possible:
- 13.1.1 identify ways in which the provision of the Services may be modernised and made more productive so as to reduce outgoings and costs; and
 - 13.1.2 reduce third party costs and fees relevant to the provision of the Services (including, without limitation, endeavouring to source equipment and third party software from suppliers with competitive rates).
- 13.2 In the event that the Provider identifies a potential saving under this clause 13, it shall promptly inform the Authority of the same and it shall advise the Authority whether, in the Provider's professional opinion, the implementation of any change is necessary to enable the Authority to benefit from the potential saving is desirable (in view of quality, reliability and other relevant factors as well as price).
- 13.3 If the Authority shall conclude that the implementation of the necessary change identified under clause 13.2 is desirable:
- 13.3.1 the Authority will inform the Provider in writing to make the change; and
 - 13.3.2 the Provider shall on receipt of written notification from the Authority implement the change within such timescales as advised by the Authority or otherwise agreed between the Authority and the Provider.

For the avoidance of doubt the Provider shall not be entitled to object to a proposed change unless the Provider acting reasonable is of the opinion that the proposed

changed would result in the Provider being commercially or otherwise disadvantaged. In that event the Provider shall immediately inform the Authority in writing of its objections and the Parties shall negotiate the proposed changes in good faith. If the Parties are unable to agree any changes clause 18 will apply.

- 13.4 Any benefits arising from any change made under this clause 13 (including any consequent reduction to the Care Fees) shall accrue solely to the Authority (subject to any costs reasonably incurred by the Provider in implementing the necessary change being taken into account).

14. COMPLAINTS

- 14.1 The Provider shall at all times operate a complaints procedure and provide details of the same to the Authority upon request.
- 14.2 The Provider shall notify the Authority of all complaints involving Residents in placements funded by the Authority received during the Agreement Period which relate in any way to the provision of the Services (including but not limited to complaints relating to any Staff of the Provider engaged in the performance of the Agreement) within two working days of receipt of the complaint by the Provider.
- 14.3 The Provider shall make available to the Authority upon request a written report on each and every reasonable and unduplicated complaint (from whatever source) giving details of the complainant and on any action taken in respect thereof.

15. DATA PROTECTION

- 15.1 The Provider shall at all times during the Agreement Period comply with and maintain Personal Data in accordance with the Data Protection Legislation.
- 15.2 If at any time during the Agreement Period the Provider is determined to be a Processor (as defined in the DPA 2018) the Provider shall enter into a data processor agreement:
- (a) with the Authority on the Authority's standard terms and conditions; and
 - (b) with a Sub-Contractor on terms substantially similar to the terms of the data processor agreement entered into with the Authority
- with each agreement governing the way in which Personal Data will be processed.
- 15.3 The Provider shall comply with the terms and conditions of the Data Sharing Schedule attached at Schedule 2 to the Agreement and any amendments to the same which the Authority notified the Provider of in writing.
- 15.4 If Personal Data is or will be shared between the Provider and a third party in connection with the Agreement the Provider shall enter into a data sharing agreement with that third party on such terms as agreed between the Provider and the third party PROVIDED always that the terms and conditions do not conflict with any obligations or requirements under the Agreement.
- 15.5 The Parties agree that Personal Data shall only be shared under the Agreement where there is a lawful and legitimate reason for doing so.

- 15.6 In the event that the Provider is a “Data Controller” (as defined in GDPR) the Provider shall at all times be responsible to third parties for any Personal Data held, including the individuals to whom the Personal Data relates and the Provider shall at all times during the Agreement Period have appropriate data protection and information security policies in place which demonstrate how the Provider will meet its responsibilities under the Data Protection Legislation.
- 15.7 When recording Personal Data, in whatever format, each piece of information must contain the date created or recorded and whether it comprises fact, opinion, hypotheses or a mixture of these together with the identity of the person recording the information.
- 15.8 On expiry of the Agreement Period, or earlier termination of the Agreement, and subject to the Data Protection Legislation, the Provider shall immediately provide to the Authority written details of all Personal Data held by the Provider relating to the Agreement or any individual in receipt of any part of the Services under the Agreement. The Provider shall then transfer to the Authority all Personal Data requested in writing by the Authority. Personal Data shall be transferred in a secure manner in compliance with Data Protection Legislation and any reasonable instructions issued by the Authority, including instructions relating to timescales. Where legally required to do so, the Provider shall be responsible for obtaining any individual consents needed to lawfully transfer Personal Data.
- 15.9 The Provider shall indemnify and keep indemnified the Authority against any Losses whatsoever incurred in respect of or in any way arising directly out of a breach by the Provider of this clause 15.

16. FOIA, EIR AND CONFIDENTIALITY

16.1 FOIA & EIR

- 16.1.1 The Provider recognises that the Authority is subject to legal duties which may require the release of information under FOIA or the EIR or any other applicable legislation or codes governing access to information (“Access Duties”) and that the Authority may be under an obligation to provide information on request. Such information may include matters arising out of or under the Agreement in any way.
- 16.1.2 In the event that the Authority receives a request for information under its Access Duties, the Authority is entitled to disclose all such information and documentation (in whatever form) as it is obliged to disclose under its Access Duties.
- 16.1.3 The Authority shall not disclose Exempt Information provided always that the Authority shall be responsible for determining at its absolute discretion what information it is obliged to disclose under its Access Duties and what is Exempt Information.
- 16.1.4 The Authority shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information relating to the Agreement which the Authority is obliged to disclose under its Access Duties.

16.1.5 The Provider will assist the Authority in complying with the Authority's obligations under its Access Duties. In the event that the Authority receives a request for information under its Access Duties and requires the Provider's assistance in obtaining the information that is subject to such request or otherwise, the Provider will respond to any such request for assistance from the Authority at the Provider's own cost and promptly and in any event within 10 days of receiving the Authority's request.

16.2 Confidentiality

16.2.1 Subject to its obligations under clause 16.1 above, the Provider undertakes to the Authority that it shall:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way except for the Purpose;
- (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with the Agreement;
- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of the Authority;
- (e) not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
- (f) apply the same security measures and degree of care to the Confidential Information as the Provider applies to its own confidential information, which the Provider warrants as providing adequate protection from unauthorised disclosure, copying or use;
- (g) keep a written record of:
 - (i) any document or Confidential Information received from the Authority in tangible form; and
 - (ii) any copies made of the Confidential Information;
- (h) establish and maintain adequate security measures (including any reasonable security measures proposed by the Authority from time to time) to safeguard the Confidential Information from unauthorised access or use; and
- (i) where instructed to do so by the Authority, ensure that any document or other records containing Confidential Information

shall not be removed from the premises identified by the Authority.

- 16.2.2 Subject to the provisions of this clause 16.2.2, the Provider may disclose Confidential Information to the minimum extent required only by an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction.
- 16.2.3 Before the Provider discloses any Confidential Information pursuant to clause 16.2.2 it shall, to the extent permitted by law, give the Authority as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 16.2.2, the Provider shall take into account the Authority's requests in relation to the content of this disclosure.
- 16.2.4 If the Provider is unable to inform the Authority before Confidential Information is disclosed pursuant to clause 16.2.2 it shall, to the extent permitted by law, inform the Authority of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.
- 16.2.5 If so requested by the Authority at any time by notice in writing to the Provider, the Provider shall promptly:
- (a) destroy or return to the Provider all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;
 - (b) erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
 - (c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
 - (d) certify in writing to the Authority that it has complied with the requirements of this clause 16.2.2.
- 16.2.6 Nothing in clause 16.2.1 shall require the Provider to return or destroy any documents and materials containing or based on the Confidential Information that the Provider is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of the Agreement shall continue to apply to any documents and materials retained by the Provider pursuant to this clause 16.2.6.
- 16.2.7 The Authority reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Authority to the Provider does not give the Provider or any other person any licence or other right

in respect of any Confidential Information beyond the rights expressly set out in the Agreement.

16.2.8 Except as expressly stated in the Agreement, the Authority makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

16.2.9 Without prejudice to any other rights or remedies that the Authority may have, the Provider acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause 16.2. Accordingly, the Authority shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this clause 16.2 by the Provider.

17. INTELLECTUAL PROPERTY RIGHTS

17.1 The Parties shall not cause or permit anything which may damage or endanger the Existing Intellectual Property Rights of the other or assist or allow others to do so.

17.2 Any Intellectual Property Rights created by the Provider during the Agreement Period in connection with the provision of the Services shall vest in the Authority and the Authority shall be entitled to use and reproduce all materials originated by the Provider (including basic factual data) for any purpose whatsoever whether in connection with the Agreement or otherwise. The Provider shall not be liable in any way for use by the Authority of any materials generated under or in respect of the Agreement for any purpose other than that for which the same was prepared and provided by the Provider.

17.3 The Provider warrants to the Authority that to the best of its knowledge the delivery of the Agreement will not infringe, in whole or in part, any third party Intellectual Property Rights and agrees to indemnify the Authority and keep fully and effectually indemnified the Authority its Staff and agents from and against all Losses arising directly or indirectly out of any act of the foregoing, where such act is, or is alleged to be, an infringement of a third party's Intellectual Property Rights.

17.4 The Authority agrees that:

17.4.1 it will notify the Provider in writing of any "IPR Claim", being any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Right used to provide the Services or as otherwise provided by the Provider (or to which the Provider has provided access) to the Authority in the fulfilment of its obligations;

17.4.2 it will allow the Provider to conduct all negotiations and proceedings and will provide the Provider with such reasonable assistance required by the Provider, each at the Provider's expense, regarding the IPR Claim; and

17.4.3 it will not, without first consulting with the Provider, knowingly make an admission relating to the IPR Claim.

17.5 The Provider shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute.

- 17.6 The Provider shall not settle or compromise any IPR Claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 17.7 If an IPR Claim is made, or the Provider anticipates that an IPR Claim might be made, the Provider may, at its own expense and sole option, either:
- 17.7.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - 17.7.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - 17.7.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - 17.7.2.2 there is no additional cost to the Authority;
 - 17.7.2.3 the terms of the Agreement shall apply to the replaced or modified item.
 - 17.7.3 If the Provider elects to modify or replace an item pursuant to clause 17.7.2 above or to procure a licence in accordance with clause 17.7.1 above, but this has not avoided or resolved the IPR Claim, then the Authority may terminate the Agreement in whole or in part by written notice with immediate effect and, without prejudice to the indemnity set out in clause 21 below, the Provider shall be liable for all reasonable and unavoidable costs of the substitute item(s) including the additional costs of procuring, implementing and maintaining the substitute item(s).

18. DISPUTE RESOLUTION

- 18.1 The Authority and the Provider shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute ultimately to each Party's Agreement Manager (or such other person as he may direct) of each Party.
- 18.2 Nothing in this dispute resolution procedure shall prevent either Party 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.
- 18.3 If the dispute cannot be resolved by the Parties pursuant to clause 18.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 18.5 unless:
- 18.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
 - 18.3.2 the Provider does not agree to mediation.
- 18.4 The obligations of the Parties shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and its Staff shall comply fully with the requirements of the Agreement at all times.

- 18.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 18.5.1 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 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 10 Working Days from the date of the proposal to appoint a Mediator, or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator;
 - 18.5.2 The Parties shall within 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 a mediation provider to provide guidance on a suitable procedure;
 - 18.5.3 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;
 - 18.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - 18.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties;
 - 18.5.6 If the parties fail to reach agreement in the structured negotiations within 60 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.
- 18.6 Subject to clause 18.2, neither the Authority nor the Provider shall institute court proceedings until the procedures set out in clauses 18.1 and 18.3 have been completed.

19. SUSPENSION AND TERMINATION OF THE AGREEMENT

- 19.1 In the event that the Authority has concerns regarding the Provider’s delivery of or ability to deliver the Services it shall, in addition to its right to serve an Improvement Notice under clause 4.8 above, be entitled to:
- 19.1.1 suspend the provision of the Services under the Agreement for such period as the Authority deems reasonably necessary; and
 - 19.1.2 take such other action as the Authority deems reasonably necessary to investigate or address its concerns

For the avoidance of doubt, the Authority shall not be liable to pay any Fees during a period of suspension.

- 19.2 The Authority is entitled to terminate the Agreement forthwith in writing in the event of one or more of the following:
- 19.2.1 a material misrepresentation by the Provider during the process leading up to its appointment is discovered;
 - 19.2.2 the Provider commits a Material Breach of the Agreement;
 - 19.2.3 the Provider persistently breaches the Agreement;
 - 19.2.4 the Provider fails to comply in any respect with an Improvement Notice served by the Authority under section 4.8 above;
 - 19.2.5 the Provider fails to comply in any way with the terms of clause 9 (Discrimination and the Promotion of Equality) or clause 10 (Safeguarding and Promoting Welfare)
 - 19.2.6
 - (i) the Provider becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent
 - (ii) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Provider
 - (iii) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the Provider and over all or any part of the assets of the Provider
 - (iv) the Provider enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally
 - (v) anything equivalent to any of the events or circumstances stated in clauses 19.2.6(i) to 19.2.6(iv) inclusive occurs in any applicable jurisdiction
- 19.3 The Authority may terminate the Agreement by written notice with immediate effect if the Provider or any Staff, agents, contractors or sub-contractors of the Provider (in all cases whether or not acting with the Provider's knowledge) breaches clause 11 (Fraud and Prohibited Acts).
- 19.4 The Authority may terminate the Agreement by written notice without penalty if there is a Change of Control to which the Authority reasonably objects, having regard to the identity, trading interests, financial standing and intentions of the new controller or potential new controller, having afforded the Provider a reasonable opportunity to make representations in this respect and having given such representations reasonable consideration except where:

- 19.4.1 the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - 19.4.2 the Provider fails to notify the Authority in writing within one month of any Change of Control taking place; or
 - 19.4.3 the Authority has not served its notice within six months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control; or
 - 19.4.4 there is a bona fide reorganisation within the Provider's group which results in a Change of Control.
- 19.5 The Provider is entitled to terminate the Agreement forthwith in writing if:
- 19.5.1 the Authority fails to make any payment within 30 days of the Provider notifying the Authority in writing that payment of the Care Fees is overdue;
 - 19.5.2 the Authority commits any other breach of Agreement (and fails to remedy the breach within a reasonable period of it having been requested to do so) which in the reasonable opinion of the Provider justifies termination of the Agreement.

20. CONSEQUENCES OF TERMINATION

- 20.1 Upon termination in accordance with the terms of the Agreement and in addition to such consequences as are set out in other provisions of the Agreement:
- 20.1.1 the Provider shall forthwith cease to provide the Services;
 - 20.1.2 the Authority shall be under no obligation to make any further payment to the Provider and shall be entitled to retain any payment which may have fallen due to the Provider before termination until the Provider has paid in full to the Authority all sums due or arising under the Agreement or any other agreement between the Parties; and
 - 20.1.3 the Provider shall forthwith release and handover to the Authority any and all property belonging to the Authority which may be in the Provider's possession or under its control including but not limited to records whether in the form of documents computer data or other material in any medium.
- 20.2 Upon termination in accordance with the terms of the Agreement and in addition to such consequences as are set out in other provisions of the Agreement the Provider shall fully and promptly indemnify and compensate the Authority in respect of any Losses suffered by the Authority as a result of or in any way connected with an event or events giving rise to the right to terminate the Agreement including but not limited to the cost of causing to be provided such part of the Agreement as would have been provided had the Agreement not been terminated or the right(s) of termination had not arisen.
- 20.3 Termination shall be without prejudice to the accrued rights and remedies of either Party.

21. INDEMNITY AND LIMITATION OF LIABILITY

- 21.1 The Provider shall indemnify on behalf of itself and its sub-contractors and keep fully and effectually indemnified the Authority its Staff and agents from and against all Losses whatsoever incurred in respect of or in any way arising directly out of the negligence or breach by the Provider and its sub-contractors of the Agreement except to the extent that such Losses may arise out of the act default or negligence of the Authority provided always that the Provider shall not be liable for any indirect or consequential losses.
- 21.2 The Provider shall take out and maintain during the Agreement Period those insurances and to those levels detailed in the main body of the Agreement.
- 21.3 The Provider shall supply to the Authority on request certified copies of insurance policies, cover notes, premiums, receipts and other documents deemed by the Authority to be necessary to comply with clause 21.2 above.

22. EMPLOYMENT EXIT PROVISIONS

- 22.1 In the event of a Relevant Transfer the Authority or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date and the Provider indemnifies and keeps the Authority indemnified against any Employment Liabilities and costs incurred in respect of the Relevant Employees prior to the Service Transfer Date.
- 22.2 The Provider shall and shall procure that any Sub-Contractor shall, within 14 days of receipt of a written request from the Authority (or otherwise required by TUPE):
- (a) that the Authority intends to either re-tender the Services or deliver the Services itself following expiry of the Agreement Period (or earlier termination)
 - (b) of termination of the Agreement

provide in respect of any person engaged or employed by the Provider or any Sub-contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any other information required by the Authority, including information as to the application of TUPE to the Staff. The Provider shall notify the Authority of any material changes to this information as and when they occur.

- 22.3 At least 28 days prior to the Service Transfer Date, the Provider shall supply to the Authority, or at the Authority's direction to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all respects. The Provider's Final Staff List shall identify which of the Provider's and the Sub-Contractor's Staff named are Relevant Employees.
- 22.4 The Authority shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as the Services (or any part of the Services).
- 22.5 The Provider warrants to the Authority and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing

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

- 22.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under the Data Protection Legislation.
- 22.7 The Authority regards compliance with this clause 22 as fundamental to the Agreement. In particular, failure to comply with clause 22.2 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Care Fees until such information is provided, or indefinitely. The maximum sum that may be retained under this clause 22.7 shall not exceed an amount equivalent to the Care Fees that would be payable in the three month period following the Provider's failure to comply with clause 22.2.
- 22.8 Any change to the TUPE Information which would increase the total employment costs of those of the Provider's Staff delivering the Services (or any part) in the six months prior to the expiry of the Agreement Period or during any termination notice period shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Provider shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.
- 22.9 In the six months prior to expiry of the Agreement Period or during any termination notice period, the Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of those of the Provider's Staff delivering the Services (or any part), their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.
- 22.10 The Provider shall indemnify and keep indemnified in full the Authority and every Replacement Provider against all Employment Liabilities relating to:
- (c) Any person who is or has been employed or engaged by the Provider or any Sub-contractor in connection with the provision of any of the Services;
 - (d) Any trade union or staff association or employee representative
- arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 22.11 The Parties shall co-operate to ensure that any requirement to inform and consult with the Staff and Staff representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

22.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause to clause 22.11, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

22.13 Despite clause 22.12, it is expressly agreed that the Parties may by agreement rescind or vary any terms of the Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

23. ACTIONS UNDER CONTRACT

The Provider shall pay to the Authority on an indemnity basis all costs, fees, disbursements and expenses including, without prejudice to the generality of the above, those payable to counsel, solicitors, surveyors and bailiffs properly incurred by the Authority in relation to or incidental to the recovery of any outstanding monies due to the Authority under the terms of the Agreement.

24. FORCE MAJEURE

24.1 Neither Party will be liable for any delay in performing or failure to perform any of its obligations under the Agreement due to a Force Majeure Event.

24.2 Any delay or failure caused by a Force Majeure Event will not constitute a breach of the Agreement and the time for performance of the affected obligation shall be extended by such period as is reasonable. As regards any delay or stoppage:

24.2.1 any costs arising from the delay or stoppage shall be borne by the Party incurring those costs;

24.2.2 either Party may if the delay or stoppage continues for more than 28 days terminate the Agreement with immediate effect on giving written notice to the other Party, and neither Party shall be liable for such termination; and

24.2.3 the Party claiming the Force Majeure Event will take all necessary steps to bring the event to a close or to find a solution by which the Agreement may be performed despite the Force Majeure Event.

25. VARIATION

Save where expressed to the contrary in these Terms and Conditions, no variations or additions to the Agreement may be made unless made in writing and signed by both Parties.

26. ASSIGNMENT, NOVATION AND SUB-CONTRACTING

26.1 The Provider shall not be entitled to assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under the Agreement without the prior written consent of the Authority.

26.2 The Provider shall not be entitled to sub-contract the provision of the Services or any part thereof without the previous written consent of the Authority which consent shall not be unreasonably withheld.

26.3 In the event that any part of the Agreement is sub-contracted the Provider hereby warrants that it:

26.3.1 it shall pay all invoices issued to it by its sub-contractor(s) within 30 days of receipt of a valid invoice; and

26.3.2 it will make it a term of any contract entered into with a sub-contractor that the sub-contractor complies with the terms of the Agreement.

27. PARTNERSHIP

Nothing in the Agreement will create any joint venture or partnership between the Authority and the Provider, and the Authority shall not be liable for any actions, costs, proceedings, claims or demands arising out of delivery of the Agreement.

28. AGENCY

Neither the Provider nor its employees shall in any circumstances hold itself or themselves out as being the agent or servant of the Authority otherwise than in circumstances expressly permitted by the Agreement.

29. WAIVER

Failure by the Authority at any time to enforce the provisions of the Agreement or require performance by the Provider of any of the provisions of the Agreement shall not be construed as a waiver or any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Authority to enforce any provision in accordance with its terms.

30. NOTICES

30.1 Any notice under the Agreement must be in writing and can only be sent by recorded delivery post or personal delivery to the addresses at the head of the Agreement.

30.2 Any other communication under the Agreement must be in writing and can only be sent by recorded delivery post, personal delivery, fax or electronic mail.

31. THIRD PARTIES

Save where expressed to the contrary, the Contract (Rights of third Parties) Act 1999 shall not apply to the Agreement.

32. SURVIVAL OF TERMS

Clauses 5, 7.6, 8, 15, 16, 17, 18, 20, 21, 22, 23 and 34 shall survive the expiry or early termination of the Agreement.

33. ENTIRE AGREEMENT

The Agreement supersedes all prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties (save that neither Party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other Party can be shown to have relied).

34. LAW & JURISDICTION

The Agreement shall be governed by and shall be construed in accordance with English law; and be subject to the exclusive jurisdiction of the Courts of England and Wales, to which both Parties submit.

Schedule 1

The Service Specification

1. Overview

- 1.1. This Service Specification details the individual service requirements relating to the delivery of residential care in Care Homes and Care Homes with nursing.

2. Scope

The scope of the Services

- 2.1. The Authority shall purchase the Services for the benefit of each Resident as and when required through an Individual Service User Placement Agreement (ISUPA) and each ISUPA shall always incorporate the terms and conditions of the Contract.
- 2.2. The Provider shall ensure that itself and each Care Home operated by the Provider is properly registered with the Care Quality Commission (CQC) or any successor body.
- 2.3. The Provider must ensure that the Statement of Purpose relating to each Care Home, or part of a Care Home where a Resident is to be placed, fully complies with the CQC requirements, is appropriate to the Resident, and that the Provider is able to fully meet the identified care needs of the intended Resident detailed in the ISUPA.
- 2.4. The Authority provides no guarantee that a particular volume of purchasing will be made under this Contract, it may be that no placements are made at all.

Compliance with the Law and guidance

- 2.5. In delivering the Services the Provider will comply with the Law and any national guidance including, but not limited to, those detailed below:
- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
 - Fundamental Standards as set out in Section 2 of The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2014 CQC Guidance for Providers of meeting the Regulations (Fundamental Standards)
 - The Care Act 2014.

Population covered

- 2.6. The Provider will deliver the Services to any Resident falling within the following Service Categories:
- Learning Disability;
 - Mental Health including Section 117 aftercare;
 - Physical Disability;

- Dementia Care;
- Older People;
- End of Life Care.

Acceptance and exclusion criteria and thresholds

2.7. The scope of the Services does not include the delivery of any part of the Services to any person:

- Under the age of 18;
- Detained under the Mental Health Act 1983, with the exception of Residents users entitled to Section 117 aftercare;
- Fully funding their residential and/or nursing care without public sector contribution;
- For which there is no ISUPA agreed between the Provider and the Authority.

2.8. Each and every time the Authority requires the Provider to deliver Services to a Resident it shall enter into an ISUPA with the Provider and the Provider agrees that it shall deliver the Services in accordance with the terms of the ISUPA, which for the avoidance of doubt will incorporate the terms and conditions contained within the Contract.

Care Fees

2.9. The fees payable under the ISUPA shall be calculated in accordance with the Host Authority's Standard Authority Rate.

2.10. Further in calculating the Fees payable under each ISUPA the following shall be taken into account:

- The local Standard Authority Rate set by the Host Local Authority;
- Any Authority Supplement;
- Any NHS Contribution;
- Any Additional Costs agreed with the Authority prior to the placement commencing.

2.11. Some Residents have very specific needs requiring regular additional and exclusive Services. The Provider must demonstrate and agree with the Authority such additional specific regular costs before the commencement of the placement. Such costs will then be reflected in the Authority Supplement.

2.12. The Host Local Authority will set the Standard Authority Rate each financial year in accordance with relevant legislation.

2.13. Once the Standard Authority Rate for any financial year is confirmed by the Host Local Authority, then the Provider may, within the following six weeks, make a request to the Authority to amend any existing Additional Costs Agreements no less than eight weeks'

prior to the proposed change taking effect. Each request will be considered on a case by case basis. If the Authority agrees to amend the Additional Costs, the change will take effect on a Monday.

- 2.14. Any Additional Costs agreed by the Authority, the Provider and the Third Party will be included in the Care Fees to ensure that The Authority retains responsibility for payment of the Additional Costs to the Provider.

3. Referral into Services and sources

- 3.1. Referral into the Services shall be made in accordance with the process set out below.
- 3.2. The Authority shall request that the Provider shall undertake an assessment of an individual's care needs, making available all necessary information to enable the Provider to do so. The Provider will then ascertain if it can meet the individual's care needs.
- 3.3. The Provider shall respond to an assessment request issued by the Authority, as a matter of urgency, to enable all relevant parties to establish the care needs of the individual as well as the level of risk, the skill mix of the Provider's Staff and the resources required to meet the care needs of the individual.
- 3.4. The Provider shall create the Provisional Support Plan for the individual and forward this with a statement confirming ability to meet the needs of the individual to the Authority in accordance with the following response times:
 - 3.4.1. For individuals within the "End of Life" Care Category: Within 24 (twenty-four) hours;
 - 3.4.2. For all other individuals: Within 72 (seventy-two) hours.
- 3.5. For individuals within the "End of Life" Care Category, the Provider shall take all reasonable steps to make arrangements to commence delivery of the Services within 12 (twelve) hours of the decision to deliver the Services.
- 3.6. The Authority shall review the Provisional Support Plan for the individual and agree with the Provider the appropriate level of resources required to deliver the required Services to the individual together with the Fees payable in respect of the Services. The Authority's Support Plan shall detail such requirements.
- 3.7. The Authority shall agree and enter into an ISUPA in accordance with Section 6 of this Service Specification. The Provider's Support Plan shall form part of the ISUPA.
- 3.8. The Authority shall develop the Authority's Support Plan in consideration of the Provider's Support Plan.
- 3.9. The Provider shall ensure that a named key worker is assigned to each Resident and, where the Resident is in receipt of nursing care, the Resident is under the overall care of a named nurse registered with the Nursing and Midwifery Council. This shall be confirmed with relevant contact details to the Authority.

- 3.10. Immediately following commencement of the Services to a Resident under an ISUPA, the Provider shall forward written notification of the care arrangements of the Resident to the Resident's GP.
- 3.11. Once a Resident has been allocated a bedroom at the Care Home the Provider shall not move that Resident to another room without the Authority's prior written consent except in cases of emergency.
- 3.12. The Authority will respond within ten (10) Working Days to any request for permission to move a Resident to another room. In the event of a room change in an emergency the Provider shall inform the Authority of the change no later than the next Working Day.
- 3.13. The Provider shall reserve the Resident's allocated bedroom for sole use by the Resident until it is agreed by the Authority that the Placement has been terminated.
- 3.14. The Authority will regularly review the needs of each Resident in accordance with its requirements under the Care Act 2014 and the Provider shall use all reasonable endeavours to co-operate with this process.

Re-assessments and continued eligibility

- 3.15. In the event of a change in the Resident's needs or if the requirements of the Authority's Support Plan change, the Provider shall notify the Authority as soon as is reasonably practicable and take any action necessary to ensure the safety of the Resident.
- 3.16. Notwithstanding the above, the Resident or their representative or the Authority or the Provider may request a re-assessment by the Care Manager of the Resident's needs at any time, with such reassessment being scheduled within ten (10) Working Days of the request being made.

4. General considerations

- 4.1. The Provider shall deliver the Services to each Resident under an ISUPA, as and when required by the Authority.
- 4.2. The Provider shall immediately notify the Authority of any regulatory authority's enforcement actions, recommendations or requirements that are material to the delivery of the Services, including draft CQC inspection reports.
- 4.3. The Provider shall inform the Authority promptly, and in writing, of any problems encountered by the Provider in delivering the Services which the Provider is unable to resolve within a reasonable period of time.
- 4.4. The Provider shall ensure that the Services shall at all times include residential accommodation and personal care to be provided in the Care Home listed in each ISUPA. Nursing care shall only be provided to a Resident if specified in the relevant ISUPA and in accordance with the requirements of CQC registration.
- 4.5. The Provider shall at all times and for twelve (12) years after the expiry of the last ISUPA entered into under this Contract, keep and maintain full and detailed records relating to

the delivery of the Services to each Resident and provide copies of the same to the Authority upon request.

- 4.6. The Provider shall ensure that each Resident's personal belongings are either included in its contents insurance cover at no additional charge to the Authority or the Resident, or shall advise each Resident on admission to the Care Home of their need to take out and maintain appropriate insurance cover in respect of their personal belongings.
- 4.7. The Provider will make available to the Authority on request a copy of the Provider's written occupancy agreement and/or statement of purpose relating to the Resident's placement in the Care Home and shall ensure that nothing in that agreement shall contradict or conflict with the terms of the Contract.

5. Significant notifiable incidents

- 5.1. The Provider shall immediately notify the Authority if any of the following occur or apply:
 - 5.1.1. An inability to continue to provide part or all of the Services, for example, because of fire or damage to property;
 - 5.1.2. Police actions or investigations relating to one or more Resident and the Services being provided;
 - 5.1.3. Anything that relates to the welfare of a Resident and anything that falls within the remit of Bolton's "Safeguarding Adults Board Procedures Manual" which is available at: <http://www.proceduresonline.com/bolton/asg/>

and all notifications made under this paragraph 6.1 shall be delivered to the following email address: contractsteam@bolton.gov.uk.

6. Person centred care

- 6.1. The Provider shall ensure that each Resident is permitted to define how they wish to be addressed by all members of the Provider's Staff.
- 6.2. The Provider shall ensure that all members of its Staff understand that conversations between a Resident and a Carer are vital in helping to meet each Resident's social and emotional needs. The Resident must be involved and included in any conversations that take place in their presence.
- 6.3. All support shall be delivered by the Provider in a manner which protects each Resident's dignity.
- 6.4. The Provider shall ensure that all members of its Staff maintain appropriate confidentiality in respect of each Resident, other members of Staff and the Provider as their employer.
- 6.5. The Provider shall ensure that each Resident is consulted on all matters concerning their individual support, treatment and general welfare and, where appropriate, options shall be offered and explained to each Resident.

- 6.6. The Provider will ensure that the Services are aimed at the promotion of independence of each Resident. The ethos of the Provider's approach shall always be to seek to maximise the degree of independence. The Provider will ensure that all members of Staff are adequately trained to encourage and maximise independent living.
- 6.7. The Provider will support each Resident, where possible, to learn or re-learn daily living skills, have greater choice and control of how they use support services and to improve their wellbeing.
- 6.8. The Provider shall ensure that each Resident's nutritional needs and choices are addressed and meal times protected. Where necessary, each Resident shall be assisted at meal times to such level as is appropriate and necessary.
- 6.9. Each Resident shall be supported by the Provider to have the same opportunities as any non resident citizen in relation to their own sexuality and personal relationships. This may include promotion and provision of information at a level suitable to the individual on sex, sexual health and personal relationships. However, this must also include safeguards to ensure each Resident is not put into vulnerable situations, for example undertaking activities that are not specified in the Authority's Support Plan for each Resident. The Provider will also ensure that all members of Staff are given guidelines for recognising and responding to the abuse and exploitation of a Resident and will have a risk management approach in relation to any Resident who could be regarded as vulnerable, or abusive to others.
- 6.10. The Provider shall support each Resident in having their emotional and spiritual needs recognised within all Services provided; each Resident's individual emotional needs shall be identified, accepted and receive a sensitive response from all members of Staff.
- 6.11. The Provider shall ensure that no photographic, visual or audio images are made of a Resident without their informed written consent (or the written consent of someone legally able to give such written consent) and that there is no use of any images of a Resident without their express written consent (or the written consent of someone legally able to give such written consent).
- 6.12. The Provider shall manage the care and related issues of each Resident and inform the Authority and next of kin or other identified persons of any change in a Resident's physical, medical or mental condition or of any change in their need for the Services (or any part thereof), such notification to take place within one Working Day of the Provider becoming aware of the change.
- 6.13. The Provider must make a written record of a Resident's admissions to hospital on their individual file and make this available to the Authority on request.
- 6.14. Where a Resident who normally resides within a Care Home is ready for discharge following a stay in an Acute Care Setting the Provider shall, ideally, undertake a needs assessment to re-admit a Resident to the Care Home within twenty four (24) hours of a request being made. This is necessary to determine if the Provider is still able to accommodate a Resident or if alternative provision is required.

7. Service description and Provider obligations

- 7.1. The Provider shall:

- 7.1.1. Ensure that in delivering the Services the necessary level of care and support is provided in accordance with the ISUPA and that all activity is accurately recorded in the Authority's Support Plan;
- 7.1.2. Work collaboratively with each Resident, their family and key personnel from relevant agencies in delivering the Services; this shall mean managing and using the Authority's Support Plan and ensuring such plans respond to the progress made by the Resident and their changing needs;
- 7.1.3. Undertake regular monitoring and reviews of each Resident, giving support, feedback and encouragement to help them regain confidence and skills;
- 7.1.4. Ensure that the Care Home premises and all equipment used in delivering the Services shall be fit for purpose, safe, clean and in good condition, all required maintenance and servicing shall be carried out with the documentation to evidence being made available to the Authority on request;
- 7.1.5. Ensure that the Care Home's environment shall be accessible, clean; safe, suitable, and odour-free with reasonable adjustments made where required;
- 7.1.6. Ensure that the Care Home shall be equipped to provide appropriate services to each Resident for the provision of aids to daily living and equipment; continence and other supplies;
- 7.1.7. Provide suitable supportive equipment for daily living, including Telecare and assistive technology;
- 7.1.8. Provide toiletries in an emergency situation for an individual Resident to use;
- 7.1.9. Make referrals to relevant agencies to provide assessment and care for those services which the Resident may require but the Provider is not expected to provide at the Care Home; any subsequent recommendations for care and support shall then be implemented;
- 7.1.10. Be familiar with the roles and expected functions being undertaken by other service providers and others contributing to the Services; the Provider shall inform the Authority of any situation where another party is failing to undertake their expected role or function;
- 7.1.11. Liaise with the Resident and their relatives to encourage their involvement in the Services they receive; the exceptions to this are:
 - 7.1.11.1. When the Authority has identified in their Support Plan that this is in conflict with the needs of the Resident; and
 - 7.1.11.2. When the Resident has made clear that they do not want their relatives to be involved in their care.

7.2. The Provider's responsibilities regarding Residents' possessions are to:

- 7.2.1. Enable the Resident to bring a range of his or her own possessions and furniture into the Care Home, within two (2) weeks of each Resident's admission to the Care Home the Provider shall complete a written inventory of the Resident's belongings, including valuables and significant items such as jewellery, bank or

building society pass books, share certificates, furniture, mobile phones, the Provider shall update the inventory as and when required;

- 7.2.2. Ensure the Resident's clothes are regularly laundered, maintained and not lost or damaged;
- 7.2.3. Treat every item of the Resident's property with care and respect. Any item belonging to a Resident can only be disposed of with the permission of the Resident, if they have mental capacity to make such decisions; or an appropriately authorised person if the Resident lacks capacity;
- 7.2.4. Ensure that, where the Provider manages the finances of the Resident, there is a separate personal account in which only the named Resident's funds are held;
- 7.2.5. Notify the Authority where the Provider has concerns about the management of the Resident's personal finances by a carer or other person;
- 7.2.6. Report to the Authority, as soon as possible, any loss of the Resident's money, benefit books, bank cards, property or breakage of property, where appropriate the police must be informed in accordance with safeguarding policies;
- 7.2.7. Ensure that the Resident's personal possessions can be kept secure with lockable rooms and lockable storage space within their room and access to secure storage in a safe when required.

8. Residents' care, health and medical issues

- 8.1. The Provider shall make available all required information regarding the Resident to the National Health Service and other relevant care agencies.
- 8.2. The Provider must ensure that whenever the Resident requests assistance to obtain medical attention or appears unwell and is unable to make such a request or declines medical attention, then the most appropriate form of medical assistance must be obtained as quickly as possible, having taken account of any legally authorised care preferences. This may include, but is not confined to, contacting his/her GP or the local ambulance service. The next of kin or another identified person must be notified of this as soon as possible.
- 8.3. The Provider shall use its best endeavours to ensure that, when necessary, the Resident is accompanied by a relevant person on journeys to a hospital or GP appointment or personal care services. The relevant person may be a member of the Provider's Staff, a representative from a voluntary organisation, a legal representative, a friend of the Resident, or a member of the Resident's family
- 8.4. The Provider shall ensure that, to prevent the spread of infectious diseases procedures relating to infection control are always followed; all members of Staff must be trained in infection control measures. These procedures shall be subject to regular audit and evidence of compliance shall be available to the Authority on request.
- 8.5. In the event of an outbreak, to prevent the onward transmission of infection, the Resident may be isolated, with appropriate consent. In such cases the Resident shall be informed

of the reasons for isolation and an estimate of the period of time isolation should apply must be given.

- 8.6. To comply with criterion 10 of 'The Code' (Health and Social Care Act 2008), the Provider must demonstrate it has a suitable and effective system in place to manage the occupational health needs and obligations of member of Staff in relation to infection.
- 8.7. The Provider shall use its best endeavours to encourage a high take up of seasonal flu vaccination among members of its Staff. This is advisable to:
 - 8.7.1. Prevent onward transmission of the flu virus from staff to any Resident as a means of infection control;
 - 8.7.2. Help business continuity by preventing sickness absence amongst members of its Staff; and
 - 8.7.3. Promote occupational health by protecting members of its Staff from infection.
- 8.8. The Provider will:
 - 8.8.1. Identify priority groups for vaccination, including, though not necessarily limited to members of its Staff who are in contact with each Resident and members of its Staff whose sickness absence could compromise business continuity;
 - 8.8.2. Ensure the vaccination is offered to priority groups;
 - 8.8.3. Ensure the benefits of vaccination are promoted to priority groups.

Medicine management

- 8.9. The Provider shall have policies, procedures and training in place to ensure the effective management of all medicines.
- 8.10. The Provider's medicines management policy shall include written processes that cover the following areas:
 - Ensuring that when a Resident transfers between care settings essential information about a Resident's medicines is shared with staff in the new care setting;
 - Ensuring that records are accurate and up to date;
 - Identifying, reporting and reviewing medicines-related problems;
 - Keeping residents safe;
 - Medicine reconciliation, the accurate listing of a resident's medicines;
 - Reviewing medicines;
 - Ordering medicines;
 - Receiving, storing and disposing of medicines;

- Helping each Resident to look after and self-administer their medicines;
- Members of the Provider's Staff administering medicines to a Resident, including Staff training and competence requirements;
- Members of the Provider's Staff undertaking covert administration;
- Administering and review of medicines for each Resident with swallowing difficulties;
- Members of the Provider's Staff giving non-prescription and over the counter products and homely remedies to residents, if appropriate;
- Storage, administration and safety of oxygen.

8.11. The Provider must ensure that it has policies and procedures to ensure safe administration of medicines in accordance with the Authority's 2018 Adult Social Care Services Medicines Policy <https://www.bolton.gov.uk/downloads/file/1594/medicines-management-policy>.

8.12. The Provider must ensure that it implements policies, and that it gives due consideration to all relevant professional advice, statutory guidance and the following guidance

- NICE Managing Medicines in Care Homes 2014 <https://www.nice.org.uk/guidance/sc1>
- NICE Quality Standard for Managing Medicines in Care Homes <https://www.nice.org.uk/guidance/qs85>
- NICE Checklist for health and social care staff developing and updating a care home medicines policy: Implementing the NICE guideline on managing medicines in care homes <https://www.nice.org.uk/guidance/sc1/resources/checklist-for-care-home-medicines-policy-pdf-13716829>
- Care Quality Commission [Regulation 12] <http://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-12-safe-care-treatment#guidance>
- The Administration of Medicines in Care Homes https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518298/Medicines_in_care_homes_A.pdf
- Guidelines on The Management of Controlled Drugs (CD) in Care Homes <https://www.prescqipp.info/resources/send/134-care-homes-controlled-drugs-good-practice-guide/1689-bulletin-75-care-homes-controlled-drugs-good-practice-guide>
- The Misuse of Drugs Acts, 1971,1973 & 2001 <https://www.legislation.gov.uk/ukpga/1971/38/contents>

- The Mental Capacity Act 2005
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf

8.13. The Provider shall ensure that all members of its Staff comply with the above policies and procedures at all times.

Bespoke equipment

8.14. Where the Provider considers that standard equipment it provides to meet the needs of a Resident is unsuitable for a Resident and the provision of bespoke equipment is necessary, the Provider shall notify the Authority and:

- Evidence what bespoke equipment is required and why;
- Propose a bespoke equipment solution for the Resident;
- Advise on an appropriate source and indicate the cost of the bespoke equipment.

8.15. The Authority shall then consider the proposal and notify the Provider of the decision within ten (10) Working Days following receipt of the request including whether the Authority agrees to reimburse the Provider for the procurement of the bespoke equipment or that the Authority will supply the bespoke equipment directly or through another commissioned service, agreeing the process to procure the equipment.

8.15.1. In the case of the Authority rejecting the proposal on clinical grounds this will be confirmed in writing including the rationale for the decision.

8.15.2. Where the Authority agrees to reimburse the Provider for the procurement of bespoke equipment such reimbursement shall be at cost and the Provider shall provide evidence to the Authority regarding the source and cost of the bespoke equipment.

8.16. Where the Authority agrees for arrangements to be made to provide bespoke equipment to the Provider either directly or through other services commissioned by the Authority (for example, Wheelchair Centres and Integrated Community Equipment Services) the Provider shall:

- 8.16.1. Only use such bespoke equipment for the named Resident it is intended for;
- 8.16.2. Maintain the bespoke equipment in a clean state and comply with any infection control and specialist decontamination requirements as advised by the supplier and/or the Authority;
- 8.16.3. Accept responsibility for the safe use of the bespoke equipment and arrange for all necessary servicing and maintenance, the costs of such being the responsibility of the Authority;
- 8.16.4. Be liable for the replacement of the bespoke equipment or the reasonable cost of repairs due to improper use by staff or where the damage is excessive, unusual or unreasonable.

- 8.17. The Provider shall notify The Authority when, for whatever reason, the bespoke equipment is no longer required for the named Resident, making arrangements with the Authority for transfer of the bespoke equipment into the possession of the Authority. The Provider shall be liable for the reimbursement of the cost of any bespoke equipment not returned.

Enhanced intervention and observation

- 8.18. Where changing needs of a Resident indicate a review may be required. As well as referring to the authority the Provider in addition shall explore appropriate options including:
- Assistive equipment;
 - Use of telecare;
 - Increased training of Staff;
 - Appropriate referral to NHS professionals;
 - Enhanced carer / nursing skills; and
 - A review of the appropriate deployment of current carer / nursing skills to support the Resident's needs.

9. Mental Capacity Act, Deprivation of Liberty Safeguards and behaviour that challenges

Mental Capacity Act 2005

- 9.1. A Resident may fall within the provisions of the Mental Capacity Act 2005 and, in such circumstance, the Provider is required to understand its responsibilities to the affected Resident.
- 9.2. The Provider shall advise the Authority if the Resident requires a statutory advocacy service. The Provider shall give all reasonable assistance and cooperation to any advocate appointed in respect of the Resident, including access to all relevant information held in regard to the Resident, after obtaining the Resident's consent, where possible.

Deprivation of Liberty Safeguards (DoLS)

- 9.3. The Provider must work in accordance with Deprivation of Liberty Safeguards (Code of Practice) and the "Local DoLS guidance for the Managing Authorities," copies of this guidance are available from dols@bolton.gov.uk. The Provider must adhere to its responsibilities as a Managing Authority as defined by the Mental Capacity Act 2005. The Provider must follow statutory guidance on DoLS and understand when and how the Provider should make a request for a Deprivation of Liberty Safeguards' Assessment. Requests for assessments should be submitted to the relevant DoLS team dependent upon where the person is classed as Ordinarily Resident; for those Residents

who normally reside within the borough of Bolton the contact address is: dols@bolton.gov.uk.

Physical intervention

- 9.4. Where the Authority's Support Plan in respect of a Resident comprises of a physical intervention plan the Provider shall ensure that members of its Staff are appropriately trained in a non-aversive model of physical intervention that is accredited by The British Institute of Learning Disabilities (BILD). Any physical intervention including planned physical intervention contained within the Authority's Support Plan in respect of a Resident must be compliant with the Mental Capacity Act 2005. This means that the physical intervention used must be reasonable and proportionate to the danger the Resident might encounter if the physical intervention were not used. Physical intervention must only be used if it is the least restrictive intervention available and the duration of any physical intervention should be as short as is reasonably possible to maintain the safety of the Resident and/or others.
- 9.5. The Provider must have a physical intervention policy approved by the Authority and have a restrictive physical intervention policy pathway; any physical interventions used out of necessity/emergency must be proportionate and reported to the Authority and if any injury is sustained the Authority's Adults Safeguarding Team. Planned physical interventions must be in accordance with the Authority's policy and the Authority's Support Plan. The Authority's Adults Safeguarding Team can be contacted via email at: safeguardingadults@bolton.gov.uk; or securely at safeguardingadults@gcsx.bolton.gov.uk.

Responding to behaviour that challenges

- 9.6. At times a Resident or their family members may display behaviour or attitudes related to the Resident's condition that could be regarded as offensive, such as dis-inhibited behaviour. The Provider is required to prepare and support its members of Staff to enable them to continue to deliver the Services to each Resident.
- 9.7. If such behaviour or attitude could be considered illegal or present a risk to any member of the Provider's Staff or others, then the Provider should report this immediately to the appropriate authorities as well as the Authority to reach an agreement about how to proceed.

10. Providing Palliative and End of Life Care

- 10.1. A Resident may require Palliative and End of Life Care and in this circumstance the Provider shall offer an appropriate level of support to families and those close to the Resident.
- 10.2. The Provider shall ensure that care is well planned and coordinated with assurance of being delivered to a high standard.
- 10.3. Therefore, the specific requirements of the Provider are to:
- 10.3.1. Ensure that members of its Staff are aware of and understand the principles of care involved in looking after those in the last few days of their life;

- 10.3.2. Ensure that each Resident at end of life receives high quality care, delivered with compassion and competence, which is tailored to their needs and wishes;
- 10.3.3. Enable a Resident to die within the Care Home if it is their preference and this is possible to achieve;
- 10.3.4. Ensure that members of its Staff have received specific training in supporting each Resident at end of life;
- 10.3.5. Ensure that each Resident is able to discuss their needs and preferences with a support worker who is competent and confident in having those discussions and who understands when it is necessary to refer on to other services for additional support;
- 10.3.6. Ensure the needs of carers are recognised and included in the overall approach to care delivery.

11. Absences, deaths and termination of placements

Absences and deaths of residents

- 11.1. The Provider shall notify the Authority immediately if a Resident is absent from the Care Home for an unplanned period and the Authority shall discuss with the Provider the viability of continuing with the relevant ISUPA. In the event that the relevant ISUPA is not terminated the Care Fees payable under that ISUPA will be reduced after twenty eight (28) nights of absence to 80 percent.
- 11.2. The Provider shall notify the Authority in writing as soon as reasonably possible but within no more than eight (8) hours of a Resident being absent from the Care Home without explanation. Out of usual business hours the Provider must also contact the Authority's emergency duty team.
- 11.3. In the event of the death of a Resident, the Provider will ensure timely notification to:
 - The Resident's next of kin and/or their representative;
 - The Authority, within twenty four (24) hours;
 - The Resident's GP;

with such notifications being made in accordance with the processes and standards detailed within the Contract.
- 11.4. If a Resident who has no next of kin dies outside of normal working hours the Provider may arrange to move the Resident's body to the nominated undertaker of the Authority provided that the Resident has not made alternative arrangements prior to death. For the avoidance of doubt, nothing in this paragraph 11.4 shall oblige any party to meet any funeral expenses.
- 11.5. An ISUPA shall terminate forthwith without notice on the death of the Resident to which it relates and in that event the Care Fees shall be payable up to the date of death plus three (3) extra nights following death.

- 11.6. The Authority may terminate an ISUPA on no less than fourteen (14) nights' notice for any reason. During the period of notice the Provider shall continue to provide the Services as specified in the ISUPA.
- 11.7. The Authority may terminate an ISUPA forthwith if the Resident's financial circumstances become such that the Resident's placement at the Care Home ceases to be eligible for financial support by the Authority.
- 11.8. The Authority may terminate an ISUPA on no less than one (1) nights' notice for the following reasons:
- 11.8.1. The Resident's placement at the Provider's Care Home is no longer appropriate to meet the Resident's assessed needs;
 - 11.8.2. The Authority discovers that it has been induced to enter into an ISUPA as a result of misrepresentation by the Resident or his/her representative, advocate or guardian of the Resident's needs, condition and/or financial circumstances;
 - 11.8.3. The Provider persistently breaches its obligations relating to a Resident under an ISUPA;
 - 11.8.4. A Resident no longer wishes to reside at the Care Home, for the avoidance of doubt a Resident's wishes may, where relevant, be expressed by their formal advocate;
 - 11.8.5. The Provider's or the Care Home's registration status has or is scheduled to change;
 - 11.8.6. The Care Home is closing.
- 11.9. The Provider may terminate an ISUPA by giving not less than seven (7) nights' written notice if the Resident's physical and/or mental condition deteriorates to a point where long term care is needed at a level which the Provider is unable to meet, having regard to the Care Home's statement of purpose. In such cases the Provider shall request a review of needs, in liaison with the Authority and appropriate health or care professionals. In this event the ISUPA shall terminate on the expiry of the said notice or on the date that the Resident is moved into more suitable accommodation whichever shall be the later date.
- 11.10. The Provider may terminate an ISUPA by giving not less than fourteen (14) nights' written notice to the Authority if in the Provider's reasonable opinion, a Resident's behaviour is a danger to the Care Home, the Provider's Staff or other residents or if a Resident persistently seriously affects the well-being of other residents, provided that:
- 11.10.1. The Provider has contacted the Resident's Care Manager, as detailed in the ISUPA, giving reasonable notice for the same to consider the issues and, where it is deemed appropriate, to arrange for further assessment of the Resident's needs; and
 - 11.10.2. A meeting has been held between the Resident's Care Manager, as detailed in the ISUPA, the Provider and, where appropriate, the Resident's representative resulting in an action plan being agreed; and

11.10.3. The agreed action plan has been implemented but has failed and a further meeting has taken place between the team leader of the Resident's Care Manager and at this meeting it was agreed that there is no other option but to remove the Resident from the Care Home; and

11.10.4. The said Care Manager has confirmed to the Provider that suitable alternative accommodation for the Resident is available.

12. Record keeping, data protection and clinical governance

Record keeping

12.1. The Provider shall ensure that all members of its Staff comply with all statutory and professional obligations concerning the recording and security of information in relation to the Resident.

12.2. The Provider shall maintain records in the provision of the Services including but not limited to:

- Care needs of the Resident;
- Risk Assessments, incidents and accidents;
- Monies and valuables of the Resident;
- Medicines management, including:
 - Accurate and up to date information on medication (i.e. a medication profile) for each Resident in the Authority's Support Plan;
 - Medication administered for each resident, except those self-administering;
 - Medicines that the resident stores and self-administers, following a risk assessment;
 - Medication incidents, route-cause analyses and outcomes;
 - Information from correspondence and messages about medicines, such as e-mails, letters, text messages and transcribed phone messages;
 - Ordering, receipt and disposal of medication;
- A Controlled Drugs (CD) register for recording:
 - The receipt, administration and disposal of Controlled Drugs Schedule 2, in a bound book with numbered pages;
 - The balance remaining for each product;

- Computerised CD records where used, should comply with guidelines from the registering authority;
 - Providers must follow the relevant legislation to ensure that appropriate records about medicines are kept secure, for an appropriate period of time, and destroyed securely when appropriate to do so.
- Activities organised by the Provider and undertaken by the Resident;
 - Visitor log;
 - Repairs and maintenance.

12.3. To enable review and audit of the Services provided to the Resident the Provider shall at the reasonable request of the Authority provide all necessary assistance to the Authority to access the Resident Records and other relevant documentation. In the case of nursing and healthcare records, the Provider shall only make these available to a healthcare professional.

12.4. At the reasonable request of the Authority, the Provider shall make available within two (2) weeks, copies of any of the above records and any other records or information held relating to the provision of the Services. The Provider shall ensure that the above requirements at all times comply with responsibilities related to Resident consent and the law.

Clinical governance

12.5. The Provider shall:

12.5.1. Establish systems and procedures of clinical governance that promote continuous improvement in the provision of quality of health and social care

12.5.2. Safeguard high standards of care by creating an environment in which health and social care continues to develop.

12.5.3. Maintain on an ongoing basis a Resident Record which details, in English, all the care provided to the Resident in accordance with and to evidence delivery of the Authority's Support Plan.

12.5.4. Maintain a signatory register which includes the names, designations and signatures of all Staff involved in the provision of care.

12.5.5. Ensure that all documentation is completed in accordance with the relevant Code of Practice, for example, the Nursing and Midwifery Council.

12.5.6. Ensure that senior management undertake regular and routine audits of the standard of documentation maintained by Staff.

12.5.7. Have processes in place to maintain effective links with local NHS Community Services, where the Provider does not directly provide nursing services. This particularly relates to Care Homes without Nursing Care.

13. Workforce

13.1. The Provider will ensure that:

- 13.1.1. It has a clear programme of induction and training relevant to the Services which it delivers;
- 13.1.2. All members of Staff satisfactorily complete an induction programme within the first twelve weeks of employment in line with the recommendations relating to the Care Certificate set by the Skills for Care, or any successor body, and requirements of the CQC, or any successor body;
- 13.1.3. The Care Certificate complements and does not replace the in-service specific induction undergone by new staff;
- 13.1.4. The Registered Manager assures Staff competence is assessed in the workplace;
- 13.1.5. The Registered Manager advises all members of Staff when they have been deemed competent in all standards and have completed the Care Certificate;
- 13.1.6. Members of its Staff do not undertake unsupervised tasks for which they have not been assessed as competent;
- 13.1.7. All training, including learning outcomes, is fully and clearly recorded for every member of its Staff;
- 13.1.8. Details of Clinical Staff registration status are recorded;
- 13.1.9. Records are kept regarding all members of its Staff, including:
 - Staff numbers employed and whether the employee is contracted permanently or through an agency;
 - Staff turnover rates;
 - Timesheets;
 - Signature register.
- 13.1.10. The following educational updates are refreshed within the timescales given below:
 - Fire safety: every three (3) years
 - Moving & handling: every two (2) years
 - Infection prevention & control: every two (2) years
 - Safeguarding: every three (3) years
 - Administration of medication: every two (2) years.

14. Involving Residents and dealing with complaints

- 14.1. The Provider shall deliver Services which focus upon ensuring the best possible outcomes for each individual Resident.
- 14.2. The Provider shall ensure that it arranges regular collective Resident and/or relatives' meetings; these must take place a minimum of three (3) times annually. The meetings will be recorded with a copy of the minutes available to the Authority when requested.
- 14.3. The Provider shall undertake a satisfaction survey amongst Residents at least every 12 (twelve) months in regard to the provision of the Services. The Survey shall include a section where each Resident or their representative can provide suggestions for improvement to the Services. A summary of the survey results shall be made available to the Authority including details of actions that the Provider plans to take in light of the survey results and when such actions will be taken.
- 14.4. The Provider will address all concerns, potential and actual complaints as early and fully as possible and in ways that minimise the opportunities for escalation and continuing dissatisfaction.

15. Self-funding residents

- 15.1. Prior to accepting a resident on a privately funded basis, the Provider shall:
 - 15.1.1. Give advice, including the fact sheet published by the Authority for self-funding care home residents, to ensure self-funding residents are claiming all financial assistance that they are eligible for.
 - 15.1.2. Advise self-funding residents to ensure they understand their commitments and that a resident may no longer be able to stay in a particular care home if they are no longer able to fund their own care.
- 15.2. In the event that the Provider agrees to accommodate a resident on a privately funded basis and it is later discovered that the resident would have been eligible to receive Services funded by the Authority from either the commencement of their placement or later:
 - 15.2.1. The Provider shall refund to the resident all fees paid from the date that the Authority informs the Provider that the individual became eligible to receive the Services funded by the Authority; and
 - 15.2.2. The Authority shall pay to the Provider the Care Fees which would have been payable had the resident's placement been made under an ISUPA. Under no circumstances shall the Authority pay to the Provider the amount which the resident had agreed to pay on a privately funded basis (including any Additional Costs agreed).

Appendix 3 - Additional definitions and interpretation

The following additional definitions relate to this Service Specification:

“Acute Care Setting” shall refer to a setting, usually a hospital, where an individual receives medical care to treat a serious injury, illness or medical condition. It may also be to recover following surgery. The duration of the care is short term.

“Additional Costs” describe the cost of residential care when the service user chooses to stay in accommodation that costs more than the amount specified in the personal budget. The difference between the personal budget and the total cost of care are the Additional Costs, these must be paid by a Third Party.

“Authority Supplement” shall mean any payment in addition to the Standard Authority Rate that the Authority makes to a Provider which is set at a specific rate for an individual Resident or a consistent rate applicable to any Resident placed in a particular home.

“Authority’s Support Plan” shall mean the support plan for each Resident developed by the Authority detailing the Resident’s care and support needs throughout a Resident’s placement in a Care Home, which support plan shall be developed in consideration of the Provisional Support Plan and the Provider’s Support Plan.

“Care Home” shall mean a care home which is:

- a. located in England or Wales and registered as a residential care home or care home with nursing under the provisions of the Health and Social Care Act 2008; and
- b. registered with the CQC as being operated by the Provider

“Care Fee” shall mean the amount payable by the Authority to the Provider in respect of each Resident.

“Care Manager” is the officer designated by the Authority who is responsible for the Authority’s Support Plan, organising care and carrying out reviews to ensure the Resident is receiving the right care that meets his/her requirements.

“Care Quality Commission (CQC)” shall mean the independent regulator of health and social care in England.

“Carer” a family member or friend of the Service User who provides day to day support to the Service User.

“Controlled Drugs” shall mean prescription medicines that are controlled under the Misuse of Drugs legislation (and subsequent amendments). These medicines are called controlled medicines or controlled drugs. The Misuse of Drugs Regulations 2001 has a full list of controlled medicines.

“End of Life Care” shall mean support for people who are in the last months or years of their life.

“Funded Nursing Care (FNC)” shall mean the proportion of fees paid to a nursing home to cover nursing costs where the residential element of a Resident’s care is paid by the Local Authority (or by the Resident themselves).

“Host Local Authority” shall mean the local authority with responsibility for adult social care in the area in which the care home is situated.

“ISUPA” shall mean a placement agreement entered into by the Provider and the Authority in accordance with the terms of the Contract, under which the Provider agrees to provide the Services (or any part) to a Resident.

“Managing Agent” shall mean that where restraints and restrictions are in put in place as part of the care of a person living in a care home it may be that the person subject to them is being deprived of their liberty; they may therefore need to be placed under Deprivation of Liberty Safeguards (DoLS). When Deprivation of Liberty Safeguards are in place the Provider managing the care home is referred to in the Mental Capacity Act as the Managing Authority.

“Mental Capacity Assessment” shall mean an assessment under the Mental Capacity Act 2005 of a Resident’s ability to make his or her own decisions prior to the delivery of any care or treatment where there is a reasonable belief that a Resident lacks capacity (the process is defined here: <https://www.scie.org.uk/mca/practice/assessing-capacity/>).

“NHS Contribution” shall mean any contribution which the Authority has agreed to make on behalf of any Clinical Commissioning Group (CCG) or any legal successor.

“Nursing Care” shall mean the provision of care to Residents residing in Care Homes which is a service provided by the relevant NHS body under section 2 of the National Health Service Act 1977.

“Nursing and Midwifery Council” the organisation responsible for regulating nursing and midwifery.

“Ordinarily Resident” shall mean the area where a person normally resides. This is important in social care for determining which local authority is responsible for meeting a person’s care and support needs. For people living in a care home setting this will be the local authority for the area in which they normally resided prior to going into the care home.

“Palliative Care” is part of End of Life Care; for those with an incurable illness, palliative care involves making the patient as comfortable as possible, including managing pain and other distressing symptoms.

“Provider’s Support Plan” sets out a Resident’s care and support needs as recorded by the Provider; it will identify assessed care needs and incorporates the Risk Assessment.

“Provisional Support Plan” means the support plan created during the initial assessment of an individual. It will be updated and expanded to make the Provider’s Support Plan following admission to the Care Home.

“Registered Nursing Home” shall mean a care home which is registered with the CQC under Schedule 1 of the Health and Social Care Act (Regulated Activities) Regulations 2014 to provide nursing care.

“Resident” shall mean an individual in direct receipt of the Services.

“Resident’s Contribution” shall mean the financial contribution payable by the Resident for the Services, as determined following a financial assessment carried out by the Authority in line with the Care Act 2014.

“Resident Records” shall mean the detailed and accurate records which the Care Home is required to maintain detailing care plans, medical conditions, health care and medications for each Resident, including the Provider’s Support Plan.

“Risk Assessment” is a written document for an individual Resident with the purpose of identifying and managing risks which could cause harm or injury to the Resident, or impair their wellbeing, it considers their and health and care requirements.

“Standard Authority Rate” shall mean the standard weekly sum determined by the Authority or by a Host Local Authority which rate shall be payable by the Authority to the Provider in respect of each Resident in receipt of the Services together with any Resident’s Contribution.

“Statement of Purpose” is required by the CQC for all regulated activities, it must include the Provider’s aims and objectives, details of the services provided, the needs the service meets, contact details, the service’s legal entity and set out the places where services are provided.

“Third Party” is a friend or relative who signs an agreement to pay Additional Costs for a person living in residential care.

Schedule 2

Data Processor Schedule

1. Personal Data to be shared

Personal Data

Dates of birth

Contact details

Financial Information

Names, addresses and contact information for carers and financial representatives.

Special Category Data

Ethnic origin

Medical history description

Details of physical health

Details of mental health

Health and social care needs of the individual

Required medication

Other Personal Data provided

Medicines administered

Incidents such as falls, and safeguarding incidents

Change in resident's health and where it has been necessary to involve health care professionals

At the commencement of each ISUPA and each time the Authority's Support Plan is updated to reflect changes relevant to a Resident, the Authority will share Personal Data and Special Category Data with the Provider. The Provider will then share Personal Data and Special Category Data with the Provider, which Personal Data shall be contained within the Provider's Support Plan. Both the Provider and the Authority will be Data Controllers.

Each Party is legally responsible for ensuring that their use of Personal Data and Special Category Data is lawful, properly controlled and upholds the rights of individuals.

When an individual moves into the Care Home and becomes a Resident the Provider's Staff will use the Authority's Support Plan to develop the Provider's Support Plan.

The Provider's Staff will record information about the care received by the Resident. All members of the Provider's Staff are also obliged to record information about the medicines administered to the Resident. These records will comprise paper and electronic records, practice will vary across the Care Home.

The information relating to a Resident's health and medicines together with accidents, incidents, falls and safeguarding concerns must be shared with the CQC.

A Resident may sometimes be discharged to different care settings, in these instances the move will be facilitated by the Resident's Care Manager who will provide a new Support Plan and transfer any care records.

2. Basis for sharing Personal Data

The Care Act 2014

The Personal Data and Special Category Data is being shared between the Authority and the Provider, being two Data Controllers.

Save where there the Provider and the Provider shall obtain consent prior to data sharing.

3. Purpose

The Services are required to facilitate the provision of personal care and accommodation within the Care Home for individuals who have been assessed as eligible for residential or nursing care.

The Services will be provided to Residents with a range of behaviours and disabilities, some of which may be profound. Some Residents may have complex needs and some may be very vulnerable.

To enable the Authority to meet its duties under the Care Act 2014, the Authority must ensure that it has a contract in place with any care home provider appropriately registered with the health and social care regulator the Care Quality Commission (CQC).

This affects approximately 1,400 people annually.

The Authority maintains strong links with the Provider through monitoring and meetings.

4. Transmission of Personal Data

Electronic Personal Data will only be shared via a secure email solution.

Personal Data stored on physical media, including paper will only be shared by way of hand delivery or by tracked secure courier, requiring a signature.

Any paper copies shared will be secured in an opaque secure envelope marked "restricted".

5. Security of Personal Data

Following receipt of the Personal Data detailed in section 1 above, the Personal Data shall be secured in accordance with the Data Protection Legislation.

6. Retention of Personal Data

All Personal Data will be retained in accordance with the Data Protection Legislation and any requirements within the Agreement provided, the Data Protection Legislation shall always take precedence.

7. Destruction of Personal Data

All Personal Data shared under the Agreement and held electronically shall be securely deleted in accordance with the Data Protection Legislation.

All paper copies shall be securely shredded (to DIN3 grade or if superseded to the equivalent secure shredding applicable to restricted data).

8. Restrictions on other use and further disclosure

It is recognised that unless the law specifically requires or permits this, shared information will not be used for different purposes or further disclosed. Even where the law permits further disclosure, in line with good practice the originating data controller will be consulted first and it may be necessary for the data subject to be informed of the disclosure.

All Personal Data shared under the Agreement and held electronically shall be securely deleted in accordance with the Data Protection Legislation.

All paper copies shall be securely shredded (to DIN3 grade or if superseded to the equivalent secure shredding applicable to restricted data).

9. Subject Access Request (SAR)

The Controller of the Personal Data shall be responsible for dealing with a SAR.

Where the Authority and the Provider are Controllers in common, the recipient of a SAR shall inform the other within 5 Working Days and the parties shall promptly agree who is responsible for responding to the SAR.

10. Complaints

The Parties agree to use their standard organisational and statutory procedures to deal with privacy/data complaints arising under this agreement and will co-operate (with the complainant's permission) where complaints relate to more than one party.

Schedule 3

Introduction - Staffing Information

There are two stages:

Stage 1 (Provider's Provisional Staff List) - Information is collected from the current employer (Transferor) and disclosed to the bidders in the tender process. The information in Stage 1 should not reveal the employees' identities. The information should enable the bidders to:

- (a) present their plans for servicing the new contract (with reference to the existing workforce); and
- (b) price their bids taking into account their potential inherited employment liabilities.

Stage 2 (Provider's Final Staff List) - Contains information that is not required by the bidders for the tender stage but will be required by the new employer once it has been identified.

All information marked * in both stages is ""employee liability information"". This information must be provided to the transferee 28 days before the transfer date. If it has already been provided, for example, because it is included in Stage 1, it must be updated so that it is accurate on the date that falls 28 days before the transfer date.

Schedule 3, Part 1

Provider's Provisional Staff List – Stage 1

STAGE 1: INFORMATION FOR BIDDERS

Name of "Transferor":	
Total number of employees transferring	
Total number of employees expected to be transferred who were originally transferred from the client (if applicable)	

COMPLETION NOTES

All parties

If the information cannot be included on this form, please attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.

Stage 1: Information for bidders' pricing purposes (anonymised)												
	* Items required to be provided to the successful bidder at least 28 days before the start of the new contract (regulation 11, TUPE)	Details	Em p No 1	Em p No 2	Em p No 3	Em p No 4	Em p No 5	Em p No 6	Em p No 7	Em p No 8	Em p No 9	Em p No 10
1	*	Job title										
2	*	Work location										
3	*	Age										
4		Gender										
5	*	Continuous service date (dd/mm/yyyy)										
6	*	Date employment started with existing employer (dd/mm/yyyy)										
7	*	Contractual weekly hours										
8	*	Regular overtime hours per week										
9	*	Salary (or hourly rate of pay)										
10	*	Payment interval										
11	*	Bonus payments										
12		Pay review method										
13		Frequency of pay reviews										
14	*	Agreed pay increases										
15		Next pay review date										
16		Any existing or future commitment to training that has a time-off or financial implication										

17	*	Car allowance (£ per year)											
18		Lease or company car details											
19	*	Any other allowances paid											
20	*	Any other benefits in kind											
21	*	Type of pension provision											
22	*	Current employer contribution rate											
23	*	Private health insurance											
24	*	Annual leave entitlement (excluding bank holidays)											
25	*	Bank holiday entitlement											
26		Mobility or flexibility clause in contract?											
27	*	Contract end date (if fixed term contract or temporary contract)											
28	*	Maternity or paternity leave											
29	*	Sick leave entitlement											
30	*	Sick pay entitlement											
31	*	Notice											
32	*	Any collective agreements?											
33		Employment status (for example, employee, self-employed, agency worker)?											
34		% of working time dedicated to the provision of services under the contract											

Schedule 3, Part 2

Provider's Final Staff List – Stage 2

STAGE 2: INFORMATION FOR THE NEW EMPLOYER AFTER CONTRACT AWARD

Name of "Transferor":	
Total number of employees transferring	
Total number of employees expected to be transferred who were originally transferred from the client (if applicable)	

		Stage 2: Additional information needed for transfer										
	* Items required to be provided to the successful bidder at least 28 days before the start of the new contract (regulation 11, TUPE)	Details	Em	Em	Em	Em	Em	Em	Em	Em	Em	Em
			p No	p No	p No	p No	p No	p No	p No	p No	p No	p No
			1	2	3	4	5	6	7	8	9	10
1		Personnel or employee number										
2		Employee full name										
3		NI number										
4		Currently absent from work due to long term sickness absence, maternity leave or career break (indicate reason for absence)										
5	*	Information about any disciplinary procedure taken against, or grievance procedure taken by, the employee in the last two years.										
6	*	Information of any court, tribunal, case, claim or action: (a) brought by the employee										

		against the transferor previous two years; and (b) that the transferor has reasonable grounds to believe that an employee may bring against the transferee, arising out of the employee's employment.										
7		Employee DBS checked? (yes or no)										
8		If "yes" enter date of DBS check notification to you and employee										
9		If "yes" enter the category of the DBS check notification to you and employee										
10		Pension information : length of pensionable reckonable service										