

Dated:

2013

CHESHIRE EAST BOROUGH COUNCIL

and

EASTERN CHESHIRE CLINICAL COMMISSIONING GROUP

SOUTH CHESHIRE CLINICAL COMMISSIONING GROUP

VALE ROYAL CLINICAL COMMISSIONING GROUP

and

[INSERT PROVIDER'S NAME]

**PRE PLACEMENT AGREEMENT FOR THE
PROVISION OF ACCOMMODATION,
PERSONAL CARE AND NURSING CARE**

Borough Solicitor

Cheshire East Borough Council

Westfields

Sandbach CW11 1HZ

Contents

| | |
|---|----|
| 1. DEFINITIONS AND INTERPRETATION | 5 |
| 2. TERM | 16 |
| 3. ENTIRE AGREEMENT | 16 |
| 4. SCOPE OF AGREEMENT | 16 |
| 5. TRANSFERRING CONTRACTS | 16 |
| 6. THE AUTHORISED OFFICER | 17 |
| 7. THE PROVIDER'S REPRESENTATIVE | 17 |
| 8. COMMUNICATIONS | 17 |
| 9. THE COMMISSIONERS' RESPONSIBILITIES | 18 |
| 10. CONFLICTS OF INTEREST | 18 |
| 11. FRAUD | 19 |
| 12. THE SERVICES | 19 |
| 13. PROVIDER'S STAFF | 19 |
| 14. PLACEMENT PROCESS | 21 |
| 15. PLACEMENT TYPE | 21 |
| 16. PLACEMENT CARE PLANNING AND REVIEW | 21 |
| 17. NURSING NEEDS | 22 |
| 18. NOTIFICATION OF AVAILABILITY | 23 |
| 19. COMPLAINTS | 24 |
| 20. PURCHASING ARRANGEMENTS | 24 |
| 21. FEES | 25 |
| 22. FEE REVIEW | 26 |
| 23. PAYMENT | 26 |
| 24. RECOVERY OF SUMS DUE | 29 |
| 25. ADULT PROTECTION PROCEDURE | 29 |
| 26. PREVENTION OF BRIBERY AND PAYMENTS ON COMMISSION | 29 |
| 27. EQUAL OPPORTUNITIES AND NON-DISCRIMINATION | 31 |
| 28. HUMAN RIGHTS | 31 |
| 29. RIGHTS OF THIRD PARTIES | 31 |
| 30. HEALTH AND SAFETY | 31 |
| 31. VETTING AND BARRING | 32 |
| 32. SMOKING POLICY | 32 |
| 33. BUSINESS AND SERVICE CONTINUITY | 32 |
| 34. PROTECTION OF PERSONAL DATA | 33 |
| 35. CONFIDENTIALITY | 33 |
| 36. PUBLICITY | 35 |
| 37. ATTENDANCE AT COMMITTEES | 35 |
| 38. TRANSFER, NOVATION AND SUB-CONTRACTING | 35 |
| 39. WAIVER | 36 |
| 40. AMENDMENTS TO THIS AGREEMENT | 36 |
| 41. SEVERABILITY | 37 |
| 42. REVIEW OF THIS AGREEMENT | 37 |
| 43. INDEMNITY AND INSURANCE | 37 |
| 44. WARRANTIES AND REPRESENTATIONS | 39 |
| 45. DEFAULT AND SUSPENSION | 39 |
| 46. TERMINATION OF THE INDIVIDUAL PLACEMENT AGREEMENT | 42 |
| 47. TERMINATION OF THE PRE PLACEMENT AGREEMENT | 43 |
| 48. CONSEQUENCES OF TERMINATION | 44 |
| 49. FORCE MAJEUR | 45 |
| 50. QUALITY AND CONTRACT MONITORING | 45 |
| 51. INFORMATION PROVISION AND EXCHANGE | 46 |

| | |
|------------------------------|----|
| 52. LAW AND JURISDICTION | 47 |
| 53. LEGISLATIVE CHANGES | 47 |
| 54. DISPUTE RESOLUTION | 47 |
| 55. OUT OF BOROUGH PROVIDERS | 48 |

APPENDICES

Schedule 1: Care and Service Specification

Annex A: Individual Placement Agreement

Schedule 2: Fees and Finances

Schedule 3: Transferring Contracts

Schedule 4: Monitoring and Evaluation

2013

BETWEEN:

(1) **CHESHIRE EAST BOROUGH COUNCIL** of Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ (the “Council”);

(2) **EASTERN CHESHIRE CLINICAL COMMISSIONING GROUP** of (insert address)

(3) SOUTH CHESHIRE CLINICAL COMMISSIONING GROUP of (insert address)

(4) VALE ROYAL CLINICAL COMMISSIONING GROUP of (insert address) of []

(collectively referred to as the “CCGs”); and

(3) **[PROVIDER]** (Company Number) whose registered office is at (the "Provider")

RECITALS

WHEREAS:

- A The Council is the local authority for the administrative area of Cheshire East for the purposes of the Local Authority Social Services Act 1970 and is empowered under Part III of the National Assistance Act 1948 and section 1(1) of the Local Government (Contracts) Act 1997 to provide residential accommodation for persons aged 18 or over in need of care and attention which is not otherwise available to them, and under the National Health Service and Community Care Act 1990 to provide community care services as that expression is defined in the National Health Service and Community Care Act 1990.
- B The Council is a Best Value Council under the Local Government Act 1999 and the functions in respect of which the Council wishes to procure are Best Value functions.
- C The CCGs have a duty to assess and provide for the registered nursing care needs of the Care Home's Service Users, pursuant to the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2001 as amended.
- D The Council and the CCGs (together referred to as the Commissioners) hereby enter into joint working arrangements for the purposes of commissioning residential and nursing care for Service Users within the overlapping area of the Borough of Cheshire East and the administrative districts of the CCGs. The Council and the CCGs wish to commission the Services set out in the terms and conditions of this Agreement at the Care Home from the Provider.
- E The Provider is appropriately registered under the Health and Social Care Act 2008 to carry on or manage the Care Home.
- F The Provider has agreed to provide the Services at the Care Home subject to, and in accordance with the terms and condition of this Agreement.

G The Parties have agreed that this Agreement shall constitute arrangements for the Provision of residential accommodation as referred to in section 26 of the National Assistance Act 1948.

PART 1 GENERAL PROVISIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1. In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

| Word / Phrase | Definition |
|------------------------------------|--|
| Agreement | Shall mean the terms and conditions of this Agreement and all Schedules and Appendices hereto |
| Assessed Service User Contribution | Shall mean any contribution the Service User is assessed to make to the Standard Fee as determined in accordance with CRAG |
| Assistive Technology | Shall mean any product or service designed to enable independence for disabled or older people |
| Authorised Officer | Shall mean the person nominated pursuant to Clause 6 (the Authorised Officer) |
| Best Value | Shall mean the requirements placed upon the Council under the Local Government Act 1999, Statutory Instruments there under and Government Guidance issued from time to time. |
| Business Continuity Plan | Shall mean the Provider's plan referred to in Clause 33 relating to the continuity of all services as agreed with the Commissioners and as may be amended from time to time which for the avoidance of doubt shall include a plan in relation to the ongoing |

| | |
|--------------------------------|--|
| | provision of the Services or equivalent replacement thereof |
| Care Home | Shall mean the residential or nursing home from which the service is delivered as set out in the Individual Placement Agreement |
| Care Home Fee | Shall mean the fee that the Care Home advertises as its charge for staying at the Care Home |
| Care Manager | Shall mean any worker(s) appointed by the Council to ensure the Service Users rights and needs are being met |
| Care Plan | Shall mean an individual plan of care as more particularly described under Personalised Care, Treatment and Support of the Essential Standards of Quality and Safety for each Service User's care and support requirements as assessed by the Council/CCGs but which shall be prepared in conjunction with the Service User, relatives and other interested parties and shall be implemented in accordance with the Care and Service Specification |
| Care and Service Specification | Shall mean the Care and Service Specification as set out in Schedule 1 and as may be amended from time to time in accordance with Clause 42 (Review of this Agreement) |
| Charging Period | Shall mean the relevant period for the submission of the Service Return from time to time set out by the Council |
| Commencement Date | Shall mean the date at which the Agreement is signed by the Parties |

| | |
|---------------------------|---|
| Community Care Assessment | Shall mean an assessment in accordance with the requirements of the NHS and Community Care Act 1990, the National Assistance (Assessment of Resources) Regulations 1992 and CRAG as amended from time to time |
| Complaints Procedure | Shall mean the Provider's Complaints Procedure |
| Contracting Authority | Shall mean any contracting authority as defined in Regulation 2 of the Public Contract Regulations 2006 other than the Council |
| Council | Shall mean Cheshire East Borough Council |
| CRAG | Shall mean the Charges for Residential Accommodation Guide (Department of Health, 2010) as amended from time to time |
| CCG(s) | Shall mean any of the Eastern Cheshire Clinical Commissioning Group, the South Cheshire Clinical Commissioning Group and the Vale Royal Clinical Commissioning Group or all collectively |
| CHC Funding | Shall mean NHS Continuing Health Care Funding provided to eligible Service Users by the NHS |
| CQC | Shall mean the Care Quality Commission or any statutory successors |
| Day | Shall mean any day Monday – Sunday inclusive unless otherwise stated |
| DBS | Shall mean the Disclosure and Barring Service or any statutory successor |

| | |
|---|--|
| Default | Shall mean any failure by any party to carry out their respective obligations under this Agreement |
| Deferred Payment Agreement | An agreement between the Council and the Service User which enables a Service User to defer part of their Assessed Service User Contribution and/or Third Party Contribution where the Third Party is the Service User. |
| Dispute Resolution | Shall mean any process to be followed if the Parties fail to agree upon any issue arising under this Agreement as set out in Clause 54 (Dispute Resolution) |
| ESRP | Shall mean the Electronic Service Return Portal through which the Provider shall submit the Service Return or any other means by which the Council will collect service returns |
| Enhanced Disclosure | Shall mean a disclosure secured in accordance with the DBS |
| Equal Opportunities Policy | Shall mean the Provider's Equal Opportunity Policy |
| Essential Standards of Quality and Safety | Shall mean a set of standards set out by the CQC and from time to time amended |
| Formal Complaint | Any complaint that is referred to and dealt with under the Complaints Procedure |
| Fundamental Breach | Any failure by the Provider which constitutes a repudiation of this Agreement including but not limited to where the Provider: <ul style="list-style-type: none"> 1. has offered any gift or other consideration as an inducement or disincentive for doing anything in respect of this Agreement (or any |

| | |
|--------------------------------------|---|
| | <p>other Agreement with the Commissioners) or</p> <ol style="list-style-type: none"> 2. has committed an offence under the Bribery Act 2010 or Prevention of Corruption Acts 1889 to 1916; or 3. becomes bankrupt, has a receiving order made against it, presents its petition in bankruptcy, is subject to a winding up order or has a receiver or administrator appointed; or 4. changes its composition or staffing so as to materially prejudice its ability to provide the Services; or 5. has its registration under the Health and Social Care Act 2008 cancelled or if the Provider is convicted under the provisions of the Act; or 6. ceases to provide without the consent of the Commissioners; 7. has persistently failed to remedy a Material Breach; or 8. is prohibited from operating by the Health and Safety Executive |
| Good Health and Social Care Practice | <p>Shall mean using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced provider and a person engaged in the provision of services the same as or similar to the Services at the time the</p> |

| | |
|--------------------------------|--|
| | Services are provided |
| Gross Social Care Cost | Shall have the meaning as set out in Clause 21.3 |
| Health and Safety Policy | Shall mean the Provider's Health and Safety Policy |
| Individual Placement Agreement | Shall mean the form of call off contract used to invoke the conditions of this Agreement and facilitate the placement of Service Users within the Care Home as set out in Schedule 1 Annex A |
| Losses | Shall mean all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services) proceedings, demands and charges whether arising under statute, contract or at common law, but to avoid doubt, excluding indirect losses |
| Material Breach | Any failure by the Provider to comply with this Agreement the effect of which is to prejudice the effective provision of the Services including the Provider's persistent failure to remedy the breach |
| NHS Funded Nursing Care | Shall mean nursing care by a registered nurse funded solely by the NHS |
| Nurse Assessor | Shall mean a registered nurse from the CCG that has been authorised to conduct the assessment for the RNCC Determination |
| Nursing Assessment | Shall mean an assessment in relation to a Service User's needs for Nursing Care and continence products and which is made by reference to the assessment process set out in Chapter 3 of the NHS Funded Nursing |

| | |
|----------------------------|--|
| | Care Practice Guide and Workbook (Department of Health 2007) |
| Nursing Care | Shall mean nursing care by a registered nurse and has the same meaning as in section 49(2) of the Health and Social Care Act 2001 |
| Nursing Care Specification | Shall mean the specification referred to at Clause 17.2.1. |
| Parent Company | Shall mean a company that controls or owns the Provider |
| Party | Shall mean the Provider, the Council or the CCGs being the signatories to this Agreement |
| Permanent Placement | Shall mean a placement resulting from a Community Care Assessment or reassessment of the Service User determining the need for permanent residential care |
| Persistent Default | Shall mean where the Provider has committed more than two Defaults during any consecutive period of 6 months whether or not these are the same Defaults or different |
| Personal Expense Allowance | Shall mean the allowance defined under CRAG |
| Placement Process | Shall mean the process by which the provisions of this Agreement are invoked as more particularly described in Clause 14 (Placement Process) |
| | |

| | |
|---------------------------|---|
| Prohibited Act | <p>Shall mean the following acts;</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement</p> <p>(c) committing any offence</p> <p>(i) under the Bribery Act</p> <p>(ii)Under legislation creating offences concerning fraudulent acts</p> <p>(iii)At common law concerning fraudulent acts relating to this Agreement or any other contract with the Council</p> <p>(iv)Defrauding, attempting to defraud or conspiring to defraud the Council</p> |
| Provider | Shall mean the Provider as defined above |
| Provider's Representative | Shall mean the person nominated pursuant to Clause 7 (The Provider's Representative) |
| Registration Standards | Shall mean such standards of Service as are necessary to achieve registration under the Health and Social Care Act 2008 and any regulations and standards (including the |

| | |
|--------------------|---|
| | Essential Standards of Quality and Safety) from time to time made thereunder |
| Registered Manager | Shall mean a person registered with the CQC in accordance with the registration requirements relating to care homes |
| Regulatory Body | Shall mean those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence the matters dealt with in the Agreement or any other affairs of the Council or the CCGs and "Regulatory Body" shall be construed accordingly. However this does not include any body of which membership is voluntary. |
| Respite Placement | Shall mean a placement of a defined period |
| Review Meeting | Shall mean a meeting held pursuant to Clauses 16, 23 or 46 |
| RNCC | Shall mean the Registered Nursing Care Contribution made by the CCG towards the cost of Nursing Care of Service Users as set from time to time |
| RNCC Determination | Shall mean the result of the assessment undertaken by the Nurse Assessor |
| Serious Default | Shall mean a Default by the Provider which materially prejudices the health, safety or welfare of a Service User or Service Users |
| Services | Shall mean the Services provided by the Provider in accordance with the Care and Service Specification |

| | |
|-----------------------------|---|
| Service Delivery Start Date | Shall mean the date at which the Service User takes up residence at the Care Home under the Individual Placement Agreement |
| Service Return | Shall mean a return containing the information required for payment as the Council may from time to time set out |
| Service User | Shall mean any person in receipt of the Services and as nominated to receive the Services by the Council |
| Smoking Policy | Shall mean the Provider's Smoking Policy |
| Staff | Shall mean the persons whether they are employed by the Provider or acting as volunteers who are employed or deployed by the Provider to provide the Services |
| Standard Fee | Shall mean the fee set by the Council for the Services and as more particularly described in Schedule 2 Fees and Finances |
| Suspension Notice | Shall mean a notice in writing to suspend the Services, or specific part thereof given under Clause 45 |
| Temporary Placement | Shall mean a placement resulting from a Community Care Assessment or reassessment of the Service User determining the need for temporary residential care |
| Term | Shall have the meaning set out in Clause 2 (Term) |
| Termination Date | Shall mean the date of termination of this Agreement in accordance with Clause 47 (Termination of the Pre Placement Agreement) |

| | |
|--------------------------|---|
| Third Party | Shall mean the person or organisation that has agreed to pay the Third Party Contribution |
| Third Party Contribution | Shall mean the sum paid by the Third Party that represents the difference between the Council Payment and the Care Home Fee |
| | |
| Trial Visit | Shall mean a visit or stay at the Care Home undertaken as part of the care planning process |
| VAT | Value Added Tax |
| Variation | Shall mean an amendment to this Agreement made in accordance with Clause 40 (Amendments to this Agreement) |
| Variation Notice | Shall mean a notice served in accordance with Clause 40 (Amendments to this Agreement) |

1.2. In this Agreement unless where the context otherwise requires:

- 1.2.1. words in the masculine also mean in the feminine and neuter and words in the singular also mean in the plural and vice versa
- 1.2.2. a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.2.3. a reference to any document other than as specified in Clause 1.2.2 shall be construed as a reference to the document as at the date of execution of this Agreement.
- 1.2.4. each Party shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is reference in this Agreement.

- 1.2.5. headings are included in this document for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.2.6. except as otherwise expressly provided in this Agreement, all remedies available to the Provider or to the Commissioners for default are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 1.2.7. neither Party shall be liable for any default of its obligations under the Agreement to the extent that such default is caused by a failure or delay by another Party in performing its obligations under this Agreement provided and to the extent that the affected Party notifies the other Party of such failure or delay within thirty (30) days of the affected Party becoming aware of its occurrence and of its likely impact.

2. TERM

- 2.1. This Agreement shall take effect on the Commencement Date and shall continue for a period of three [3] years subject to earlier termination of this Agreement or a part thereof in accordance with other provisions of this Agreement (the "Initial Term").
- 2.2. The Commissioners may extend the term of the Agreement for an additional two [2] years subject to the Commissioners giving the Provider not less than three [3] months' written notice prior to the end of the Initial Term.

3. ENTIRE AGREEMENT

- 3.1. This Agreement, including any Individual Placement Agreement placed under it, constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by any Party.

4. SCOPE OF AGREEMENT

- 4.1. This Agreement governs the overall relationship of the Parties with respect to the provision of the Services. The Commissioners are entitled (but not required) at any time during the duration of this Agreement to make a placement for the Services from the Provider in accordance with the Placement Process set out in Clause 14 (Placement Process) and the Provider shall provide such Services in accordance with all applicable provisions of this Agreement.

5. TRANSFERRING CONTRACTS

- 5.1. At the Commencement Date the existing contracts that the Commissioners have in place with the Provider for the Services, as more particularly detailed in Schedule 3 (Transferring Contracts) will become subject to the terms and conditions of this Agreement for the remainder of the term of each contract.

6. THE AUTHORISED OFFICER

- 6.1. The Commissioner's shall appoint an officer of the Council to exercise its rights and powers under this Agreement, called the Authorised Officer. This will not limit in any way either the Council's rights or its obligations.
- 6.2. Details of the person appointed to act as the Authorised Officer from the Commencement Date (the telephone number, fax number, e-mail address and postal address) are set out under Clause 8 (Communications).
- 6.3. From time to time the Authorised Officer may appoint another person or persons to exercise some or all of their functions know as a 'Deputy Authorised Officer' and where appropriate the Council shall notify the Provider in the course of their dealings of such an appointment.

7. THE PROVIDER'S REPRESENTATIVE

- 7.1. The Provider's Representative shall be the Registered Manager, unless the Council gives its prior written consent to the selection of an appropriate alternative, and who shall exercise its rights and powers under this Agreement. This will not limit in any way the Provider's rights or its obligations.
- 7.2. Details of the Provider's Representative from the Commencement Date (the telephone number, fax number, e-mail address and postal address) are set out under Clause 8 (Communication).
- 7.3. The Provider's Representative may appoint another person or persons to exercise some or all of their functions (known as a 'Deputy Representative') but if such an appointment is to be made then the Council must be notified within 5 days.
- 7.4. All notifications of changes under this Clause 7 (The Provider's Representative) shall be made in accordance with Clause 8 (Communications).

8. COMMUNICATIONS

- 8.1. Except as otherwise expressly provided communications from the Provider to the Commissioners and vice versa shall not have any validity under this Agreement unless made in writing by or on behalf of the Commissioners or as the case may be by or on behalf of the Provider. The Parties agree that e-mail or letters, delivered by hand, by post or by facsimile transmission or e-mail, will be considered a satisfactory form of communication for the purposes of this Clause 8 (Communications).
- 8.2. All communications shall be considered to have been served, subject to there being no notifications of non delivery; if posted, subject to proof to the contrary two working days after the date of posting; if delivered by hand, on delivery; if delivered by facsimile transmission or e-mail, four hours after sending.

- 8.3. For the purposes of this Clause 8 (Communications) and with reference to Clause 6 (The Authorised Officer), and Clause 7 (The Provider's Representative), the contact details for each representative shall be:

For and on behalf of the Commissioners:

Lorraine Butcher – Strategic Director Children, Adults and Families

Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ

Telephone: 0300 123 5500

For and on behalf of the Provider

[Insert Officer Name and Post Details]

[Insert Address]

[Telephone/Fax/E-mail]

Any Party may change its address for service by notice as provided in this Clause 8 (Communications).

- 8.4 The Provider shall notify the Commissioners as soon as possible and in any event within 5 days of any change to the information set out in Clause 8.3. For the avoidance of doubt this shall include notification of all temporary arrangements. The Council does not accept any liability for any communication which is not received by the Provider where any change to the information has not been received by the Council within the timescales stated.

9. THE COMMISSIONERS' RESPONSIBILITIES

- 9.1. The Commissioners shall perform their responsibilities in accordance with the provisions set out in this Agreement.

10. CONFLICTS OF INTEREST

- 10.1. The Provider shall notify the Authorised Officer immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Council or CCGs and any other client of the Provider and the Provider shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Authorised Officer.

11. FRAUD

- 11.1. The Provider must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Commissioners. Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the

resources of the Commissioners the Provider shall immediately inform the Authorised Officer.

PART 2 PROVISIONS OF THE SERVICES

12. THE SERVICES

- 12.1. The Provider shall, subject to the provisions of this Agreement, from the Commencement Date and thereafter during the Term provide and monitor the Services to the Service Users in accordance with the Council's requirements as set out in the Care and Service Specification, Care Plans and in accordance with Good Health and Social Care Practice, Registration Standards and the terms of the Agreement.
- 12.2. The Provider shall at all times deliver the Services in accordance with the law and all legislative requirements.
- 12.3. The Provider acknowledges that the Services are to be delivered upon each and every calendar day 24 hours a day without exception.

13. PROVIDER'S STAFF

- 13.1. The Provider shall appoint and employ suitably qualified and experienced medical, nursing and other clinical and non-clinical Staff to ensure that the Services are provided in all respects and at all times in accordance with this Agreement. If requested by the Commissioner, the Provider shall as soon as practicable and by no later than 14 Days of receipt of such written request, provide the Commissioner with evidence of the Provider's compliance with this Clause 13 (Provider's Staff).
- 13.2. On the request of the Commissioner, the Provider shall provide the Commissioner with a copy of its workforce or human resources policies which shall comply with the law.
- 13.3. The Provider shall ensure that the Staff:
 - 13.3.1. if applicable, are registered with the appropriate professional and or Regulatory Body,
 - 13.3.2. possess the appropriate qualifications, experience, skills and competencies to perform the duties required of them and be appropriately supervised both managerially and professionally;
 - 13.3.3. receive appropriate training in relation to Safeguarding and that the multi agency procedures published by the Cheshire East Local Adult Safeguarding Board are understood and followed;

- 13.3.4. are covered by the Provider's indemnity arrangements (as identified and to the extent set out in Clause 43 (Indemnity and Insurance)) for the provision of the Services;
- 13.3.5. carry and where appropriate display valid and appropriate identification in accordance with Good Health and Social Care Practice; and
- 13.3.6. are aware of and respect the equality and human rights of colleagues, Service Users and the public as well as having regard to dignity and respect.
- 13.4. The Provider shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:
 - 13.4.1. proper and sufficient continuous professional and personal development, training and instructions,
 - 13.4.2. full and detailed appraisal (in terms of performance and on-going education and training) utilising where applicable the NHS Knowledge and Skills Framework or a similar or equivalent framework or model; and
 - 13.4.3. professional leadership commensurate with the Services, each in accordance with Good Health and Social Care Practice and the standards of their relevant professional body, if any.
- 13.5. The Provider shall use its best endeavours to directly employ all Staff involved in the delivery of the Services. The Providers shall only allow Staff to work in the Care Home following receipt of satisfactory pre-employment checks, to include those relating to Clause 31 (Vetting and Barring), and those relating to the eligibility of prospective Staff to work in the UK. Where the Provider uses Staff to deliver the Services who are not directly employed, the Provider will ensure the employer of the Staff has undertaken the pre-employment checks required under this clause.
- 13.6. The Provider shall ensure that at all times an appropriately qualified and experienced member of Staff shall be designated as supervisor and that Staff shall be informed of the supervisor.
- 13.7. In the event that the Authorised Officer request the Provider to investigate a complaint or allegation against a member of Staff the Provider shall:
 - 13.7.1. undertake the investigation within the timescale set out by the Authorised Officer;
 - 13.7.2. keep the Authorised Officer updated in respect of the investigation and any action resulting from the same;
 - 13.7.3. at the reasonable request of the Authorised Officer ensure that the Staff subject to the investigation does not provide the Services to any Service Users placed under this Agreement; and

13.7.4. comply with Clause 19 (Complaints).

- 13.8. In the event of a request from the Authorised Officer the Provider shall provide the necessary support and assistance as may be required to enable the Council to carry out any investigation.

14. PLACEMENT PROCESS

- 14.1. Services purchased under this Agreement and associated Individual Placement Agreements shall be provided only to Service Users whose needs have been assessed and referred for the Services by the relevant Care Manager.
- 14.2. The placement will be made by way of an Individual Service User Placement Agreement.

15. PLACEMENT TYPE

- 15.1. The Commissioner shall make Respite, Temporary or Permanent Placements, dependent on what is determined by the Care Manager as the assessed need or re-assessed need of the Service User.
- 15.2. Trial Visits or stays to a Care Home when agreed by the Parties shall have the status, with regard to their classification as either Temporary or Permanent that reflects the need identified during the care planning process and as determined in accordance with Clause 14 (Placement Process).
- 15.3. Where a Service User is assessed as requiring Nursing Care this shall be recorded in the Service User's Individual Placement Agreement.

16. PLACEMENT CARE PLANNING AND REVIEW

- 16.1. The Care Manager shall be responsible for the care planning process before the placement of the Service User in the Care Home. Where appropriate the Care Manager shall involve the Provider's Representative, or as the circumstances dictate the Registered Manager, in the care planning process and in any event shall supply the Care Home with an up to date copy of the Service User's assessment and Care Plan setting out the aims of the care to be provided and the input, tasks and services required of the individuals and agencies in order to achieve them.
- 16.2. The Care Manager shall be responsible for ensuring that the Provider is able to provide all equipment necessary to enable appropriate care to be delivered to the Service User prior to admission of that Service User.
- 16.3. A Review Meeting shall take place at the end of the initial 6 week placement period and at least annually thereafter to review the care needs and the Care Plan of the Service User.
- 16.4. At the request at anytime of the Council, CCGs, Provider, Service User (or the Service User's representative) the Council will call a formal Review Meeting in order

to discuss the progress of care for a Service User with reference to the Care Plan, or to examine a significant issue.

- 16.5. The Provider shall ensure that the appropriate manager or senior Staff member are made available for a Review Meeting. The Council shall ensure that all parties who significantly contribute to the Service User's care are invited to the Review Meeting.
- 16.6. The Council shall ensure that notes of each Review Meeting, including a record of any agreements reached, will be made available within two [2] weeks of the meeting notwithstanding the fact that agreed actions including amendments or variations to the Care Plan may be implemented in accordance with an agreed timescale prior to the circulation of the Review Meeting notes.
- 16.7. The Provider shall ensure that Service Users are accommodated in single rooms, unless they choose otherwise. Any intention by the Provider to move any Service User on a permanent basis from one room to another for whatever reason or a temporary move where that temporary arrangement will exist for 2 months or more must be negotiated in advance with the Care Manager.

17. NURSING NEEDS

17.1. Assessment of Nursing Needs

- 17.1.1. The CCG shall arrange for an assessment of the Service User's Nursing Care needs to be undertaken by the Nurse Assessor prior to the entry of the Service User to a Care Home with Nursing. This may be conducted after a multi-disciplinary assessment which may include representation from the Council and the CCG.
- 17.1.2. Following the assessment of the Service User's Nursing Care needs by the Nurse Assessor the CCG will thereafter supply the Provider and the Service User with a written statement as to the amount of the RNCC Determination.

17.2. Provision of Nursing Care

- 17.2.1. Where a Service User is assessed as requiring Nursing Care the Provider shall provide such care to each and every Service User under the terms of this Agreement and in accordance with the requirements of their Care Plan and Nursing Care Specification.
- 17.2.2. The CCG shall provide or procure the provision to each Service User such specialist nursing equipment (subject to the conditions of any relevant policy of the CCG from time to time in force) and continence aids as have been identified in the Nursing Assessment process and as are set out in the Service User's Care Plan.

17.3. Review and Re-Assessment of Nursing Needs

- 17.3.1. The CCG shall review the needs of each Service User three [3] months after the initial RNCC Determination is disclosed, as more particularly described at Clause 17.1.2, and thereafter at least every twelve [12] months or at a more frequent interval as determined by the CCG.
- 17.3.2. Where the Provider considers that the level of Nursing Care required by a Service User has changed the Provider shall immediately inform the CCG. The CCG shall then arrange for a Nursing Assessment to be conducted by the Nurse Assessor as soon as reasonably practicable after the date of request by the Provider.
- 17.3.3. Upon request by a Service User (or the Service User's Representative), the Provider or the Council made to the CCG for an assessment of a Service User's Nursing Care need the CCG shall arrange for a Nursing Assessment by the Nursing Assessor subject to the CCG being satisfied that there may have been a change in the Service User's Nursing Care needs.
- 17.3.4. In the event of a Nursing Assessment pursuant to Clause 17.3.2 or 17.3.3 the CCG shall advise the Service User (or the Service User's representative), the Council and the Provider within 14 Days:
- (a) of the outcome of the Nursing Assessment including the RNCC Determination as to whether a Service User has been assessed to be eligible for the RNCC;
 - (b) the date upon which the RNCC payments shall become effective, which for the avoidance of doubt shall be no later than the date of the RNCC Determination conducted pursuant to Clause 17.3.2 or 17.3.3; and
 - (c) whether any changes to the Service User's Care Plan are required.
- 17.3.5. The Provider shall apply for CHC Funding where it is appropriate for a Service User to receive such funding and shall notify the Council that such an application has been made.

18. NOTIFICATION OF AVAILABILITY

- 18.1. The Provider shall notify the Council, on a weekly basis, each Tuesday morning, of any vacant or soon to be vacant beds at the Care Home. The information will be expected to be sent electronically and in a format to be specified by the Council from time to time.

19. COMPLAINTS

- 19.1. The Provider shall with effect from the Commencement Date implement and maintain a Complaints Procedure, entitling Service Users to make a Formal Complaint about any aspects of the provision of the Services.

- 19.2. All Service Users shall be informed of their right to make a complaint and shall be provided with a copy of the Complaints Procedure.
- 19.3. In the event that a complaint is made to the Council or the CCG under their respective complaints procedures the Provider will co-operate fully, promptly and at their own expense in the investigation of the complaint.
- 19.4. Co-operation by the Provider in accordance with Clause 17 (Nursing Needs) shall include access to and the making available and provision of such information, statistics and records as the Authorised Officer deems necessary.
- 19.5. In relation to complaints made to the Provider under their Complaints Procedure the Provider shall notify the Commissioners in writing within five [5] days of receipt all Formal Complaints made by or on behalf of Service Users, in accordance with Clause 19.1, and provide such information as requested by the Council.
- 19.6. The Provider shall implement lessons learned from complaints and demonstrate at any meeting held under Clause 42 (Review) or for such similar purpose the extent to which Service improvements have been made as a result.
- 19.7. The Council may require access to and use of any information, statistics or records relating to complaints made to the Provider under its Complaints Procedure, to assess the performance of the Provider and compliance to this Agreement.
- 19.8. The Council may use any information, statistics or records, relating to complaints made to the Council under the Council's complaints procedure to assess performance of the Provider and compliance to this Agreement.

PART 3 FEES AND PAYMENT

20. PURCHASING ARRANGEMENTS

- 20.1. This Agreement does not constitute a guarantee to purchase any Services from the Provider, however, should any Services be purchased under an Individual Placement Agreement the terms and conditions contained within this Agreement will apply.
- 20.2. The invocation of this Agreement shall arise from the Parties entering into an Individual Placement Agreement and shall take effect from the Service Delivery Start Date.

21. FEES

- 21.1. The Standard Fee in respect of the categories of care covered by this Agreement are set out in Schedule 2 (Fees & Finances).
- 21.2. The Council acknowledges that Service Users may choose a Care Home whose Care Home Fee is greater than the Standard Fee. In such circumstances a Third

Party will meet the difference in fees between the Standard Fee and the Gross Social Care Cost. .

21.3. The Standard Fee and any Third Party Contribution shall make up the Gross Social Care Cost.

21.4. Other than in line with the CRAG guidance on the twelve [12] week disregard the Provider shall under no circumstances attempt to secure any difference in cost between the Care Home Fee and the Standard Fee from the Service User. For the avoidance of doubt at the end of the 12 week disregard arrangements compliant with this clause 21 must be in place in respect of all sums relating to the placement of a Service User.

21.5. Service User Contributions

21.5.1. The Council will carry out financial assessments with all prospective Service Users using the CRAG and in order to determine whether or not the Service User is liable to make an Assessed Service User's Contribution.

21.5.2. Where the Service User is liable to make an Assessed Service User Contribution the Council shall either invoice the Service User directly or enter a Deferred Payment Agreement with the Service User for the same.

21.6. NHS Funded Nursing Care

21.6.1. Where a Service User has been assessed as to require Nursing Care then the RNCC shall be recorded within the Individual Placement Agreement and when added to the Gross Social Care Cost shall equate to the Agreement Price.

21.7. Personal Expense Allowance

21.7.1. The Provider shall ensure that the Service User's Personal Expense Allowance is not used for the purchase of, or contribution towards any Service required to be provided under this Agreement or associated Individual Placement Agreement.

21.7.2. The Provider shall ensure that the Service User has complete discretion in spending their own Personal Expense Allowance and other personal monies within their control which is not included in calculating the Assessed Service User Contribution. Where a Service User lacks mental capacity to deal with their own money and has no-one legally authorised to deal with their affairs the Provider shall notify the Care Manager immediately in writing. The Provider shall not handle the Service User's money unless appropriate authorisation is in place and the Provider shall ensure that they maintain and operate a robust policy and procedure to ensure the safe handling and management of client monies.

22. FEE REVIEW

- 22.1. Subject to Clause 22.2 and Clause 22.4 the Standard Fee shall be fixed for the duration of this Agreement.
- 22.2. The Standard Fee shall be reviewed by the Council to determine whether there should be any adjustment to the Standard Fee to take account of the effects of inflation annually upon the anniversary of the Commencement Date or at any such other time as the Council in its absolute discretion may determine from time to time. For the avoidance of doubt the provisions of this Clause 22 in no way guarantee or represent that there shall be an increase in the Standard Fee upon the conclusion of any such review.
- 22.3. The Council shall use its reasonable endeavours to announce the outcome of each such review to the Provider at least one month before any resulting adjustment is due to take effect. The Provider shall be notified by way of a letter which shall state the date upon which the change to the Standard Fee shall take effect and shall act as an update to the Schedule 2 (Fees & Finances) of this Agreement.
- 22.4. At the request of the Provider the Standard Fee may be reduced at any time. In the event of such a request the Council shall by letter confirm its agreement to the decrease in the Standard Fee and the date upon which the decrease to the Standard Fee shall take effect. The letter shall act as an update to Schedule 2 (Fees & Finances) of this Agreement.
- 22.5. The letter referred to in Clause 22.3 and Clause 22.4 shall be deemed to be a Variation to this Agreement.

23. PAYMENT

23.1. Basis of Payment

- 23.1.1. In accordance with the provisions of Clause 21 (Fees), and subject to Clause 23.2, 23.3 and 45.2.6, the Council shall pay the Provider a sum relating to the Standard Fee as detailed within each Service User's Individual Placement Agreement in respect of the Services delivered to the Service User by the Provider.
- 23.1.2. The CCG shall be solely responsible for payment of the RNCC for each Service User assessed to be eligible directly to the Provider.

23.2. Payment in Respect of Absence

- 23.2.1. If a Service User has a period of absence due to an admission to hospital or other health care provider or for any other reason, whereby they temporarily cease to be in receipt of the Services the first fourteen [14] Days of absence shall, for payment purposes, be treated as normal residence.
- 23.2.2. At the expiry of the fourteen [14] Day period identified in Clause 23.2.1 at the discretion of the Care Manager a payment equivalent to 80% of the Standard

Fee may be made for up to a maximum period of six [6] weeks (an “Absence Payment”).

23.2.3. The Service User’s own bed shall be preserved for the period of time under which an Absence Payment made pursuant to Clause 23.2.1 or 23.2.2.

23.2.4. In the event that the Care Manager exercises their discretion under Clause 23.2.1 then a Review Meeting comprising the Council and the CCG shall be held no later than the expiry of the six [6] week period identified in Clause 23.2.2 to determine whether the circumstances justify an extension of the Absence Payment or whether the Individual Placement Agreement shall be terminated in accordance with the provisions of this Agreement.

23.2.5. For the avoidance of doubt the Provider’s Representative shall notify the Care Manager of such absence in accordance with Clause 51.3 and in the event of any failure to comply with this obligation the Council shall not be obliged to make any payment for any period of absence and where an overpayment has occurred the Council shall be entitled to recover the same under the terms of this Agreement.

23.3. Payment Following the Death of a Service User

23.3.1. The Council will pay the Standard Fee until 23:59 on the day following the date of death.

23.3.2. A request for an additional sum made by the Provider in the event that a Service User’s personal effects have not been removed promptly shall be considered by the Care Manager and may at the absolute discretion of the Care Manager be approved. Payment of such an additional sum shall only be made in the event of the prior written agreement of the Care Manager.

23.4. Method of Payment

23.4.1. The Provider shall through the ESRP (or such other system as the Council directs) submit a Service Return in respect of the relevant Charging Period.

23.4.2. Upon receipt of a Service Return the Council shall process the same and make payment in accordance with the terms of this Agreement.

23.5. Payments Generally

23.5.1. Payment is exclusive of any applicable VAT for which the Council shall be additionally required to pay the Provider upon receipt of a valid tax invoice at the prevailing rate in force from time to time. At the Commencement Date the Parties acknowledge that VAT on the Services is zero rated.

23.5.2. It is the responsibility of the Provider to ensure that the correct rate of VAT is applied.

23.5.3. In the event of that a Service User fails to arrive at the Care Home and as a result does not receive the Services reasonable expenses not exceeding the Standard Fee at a pro-rata rate for twenty-four [24] hours shall be paid by the Council to the Provider.

23.5.4. Service Returns must be submitted promptly and in accordance with the prevailing Council instructions. Service Returns submitted more than three [3] months from the due date shall only be accepted at the discretion of the Council and may not be processed for payment.

23.6. Payment Changes

23.6.1. During the Term of this Agreement the Council anticipates two changes being necessitated in respect of the payments process under this Agreement. The first shall involve the payment by the Council of the Standard Fee net of any Assessed Service User Contribution, associated transfer of responsibility of the collection of the Assessed Service User Contribution from the Council to the Provider. The other anticipated change is the introduction of payment by remittance.

23.6.2. The Provider acknowledges that amendment to the provisions of this Agreement may result in changes introduced pursuant to Clause 23.6.1.

23.6.3. In the event of amendment introduced pursuant to Clause 23.6.1 each Party shall bear its own cost.

23.6.4. Any amendment introduced pursuant to Clause 23.6 shall be effective subject to thirty [30] Days written notice from the Council to the Provider and for the avoidance of doubt the provisions of Clause 40 (Amendments to this Agreement) shall not apply.

23.7 The Provider and the Commissioners acknowledge, pursuant to CRAG, their agreement for net payment arrangements and note that the operation of this shall be subject to the agreement of the Service User. The Provider shall be responsible for collecting the Assessed Service User Contribution. The Council shall put forward a debt recovery process which must be adhered to by the Provider.

24. RECOVERY OF SUMS DUE

24.1. Wherever under this Agreement any sum of money is recoverable from or payable by the Provider (including any sum that the Provider is liable to pay to the Council and/or the CCGs in respect of any breach of this Agreement), the Council and/or CCG, to whom the money is due as appropriate in the circumstances, may unilaterally deduct that sum from any sum then due, or which later may become due to the Provider from the Council or CCGs as appropriate in the circumstances, under this agreement or any other agreement or contract with the Council or CCGs.

- 24.2. The Provider shall make any payments due to the Council and/or the CCGs as appropriate without deduction, whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council and/or the CCG as appropriate.
- 24.3. The Commissioners shall be entitled to reclaim from the Provider any sums related to an overpayment or payment made in error. In the event that the Council or the CCG makes a demand to the Provider for any overpayment or any payment made in error the Provider shall be required to pay the sum demanded within fourteen [14] Days of the date upon which the demand is made.

PART 4 STATUTORY OBLIGATIONS, CODES OF PRACTICE AND REGULATIONS

25. ADULT PROTECTION PROCEDURE

- 25.1. In cases of actual or suspected abuse of or towards a Service User the Provider shall ensure strict adherence to the Cheshire East No Secrets Policy as amended from time to time in order to protect and safeguard the Service User and in doing so shall comply with the requirements of any investigation carried out by the Council.
- 25.2. The Provider shall ensure that they have an awareness of the requirements of both the Cheshire East Local Safeguarding Children's and Adult's Boards and Child Protection procedures where the Provider has any concerns for the safety or welfare of the persons under the age of 18 that come to the Provider's attention whilst providing the Services.

26. PREVENTION OF BRIBERY AND PAYMENTS OF COMMISSION

- 26.1. The Provider shall use best endeavours to ensure neither it nor any Staff member solicits or accepts any gratuity or tip or any other form of money taking or reward collection or charge for any part of the Services required to be provided under this Agreement other than as provided for in this Agreement.
- 26.2. The Provider:
- 26.2.1. shall not, and shall procure that any Staff shall not in connection with this Agreement commit a Prohibited Act; and
- 26.2.2. 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 Commissioners, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Commissioners before execution of this Agreement.
- 26.3. The Provider shall:

- 26.3.1. upon request provide the Commissioners with any reasonable assistance to enable the Commissioners to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act; and
- 26.3.2. within twenty [20] Days of the Commencement Date and annually thereafter certify to the Commissioners in writing (such certification to be signed by a duly authorised officer of the Provider) compliance with this Clause 26 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Commissioners may reasonably request.
- 26.4. The Provider shall have an anti-bribery policy, which shall be disclosed upon request to the Commissioners, to prevent the Provider or member of Staff from committing a Prohibited Act and shall enforce where appropriate.
- 26.5. If the Provider notifies the Commissioners that it suspects or knows that there may be a breach of this Clause 26 then the Provider must respond promptly to the Commissioners' enquiries, co-operate with any investigation, and allow the Commissioners to audit books, records and any other relevant documentation. This obligation shall continue for a minimum of six [6] years following the expiry or termination of this Agreement.
- 26.6. The Commissioners may terminate this Agreement or any specific Individual Placement Agreement by written notice with immediate effect if the Provider or their Staff member breaches Clause 26.1.
- 26.7. Any notice of termination served under Clause 26.6 must specify:
 - 26.7.1. the nature of the Prohibited Act
 - 26.7.2. the identity of the party whom the Commissioner considers has committed the Prohibited Act; and
 - 26.7.3. the date on which this Agreement will terminate.
- 26.8. Despite Clause 54 (Dispute Resolution) any dispute relating to:
 - 26.8.1. the interpretation of this Clause 26; or
 - 26.8.2. the right of the Council under this Clause 26 to terminate this Agreement; or
 - 26.8.3. the amount or values of any such gift, consideration or commission;shall be determined by the Commissioners and its decision shall be final and conclusive.

- 26.9 Any termination under Clause 26.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Commissioners.

27. EQUAL OPPORTUNITIES AND NON DISCRIMINATION

- 27.1. The Provider shall provide appropriate assistance and make reasonable adjustments for Service Users who do not speak, read or write English or who have communication difficulties (including but without limitation hearing, oral, visual or learning impairments).
- 27.2. The Provider shall not discriminate between Service Users on the grounds of gender, age, ethnicity, disability, religion or belief, sexual orientation or any other non-medical characteristic and shall have due regard in its performance of this Agreement to the Equality Act 2010 and any other relevant legislation including but not limited to the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Health Act 2006 as may apply.
- 27.3. The Provider shall put in place and at all times for as long as this Agreement is in force operate to an Equal Opportunities Policy a copy of which shall be provided to the Commissioners upon request. For the avoidance of doubt the Equal Opportunities Policy shall set out how the Provider will comply with its obligations under the Equality Act 2010.

28. HUMAN RIGHTS

- 28.1. The Provider shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights.
- 28.2. The Provider shall not do or permit or allow anything to be done which may result in the Commissioners acting incompatibly with the rights contained within the European Convention on Human Rights Act 1998.
- 28.3. The Provider shall indemnify the Commissioners against any Losses or expenditure resulting from the Provider's breach of Clauses 28.1 and 28.2.

29. RIGHTS OF THIRD PARTIES

- 29.1. A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Agreement.

30. HEALTH AND SAFETY

- 30.1. The Provider must put in place, and operate to, Health and Safety Policy for as long as this Agreement is in force and shall provide the Commissioners with a copy of the policy if requested to do so.
- 30.2. The Provider must ensure that its Health and Safety Policy complies with the requirements of the Essential Standards of Quality and Safety and all relevant

statutory obligations and in so doing assures the maintenance of safe working practices within the Care Home.

31. VETTING AND BARRING

- 31.1. The Provider shall ensure that in respect of all potential Staff or person performing any of the Services that the Provider, at its own cost, shall without limitation comply with the following guidance as amended from time to time:
 - 31.1.1. such vetting scheme as is administered by or may be administered by the DBS or may be introduced by the Home Office or similar body;
 - 31.1.2. such other checks as required by the DBS or any other body executing the function of the DBS or which are to be undertaken in accordance with current and future national guideline and policies;
 - 31.1.3. shall ensure that Staff are not involved in the delivery of the Services until Enhanced Disclosure has been received from the DBS and the Provider shall have in place a policy and risk assessment process which shall be followed in the event that adverse disclosures are revealed.
- 31.2. Should the Provider discover adverse disclosure not declared on an application form or similar the Provider shall inform the Commissioners and where appropriate the police.
- 31.3. The Provider shall ensure that upon request the Commissioners are provided with access to the DBS disclosure and associated risk assessments.

32. SMOKING POLICY

- 32.1. The Provider must put in place and operate to a Smoking Policy for as long as the Agreement is in force and provide the Commissioners with a copy of the policy upon request.
- 32.2. The Provider must ensure that its Smoking Policy complies with all relevant statutory obligations and whilst it is acknowledged that Care Homes have exemptions under the *Smoke Free (Exemptions and Vehicles) Regulations 2007* the policy shall reflect that smoking is only allowed in certain rooms within the Care Home and that these rooms such as bedrooms or designated rooms for smoking are clearly marked.

33. BUSINESS AND SERVICE CONTINUITY

- 33.1. The Provider shall at all times for as long as the Agreement is in force maintain its ability to provide, and shall ensure that it is able to offer to the Commissioner the Services.
- 33.2. The Provider shall have and at all times maintain an up-to-date Business Continuity Plan agreed with the Commissioner to ensure the continual availability to the Commissioner of the Services in the event of any interruption or suspension of the

Provider's ability to provide them, and in the event of any partial or entire suspension or termination of this Agreement. The Provider shall in consultation with the Commissioner implement the Business Continuity Plan as required in any such event.

- 33.3. The Provider shall notify the Commissioner as soon as reasonably practicable of its activation, and in any event no later than one [1] Day from the date of such activation.

PART 5 PROTECTION OF INFORMATION

34. PROTECTION OF PERSONAL DATA

- 34.1. Every Party shall comply with its respective obligations under the provisions of the Data Protection Act 1998.
- 34.2. Where the Provider or any of its sub-contractors, as part of the Services under this Agreement, processes personal data as a data processor on behalf of the Commissioners the Provider shall and shall procure its Staff and any sub-provider to:
- 34.2.1. act only on instructions from the Commissioners as data controller; and
- 34.2.2. comply with the Commissioner's instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the Commissioners.

35. CONFIDENTIALITY

- 35.1. The Provider acknowledges that any confidential information obtained from or relating to the Commissioners, or the Council or CCGs individually, their servants or agents remains the property of the Commissioners, Council or CCGs as appropriate in the circumstances.
- 35.2. The Commissioners undertake to use their best endeavours to keep confidential any information provided by the Provider subject to the Commissioners' obligations under law, including the Freedom of Information Act 2000. If the Provider considers that any information communicated to the Commissioners should not be disclosed because of its sensitivity then this should be stated together with the reason for considering it sensitive. The Commissioners will then use reasonable endeavours to consult the Provider in considering any request received under the Freedom of Information Act 2000 before replying to such a request. It should be noted that the Commissioners do not have discretion in responding to such requests under the Act.
- 35.3. The Parties hereby warrant that:
- 35.3.1. all Staff and any person employed or engaged by the Parties (in connection with this Agreement in the course of such employment or engagement) shall

only use confidential information for the purposes of this Agreement subject to Clause 35.2;

- 35.3.2. all Staff and any person employed or engaged by the Parties (in connection with this Agreement in the course of such employment or engagement) shall not disclose any confidential information to any third party without the prior written consent of the other parties subject to Clause 35.2;
- 35.3.3. the Parties shall take all necessary precautions to ensure that all confidential information is treated as confidential and not disclosed (save as aforesaid and subject to Clause 35.2) or used other than for the purposes of this Agreement by their Staff, employees, servants, agents or sub-providers.
- 35.4. The provisions of Clause 35.1 and 35.3 shall not apply to any information which:
 - 35.4.1. is or becomes public knowledge other than by breach of this Clause 35.3; or
 - 35.4.2. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
 - 35.4.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 35.4.4. is independently developed without access to the confidential information.
- 35.5. Nothing in this Clause 35 shall be deemed or construed to prevent the Commissioners from disclosing any confidential information obtained from the Provider to any consultant, Provider or other person engaged by the Commissioners in connection herewith, provided that the Commissioners shall have obtained from the consultant, Provider or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 35 and the Commissioners shall, on request by the Provider, notify the Provider of the identity of such consultant, Provider or other person as soon as practicable.
- 35.6. Nothing in this Agreement shall prevent the Provider or the Commissioners from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of confidential information or an infringement by the Commissioners or the Provider of any Intellectual Property Right.

36. PUBLICITY

- 36.1. The Council and the CCGs' name shall not be used by the Provider in the endorsement of any project or in any other way or for any purpose without the Council's and/or the CCGs' prior written consent.
- 36.2. The Council and the CCGs shall be entitled to publicise this Agreement in accordance with any legal obligation including any examination of this Agreement by

the National Audit Office pursuant to the National Audit Act 1983 or for any other purpose.

37. ATTENDANCE AT COMMITTEES

- 37.1. If required by the Council to do so the Provider shall throughout the period of this Agreement and for a period of six years after expiry of this Agreement give all reasonable assistance to the Council including attending any of the Council's Committees in order to answer questions pertaining to this Agreement should the need arise.
- 37.2. In the event that the Council requires the Provider's assistance after the expiry of this Agreement as referred to in Clause 37.1 the Council shall pay the reasonable expenses of the Provider arising as a result of providing such assistance.
- 37.3. The provisions of Clause 37.1 and 37.2 shall apply to the CCGs and the Provider in respect of any equivalent requirements.

PART 6 CONTROL OF THE CONTRACT

38. TRANSFER, NOVATION & SUB CONTRACTING

- 38.1. Subject to Clause 38 the Provider shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations under this Agreement without the prior written consent of the Commissioners.
- 38.2. The Commissioners shall not assign this Agreement except where required to do so by law or where agreed by the Provider, such agreement should not be unreasonably withheld or delayed.
- 38.3. The Provider shall be responsible for the performance of and shall be liable to the Commissioners for the acts and omissions of its sub-contractors. The Provider shall ensure that any sub-contractor meets the standards and performance levels required of the Provider under this Agreement.
- 38.4. The Provider shall be responsible for the performance of and shall be liable to the Commissioners for the acts and omissions of any other party to which it may assign, transfer or otherwise dispose of any obligation under this Agreement ("New Party") as if they were there acts or omissions of the Provider, unless:
 - 38.4.1. the Provider has obtained the prior written consent of the Commissioners in accordance with Clause 38.1; and
 - 38.4.2. the terms of such assignment, transfer or disposal have been approved and accepted by the New Party so that the New Party is liable to the Commissioner for its acts and omissions.

- 38.5. This Agreement shall be binding on and shall be to the benefit of the Provider and the Commissioners and their respective successors and permitted transferees and assigns.

39. WAIVER

- 39.1. The failure of any Party to insist upon strict performance of any provision of this Agreement, or the failure, of any Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 39.2. A waiver of any default shall not constitute a waiver of any subsequent default.
- 39.3. No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Parties in writing in accordance with the provisions of Clause 8 (Communications).

40. AMENDMENTS TO THIS AGREEMENT

- 40.1. Subject to Clause 22.5, Clause 23.6 and Schedule 2 of this Agreement, this Agreement shall not be varied or amended unless such Variation or amendment is agreed in writing by a duly authorised representative of the Commissioners on behalf of the Commissioners and by a duly authorised representative of the Provider on behalf of the Provider.
- 40.2. Any such Variation or amendment shall be communicated by way of a Variation Notice, if any Party receives a Variation Notice, within 28 days of receipt it shall notify the other Parties as to whether it accepts the variation or amendments.
- 40.3. For the avoidance of doubt any Variation or amendment shall be effective only from the date stated in the Variation Notice.

41. SEVERABILITY

- 41.1. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement the Parties shall immediately commence good faith negotiations to remedy such invalidity.

42. REVIEW OF THIS AGREEMENT

- 42.1. Without prejudice to the provisions of Clause 50 (Contract and Quality Monitoring) and in accordance with Part 1 of the Local Government Act 1999 the Council may from time to time review the Services in pursuance of the Council's commitment to continuing Service improvement having regard to a combination of economy, efficiency and effectiveness and the Provider shall:

- 42.1.1. participate in and fully co-operate with such reviews; and
- 42.1.2. provide such assistance and other information including, but not limited to, accounting and other record books, business plans, quality assurance, service records and service plans as may be reasonably required by the Council in relation to the Service.
- 42.1.3. The Provider acknowledges that the review may necessitate an amendment of the Care Services Specification and in such circumstances the Parties shall work together to implement any resulting amendment.
- 42.1.4. Where ever possible the Council will align such reviews with its activities in respect of Clause 50 (Contract and Quality Monitoring).

PART 7 LIABILITIES

43. INDEMNITY AND INSURANCE

- 43.1. Without prejudice to its liability for breach of any of its obligations under this Agreement, the Commissioners shall be liable to the Provider for, and shall indemnify and keep the Provider indemnified against, and the Provider shall be liable to the Commissioners for, and shall indemnify and keep the Commissioners indemnified against any Losses whatsoever in respect of:
 - 43.1.1. any Losses to property (whether real or personal);
 - 43.1.2. any injury to any person, including injury resulting in death; and
 - 43.1.3. any Losses of the indemnified Party,that result from or arise out of the indemnifying Party's negligence or breach of this Agreement in connection with the performance of this Agreement or the provision of the Services (including in the case of the Provider (without limitation), its use of equipment, or other materials, or products and the actions or omissions of the Staff or sub-contractors in the provision of the Services), except insofar as such Losses has been caused by any act or omission by, or on the part of, or in accordance with the instructions of the indemnified Party, its employees or agents.
- 43.2. The Provider shall maintain in force (and/or procure that its sub-contractors and non-employed consultants shall maintain in force) at its own cost appropriate indemnity arrangements (in accordance with Clause 43.3 below) in respect of:
 - 43.2.1. employer's liability of £10,000,000;
 - 43.2.2. public liability of a minimum of £5,000,000 in respect of any one incident;
 - 43.2.3. malpractice of a minimum of £5,000,000 in any one year;

43.2.4. Building and Contents.

43.3. For the purpose of this Clause 43, an indemnity arrangement may comprise of either:

43.3.1. a policy of insurance;

43.3.2. an arrangement made for the purposes of indemnifying a person or organisation; or

43.3.3. a combination of a policy of insurance and an arrangement made for the purposes of indemnifying a person or organisation.

43.4. The Provider shall, from time to time and in any event within 5 days of a written demand, provide documentary evidence to the Commissioners that any indemnity arrangements taken out by the Provider pursuant to this Clause 43 are fully maintained and that any premiums on them and / or contributions in respect of them (if any) are fully paid.

43.5. Upon the expiry or termination of this Agreement the Provider shall (and shall use its reasonable endeavours to procure that each of its sub-contractors shall) procure that any ongoing liability it has or may have in negligence to any Service User (or the Commissioners) arising out of a Service User's care and treatment under this Agreement shall continue to be the subject of appropriate indemnity arrangements for the period of **six [6] years** from termination or expiry of this Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.

43.6. In connection with the Services, unless the Commissioners and the Provider otherwise agree in writing, the Provider shall not require, and shall ensure that no other person shall require any Service User to sign any document whatsoever containing any waiver of the Provider's liability to that Service User.

43.7. This Clause 43 shall survive in all respects the expiry of this Agreement or its termination for any reason.

43.8. Nothing in this Agreement shall exclude or limit the liability of any Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.

43.9. Each Party shall at all times take all reasonable steps to minimise and mitigate any Losses for which one Party is entitled to bring a claim against the other pursuant of this Agreement.

44. WARRANTIES AND REPRESENTATIONS

44.1. The Provider warrants and represents that:

44.1.1. the Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedure so require, the consent of

its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Provider.

44.1.2. the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice;

44.1.3. all obligations of the Provider pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

44.2. The warranties set out in this Clause 44 are given on the Commencement Date and repeated on every day during the term of this Agreement.

PART 8 DEFAULT AND TERMINATION

45. DEFAULT AND SUSPENSION

45.1. Default

45.1.1. If the Provider commits any breach of this Agreement or Individual Placement Agreement the Commissioners will be entitled to serve a Default Notice upon the Provider. This shall be without prejudice to any other right or remedy which may be available to the Commissioners under this Agreement or law.

45.1.2. Where a Default Notice is served it shall set out:

- (a) the nature of the Default;
- (b) the resolution required;
- (c) the prescribed timescales and deadline for remedying the Default.

45.2. Suspension

45.2.1. A “**Suspension Event**” shall have occurred if:

- (a) The Commissioners reasonably consider that:
 - (a) a breach by the Provider of any obligation under this Agreement may result in a material interruption in the provision of the Services; or
 - (b) the Provider has committed a Persistent Default or Serious Default; or
 - (c) the Provider fails to remedy a Default by the deadline set out in the Default Notice.

- (d) Within 12 months of the Provider having received a Default Notice pursuant to Clause 45.1.2 the same issue as identified in the Default Notice recurs; or
- (e) the Commissioners, acting reasonably, considers that the circumstances constitute an emergency, including an event of Force Majeure affecting provision of the Services; or
- (f) the Provider is prevented, or will be prevented, from providing the Services due to the suspension, restriction or variation of any required permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by law or from a third party for or in connection with the performance of the Services including without limitation any registration with a regulator

45.2.2. Where a Suspension Event occurs the Commissioners may:

- (a) suspend the affected Services, in whole or in part by serving a Suspension Notice upon the Provider;
- (b) serve notice to terminate pursuant to either Clause 46.4.4 or Clause 47.3.2;
- (c) where appropriate, promptly notify, CQC or any regulator or similar body or organisation of the Suspension Event.

45.2.3. A Suspension Notice issued pursuant to Clause 45.2 shall set out the:

- (a) reason(s) why the Suspension Notice has been issued;
- (b) resolution required;
- (c) prescribed timescales and deadline for implementing the resolution.

45.2.4. Except where suspension occurs by reason of Force Majeure, the Provider shall indemnify the Commissioners and keep the Commissioners indemnified in respect of any Losses.

45.2.5. On suspension of the Services, or part thereof, the Provider shall:

- (a) co-operate fully with the Commissioners and any successor provider of the suspended Services, or part thereof, in order to ensure continuity and a smooth transfer of the suspended Service, or part thereof, to avoid any inconvenience or risk to the health and safety of Service Users or Staff of the Commissioners or members of the public, and to that end the Provider may be required by the Commissioners to agree with the Commissioners, and with any successor provider of the suspended Service, or part thereof, a transition plan; and

- (b) at the reasonable request of the Commissioners and at the cost of the Provider:
 - (a) promptly render all reasonable assistance and provide all information necessary to effect an orderly resumption of the Service, or part thereof, by another provider; and
 - (b) deliver to the Commissioners all materials, papers, documents owned by the Commissioners and utilised by the Provider in the provision of the suspended Service, or part thereof; and
 - (c) the Parties shall use all reasonable endeavours to minimise any inconvenience caused to or likely to be caused to Service Users or prospective service users as a result of the suspension of the Services, or part thereof.
- 45.2.6. Where a Default Notice or Suspension Notice is served upon the Provider the Commissioners reserve the right to direct their Staff, or other appropriate persons to deliver, manage, supervise or otherwise direct the provision of the Services at the Care Home.
- 45.2.7. In the event the Commissioners invoke Clause 45.2.6 the Provider shall fully co-operate and procure that its Staff shall facilitate and ensure access to the Care Home and provide full co-operation with any and all other requests related to the delivery, management, supervision or direction of the Services at the Care Home.
- 45.2.8. During any period of suspension of a Service, or part of a Service:
 - (a) the Commissioners shall use reasonable efforts to ensure that no further Service Users are referred to the Provider during the period of suspension;
 - (b) the Provider shall cease to accept any referrals of Service Users from the Commissioners who require the suspended Service or part thereof.
 - (c) Where the Commissioners determine that the Provider is able to resume delivery of the Service, or part thereof, a notice (a “**Resumption Notice**”) shall be served setting out the date from which delivery of the Service or part thereof shall resume.
- 45.2.9. In the event that a Resumption Notice is served it shall be at the absolute discretion of the Commissioners as to whether any Service Users displaced or otherwise transferred or affected during the suspension period is returned to the Provider.
- 45.2.10. Where the Provider fails to remedy the cause of the Suspension Event within the timescale set out in the Suspension Notice the Commissioners may at their absolute discretion:

- (a) elect to extend the deadline initially set in the Suspension Notice; or
- (b) serve notice to terminate pursuant to either Clause 46.4.5 or Clause 47.3.2.

46. TERMINATION OF THE INDIVIDUAL PLACEMENT AGREEMENT

- 46.1. In the event of termination of this Agreement all associated Individual Placement Agreements shall terminate no later than the Termination Date of the Pre-Placement Agreement.
- 46.2. An Individual Placement Agreement shall terminate immediately:
 - 46.2.1. upon the death of a Service User, subject to Clause 23.3;
 - 46.2.2. where a Service Users fails to arrive at the Care Home to receive the Service, subject to Clause 23.5.3;
 - 46.2.3. in the event that Care Manager elects not to exercise the discretion to extend payment of the Absence Payment as provided for in Clause 23.2.4.
- 46.3. An Individual Placement Agreement may be terminated by the Council without notice where in the professional opinion of the Council, the Service User's assessed needs have changed and those needs cannot be met by the Care Home.
- 46.4. An Individual Placement Agreement shall terminate upon the expiry of:
 - 46.4.1. two [2] weeks notice from the Council of the Service User's intention to leave the Care Home
 - 46.4.2. two [2] weeks notice, or such period as agreed by the parties in the circumstances, from the date upon which the Authorised Officer accepts a recommendation that there is a need to transfer a Service User to another Care Home following the declaration of a professional judgement of the Council or CCG, whether independently reached or arrived at following the request for a Review Meeting from the Provider;
 - 46.4.3. twelve [12] weeks notice in writing from the Commissioners or the Provider.
 - 46.4.4. any period of notice to terminate an Individual Placement Agreement pursuant to Clause 45.2.2 or Clause 45.2.10. or similar.
 - 46.4.5. upon the expiry of any Temporary Placement or Respite Placement
- 46.5. In the event of the Council determining that a Service User's needs have changed such that they can no longer be met by the Provider the Parties will seek to negotiate a solution that will best serve the needs and choice of the Service User. In circumstances where, for whatever reason, the Service User cannot continue to remain at the Care Home the Parties will facilitate the Service User move to an alternative provider.

- 46.6. In any event the Commissioners may terminate an Individual Service Agreement immediately in an emergency situation or other unplanned scenarios where it is not in the Service User's best interests to remain in receipt of the Services provided by the Provider.
- 46.7. Upon the death, or permanent absence of a Service User the Provider shall return to the CCG all such equipment as the CCG had supplied to the Provider for the benefit of the Service User and/or in respect of the Service User's Nursing Care Needs.
- 46.8. Upon the death, or permanent absence of a Service User the Provider shall return to the Council all such equipment as the Council had supplied to the Provider for the benefit of the Service User.

47. TERMINATION OF THE PRE PLACEMENT AGREEMENT

- 47.1. The Commissioners may at any time by giving notice in writing terminate this Agreement with immediate effect, as from the date of service of such notice where:
 - 47.1.1. the Provider is in Fundamental Breach;
 - 47.1.2. the Provider is in Serious Default;
- 47.2. The Commissioners shall recover from the Provider any Losses resulting from termination under Clause 47.1.
- 47.3. The Commissioners may at any time by giving notice in writing terminate this Agreement:
 - 47.3.1. upon the date set out in the notice where the Provider notifies the Council that the Care Home is to permanently close;
 - 47.3.2. upon the expiry of any period of notice to terminate this Agreement as set out further to Clause 45.2.2.2 or Clause 45.2.10.2 or similar.
- 47.4. Without prejudice to any other provision of Clauses 47 any Party shall have the right to terminate this Agreement at any time by giving not less than twelve 12 weeks notice in writing to the other Parties which period of notice may be extended at any time before its expiry upon the agreement in writing of the other Parties.
- 47.5. The CCG may withdraw from this agreement upon the expiry of twelve [12] weeks written notice in the event of any statutory enactment, regulation, order or direction by the Secretary of State which at law precludes the CCG from making the RNCC payments to the Provider whether as a result of the withdrawal of the RNCC or for any other reason.
- 47.6. In the event of this Agreement being terminated in accordance with Clauses 46 or 47 during any notice period all Parties shall ensure that the interests of the Service Users are met. During any such notice period:

- 47.6.1. should the Council decide with the agreement of the Service User and their family or representatives to facilitate uptake of a place at an alternative care service the Service User shall leave the Care Home at whatever time is in their best interests and if needs be with immediate effect;
- 47.6.2. the date at which the last Service User for which the Parties have an Individual Placement Agreement leaves the Care Home shall be the date that the Pre-Placement Agreement is deemed to have terminated and any remaining notice periods will be waived;
- 47.6.3. in the event of this Agreement being terminated the Commissioners obligations under Clauses 20 (Purchasing Arrangements) Clause 21 (Fees) and Clause 23 (Payment) will cease and the Provider shall repay to the Commissioner all if any of the payment already received.

48. CONSEQUENCES OF TERMINATION

- 48.1. Termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any Party.
- 48.2. At the end of the Term (howsoever arising) the Provider shall provide, without charge, assistance to the Council and any replacement care provider appointed by the Council to deliver the Services so as to ensure an effective handover.
- 48.3. In the event of the termination under Clauses 46 or 47 the Commissioners shall be entitled to copies of all records relating to the Service unless prohibited by law, and the Commissioners shall be at liberty to use the same in their absolute discretion.
- 48.4. In the event of the termination of this Agreement by the provisions of this Clause 48 and Clauses 1 (Definitions and Interpretations), 24 (Recovery of Sums Due), 26 (Prevention of Bribery & Payments of Commission), 35 (Confidentiality), 43 (Indemnity and Insurance), and 52 (Law and Jurisdiction) shall survive.

49. FORCE MAJEURE

- 49.1. Neither Party shall be liable for any failure or delay in performance of this Agreement due to any 'Act of God', riots, war, acts of terrorism , , fire, flood, drought, tempest or other event beyond the reasonable control of any Party.
- 49.2. For the avoidance of doubt disruption related to strike or other industrial relations matters or labour disputes shall not constitute a force majeure.

50. QUALITY AND CONTRACT MONITORING

- 50.1. The Provider shall co-operate with the Council in evaluating the effectiveness of the Service with respect to the requirements of this Agreement.

- 50.2. The Provider shall comply with the monitoring arrangements set out in Schedule 4 (Monitoring & Evaluation) or as otherwise set out by the Council during the Term of this Agreement.
- 50.3. The Provider shall and procure that it's Staff shall give the Authorised Officer, the Care Manager and the Nursing Assessor or their deputies or other designated Staff member on demand access to any Service User.
- 50.4. The Provider shall at any time during the Term of this Agreement allow the Authorised Officer, their deputy or other designated Staff member, access, with or without notice, for the purposes of evaluating performance, to:
 - 50.4.1. the Care Home for the purpose of monitoring, inspecting and witnessing the provision of the Services;
 - 50.4.2. any personnel or agents of the Provider for the purpose of interviewing such persons in connection with the provision of the Services;
 - 50.4.3. all records, including financial, relating to the provision of services under this Agreement held by the Provider for the purpose of assessing how the Provider is carrying out it's obligations under this Agreement and the safety and welfare of the Service Users;
 - 50.4.4. all records and names of Service Users relating to the provision of the Services under this Agreement held by the Provider pursuant to Section 26 National Assistance Act 1948 provided that such access shall first have been approved by the Service User in question.
- 50.5. The Provider acknowledges that the Council shall, on an annual basis, undertake a review to consider the quality of the provision of the Services against any and all information that is provided by, or requested from, the Provider pursuant to this Agreement and which may, at the discretion of the Council include a meeting between the Council and the Provider. In all respects the Provider shall engage with such a review.
- 50.6. The Authorised Officer or their representative shall from time to time arrange visits to monitor, and where necessary address issues of, contract compliance. Such visits may be conducted with or without notice and the Provider shall in all respects engage with contract compliance activity.
- 50.7. The Provider shall co-operate fully with Local Healthwatch, and any statutory successor, including but not limited to the provision of information, using the same timescales as those set out for Freedom of Information requests and providing access to the Service under the Local Involvement Networks (Duty of Service Providers to Allow Entry) Regulations 2008, which provides LINKs with the powers to enter and view services, or any similar Regulations made in relation to Local Healthwatch powers under the Health and Social Care Act 2012, except where exemptions apply.

51. INFORMATION PROVISION AND EXCHANGE

- 51.1. The Provider shall compile and maintain such information as may reasonably be required by the Council in relation to provision of the Services, and to ensure compliance to this Agreement which may include quality and performance indicator information to be provided in such form as the Council from time to time directs.
- 51.2. The Provider shall inform the Council by way of e-mail to the Authorised Officer as soon as reasonably practicable and in any event within twenty-four [24] hours of the incidence or occurrence of any matter that the Provider is required to report to CQC as set out in the Essential Standards of Quality and Safety as a reporting requirement whether or not it relates to a Service User:
- 1 abuse or allegations of abuse;
 - 2 serious injuries;
 - 3 applications to deprive a person of their liberty;
 - 4 events that prevent or threaten to prevent the registered person from carrying out an activity safely and to an appropriate standard;
 - 5 deaths of people in their services;
 - 6 incidents reported to or investigated by the police; and
 - 7 unauthorised absences.
- 51.3. The Provider must also notify the Council within twenty-four [24] hours of information being received of the following:
- 51.3.1. as a result of any misconduct or mismanagement on the Provider's part a Regulatory Body or other Statutory Agency e.g. another placing authority directs an inquiry into or makes an order of any kind in relation to the Provider;
 - 51.3.2. or any registration which the Provider must maintain in order to provide any of the Services is withdrawn or cancelled or is threatened to be withdrawn or cancelled;
 - 51.3.3. an absence of a Service User pursuant to Clause 23.2.
- 51.4. Subject to the provisions of Clause 34 (Protection of Personal Data) and Clause 35 (Confidentiality), the Provider shall facilitate the electronic exchange, between the Parties, of any or all data, information, files, records, documents and the like, in relation to provision of Services under this Agreement.
- 51.5. The Provider shall refer all concerns or findings as appropriate to the Independent Safeguarding Authority or the Nursing and Midwifery Council.

PART 9 DISPUTE AND LAW

52. LAW AND JURISDICTION

- 52.1. This Agreement shall be considered as a contract made in England and according to English Law and, subject to this Clause 52 shall be subject to the exclusive jurisdiction of the English Courts to which both Parties hereby submit.
- 52.2. This Agreement is binding on the Council and its successors and assignees and the Provider and the Provider's successors and permitted assignees.

53. LEGISLATIVE CHANGE

- 53.1. The Provider shall bear the cost of complying with all such statutes, enactments, orders, regulations or other similar instruments as are referenced in this Agreement and any amendments thereto except that where any such amendment necessitates a change to a Service and provided that such amendment could not have reasonably been foreseen by the Provider at the date hereof the Parties shall enter good faith negotiations to make such adjustments to the charges as may be necessary to compensate the Provider for such additional costs as are both reasonably and necessarily incurred by the Provider in accommodating such amendments.

54. DISPUTE RESOLUTION

- 54.1. If there is a dispute between the Parties arising out of or in connection with the interpretation or operation of this Agreement or the performance of the Services by the Provider or any failure by the Parties to agree any matter to be agreed as referred to in this Agreement then any Party may notify the other that it wishes the dispute to be referred to a meeting of each Party's representative, to take place within 14 days of the dispute being referred. The contact persons for the purpose of this Clause are the relevant Authorised Officer and the Provider's Representative as defined in Clause 6 and Clause 7 respectively.
- 54.2. Any dispute arising between the Commissioners and the Provider that cannot be resolved using Clause 54.1 shall be dealt with by the Parties in accordance with the following procedure:
 - 54.2.1. if unresolved the dispute shall be referred to a meeting of the Head of Individual Commissioning (or officer of the Council of equivalent standing), and the local manager for the Provider. The local manager for the Provider shall be the manager senior to, and responsible for the Provider's Representative;
 - 54.2.2. if the dispute remains unresolved it shall be referred to a meeting of the Director of Adults Services (or such other senior officer of the Council as specified by the Director) and the regional director of the Provider to resolve the dispute. The regional director for the Provider shall be the manager senior to, and responsible for the local manager for the Provider.
- 54.3. If the dispute continues to remain unresolved any Party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre

for Effective Dispute Resolution (CEDR) Model Mediation Procedure 2001 or such later edition as may be in use.

- 54.4. Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the CEDR.
- 54.5. If and to the extent that after engaging in good faith in the CEDR the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts.
- 54.6. In the event that the process of the CEDR does not succeed in finding a resolution to the dispute within a period of 56 days, or such other time as the Parties may agree, any Party may take such action as is available to it under this Agreement or generally at law.
- 54.7. The use of the Dispute Resolution procedures set out in this Clause 54 shall not delay or take precedence over the provisions for termination and suspension set out in Clauses 45 (Default and Suspension) and Clause 47 (Termination of the Pre-Placement Agreement).

55. OUT OF BOROUGH PROVIDERS

- 55.1. A Provider located out of the Borough of Cheshire East shall be exempt from the requirements of 18.1 and any other provisions as set out in any Individual Placement Agreement.
- 55.2. The Parties acknowledge that Providers situated in Wales are regulated by the Care and Social Services Inspectorate Wales (“CCSIW”) rather than CQC and those references within this Agreement to CQC shall be positively and purposively interpreted with reference to any corollary or similar power, requirement etc, of CCSIW.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

THE COMMON SEAL OF)

CHESHIRE EAST BOROUGH COUNCIL

)

was hereunto affixed in the

presence of)

.....
Borough Solicitor/ Authorised
Signatory

THE COMMON SEAL OF)

**CENTRAL AND EASTERN CHESHIRE
NHS PRIMARY CARE TRUST**)

was hereunto affixed in the

presence of)

.....
Authorised Signatory

Signed as a deed by **[INSERT
COMPANY NAME]** acting by a director
in the presence of a witness:

.....
SIGNATURE OF DIRECTOR
SIGNATURE OF WITNESS

.....
PRINTED NAME OF DIRECTOR

.....

.....

PRINTED NAME, ADDRESS AND
OCCUPATION OF WITNESS

APPENDICES

Schedule 1: Care and Service Specification

Schedule 2: Fees and Finances

Schedule 3: Transferring Contracts

Schedule 4: Monitoring and Evaluation

Schedule 1: Care and Service Specification

Provision of Personal Care and Accommodation for Adults Aged 18 and Over in a Care Home or Care Home with Nursing

1. Scope of Services

1.1 As well as adhering to the standards set out in this specification, Care Homes and Care Homes with Nursing will comply with all legislative requirements, Statutory Guidance and National Policy including, but not limited to

- The Health and Social Care Act 2008
- The Mental Health Act 1983
- The Mental Health Act 2007
- The Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards
- Registration with the Care Quality Commission
- Essential Standards of Quality and Safety 2010
- Dignity in Care (2010)
- The Health and Social Care Act 2008 (Registration of Regulated Activities) Regulations 2009
- Equality Act 2010
- Essence of Care 2010
- Reducing Health Care Associated Infections (HCAI): Code of practice for the Prevention and Control of Health Care Associated Infections (DH 2010)
- End of Life Care Strategy (2008)
- Gender Recognition Act (2004)
- Freedom of Information Act
- Human Rights Act 1998
- Health and Safety at Work Legislation
- Employment Act 2008
- Data protection Act 2008

- 1.2** This specification details the range of standards to which the provider shall necessarily comply with in delivering the Services throughout this Agreement
- 1.3** The inclusion or exclusion of any standards already referenced elsewhere within this Agreement shall not be interpreted as a diminishing of their importance
- 1.4** The purpose of the Services described in this specification are to meet the assessed needs of Service Users and to enable them to live a life where they feel supported and cared for, whilst being enabled to exercise control of their own lives.
- 1.5** The standards contained in this specification are the minimum required but the Provider will make best endeavours to continuously improve the services it provides to further promote the well-being, independence and safety of Service Users
- 1.6** The Services will be delivered from the Care Home which is registered with the CQC.
- 1.7** The Provider will only deliver the Services for the care categories for which it is registered with the regulator to deliver.
- 1.8** The Provider will deliver the Services in a person-centred, needs-led manner, using a holistic approach including having regard to emotional, mental and physical health, social, personal, nutritional and cultural needs.
- 1.9** Individuality, dignity and potential risk to independence should always be an overarching consideration when planning the delivery of the Services.
- 1.10** The Provider will endeavour to ensure that services will be personalised to ensure that Service Users have choice and input in the time and the manner in which Services are delivered to them
- 1.11** The Provider will provide a suitable and safe environment that meets the needs of the Service User
- 1.12** The Provider will ensure that the nutritional needs and preferences of the Service User are met
- 1.13** The Provider will support the Service User to live as healthily and independently as possible irrespective of their condition
- 1.14** The Provider will meet all identified needs contained in the Service User's Care Plan
- 1.15** The Provider will deliver evidence based care

2 Criteria Included in this Specification

- 2.1** Under the Health and Social Care Act 2008, Homes for which registration as Care Homes is required must comply with the Essential Standards of Quality and Safety as published by the Secretary of State for Health or the Minister for Health and Social Services of the Welsh Assembly as appropriate.
- 2.2** Cheshire East Council will expect that all Providers and their Staff delivering Services under this contract are fully aware of the content of the Essential Standards of Quality and Safety and will provide Services that are compliant with these standards and relevant to the services that the Care Home is registered to provide.
- 2.3** The provision of both accommodation and personal care in Care Homes and Care Homes with Nursing is expected to include, where required, assistance with bathing, eating, mobility, dressing, using the toilet, administration of medicines and any other necessary personal care support which may reasonably be required to meet the Service Users individual care needs.
- 2.4** The provider will deliver these outcomes in a personalised, person centred, outcome focussed way that fully involves the input of the Service User.
- 2.5** Where Service Users are not able to express how their care should be delivered, Officers representing Cheshire East Council in conjunction with an appropriate person representing the Service User (such as a relative or advocate) in conjunction with the Service Provider, will make the final decision as to how the care will be delivered.

3 Excluded Criteria

This specification will not include

- 3.1** Provision or procurement of goods or services for the Service User considered to be private or personal in nature and not considered to be an essential element of care being commissioned by the Commissioners.
- 3.2** Escorts to accompany Service Users when Service user need to go off site. The Provider will reference its policy on escorting Service Users in their Service User Guide, Statement of Purpose or other equivalent document.
- 3.3** Private holidays/private outings including associated expenses such as escorts

3.4 Provision for any person under the age of 18

4 Access to Statutory and Supplementary Services

4.1 The Provider shall have a process in place to maintain effective links with local NHS Community Services

4.2 The Provider is responsible for ensuring that the Service User's needs for accessing healthcare services, including primary healthcare, are identified and that access to services (including where relevant, referrals) are arranged in a timely manner.

4.3 The successful delivery of the Services will include the ability of the Provider to coordinate access for the Service User to all relevant services as may be required in accordance with individual need including but not limited to

- Hospital Discharge Liaison Team
- General Practitioners and Out of Hours Service
- Allied Health professionals such as Physiotherapists, speech and language therapists, occupational therapists, podiatrists and dieticians
- Social Care
- Services provided by the 'Third Sector'
- Ambulance – patient transport services
- Mental Health Services
- NHS Community Services
- Specialist Palliative care Services, including for example, Macmillan Nurses
- Dental Services
- Infection Prevention teams and Health protection Agency
- Community Pharmacy Services
- Any other deemed applicable by the Care Manager

- 4.4** The Provider shall advise the Commissioners at any point that it appears that the Service User may require an advocacy service or an independent mental capacity advocate (“IMCA”) and shall provide all reasonable assistance and cooperation to the advocacy service or IMCA appointed in respect of the Service user including access to all information held in regard to the Service User and access to the service user at all times

5 Service Delivery

When delivering the Services to the Service User, the Provider will adhere to the following principles of service delivery

5.1 Respect for Capacity

The Service User is to be treated as able to make his own decisions. A Service User’s capacity to make a decision will be established at the time that a decision needs to be made in line with the definition of capacity set out in the Mental Capacity Act 2005

5.2 Equality of Opportunity

The service will be organised and provided in a way which does not discriminate against the service user and staff in respect of age, gender, disability, sexuality, culture, language, religion or age.

5.3 Individuality

The Service User will be recognised and respected as an individual person.

5.4 Rights

The maintenance of all entitlements associated with UK citizenship (subject to any authorised deprivation of liberty safeguards 2008 and Mental Health Act 1983)

5.5 Choice and Control

The opportunity to select independently from a range of personalised options.

5.6 Independence

The opportunity to act and think without reference to another person, including willingness to incur an acceptable degree of risk

5.7 Fulfilment

The realisation of reasonable personal aspirations and abilities in all aspects of daily life

5.8 Privacy

The right of the Service User to be left alone undisturbed and free from intrusion of public attention into their affairs providing that this does not conflict with any identified mental health need

5.9 Dignity

Recognition of the intrinsic value of the Service User, regardless of circumstances, by recognising their uniqueness and their personal needs and treating them with respect, in line with Department of Health guidance including “Dignity in Care” and “End of Life”

5.10 Confidentiality

The sharing of any and all kinds of information concerning a Service User will always be consistent with the principles of consent and data protection as well as choice and privacy

5.11 Protection

The Service User shall be protected from risk of harm that arises from abuse or neglect

5.12 Service User Engagement

The Provider actively engages with the Service User so that they are consistently contributing, where possible and where considered important by the Service User, to the structuring and delivery of their care

5.13 Person Centred Care

The Service Users goals, targets and objectives should remain the focus of care at all times

5.14 Cultural Awareness

The Provider ensures that the religious, cultural and spiritual needs and wishes of the Service User are identified, respected and wherever possible, met.

6 Care Planning and Record Keeping

6.1 Prior to routine admission to the Care Home or Care Home with Nursing the Service Provider must ensure that a full assessment of the individual Service Users needs has been undertaken and an appropriate Care Plan has been put in place that accurately reflects how the Provider will deliver services to meet the needs of the Service User.

6.2 The Provider shall maintain on an on-going basis this Care Plan which details, in English, all the care provided to the Service User in accordance with and to evidence delivery of the Service Users support needs. The Care Plan shall reference and take into account all relevant outcomes in the 'Essential Standards of Quality & Safety' published by the CQC. The Care Plan shall be standardised and include, but not be limited to

6.2.1 Person Centred Biography

6.2.2 Medical History (including any prescribed medication)

6.2.3 Dates and times when care is provided

6.2.4 Type and frequencies of care provided (including records of visits by professionals)

6.2.5 Observations which may be relevant to care needs (including nursing care)

6.2.6 Risk Assessments

6.2.7 Protocols relevant to care

6.2.8 Relevant medical diagnoses which may affect the delivery of care e.g. allergies, intolerances to certain foods etc.

6.2.9 Any actions to be taken, timescales for actions to be performed and the names of those persons to undertake the actions

6.2.10 Names, designations and signatures of the staff writing and updating the Care Plan

6.3 The Care Plan should ensure that

6.3.1 The Service User or representative perception of their support needs and preferred models of care will be at the centre of the care planning process

6.3.2 The Service User or representative is fully supported and encouraged to participate in an informed decision making process and to be involved in their personal care planning

6.3.3 Information provided by Health and Social Care professionals is considered and reflected as appropriate

6.4 The Provider shall ensure that senior management Staff undertake regular and routine audits of the standard of documentation maintained and recorded in Care Plans. These audits will be made available to the Commissioners upon request.

6.5 The Provider shall maintain records relevant to the provision of the Services it provides that will include, but not be limited to,

6.5.1 Care needs of the Service User

6.5.2 Risk Assessments, incidents and accidents

6.5.3 Monies and valuables of the Service User

6.5.4 Medicines Management including

- A central register of prescribed drugs and medicines
- A medication profiles for each Service User
- Medication administered per Service User (except for self-administers)
- Medicines that the Service User stores and self administers (following a risk assessment)
- Medication errors and near misses

6.5.5 A controlled drugs register for recording

- The receipt, administration and disposal of controlled drugs
- The balance remaining for each product

- 6.5.6** Computerised records where used, should comply with guidelines from the registering authority
 - 6.5.7** Activities organised by the provider and undertaken by the Service User
 - 6.5.8** Visitor log (including all social care/health professionals)
 - 6.5.9** Complaints received including the nature of each complaint and action taken by the Provider in response
 - 6.5.10** Name and contact details of next of kin/advocate and/or legal representative
- 6.6** At the request of the Commissioner, the Provider shall provide within 3 working days, copies of any of the above records and any other records or information held relating to the provision of the Services. Where the Commissioner requires the above records due to a Safeguarding issue, the provider will share these documents with the Commissioner immediately.
 - 6.7** The provider shall ensure that the above requirements at all times comply with the law and all relevant legislation.
 - 6.8** The Provider shall have policies in place as required to comply with all relevant legislation, guidance, registration requirements and as may be required by the Commissioner
 - 6.9** Policies will be regularly reviewed by a member of the providers Senior Management Team to ensure they remain up to date and relevant
 - 6.10** All policies shall include their date of issue and planned review date
 - 6.11** The Provider shall ensure that all staff are made aware of all policies relevant to their individual role, receive appropriate training in connection with these policies and that this training is evidenced in the delivery of care.
 - 6.12** The Provider shall ensure that the Service User, or representative, is made aware of, has access to and understands all relevant policies and procedures.
 - 6.13** The Provider will maintain an accurate and up to-date list of all Service Users residing in the Care Home including privately funded service users and Services Users funded by other Local Authorities and be ready to share this list with the Commissioners on request

7 Referrals

- 7.1** The Provider will only consider accepting Service Users who have assessed needs that can be met by the Provider for the services it is registered with the regulator to deliver.
- 7.2** The Provider will undertake an assessment of any prospective Service User at the request of the Commissioners.
- 7.3** Where the Provider is able to care for a Service User and it is identified that the Service User will receive care at the Providers premises, the Provider will confirm to the Commissioners its ability to meet the needs of the Service User and create a provisional Care Plan for the Service User in accordance with the following timescales
 - 7.3.1** For individuals within the 'end of life' category: within 24 hours of referral
 - 7.3.2** For all other individuals: within 72 hours of referral
- 7.4** 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 hours of the decision to deliver the Services made by the Commissioner and notified to the Provider.
- 7.5** For all placements made with the Providers that are funded by the Commissioner(s), an Individual Placement Agreement will be completed by the Parties.
- 7.6** Following completion of the Individual Placement Agreement and where the Service User is not already resident within the Provider's premises, the Provider will make reasonable arrangements to transfer the Service User to the premises.
- 7.7** The Provider will ensure that a named worker is assigned to the Service User immediately upon admission.
- 7.8** The Provider will forward written notification to the Service User's GP with details of the new care arrangement for the Service User within 24 hours of their admission.

8 Public/Client Relations and Engagement

- 8.1** The provider will undertake a satisfaction survey amongst Service Users (or appropriate representative) at least every twelve months in regard to the provision of care.

- 8.2** Results of the survey will be made available to the Commissioners including details of actions that the Provider plans to take in light of the survey results and when such actions will be taken.
- 8.3** The Provider shall ensure that family relations and friends of the Service User are made to feel welcome when making contact with the Service User and that visiting times remain flexible in keeping with the consent of the Service User to maximise accessibility to the Service User.
- 8.4** The Provider shall ensure that the Service Users representative is involved and consulted appropriately in the planning of the care of the Service user in keeping with the consent and preferences of the Service User.
- 8.5** Where a Service User requests, or is agreeable to receive information regarding self management of their care requirements in order to maintain their health and wellbeing, the Provider shall make arrangements for the Service User to access either the appropriate NHS service (for example, Community Matron or Community Nurse) or Local Authority Service.
- 8.6** The Provider shall ensure that information intended for the Service User is delivered in a variety of formats to the needs, ability and capacity of the Service User.

9 Information Prior to Admission

- 9.1** The Provider will ensure that the following is made available to prospective users of the Services and their representatives prior to admission to the Care Home
 - 9.1.1** Service User Guide: The Provider shall ensure that the Service User receives a copy of the Service User Guide and this is maintained with up to date and accurate information including (but not limited to) key policies and/or procedures such as smoking, visiting arrangements, prevention and control of infection, complaints etc
 - 9.1.2** A copy of the latest Quality Risk Profile for the Care Home

Annex A: Individual Placement Agreement

Schedule 2: Fees and Finances

1 Introduction

1.1 This schedule sets out the details relating to the Council's Standard Fees and how these relate to the payments made to Care Homes. Payments made to Care Homes by the Council will be:

- 1.1.1** in accordance with the provisions set out of in Part Three [3] Fees and Payment of the terms and conditions of this Agreement;
- 1.1.2** in relation of the Services within Schedule 1 to this Agreement;
- 1.1.3** for the Service Users for whom the Provider has Individual Placement Agreements or that are set out in Schedule 3 Transferring Contracts with the Council.

2 Contract Price

2.1 The Council's Standard Fee for the Services are

| | |
|----------------------------------|----------------|
| Residential | £376.73 |
| Residential with Dementia | £467.10 |
| Nursing | £433.07 |
| Nursing with Dementia | £467.10 |

2.2 In the event that a Service User has assessed need(s) beyond the scope of the Care Services Specification the Council acting through the Care Manager may at its absolute discretion agree the placement of a Service User at rate above the Standard Fee. The difference in the rate agreed and the Standard Fee shall be referred to as the **"Supplementary Fee"**.

2.3 Each Individual Placement Agreement shall record the value of:

- 2.3.1** the Standard Fee;
- 2.3.2** the RNCC at the prevailing rate if applicable; and
- 2.3.3** any Supplementary Fee.

3 Payment Changes

3.1 As outlined in Clause 23.6 the Council anticipates two changes being necessitated during the Term of the Contract:

3.1.1 Net Payments and

3.1.2 Payment by Remittance

3.2 The Council shall provide three [3] months written notice to the Provider in advance of change pursuant to Clause 23.6.

3.3 The implementation of change pursuant to Clause 23.6 may necessitate an amendment to this Schedule 2, which the Council shall be entitled to introduce subject to ten [10] Days written notice to the Provider.

3.4 Net Payments

3.4.1 A transition to Net Payments shall mean that the Council will pay the Provider the Standard Fee minus any Assessed Service User Contribution.

3.4.2 The Provider shall be provided by the Council with the information necessary to collect the Assessed Service User Contribution directly from the Service User.

3.5 Payment by Remittance

3.5.1 The Council anticipates that a transition to Payment by Remittance shall result in the Council on a four [4] weekly cycle producing a schedule of Service Users placed with the Provider for the preceding four [4] weeks and the associated charges for each Service User.

3.5.2 Thereafter the Provider shall be required to verify the schedule referred to at 3.4.1 above and notify the Council within five [5] Days of the accuracy or any amendments, changes or corrections to the schedule.

3.5.3 Once the Provider has confirmed the schedule or provided any necessary amendments, changes or corrections the Council shall process the payment.

3.5.4 The Council shall resolve any overpayment in accordance with the provisions of this Agreement.

Schedule 3: Transferring Contracts

Contents

- 1 List of those Service Users and their associated contracts that shall transfer in accordance with Clause 5 of this Agreement

Schedule 4: Monitoring and Evaluation

1 Principles

All providers will be expected to deliver care to service users in line with CQC 'Essential Standards of Quality & Safety' and any other recognised regulations or guidance to ensure quality, value for money and continuous improvement. Each provider will be monitored in line with the following outcomes which The Council and the CCGs see as integral to quality service delivery.

- A Respecting and involving people who use the service**
- B Consent to care and treatment**
- C Care and welfare**
- D Nutritional needs**
- E Cooperating with others**
- F Safeguarding**
- G Cleanliness and infection control**
- H Management of medicines**
- I Safety and suitability of premises**
- J Safety and suitability of equipment**
- K Staffing**
- L Assessing and monitoring of complaints**
- M Record keeping**

2 Process

- A)** Following any contract monitoring visit where improvements have been identified, an improvement action plan will be implemented by the provider that sets out how improvements will be made. This action plan will be approved by The Council before being implemented. The action plan will define a timescale for these improvements to be implemented.
- B)** The Council reserves the right to undertake specific reviews/monitoring of any care package/placement at any time during a year.

3 Proactive Monitoring

Each provider will receive contract monitoring visits and may be asked to provide documentation for monitoring purposes. The Provider may also expect to receive announced or unannounced visits from officers of the Council and CCGs as well as mystery shopping.

4 Reactive Monitoring

Officers from The Council or CCGs' Quality Monitoring Team or Contracts & Commissioning Team will undertake reactive monitoring of Care Homes where any issues have been raised from any stakeholder. These issues may include safeguarding incidents, formal complaints, notification from CQC of non-adherence to the Essential Standards of Quality & Safety, issues identified following annual reviews of service users and any other issues, however identified, which The Council, in its best judgement, feel necessary to investigate.