

DYNAMIC PURCHASING SYSTEM AGREEMENT

for the supply of

Older Persons Residential and Nursing
Care Home Services

between

(1) THE KENT COUNTY COUNCIL

-and-

(2) PROVIDER

Kent Legal Services
Kent County Council
County Hall
Maidstone
ME14 1XQ

www.kent.gov.uk/Legal
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FORM OF AGREEMENT

THIS AGREEMENT is made on the day of 2019

BETWEEN:

- (1) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, ME14 1XQ (the "Council"); and
- (2) **PROVIDER** (company registered number []) whose registered office is at [] (the "Provider").

RECITALS:

- (A) The Council is a local authority as defined by section 270 of the Local Government Act 1972
- (B) The Council must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations. In order to satisfy these obligations the Council wishes to procure the provision of the Services and the Provider wishes to provide the Services.
- (C) Following a tendering process the Council has appointed the Provider to provide the Services in accordance with the provisions of this Contract.
- (D) The Parties agree to co-operate with each other in good faith to facilitate the provisions of the Services and be bound by the terms and conditions of this Contract.
- (E) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED:

1. This Contract is comprised of the following documents:
 - 1.1 This Form of Agreement;
 - 1.2 The conditions of Contract;
 - 1.3 The Schedules;
 - 1.4 The Appendices;as completed and agreed by the Parties and as varied from time to time in accordance with clause 38 of this Contract.
2. Terms and expressions used in this Contract shall have the meaning given in clause 1.1 of the conditions of Contract.
3. In consideration for payment of the Contract Price by the Council to the Provider the Provider undertakes to perform the applicable Service or Services set out in Schedule 1 (Specification) with due skill, care and diligence throughout the Contract Period and any Extended Period.

EXECUTION AS A DEED

IN WITNESS whereof this Contract has been executed by the Parties as a deed:

THE COMMON SEAL of **THE
KENT COUNTY COUNCIL**
was hereunto affixed in the
presence of:

Authorised Signatory

Signed for and on behalf of **[Provider]** in the presence of:

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

in the presence of:

Name of Witness:

Address of Witness:

Occupation of Witness:

EXECUTION UNDER HAND

IN WITNESS whereof this Contract has been executed by the Parties in accordance with their respective constitutions:

Signed for and on behalf of **THE KENT COUNTY COUNCIL**

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

Signed for and on behalf of **[PROVIDER]**

[Care Home Name]

.....
Authorised Signatory

.....
Print Name of Authorised Signatory

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Achieved Service Level” means in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 6).

“Appendix” means an appendix to this Contract and **“Appendices”** shall have the same meaning ascribed hereto.

“Approval” means the written consent of the Council.

“Caldicott Principles” means those identified in the Department of Health report on the review of Patient Identifiable Information December 1997 (or as updated from time to time) and as set out in Schedule 8.

“Change” means any change to this Contract.

“Commencement Date” means the start of the contract.

“Commercially Sensitive Information” means where applicable the information listed in Schedule 7 (Commercially Sensitive Information) comprised of information:

(a) which is provided by the Provider to the Council in confidence for the period set out in that Schedule; and/or

(b) that constitutes a trade secret.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information

shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 30 (Confidential Information));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Contract”	means the terms and conditions of this Contract including its Schedules and Appendices.
“Contract Manager”	means the person appointed and nominated from time to time by the Council to oversee and supervise the management of this Contract.
“Contract Period”	means the period commencing on the Commencement Date and ending on the Expiry Date including any Extended Period or earlier termination of this Contract.
“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Provider by the Council as set out in Schedule 2 of this Contract, for the full and proper performance by the Provider of its obligations under this Contract.
“Contracting Authority”	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.
“Council”	means The Kent County Council of County Hall, Maidstone, ME14 1XQ.
“CQC”	means Care Quality Commission established under the Health and Social Care Act 2008.
“DBS”	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract and in

respect of which such Party is liable to the other.

“Deferred Payment”

means the definition given to under Sections 34 to 36 of the Care Act 2014 and regulations 2 and 3 of the Care and Support (Deferred Payment) Regulations 2014 which requires or permits the Council to enter into a deferred payment agreement with an adult subject to some specific conditions being met

“Disaster”

means an event defined as a disaster in the Disaster Recovery Plan.

“Disaster Recovery Plan”

means a plan which sets out the procedures to be adopted by the Provider in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Provider in planning and providing for any such event), the Disaster Recovery Plan at the date of this Contract.

“DPA”

means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“DPS”

means the Dynamic Purchasing System procurement process under the Public Contracts Regulations 2015 (as amended from time to time)

“Effective Date”

means a date after the Commencement Date when a Provider is engaged by the Council to join the DPS for the provision of Services to Service User(s) under this Contract.

“Employment Checks”

means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.

“Enhanced DBS & Barred List Check”

means an Enhanced DBS & Barred List Check (Child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check

(child & adult) as appropriate.

- “Enhanced DBS & Barred List Check (Child)”** means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children’s barred list.
- “Enhanced DBS & Barred List Check (Adult)”** means a disclosure of information comprised in an Enhanced DBS Check together with information from DBS adult’s barred list.
- “Enhanced DBS & Barred List Check (Child & Adult)”** means a disclosure of information comprised in an Enhanced DBS check together with information from the DBS children’s and adult’s barred list.
- “Enhanced DBS Check”** means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.
- “Enhanced DBS Position”** means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) which also meets the criteria set out in The Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted.
- “Environmental Information Regulations”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
- “Equipment”** means the Provider or the Council’s equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under this Contract.
- “Expiry Date”** means the 5th of April 2020.
- “Extended Period”** means the period or periods of up to 4 (four) years after the Expiry Date.
- “Fees Regulations”** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
- “FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such

legislation.

“Force Majeure”

means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Provider’s or any Sub-contractor’s organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any Sub-contract.

“Former Self Funders”

means a Service User whose residential placement has previously been funded privately, whose wealth has now depleted, and is now eligible for Council funding

“Good Industry Practice”

means using and complying with present and future clinical guidance, governance, arrangements, standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider or a person or body engaged in providing services the same as (or similar type of undertaking to the Services at the time the Services are provided) applicable.

“Guide Price”

means the price that the Council would usually expect to pay for residential or nursing care as set out in Schedule 2.

“Indicative Price”

means the price tendered on behalf of a Care Home on the DPS, when Providers join the DPS. The Indicative Price is the maximum price (or not to exceed price) that a Provider on the DPS framework contract can charge for any Council funded placement.

“Individual Contract Price”

means the final price agreed between the Council and the Provider for an individual placement.

“Information”

has the meaning given under section 84 of the

FOIA.

“Institutional Investor”		means an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pensions fund, private equity firm, venture capitalist, insurance company or investment trust.
“Intellectual Rights”	Property	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“Key Personnel”		means the person appointed and nominated from time to time by the Provider to oversee and supervise the management of this Contract.
“Law”		means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Provider is bound to comply.
“Local HealthWatch”		means the local independent consumer champion for health and social care in England.
“Losses”		means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses.
“Month”		means calendar month.
“NICE”		means National Institute for Health and Care Excellence being the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of all ill health (or any successor body).
“Party”		means a party to this Contract.

“Premises”	means the location where the Services are to be supplied, as set out in the Specification.
“Price Review Date”	shall be the 1 st of April of each year or such other date notified to the Provider by the Council.
“Prohibited Act”	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council.
“Property”	means the property, other than real property, issued or made available to the Provider by the Council in connection with the Contract.
“Provider”	means the person, firm or company with whom the Council enters into this Contract.
“Provider Party”	means the Provider's agents and contractors, including each Sub-contractor.
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced

operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

- “Receipt”** means the physical or electronic arrival of the invoice at the address of the Council or at any other address given by the Council to the Provider for the submission of invoices.
- “Regulated Activity”** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
- “Regulated Provider”** **Activity** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
- “Regulatory Body”** means a body established by 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 Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly. “Regulatory Bodies” shall have the same meanings ascribed hereto.
- “Relevant Convictions”** means a conviction that is relevant to the nature of the Services or as listed by the Council.
- “Relevant Index”** is as described and set out in clause 21A
- “Relevant Transfer”** a relevant transfer for the purposes of TUPE.
- “Replacement Provider”** means any third party provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
- “Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).
- “Restricted Person”** means: (i) any person, other than an Institution Investor who has a material interest in the production of tobacco products or alcohol beverages; or any person who the Council otherwise reasonably believes is inappropriate

	for public policy reasons to have a controlling interest in the Provider or in the Sub-contractor.
“Schedule”	means a schedule attached to, and forming part of, this Contract.
“Service Credits”	means the sums attributable to a Service Failure as specified in Schedule 9.
“Service Failure”	a failure by the Provider to provide the Services in accordance with any individual Service Level.
“Service Levels”	the service levels to which the Services are to be provided, as set out Schedules 1 & 6.
“Services”	means the services to be supplied as specified in the Specification.
“Service Item”	means any subset of the Services (or item within that subset) or one or more Service Users as identified in the Specification.
“Service User”	means the person directly receiving the Services provided by the Provider as specified in the Service Specifications and includes their Carer and Legal Guardian where appropriate and “Service Users” shall have the same meaning ascribed hereto.
“Specification”	means the description of the Services to be supplied under this Contract as set out in the Specification Schedule.
“Staff”	means all persons employed or engaged by the Provider to perform its obligations under this Contract together with the Provider’s servants, agents, suppliers and Sub-contractors used in the performance of its obligations under the Contract.
“Staff Vetting Procedure”	means the Council’s procedures for the vetting of personnel and as advised to the Provider by the Council.
“Standard DBS Check”	means a disclosure of information which contains certain details of an individual’s convictions, cautions, reprimands or warnings recorded on police central records and includes both ‘spent’ and ‘unspent’ convictions.
“Standard DBS Position”	means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted.

“Sub-contractor”	means any third party with whom the Provider enters into a sub-contract or the servants or agents of that third party.
“Tender”	means the document(s) submitted by the Provider to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Services.
“Third Party Top Up”	means an agreement between the Council and a third party where the third party reimburses the Council for the difference between the Individual Placement Contract Price and the applicable Guide Price (or higher price if there is no suitable placement at the guide price at that time in Schedule 2). “TPTU” shall have the same meaning ascribed hereto.
“Transferring Employees”	means those persons (or person) whose contract of employment becomes transferred by the application of TUPE or otherwise on the expiry or termination of this Contract.
“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended from time to time.
“Variation”	has the meaning given to it in clause 38 (Variation).
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
“Working Day”	means any calendar day including Sundays and Bank Holidays.

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.2.8 The terms and conditions of this Contract and Schedules are to be read as mutually explanatory of one another. In the even that there is a conflict or inconsistency between the clauses and the Schedules and/or any Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.2.8.1: Schedule 1 (Specification) and Schedule 3 (Individual Placement Contract Conditions)
- 1.2.8.2: Schedule 2 (Pricing) and Schedule 6 (Contract Management)
- 1.2.8.3: the remaining Schedules equally

2. CONTRACT PERIOD AND EXTENSION

- 2.1 This Contract shall take effect on the Commencement Date and shall expire automatically at the Expiry Date unless it is otherwise terminated in accordance with the provisions of this Contract, or by operation of law, or extended under clause 2.2.
- 2.2 The Council may, by giving written notice to the Provider extend this Contract for such further period or periods of up to 4 (four) years as agreed between the Parties. If the Council decides to exercise the option to extend this Contract the Council shall give up to 3 (three) Months’ notice to the Provider (or such other time agreed between the Parties).
- 2.3 The provisions of this Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 23 (Price Adjustment)) throughout any such Extended Period.

3. PROVIDER’S STATUS

At all times during the Contract Period the Provider shall be an independent Provider and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

4. COUNCIL’S OBLIGATIONS

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty

and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.

5. NOTICES

- 5.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 5.3 For the purposes of clause 5.2, notices shall be addressed for the attention of the Council's Contract Manager and the Provider's Key Personnel and the address for Service for each Party shall be the address stipulated above.
- 5.4 Either Party may change its address for the service by serving a notice in accordance with this clause.

6. MISTAKES IN INFORMATION

The Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

7. CONFLICTS OF INTEREST

- 7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise.
- 7.2 The Council reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

8. THE SERVICES

- 8.1 The Provider shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:
- 8.1.1 the Quality Standards (if any stipulated in the Specification);
 - 8.1.2 Good Industry Practice;
 - 8.1.3 the Law; and
 - 8.1.4 the requirements of the Contract.
- 8.2 The Council may inspect and examine the manner in which the Provider supplies the Services at the Premises any time during a Working Day on giving reasonable notice to the Provider. The Council reserves the right to carry out an unannounced inspection (without giving notice to the Provider) where the Council has concerns about the Services being provided to Service Users.
- 8.3 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.
- 8.4 The Provider will carry out the Services in accordance with the requirements of the Specification in a professional manner with due diligence and exercising all the due care, skill and judgement to be expected of a competent provider of services of a similar kind and in a similar field/industry.
- 8.5 The Provider shall devote such time to providing the Services as are required to provide them to the standard required under or by virtue of this Contract and shall provide all equipment and other items necessary for the carrying out of the Services
- 8.6 The Provider must carry out the Services in accordance with the Law and Good Clinical Practice and must, unless otherwise agreed (subject to the Law) with the Council in writing:
- 8.6.1 comply, where applicable, with the registration and regulatory compliance guidance of CQC and any other Regulatory Body;
 - 8.6.2 respond, where applicable, to all requirements and enforcement actions issued from time to time by CQC or any other Regulatory Body;
 - 8.6.3 consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
 - 8.6.4 comply with the recommendations issued from time to time by a Regulatory Body;
 - 8.6.5 comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;

- 8.6.6 respond to any reports and recommendations made by Local HealthWatch;
- 8.6.7 comply with performance indicators and quality outcomes indicators set out in Schedule 6 and
- 8.6.8 comply with the Caldicott Principles set out in Schedule 8 where applicable (and appropriate) to the provision of the Services

Individual Placement of Service Users

- 8.7 The protocol set out in Schedule 4 (Individual Placement Process) will apply during the Contract Period for placing Service Users in the Provider's Premises.
- 8.8 The Parties shall execute the document set out in Schedule 3 (Individual Placement Contract Conditions) to effect the Service User's placement in the Provider's Premises

9. SERVICE LEVELS AND SERVICE CREDITS

- 9.1 The Provider shall provide the Services set out in Schedule 1 of this Contract.
- 9.2 Where any part of the Services is stated in Schedule 1 to be subject to a specific Service Level, the Provider shall provide that part of the Services in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 9.3 The Provider shall provide records of management reports and information summarising the Achieved Service Levels as provided for in clause 42.
- 9.4 If the Provider fails to provide the Services in accordance with any individual Service Level, the Provider shall pay to the Council the Service Credit (and liquidated damages) set out in clause 9.5.
- 9.5 The parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Council. The Provider has taken the Service Credit (and liquidated damages) into account in setting the level of this Contract Price. The items that comprise of liquidated damages under this clause include costs of finding a replacement provider for the Service Users, costs of any transport arranged (including associated expenses) to move the Service User from the Provider's Premises, Council officers of their nominated representatives time and resources)
- 9.6 If the Provider fails to provide the information required in accordance with the provisions of this Contract, and fails to provide any KPI for a period of three (3) consecutive months, then the Council has the right to withdraw or suspend for a nominated period the Provider from receiving new placements under this Contract.

10. PROVISION AND REMOVAL OF EQUIPMENT

- 10.1 The Provider and the Council may be required to make Equipment available for the provision of the Services. The Provider shall follow the Council's Equipment protocol for the provision of the Services

- 10.2 The Provider shall ensure that any Equipment used for the delivery of the Services shall comply with industry standard and all applicable Law.
- 10.3 All Equipment brought onto the Premises for the provision of the Services shall be at the Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- 10.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 10.5 The Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
 - 10.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with this Contract; and
 - 10.5.2 replace such item with a suitable substitute item of Equipment.
- 10.6 On completion of the Services the Provider shall return to the Council any Equipment made available to the Provider by the Council during the Contract Period. All such Equipment shall be in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Council Equipment other than fair wear and tear.

11. KEY PERSONNEL AND CONTRACT MANAGER

- 11.1 The Provider and the Council shall each appoint and nominate a Key Personnel and a Contract Manager to supervise and manage the provision of the Services.
- 11.2 The Provider shall notify the Council of a change in the Key Personnel. The Provider warrants that the change of the Key Personnel shall not adversely affect the provision of the Services.
- 11.3 Any replacements to the Key Personnel shall be notified to the Council within 24 hours of the change of the current Key Personnel. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 11.4 The Provider shall minimise any adverse impact on this Contract and Service Users which could be caused by a change in Key Personnel.
- 11.5 The Council shall notify to the Provider from time to time where there is a change in the Contract Manager

12. PROVIDER'S STAFF

- 12.1 The Council may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain involved in the delivery of the Services:
 - 12.1.1 any member of the Staff; or

- 12.1.2 any person employed or engaged by any member of the Staff, whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.
- 12.2 At the Council's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with this Contract to the Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably request.
- 12.3 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 12.4 The Provider shall comply with Staff vetting procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff vetting procedures.
- 12.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council may require the Provider to carry out a Disclosure and Barring Service check in respect of any person to be employed or engaged in the provision of the Services. The Provider shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Provider to have a Relevant Conviction (whether as a result of or through a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
- 12.6 If the Provider fails to comply with clause 12.2 within 21 Working Days of the date of the request the Provider shall be in Default of its obligations under this Contract.
- 12.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Provider has failed to comply with clause 12.2 shall be final and conclusive and the Provider shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under clause 12.1.

13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 13.1 The Provider shall assign to the performance of the Service sufficient Staff who shall possess and exercise such qualifications, skill and experience as is necessary for the proper performance of the Service
- 13.2 At all times, the Provider must ensure that:
- 13.2.1 each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- 13.2.2 there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;

- 13.2.3 where applicable, Staff are registered with the appropriate professional regulatory body; and
- 13.2.4 Staff are aware of and respect equality and human rights of colleagues and Service Users.
- 13.3 If requested by the Council, the Provider shall as soon as practicable and by no later than 20 Working Days following receipt of that request, provide the Council with evidence of the Provider's compliance with Clause 13.2.
- 13.4 The Provider must have in place systems for seeking and recording specialist professional advice and must 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 instruction; and
 - 13.4.2 full and detailed appraisal (in terms of performance and on-going education and training), each in accordance with Good Clinical Practice and the standards of any applicable relevant professional body.
- 13.5 Where applicable under section 1(F) (1) of the NHS Act 2006, the Provider must co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- 13.6 The Provider must carry out Staff surveys in relation to the Services at intervals and as agreed in writing from time to time.
- 13.7 Subject to Clause 13.8, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
 - 13.7.1 the Employment Checks; and
 - 13.7.2 such other checks as required by the DBS.
- 13.8 Subject to Clause 13.9, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Council.
- 13.9 Where Clause 13.8 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
 - 13.9.1 an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - 13.9.2 wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - 13.9.3 the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Agreement; and

- 13.9.4 any other reasonable requirement of the Council.
- 13.10 Where the Council has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Council and in any event within 20 Working Days of that request (unless otherwise agreed in writing), provide the Council with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.
- 13.11 The Provider shall indemnify and keep indemnified the Council and any successor service provider against any Losses incurred by the Council and/or the successor service provider in connection with any claim under this Clause 13 or demand by any transferring employee under TUPE.
- 13.12 Where the Contract Manager (but not unreasonably or vexatiously) is of the opinion that any Staff are unsuitable to work with children and vulnerable adults he may require their exclusion from being engaged in the Services and the Provider shall immediately comply with this requirement.
- 13.13 The Provider shall undertake checks to ensure that any potential Staff who is likely to be in a position where they are providing the Service to a Service User has a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom. The Provider shall not employ or engage any Staff prior to receipt of a satisfactory check. Should the check disclose information about Staff which indicates that the person does not have a legal right and (as the case may be) the necessary permission to take up work in the United Kingdom then that person shall not be so employed or engaged in any work in or about the Service.
- 13.14 The Provider shall ensure that the employment or involvement of young Staff complies with the law and in particular the Children and Young Persons Act 1933 (as amended) and the Children Act 1989.
- 13.15 The Provider shall ensure that volunteers using their own vehicles in or about the performance of the Services have informed their insurers of their volunteer driving.
- 13.16 The Provider shall notify the Council in writing on the engagement of any person in a Restricted Post.
- 13.17 The Provider must have policies and procedures which acknowledge and provide for on-going monitoring of the Staff including undertaking further DBS disclosures if required.
- 13.18 The Provider must keep and must procure that the Council is kept advised at all times of any Staff who subsequent to their commencement of employment receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider (or any employee of a Sub-contractor involved in the provision of the Services).
- 13.19 In the event that the Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this Clause 13 and shall procure that the Sub-contractor complies with such terms. The Provider shall indemnify the Council and keep the Council indemnified in full from and against all loss,

damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

- 13.20 Failure by the Provider to comply with this Clause 13 may lead to the termination of this Contract at the Council's sole discretion.
- 13.21 The Provider shall comply and shall ensure that all Staff comply with the Kent and Medway Safeguarding Children's Procedures 20071 and the Multi Agency Adult Protection Policy, Protocols and Guidance for Kent and Medway (updated six monthly) and the Provider's own policy and procedure concerning Adult Protection/Safeguarding.
- 13.22 The Provider's Safeguarding Policy shall include safeguarding vulnerable adults and children from any form of abuse or exploitation which includes physical, financial, psychological or sexual abuse, neglect, discriminatory, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance.
- 13.23 The Provider shall have in place robust procedures for responding to suspicion or evidence of abuse or neglect to ensure the safety and protection of the Service User. The procedures shall reflect local multi-agency Policy, Protocols and Guidance, including informing the Care Quality Commission and where appropriate involving the police in accordance with the Public Interest Disclosure Act 1998 and the Department of Health guidance "No Secrets" and the Disclosure and Barring Service
- 13.24 The Provider's Safeguarding Policy and Procedures must ensure that all allegations and incidents of abuse are followed up in a prompt, specified timeframe. All details and actions taken are recorded in a special record/electronic file kept specifically for the purpose, and on the personal file of the Service User. The Provider shall have regard to the following Council policy:
- http://www.kent.gov.uk/_data/assets/pdf_file/0018/11574/multi-agency-safeguarding-adults-policies-protocols-and-guidance-kent-and-medway.pdf
- 13.25 The Provider shall have a Public Interest Disclosure Act 1998 (Whistleblowing) policy which will include procedures under which Staff can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These can include situations when Staff believe that:
- 13.25.1 a criminal offence has been committed;
- 13.25.2 someone has failed to comply with a legal obligation;
- 13.25.3 a miscarriage of justice has occurred;
- 13.25.4 the health and safety of an individual is being endangered; and
- 13.25.5 there are or may be financial irregularities.
- 13.26 The Provider shall have in place policies and procedures for Staff regarding the Service User's will and bequests. The policies and procedures shall prevent the involvement of any Staff, or family members of Staff, in the making of, or

benefiting from, the Service Users will, soliciting any other form of bequest or legacy, acting as a witness or executor, and being involved in any way with any other legal arrangement.

- 13.27 The Provider shall ensure that all Staff shall receive training on the prevention of abuse within one Month of employment and this must be updated annually. Adult Protection level 1 is the minimum requirement for all staff and levels 1 and 2 for managers.
- 13.28 The Provider shall ensure that all Staff shall comply with the Mental Capacity Act (MCA) 2005 (as amended and updated from time to time), and the Deprivation of Liberty Safeguards (DoLS). The Provider's processes shall incorporate consideration of whether a person has capacity to consent to the services which are to be provided and whether their actions are likely to result in a deprivation of liberty. The Provider's records must provide evidence of compliance with the MCA and DoLS where appropriate. The Provider shall ensure that all Staff shall receive training on MCA and DoLS.
- 13.29 The Provider shall have in place throughout the Contract Period MCA policies and procedures to ensure that all Staff understand and comply with their duties and responsibilities under the MCA 2005 for all care and support services.
- 13.30 The Provider shall have in place throughout this Contract Period DoLS policies and procedures to ensure that potential deprivation of liberty is identified, applications for DoLS authorisations are promptly made where appropriate, conditions are properly followed and reviews are regularly undertaken.
- 13.31 The Provider shall ensure that all Staff will be aware of the conditions under which to instruct and consult the statutory advocacy service, Independent Mental Capacity Advocacy (IMCA) service, under MCA. All Staff shall understand the role of the IMCA and the role of the paid Relevant Person's Representative (RPR) under DoLS.

Safeguarding and Serious Case Reviews

- 13.32 The Provider shall (at no additional cost to the Council) assist the Council by providing such information as the Council may request in relation to a serious case review. If for any reason, the Provider cannot assist they must inform the Council in writing within 48 hours of request. The Provider must also stipulate why they cannot assist with the request.

Safeguarding Vulnerable Adults

- 13.33 Providers must follow guidance issued by the Council under the Kent and Medway Safeguarding Vulnerable Adults Multi Agency Policies and Protocols:
- http://www.kent.gov.uk/_data/assets/pdf_file/0018/11574/multi-agency-safeguarding-adults-policies-protocols-and-guidance-kent-and-medway.pdf
- 13.34 The Provider acknowledges that they should at all times have regard to the health and safety of all those accessing the Residential/Nursing home i.e. Staff, Sub Contractors, Service User and visitors.

- 13.35 The Provider shall be responsible for the observance of the Health and safety legal and policy requirements for its staff, employees and any Sub-contractor engaged by the Provider to carry out the designated service on any of the Providers Premises.
- 13.36 The Provider will immediately report to the Council all accidents which concerns or relates to the Service(s) being delivered and which ordinarily require reporting in accordance with the Health and Safety at Work Act 1974.
- 13.37 The Provider shall use all reasonable endeavours to ensure that all Provider Parties have read and understood both the Providers and Statutory and local health and safety policies before they undertake any Service delivery on or within the Providers premises.
- 13.38 Provider must ensure that any observed and/or reported Health and Safety breach is addressed within the quickest possible timespan and any effected areas are made safe before activity is re-commenced.

Regulatory Compliance

- 13.39 The Provider shall supply or make available to the Council all certification, licences, permits etc. that is required to ensure that the Provider is legally permitted to deliver the services made available to the Council, the Service Users or any other recipient.
- 13.40 The Provider shall ensure that full traceability is available in relation to all Services, products and facilities supplied to the Service Users.

14. TUPE AND PENSIONS

- 14.1 Where applicable and if TUPE applies upon expiry or termination of this Contract (such date being termed the "Transfer Date") for whatever reason the provisions of 14.1.1 and 14.1.2 shall have effect in respect of Transferring Employees regardless of whether legislation shall determine that TUPE applies:
- 14.1.1 The Provider shall or shall procure that all wages, salaries and other benefits of the Transferring Employees and other employees or former employees of the Consultant (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Provider up to the Transfer Date are satisfied;
- 14.1.2 Without prejudice to Clause 14.1.1, the Provider shall:
- (a) remain responsible for all the Provider employees (other than the Transferring Employees) on or after the time of expiry or termination of this Agreement and shall indemnify the Council or any new service provider appointed to provide the Services against all Losses incurred by the Council or new Provider resulting from any claim whatsoever whether arising before on or after the Transfer Date by or on behalf of any of the Provider's employees who do not constitute the Transferring Employees;

(b) in respect of those employees who constitute Transferring Employees the Provider shall indemnify the Council, or any new service provider appointed by the Council to provide the Services against all Direct Losses incurred by the Council or new Provider resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period on or before the Transfer Date (whether any such claim, attributable to the period up to and on the Transfer Date, arises before, on or after the Transfer Date) including but not limited to any failure by the Provider to comply with its or their obligations under Regulation 10 of TUPE and/or Article 6 of the Acquired Rights Directive as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of the Council or the new Provider.

14.2 For the purposes of Clauses 14.1.2(a) and 14.1.2(b), Losses means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute contract or at common law.

14.3 The Council shall be entitled to assign the benefit of the indemnity in this clause 14 to any replacement service provider appointed by the Council to provide services equivalent to those provided by the Provider under this Contract.

14.4 The Provider agrees to provide the Council with full and accurate employment information regarding the Transferring Employees and will not for a period of 12 Months prior to termination or expiry of the Services make any material changes in the numbers of Transferring Employees, their remuneration or other terms and conditions of employment.

14.5 In respect of those employees (if any) of another service provider and who were wholly or mainly engaged in the provision of the Services immediately before the commencement of the Services by the Provider ("Outgoing Transfer Date") the Provider shall indemnify the Council against all Losses incurred by the Council resulting from any claim whatsoever by these employees from the issue of the order for Services (whether such claim attributable to the period before the Outgoing Transfer Date arises before on or after the Outgoing Transfer Date) arising out of or by virtue of any failure by the Provider to comply with its or their obligations under Regulation 10 of TUPE and or Article 6 of the Acquired Rights Directive save to the extent that such failure to comply arises out of an act or remission of the Council.

14.6 The Council undertakes, in respect of any Transferring Employees to comply with its obligations under TUPE.

15. INSPECTION OF PREMISES

15.1 The Provider shall during the Contract Period use suitable Premises in compliance with the provisions of the Law.

- 15.2 The Council, its representatives or any Regulated Body shall have the right to inspect the Premises where the Services are being provided with or without prior notice.

16. LICENCE TO OCCUPY COUNCIL PREMISES

- 16.1 This provisions of this clause 16 shall apply where the Council makes Premises available to the Provider for the provision of the Services
- 16.2 Any land or Premises made available from time to time to the Provider by the Council in connection for the provision of the Services shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under this Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of this Contract.
- 16.3 The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Council may reasonably request.
- 16.4 Should the Provider require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Provider's expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.
- 16.5 The Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 16.6 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

17. PROPERTY

- 17.1 Where the Council issues Property free of charge to the Provider such Property shall be and remain the property of the Council and the Provider irrevocably licences the Council and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Council. The Provider shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractor and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.

- 17.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Council otherwise within 5 Working Days of receipt.
- 17.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with this Contract and for no other purpose without prior Approval.
- 17.4 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 17.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Provider shall inform the Council within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

18. PARENT COMPANY GUARANTEE

Where applicable and if required by the Council the Provider shall procure the delivery of a parent company guarantee substantially in the form requested by the Council.

19. PERFORMANCE BOND

Where applicable and if required by the Council the Provider shall procure the delivery of a performance bond substantially in the form requested by the Council.

20. CONTRACT PRICE

- 20.1 In consideration of the Provider's performance of its obligations under this Contract, the Council shall pay the Contract Price as set out in Schedule 2.
- 20.2 The Council shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Contract.

21. PAYMENT AND VAT

- 21.1 Unless otherwise specified in Schedule 2, the Council shall pay all sums due to the Provider within thirty (30) days of receipt of a valid invoice, submitted monthly in arrears.
- 21.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 21.3 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under this Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

- 21.4 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under this Contract. Any amounts due under this clause 21.5 shall be paid by the Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.
- 21.5 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate this Contract in accordance with the provisions of this Contract.
- 21.6 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by this Council during the Contract Period and following the end of this Contract for a period of six (6) years.
- 21.7 The Provider acknowledges the Council's position that electronic payment may be introduced and implemented during the Contract Period as a means of paying the Provider for the provision of the Services. Implementation of any electronic payment system by the Provider within its organisation shall be at the Provider's costs.
- 21.8 Save as otherwise expressed in this Contract, in the event of failure by the Council to pay sums due within the period agreed, interest shall be due at the rate of two per cent (2%) above the base rate for the time being of Bank of England calculated on a daily basis which the Parties agree shall be a sufficiently substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998. For the avoidance of doubt the provision of this Clause 21.9 shall only apply to undisputed amount.
- 21A **RELEVANT INDEX**
- 21A.1 The Council shall adjust the Guide Price for each Level of Need, as specified in Schedule 2 Pricing, with effect from 1 April of each Contract Year (starting from 1 April 2017) by multiplying the relevant amount by the percentage average change in the CPI (Consumer Price Index) prior to the start of the applicable Contract Year.
- 21A.2 In accordance with 21A.1 the Guide Price review will occur in conjunction with the Price Review as outlined in Schedule 2 Pricing, to allow any Providers whose Indicative Price is at the current Guide Price to at least equal the new Guide Price. Any existing Service User placed below the Guide Price will be raised to equal the new Guide Price and this will commence at the beginning of the applicable Contract Year.
- 21A.3 For the annual review, all Individual Placement Contract Prices will be increased by the rate determined by the CPI published for the 12 months ended on 31 December prior to the start of the applicable Contract Year.
- 21A.4 Irrespective of any increase in Care Home costs the Council shall not be required to increase the Guide Price and/or Prices for existing Service Users, if there is no corresponding increase in the budget available for the Services and dependent on required authorisation by the Councils elected Members in

relation to any increase to the Guide Price. Any agreed Guide Price increases will be capped at the average CPI rate (12 months).

22. RECOVERY OF SUMS DUE

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

23. PRICE ADJUSTMENT

- 23.1 Unless otherwise indicated in Schedule 2, the Contract Price shall apply for the Contract Period without adjustment.
- 23.2 The Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change in the Relevant Index as published in the December preceding the relevant Price Review Date.

24. PREVENTION OF BRIBERY AND CORRUPTION

- 24.1 The Provider:
 - 24.1.1 shall not, and shall procure that any Provider Staff or Provider Party shall not, in connection with this Contract commit a Prohibited Act;
 - 24.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.
- 24.2 The Provider shall:
 - 24.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

- 24.2.2 within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause 24 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 24.3 The Provider shall ensure that its anti-bribery policy is provided to the Council on request.
- 24.4 If any breach of clause 24.1 is suspected or known, the Provider must notify the Council immediately.
- 24.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 24.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the Contract Period, Extended Period and 6 years following the expiry or termination of this Contract.
- 24.6 The Council may terminate this Contract by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 24.1.
- 24.7 Any notice of termination under clause 24.6 must specify:
- 24.7.1 the nature of the Prohibited Act;
- 24.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 24.7.3 the date on which this Contract will terminate.
- 24.8 Despite clause 58 (Dispute resolution), any dispute relating to:
- 24.8.1 the interpretation of clause 24; or
- 24.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 24.9 Any termination under clause 24.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
- 25. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION**
- 25.1 The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- 25.2 The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who

have communication difficulties (including without limitation hearing, oral or learning impairments).

25.3 In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:

25.3.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;

25.3.2 advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

25.3.3 foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

25.3.4 as soon as reasonably practicable following any reasonable request from the Council, the Provider must provide the Council with a plan detailing how it will comply with its obligations under Clause 19.3.

25.3.5 the Provider must provide to the Council as soon as reasonably practicable, any information that the Council reasonably requires to:

(a) monitor the equity of access to the Services; and

(b) fulfil their obligations under the Law.

25.4 In the event of any finding of unlawful discrimination being made against the Provider in the last three years by any Court or Tribunal or of an adverse finding in any form of investigation by anybody charged with carrying out such investigation over the same period the Provider shall take appropriate steps to prevent repetition of the unlawful discrimination.

25.5 The Provider shall set out its policy on discrimination:

25.5.1 in instructions for those concerned with the recruitment training and promotion;

25.5.2 in documents available to employees recognised Trade Unions or other representative groups of employees;

25.5.3 in recruitment advertisements or other literature.

25.6 The Provider shall on request provide the Council with examples of the instructions and document of recruitment advertisements or other literature

25.7 The Provider shall observe as far as possible all relevant codes of practice and maintain a system of audit monitoring and actions in respect of the provisions of this clause 25.

- 25.8 The Provider shall fully indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Provider or this clause 25.

26. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

27. ENVIRONMENTAL REQUIREMENTS

- 27.1 The Provider shall, when working on the Premises, perform its obligations under this Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 27.2 The Provider shall comply with statutory obligations under Environmental Legislation and for the purposes of this Contract "Environmental Legislation" means the Environmental Protection Act 1990, the Water Resources Act 1991, the Clean Air Act 1993, the Environment Act 1995 and any regulations, directions or guidance having statutory effect pursuant to the same, or any EU directive having effect which makes provision for the control of pollution, the control of hazardous substances land use control and wild life and countryside protection.
- 27.3 In the event of any finding by any Court or Tribunal or other judicial or quasi judicial body being made against the Provider in respect of any breach of environmental legislation the Provider shall take appropriate steps to abate such a breach and prevent its repetition.
- 27.4 The Provider shall upon request provide the Council with details of any steps taken under clause 27.3 above.
- 27.5 The Provider shall within three (3) Months of the date of this Contract adopt a policy and shall thereafter maintain such a policy taking account as far as is reasonably practical of any amendment to that policy from time to time made by the Council and any revisions or amendments to any national guidelines or any nationally recognised procedures or lists which relate to the minimising of environmental emergency.
- 27.6 The Provider shall observe as far as possible the policy from time to time enforced by virtue of clause 27.5 above.
- 27.7 The Provider shall provide such information as the Council may reasonably request for the purposes of assessing the Provider's compliance with paragraphs 27.6 and 27.7 above as far as is relevant including examples of documents advertisements or other literature.
- 27.8 The Provider shall where applicable:-

- 27.8.1 institute and maintain an environmental management system in accordance with the procedures targets and other specifications mentioned in, and shall provide and perform the service in all respects in accordance with, the Environmental Statement (where the words "Environmental Statement" mean the environmental method statement and any other information or representations supplied with incorporated into or presented within the Provider's tender or submission to the Council in respect of this Contract);
- 27.8.2 operate such environmental management system as referred to in 27.8.1 above during the Contract Period and shall furnish such detailed information as the Council may reasonably require in regard thereto and without prejudice to the generality of the foregoing shall accurately complete and submit to the Council, at such times as the Council shall reasonably direct (but so that the Provider shall not be required to submit more than one return in any one period of twelve (12) Months), performance returns in the form to be directed by the Council (acting reasonably) The Provider shall also permit the Council (acting reasonably) to inspect the system referred to in this paragraph for compliance with the requirements of this paragraph.
- 27.9 The Provider shall provide the service so that all vehicles used in provision of the service will comply with the Councils best practice requirements under its policy from time to time in force. Where higher standards are not set under such policy the minimum standard will be for all vehicles used in the provision of the service to meet the current Euro Standards.

28. HEALTH AND SAFETY

- 28.1 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract. The Council shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under this Contract.
- 28.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 28.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under this Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 28.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under this Contract.
- 28.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

29. DATA PROTECTION ACT

Information Governance – General Responsibilities

- 29.1 Clause 29 is to be read in conjunction with Schedule 11 and Schedule 11 – Annex 1.
- 29.2 For the purposes of this Clause 29, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the DPA.
- 29.3 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Council is the Data Controller and that the Provider is the Data Processor.
- 29.4 The Parties acknowledge their respective obligations arising under the DPA and must assist each other as necessary to enable each other to comply with these obligations.
- 29.5 The Provider undertakes to:
- 29.5.1 Treat as confidential all Personal Data which may be derived from or be obtained in the course of the Contract or which may come into the possession of the Provider or an employee, servant or agent or Sub-Contractor of the Provider as a result or in connection with the contract; and;
 - 29.5.2 Provide all necessary precautions to ensure that all such information is treated as confidential by the Provider, his employees, servants, agents or Sub-Contractors; and
 - 29.5.3 Ensure that he, his employees, servants, agents and Sub-Contractors are aware of the provisions of the DPA and that any personal information obtained from the Council shall not be disclosed or used in any unlawful manner; and
 - 29.5.4 Indemnify the Council against any loss arising under the DPA caused by any action, authorised or unauthorised, taken by himself, his employees, servants, agents or Sub-Contractors
 - 29.5.5 Nominate a data protection lead to be responsible for data protection and for providing the Council with regular reports on information security matters, including details of all incidents of data loss and breach of confidence;
 - 29.5.6 Have in place adequate mechanisms to ensure that Sub-Contractors, agents and subsidiaries to whom personal information is disclosed comply with their contractual obligations to keep personal data and information secure and confidential in accordance with data protection requirements;
 - 29.5.7 Ensure that the Council is kept informed at all times of the identities of the data protection lead.
- 29.6 The Provider as a Data Processor

- 29.7 The Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- 29.8 Notwithstanding the general obligation in Clause 29.3, where the Provider is processing Personal Data as a Data Processor for the Council the Provider shall:
- 29.8.1 Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Contracting Authority;
 - 29.8.2 Comply with all applicable Laws;
 - 29.8.3 Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;
 - 29.8.4 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 29.8.5 must be able to demonstrate that employees, servants, or agents associated with the performance of this contract are aware of their personal responsibilities under the DPA to maintain the security of the Personal Data controlled by the Council;
 - 29.8.6 take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;
 - 29.8.7 obtain prior written consent from the Contracting Authority in order to transfer the Personal Data to any Sub-Contractor for the provision of the Services;
 - 29.8.8 Personal Data must not be copied for any other purpose than that agreed between the Provider and the Council.
 - 29.8.9 Personal data shall be returned to the Council at the end of the contract, or on completion of works or when requested by the Council.
 - 29.8.10 The Council is required to comply with Her Majesty's Government information security standards for the secure destruction of data processed on its behalf. The Provider must provide certificated evidence of secure destruction to the required standards when equipment is decommissioned or retired or at the end of the Contract.
- 29.9 The Provider shall permit the Council or the Council 's representative (subject to reasonable and appropriate confidentiality requirements), to inspect and audit, in accordance with Clause 35 (Audit), the Provider's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the

Council to verify and/or procure that the Provider is in full compliance with its obligations under this Contract;

- 29.9.1 not Process, cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Council and, where the Council consents to the transfer, to comply with;
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Council;
- 29.9.2 ensure that all Staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 29;
- 29.9.3 ensure that none of the Staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council;
- 29.9.4 not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council; and
- 29.10 notify the Council (within five Working Days) if it receives:
 - 29.10.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 29.10.2 a complaint or request relating to the Council's obligations under the DPA;
 - 29.10.3 The Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 29.11 The Provider agrees to indemnify and keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Provider or its employees or agents to comply with any of its obligations under this Contract.

Responsibilities when engaging Sub-Contractors

- 29.12 Subject always to Clause 36 (Transfer and Sub-Contracting) if the Provider is to require any Sub-Contractor to process Personal Data on its behalf, the Provider must:
 - 29.12.1 require that the Sub-Contractor provides sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;

- 29.12.2 ensure that the Sub-Contractor is engaged under the terms of a written agreement requiring the Sub-Contractor to:
- (a) process such personal data only in accordance with the Provider's instructions;
 - (b) comply at all times with obligations equivalent to those imposed on the Provider by virtue of the Seventh Data Protection Principle of the DPA;
 - (c) allow rights of audit and inspection in respect of relevant data handling systems to the Provider or to the Council or to any person authorised by the Provider or by the Council to act on its behalf; and
 - (d) impose on its own Sub-Contractors (in the event the Sub-Contractor further Sub-Contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Sub-Contractor by this Clause 29.

29.13 The provision of this Clause 29 shall apply during the Contract Period and indefinitely after its expiry.

30. CONFIDENTIAL INFORMATION

30.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

30.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

30.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

30.2 clause 30.1 shall not apply to the extent that:

30.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 31 (Freedom of Information);

30.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

30.2.3 such information was obtained from a third party without obligation of confidentiality;

30.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

30.2.5 it is independently developed without access to the other Party's Confidential Information.

- 30.3 The Provider may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 30.4 The Provider shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.
- 30.5 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 30.6 Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:
- 30.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 30.6.2 to any consultant, Provider or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
 - 30.6.3 for the purpose of the examination and certification of the Council's accounts; or
 - 30.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 30.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 30.6 is made aware of the Council's obligations of confidentiality.
- 30.8 Nothing in this clause 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

31. FREEDOM OF INFORMATION

- 31.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 31.2 The Provider shall and shall procure that any Sub-contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable

and in any event within two Working Days of receiving a Request for Information;

- 31.2.1 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
- 31.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 31.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 31.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 31.5 The Provider acknowledges that (notwithstanding the provisions of clause 31) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
 - 31.5.1 without consulting the Provider; or
 - 31.5.2 following consultation with the Provider and having taken their views into account;

provided always that where 31.5 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- 31.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 31.7 The Provider acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule 7 is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 31.

Electronic Communications

- 31.8 The Provider shall ensure that prior to the Commencement Date they will have registered (set up) and provided the Council with their generic email address, (i.e. admin@Provider.com, office@Provider.com, manager@Provider.co.uk.) The use of Hotmail, AOL and any other personal email addresses will not be accepted by the Council.

- 31.9 If the Provider fails to provide the Council with the address new referrals at the start of this Contract may not be sent.

31A INFORMATION GOVERNANCE

31A.1 In providing the Services the Parties have a legal responsibility to ensure that their use of personal information is lawful, properly controlled and that an individual's rights are respected.

31A.2 The Provider and its Staff shall during the provision of the Services comply with the provisions of Schedule 8 Part B.

31A.3 The Provider will ensure that its' Staff:

31A.3.1 remember that the Data Protection Act is not a barrier to sharing information but provides them with a framework to ensure that personal information about living persons is shared appropriately.

31A.3.2 are open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.

31A.3.3 seek advice if they are in any doubt, without disclosing the identity of the person where possible.

31A.3.4 share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. Information may still be shared without consent if, in their judgment, that lack of consent can be overridden in the public interest. They will base their judgment on the facts of the case.

31A.3.5 consider safety and well-being, basing their information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.

31A.3.6 apply the following principles when sharing information, "necessary, proportionate, relevant, accurate, timely and secure", ensuring that the information shared is necessary for the purpose for it is being shared, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.

31A.3.7 keep records of their decisions and the reasons for them – whether it is to share information or not. If the decision is to share the record will indicate what has been shared, with whom and for what purpose.

31A.4 Indemnity

31A.4.1 Where the Provider fails to comply with or breaches the provisions of clause 31A the Provider shall indemnify the Council against legal liability for a negligent act or accidental error or accidental omission which may be incurred in circumstances where the subject of the exchange of information suffers loss as a result of the misuse or inaccuracy of the information and brings an action claim or demand as a consequence thereof.

32. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

32.1 The Provider shall not make any press announcement or publicise this Contract, the Services or any aspects thereof in any way, except with the prior written Approval of the Council.

32.2 The Provider shall take reasonable steps to ensure that its servants, employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause 32.1.

33. SECURITY

33.1 The Provider shall comply with all security requirements of the Council while on the Premises, and shall ensure that all Staff comply with such requirements. The Council shall be responsible for maintaining the security of the Premises over which the Council has control in accordance with its standard security requirements.

34. INTELLECTUAL PROPERTY RIGHTS

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

34.1.1 furnished to or made available to the Provider by or on behalf of the Council shall remain the property of the Council; and

34.1.2 prepared by or for the Provider on behalf of the Council for use, or intended use, in relation to the performance by the Provider of its obligations under this Contract shall belong to the Council;

and the Provider shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of this Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

34.2 The Provider hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 34.1.2. This assignment shall take effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation necessary to execute this assignment.

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

- 34.4 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Provider or to any other third party supplying services to the Council.
- 34.5 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Provider shall, during and after this Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- 34.5.1 items or materials based upon designs supplied by the Council; or
 - 34.5.2 the use of data supplied by the Council which is not required to be verified by the Provider under any provision of this Contract.
- 34.6 The Council shall notify the Provider in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Provider.
- 34.7 The Provider shall, at its own expense, conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:
- 34.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 34.7.2 shall take due and proper account of the interests of the Council; and
 - 34.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 34.8 The Council shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Provider's obligations under this Contract and the Provider shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 34.5.1 or 34.5.2.
- 34.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the

Provider in connection with the performance of its obligations under this Contract.

34.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:

34.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply *mutates mutandis* to such modified Services or to the substitute Services; or

34.10.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,

and in the event that the Provider is unable to comply with clauses 34.7.1 or 34.7.2 within fifteen (15) Working Days of receipt of the Provider's notification the Council may terminate this Contract with immediate effect by notice in writing.

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

35. AUDIT AND INSPECTION

35.1 The Provider shall keep and maintain for the period stipulated in this Contract full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with this Contract.

35.2 The Provider must comply with all reasonable written requests made by, CQC, the National Audit Office, any authorised person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.

35.3 Subject to Law and notwithstanding clause 35.2 the Contract Manager or other Council nominated representatives may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Clinical Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all

reasonable assistance and provide all reasonable facilities to the Authorised Person.

- 35.4 Within ten (10) Working Days of the Council's reasonable request, the Provider must send the Council a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- 35.5 The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 35.6 During any audit undertaken under clause 35.2 and 35.3, the Provider must provide the Council with all reasonable co-operation and assistance in relation to that audit, including:
 - 35.6.1 all reasonable information requested within the scope of the audit;
 - 35.6.2 reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
 - 35.6.3 access to the Staff.
- 35.7 The Council will have the right to carry out a full or part financial audit of costs within the first year of the Contract term. The audit may be undertaken by the Council's Officers or by an independent third party appointed by the Council.

36. TRANSFER AND SUB-CONTRACTING

- 36.1 The Provider shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior Approval. Sub-contracting any part of this Contract shall not relieve the Provider of any of its obligations or duties under this Contract.
- 36.2 The Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- 36.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.
- 36.4 The Provider shall ensure that the assignee notifies the Council of the Assignee's contact information and bank account details to which the Council shall make payment.
- 36.5 The provisions of clause 21 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.
- 36.6 The Council may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:
 - 36.6.1 any Contracting Authority; or

- 36.6.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or
- 36.6.3 private sector body which substantially performs the functions of the Council, (**“the Transferee”**)

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

- 36.7 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.
- 36.8 The Council may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider’s obligations under this Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider’s obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 36.9 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.
- 36.10 If a Sub-contractor is appointed to service a requirement under this Contract this does not release the Provider from any liability to the Council or Service User in respect of the sub-contracted services and the Provider shall be responsible for the acts, defaults, or neglect of any Sub-contractor or their agents or employees in all respects as if they were the acts, defaults or neglects of the supplier or their agents or employees.

37. WAIVER

- 37.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 37.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 5 (Notices).
- 37.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

38. VARIATION AND CHANGE CONTROL

- 38.1 Subject to the provisions of this clause 38, the Council may request a variation to the Specification including a change to the Specification. Such a change is hereinafter called a "Variation".
- 38.2 The Council may request a Variation by notifying the Provider in writing of the Variation and giving the Provider sufficient information to assess the extent of the Variation and consider whether any change to this Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Provider accepts the Variation it shall confirm the same in writing.
- 38.3 In the event that the Provider is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to this Contract Price, the Council may;
- 38.3.1 allow the Provider to fulfil its obligations under this Contract without the variation to the Specification;
- 38.3.2 terminate this Contract with immediate effect.
- 38.4 The Provider may propose variations to this Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a variation. A variation proposed by the Provider shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.

Change Control Procedure

- 38.5 A change request must be submitted to the Council's Contract Manager in the case of a request by the Provider and to the Provider's Key Personnel in the case of a request by the Council.
- 38.6 Either Party may raise a change request in the form (the "Contract Change Control Form") annexed in Schedule 5. All Contract Change Control Forms should where practicable be supported by additional information which should accompany this Contract Change Control Form. Where a Party requires additional information from the other Party in order to complete the Contract Change Control Form as fully as possible then that other Party shall respond to such request for additional information as soon as practicable and in any event shall use all reasonable endeavours to supply the necessary details within 48 hours, or such other timescales as may be agreed between the parties.
- 38.7 For the purposes of this clause, a Change of Control shall mean:
- 38.7.1 Any sale, transfer or disposal of any legal, beneficial or equitable interest in relation to more than 50% of the outstanding voting securities or capital stock of the Provider, or any other comparable equity or ownership interest with respect to the Provider as defined in section 1124 of the Corporation Tax Act 2010, except where such sale or transfer of shares relates to:
- (a) shares traded on a stock exchange; or

(b) a transfer to an Affiliate.

38.8 Both Parties agree to waive their rights to execute any Variation or Change to this Contract as a Deed.

38.9 Where the Provider undergoes a Change of Control without obtaining the prior written approval of the Council, the Council may terminate this Contract forthwith by notice in writing to that effect, provided that the Council exercises its right to terminate within six (6) months of:

38.9.1 receiving notification of the Change of Control from the Provider; or

38.9.2 otherwise becoming aware of the Change of Control.

39. SEVERABILITY

If any provision of this Contract 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 of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

40. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

40.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in Schedule 6 (Contract Management). The Council may, in its sole discretion, uphold the complaint and take further action in accordance with clause 50 (Termination on Default) of this Contract.

40.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, without prejudice to its rights under clause 50 (Termination on Default), do any of the following:

40.2.1 without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with this Contract;

40.2.2 without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in this Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

40.2.3 terminate, in accordance with clause 50 (Termination on Default), the whole of this Contract.

40.3 Without prejudice to its right under clause 22 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred and any

reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

40.4 If the Provider fails to supply any of the Services in accordance with the provisions of this Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Council may direct.

40.5 In the event that:

40.5.1 the Provider fails to comply with clause 40.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

40.5.2 the Provider persistently fails to comply with clause 40.4 above,

the Council may terminate this Contract with immediate effect by notice in writing.

41. REMEDIES CUMULATIVE

Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

42. CONTRACT MANAGEMENT

42.1 The Provider shall comply with the monitoring and contract management arrangements set out in the Schedule 6 (Contract Management) including, but not limited to, providing such data and information as the Provider may be required to produce under this Contract.

42.2 Provided that the Provider's Key Personnel and other nominated officers of the Provider as required are given reasonable notice of the same the Provider's Key Personnel shall attend meetings where an issue related to the Services is to be considered.

43. CONTRACT REVIEW

43.1 The Council shall monitor and review this Contract against the performance targets set out in Schedule 6. The Provider shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews and provide all necessary information required. The review may lead to a Change or Variation of the Council's requirements for the Services. As a result of the review, the Council shall (in its discretion) be entitled to:

43.1.1 affirm that this Contract shall continue in accordance with its terms; or

43.1.2 reduce the Contract Period; or

- 43.1.3 exercise the option to terminate this Contract in accordance with clause 51; or
- 43.1.4 require a reduction in the volume or scope of the Services (which shall take effect as a Variation in accordance with clause 38) in return for a reduction in the Contract Price; or
- 43.2 The Council shall notify the Provider in writing of the results of the annual Contract review and the Provider shall take all necessary steps to implement the outcome of the review within four (4) weeks of receiving such notice (or such other reasonable period as may be specified by the Council).
- 43.3 The Provider shall co-operate and shall procure that its Sub-contractors co-operate with the Council in carrying out the monitoring review referred to in this clause 43 at no additional charge to the Council.
- 43.4 After the contract review and contract management (as the case may be) the Council may where applicable invoke the provisions of Schedule 9 (Sanctions and Escalation Process)

44. ENTIRE AGREEMENT

- 44.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

45. COUNTERPARTS

This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

46. LIABILITY AND INDEMNITY

- 46.1 Neither Party excludes or limits liability to the other Party for:
 - 46.1.1 death or personal injury caused by its negligence; or
 - 46.1.2 Prohibited Act; or
 - 46.1.3 fraudulent misrepresentation; or
 - 46.1.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 46.2 Subject to clause 46.3 and 46.4 the Provider shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:
 - 46.2.1 the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under this Contract;

- 46.2.2 the act, omission or default of the Provider, any Sub-contractor or any member of Staff including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such Party; and
- 46.2.3 any other loss which is caused directly or indirectly by any act or omission of the Provider.
- 46.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Contract.

47. INSURANCE

- 47.1 The Provider shall throughout the Contract Period effect and maintain with a reputable insurance company the following policies of insurance:
 - 47.1.1 public liability insurance; and
 - 47.1.2 employer's liability insurance
- 47.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 47.3 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of this Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 47.4 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.
- 47.5 Where applicable and required for the provision of the Services, the Provider shall effect the additional insurances stipulated in clause 47.8 of this Contract
- 47.6 Where professional indemnity insurance is required the Provider shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, Sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the amount stated in clause 47.7. Such insurance shall be maintained for a period of twelve (12) years after the Expiry Date or earlier termination of this Contract.
- 47.7 Insurance Levels
 - 47.7.1 The Provider shall maintain the levels of insurance set out below for the provision of the Services. The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.

- public liability insurance - £5million (five million pounds)
(not less than £5,000,000 each and every claim)
- employer's liability insurance - £10million (ten million pounds)
(not less than £10,000,000 each and every claim)

47.7.2 Adequate insurance cover to enable you to fulfil your responsibility under this Agreement in the event of material damage which causes the Service to be continued at another or multiple other locations;

47.7.3 Adequate professional indemnity, errors and omissions or malpractice insurance cover in respect of any one claim which you become legally liable to pay for loss or injury caused by any negligent act, error or omission occurring or committed in good faith in the conduct of your activities or duties.

48. WARRANTIES AND REPRESENTATIONS

48.1 The Provider warrants and represents that:

48.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Provider;

48.1.2 in entering the Contract it has not committed any Prohibited Act;

48.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of this Contract;

48.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Contract;

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

48.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

- 48.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;
- 48.1.8 in the three (3) years prior to the date of this Contract:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

49. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 49.1 The Council may terminate this Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:
- 49.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 49.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 49.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
 - 49.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 49.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 49.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 49.1.7 being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 49.1.8 any event similar to those listed in 49.1(1-7) occurs under the law of any other jurisdiction.

- 49.2 The Council may terminate this Contract with immediate effect by notice in writing where the Provider is an individual and:
- 49.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
 - 49.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Provider's bankruptcy; or
 - 49.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 49.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - 49.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) days; or
 - 49.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - 49.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 49.3 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). The Council may terminate this Contract by notice in writing with immediate effect within six months of:
- 49.3.1 being notified that a change of control has occurred; or
 - 49.3.2 where no notification has been made, the date that the Council becomes aware of the change of control,
- but shall not be permitted to terminate where an Approval was granted prior to the change of control.

50. TERMINATION ON DEFAULT

- 50.1 The Council may terminate this Contract by written notice to the Provider with immediate effect if the Provider commits a Default and if:
- 50.1.1 the Provider has not remedied the Default to the satisfaction of the Council within fifteen (15) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 50.1.2 the Default is not, in the opinion of the Council, capable of remedy; or

- 50.1.3 the Default is a material breach of this Contract.
- 50.2 In the event that through any Default of the Provider, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 50.3 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may invoke the Dispute Resolution process (clause 58), save that such right shall not apply where the failure to pay is due to the Council exercising its rights under clause 22 (Recovery of Sums Due).

51. BREAK CLAUSE

- 51.1 Either the Council or the Provider shall have the right to withdraw from this DPS Contract at any time by giving written notice of not less than three months to the other party.
 - 51.1.1 the enactment of Clause 51.1 will not affect the terms and conditions of the individual placements made under this DPS
- 51.2 Where the Council exercises its right to terminate this Contract under clause 51.1, the Provider shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Provider in respect of any other losses whatsoever whether:
 - 51.2.1 loss of future profits;
 - 51.2.2 redundancy or Sub-contractor breakage costs; or
 - 51.2.3 any other costs whatsoever incurred by the Provider as a consequence of such termination.

52. CONSEQUENCES OF EXPIRY OR TERMINATION

- 52.1 Where the Council terminates this Contract under clause 50 (Termination on Default):
 - 52.1.1 the Council may recover from the Provider the cost reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.
 - 52.1.2 no further payments shall be payable by the Council to the Provider (for Services supplied by the Provider prior to termination and in accordance with this Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.
- 52.2 Save as otherwise expressly provided in this Contract:

- 52.2.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 52.2.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under clauses 21 (Payment and VAT), 22 (Recovery of Sums Due), 24 (Prevention of Bribery and Corruption), 29 (Data Protection Act), 30 (Confidential Information), 31 (Freedom of Information), 34 (Intellectual Property Rights), 35 (Audit), 41 Remedies Cumulative), 46 (Liability and Indemnity), 47 (Insurance), 52 (Consequences of Expiry or Termination), 54 (Recovery upon Termination) and 57 (Governing Law and Jurisdiction).
- 52.3 If the Provider's employment is terminated as provided in clause 52 the Council shall cease to be under any obligation to make any further payment under the costs loss and/or damage resulting from or arising out of the termination of the Provider's employment shall have been calculated and provided such calculation shows a sum or sums due to the Provider.

53. DISRUPTION

- 53.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council.
- 53.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.
- 53.3 In the event of industrial action by the Staff, the Provider shall seek Approval to its proposals to continue to perform its obligations under this Contract.
- 53.4 If the Provider's proposals referred to in clause 53.3 are considered insufficient or unacceptable by the Council acting reasonably, then this Contract may be terminated with immediate effect by the Council by notice in writing.
- 53.5 If the Provider is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Council, the Provider may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

54. RECOVERY UPON TERMINATION

- 54.1 On the termination of this Contract for any reason, the Provider shall:
- 54.1.1 immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Services;

- 54.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Provider under clause 17. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 54.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress;
 - 54.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.
- 54.2 If the Provider fails to comply with clause 54.1.1 and 54.1.2, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-contractors where any such items may be held.
- 54.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under clause 54.1.3 and 54.1.4 free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

55. FORCE MAJEURE

- 55.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Contract for a period in excess of six (6) Months, either Party may terminate this Contract with immediate effect by notice in writing.
- 55.2 Any failure or delay by the Provider in performing its obligations under this Contract which results from any failure or delay by an agent, Sub-contractors or supplier shall be regarded as due to Force Majeure only if that agent, sub-Provider or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 55.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 55.2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

56. DISASTER RECOVERY

- 56.1 The Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

- 56.2 Following the declaration of a Disaster in respect of any of the Services, the Provider shall:
- 56.2.1 implement the Disaster Recovery Plan;
 - 56.2.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
 - 56.2.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- 56.3 To the extent that the Provider complies fully with the provisions of this clause 56 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Provider), the Service Levels (if any) to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in Schedules 1 and 6 but shall be the service levels set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

57. GOVERNING LAW AND JURISDICTION

Subject to the provisions of clause 58, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

58. DISPUTE RESOLUTION

- 58.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within ten (10) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 58.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 58.3 If the dispute cannot be resolved by the Parties pursuant to clause 58.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 58.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.
- 58.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Provider and the Staff shall comply fully with the requirements of this Contract at all times.
- 58.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 58.5.1 a neutral adviser or mediator (the "Mediator") shall be appointed by the Centre for Effective Dispute Resolution.

- 58.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 58.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 58.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 58.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.
- 58.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

59. SUCCESSORS

- 59.1 This Contract will be binding on and will be for the benefit of the Council and Provider and their respective successors and permitted transferees and assigns.
- 59.2 If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on the other Party's decision whether or not to contract or continue to contract substantially on the terms of this Contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then take whatever action under this Contract as it deems necessary.

60. DOCUMENTATION GOVERNANCE AND ACCESS

- 60.1 The Provider shall keep and maintain for the period of twelve (12) years starting from the last day of this contract, full and accurate records of this Contract, including:
- 60.1.1 the Services supplied under it;
 - 60.1.2 all expenditure reimbursed by the Council;
 - 60.1.3 all payments and reimbursed payments made by the Council.
- 60.2 The Provider shall on request afford the Council or the Council's representatives, such access to all relevant records as may be requested by the Council in connection with this Contract over this twelve (12) year period. These records include but are not exclusive to, all policies, procedures and the following:

- 60.2.1 Financial Activation Notice (FAN) - The form issued by the Council that triggers the first payment to the Provider. The form confirms the individual placement contract price;
- 60.2.2 Care and Support Plan - The plan produced by the Case Manager that gives particulars of the intended outcomes for the Service User meeting including his or her needs which are required to be delivered;
- 60.2.3 Health and Medication Records.
- 60.3 During the Contract Period the Council's Contract Manager may require other documentation to be made available.

61. CONTINUOUS IMPROVEMENT

- 61.1 The Provider shall have an ongoing obligation during the Contract Period to identify new or potential improvements to the Services in accordance with clause 6.
- 61.2 As part of its obligations the Provider shall identify and report to the Contract Manager from time to time and at least during each contract review:
 - 61.2.1 the adoption of new or emerging technological or product / service developments that can be used to improve this Contract offering and deliver increased benefits to the Service Users, the Provider and the Council.
 - 61.2.2 improvements to the Providers service offering in areas such as people skills, support, knowledge, quality, Service User satisfaction and contract performance, in areas such as leadership and management.
 - 61.2.3 environmental impact considerations, such as biodegradability, sourcing from local businesses, improved travel arrangements, improved software media, community involvement.
- 61.3 The provisions of clause 61.2 provides an indicative list and not an exhaustive list.
- 61.4 In undertaking the Services, the Provider shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual obligations and of the Services as a whole, including specifically the cost of the Services, the time, cost quality and health and safety standards of the various processes involved in delivery of the Services and generally to provide best value outcomes to the Council as are set out in the Specification AND FURTHER the Provider shall co-operate with the Council and others to the extent required so that the Council can keep under review the performance required under this Agreement and this Clause in particular.

62. IMPLEMENTATION PROCESS NEW DPS JOINERS

- 62.1 Any new Provider wishing to become part of the DPS from 4 April 2016 will be invited to complete a questionnaire and provide pricing information to the Council.

- 62.2 The placement process will be issued as a separate guidance to this Contract and be regularly updated and communicated to all Providers on the DPS.
- 62.3 The implementation plan for the DPS is fundamental to the successful development of this Contract. The Council will need the assistance of the Providers to implement the process in a timely way. This may include participation in training, use of support lines, improvement and provider forums. The Providers may also be asked to participate in system development during the lifetime of this Contract.
- 62.4 There is a potential for other Contracting Authorities and public bodies to use the DPS system. Providers may be asked to work with other Contracting Authorities and public bodies, to ensure maximum user knowledge and operational experience is shared freely and accurately.
- 62.5 There will be a contract management introduction period of three (3) Months from Contract commencement date.
- 62.6 At the end of the (3) three months implementation period the Council will initiate quarterly forums for the providers to update Providers on relevant changes, performance, statutory impacts, the Council's objectives and associated strategies, markets, projects and Technology.

63. EXIT PROCESS

- 63.1 During the Contract Period a new working relationship will be discussed with the market, to ensure compliance with Phase 1 of the Care Act 2014, and progress towards the implementation of Phase 2 of the Care Act due to be enacted in April 2020. During the lifetime of this contract information and process development will need the cooperation of the Providers. This will not be unreasonably withheld.
- 63.2 It is important that the eventual exit from this contract is considered, either by renewal with another supplier, requirement discontinuation, or contract termination. For each option the tenderer is required to confirm how it will address the situation and confirmation that it accepts a contractual commitment to undertake and fully cooperate with the Council and other Contracting Authorities to ensure a timely and accurate contract changeover.
- 63.3 If the Provider exits this Contract, for any reason, all details relating to the Service User/s, supported by the Council funding, should be delivered to the Council within seven (7) Working Days of the Expiry Date.
- 63.4 The Provider is to engage actively with the Council to ensure that a transition to a new service provider can be completed with minimal disruption and emotional impact to the Service User.
- 63.5 A full inventory of the Service Users personal provisions is to be completed with the Council's Contract Manager.
- 63.6 Time and resources will be made available by the Provider to ensure that all queries are resolved within seven (7) Working Days of Contract termination.

64. THE CARE ACT 2014

- 64.1 The Parties acknowledge that some provisions of the Care Act 2014 are currently not in force and it is envisaged that they will come into force sometime in year 2017 (or before or after as the case may be). The Parties agree that this Contract will be deemed automatically varied where those provisions come into force and as a result the Council shall issue a Change request notice in accordance with Schedule 5.
- 64.2 The Change request notice will set out the changes and the extent to which they impact on this Contract including where relevant, adjustments to be made to the Contract Price (if any) to reflect the changes.
- 64.3 Subsequent to the provisions of clause 64.1 and its implementation the Council shall notify to the Provider in the Change request notice the change in the quality criteria and mandatory clauses required to be added (where applicable) to this Contract

65. DEFERRED PAYMENT

- 65.1 The Council operates a Deferred Payment scheme in accordance with the provisions of the Care Act 2014.
- 65.2 An existing resident privately funded may apply and become eligible for Deferred Payments. In the case where the Council has a legal charge or operates a Deferred Payment on a Service User's property and is funding the Service User until the property is sold and the Service User becomes self-funding the price payable in respect of the individual will automatically revert to the Providers Indicative Price for the relevant category Level of Need.
- 65.3 The Provider will be responsible for assessing the financial viability of Service Users who enter the service under a private arrangement. If a Service User is under the provision of a Deferred Payment and becomes eligible for the Council's funding, the price payable in respect of the Service User will automatically revert to the Providers Indicative Price, as set out in Schedule 2.
- 65.4 If a Third Party Top Up cannot be agreed the Council reserves the right to move the Service User.

66. FORMER SELF FUNDERS (WEALTH DEPLETERS)

- 66.1 The Provider will be responsible for assessing the financial viability of Service Users who enter the service under a private arrangement. If a self-funder's wealth depletes and they become eligible for the Council's funding, the price payable in respect of the Service User will temporarily revert to the Providers Indicative price, as set out in Schedule 2.
- 66.2 If a long term placement rate cannot be agreed the Council reserves the right to move the Service User as set out in Schedule 2.

67. BLOCK BOOKED BEDS

- 67.1 The Provider shall provide a multiple of at least 2 (two) block booked beds at its Premises solely for the use of the Council's referral. The block booked beds

shall be kept vacant on a one year rolling basis for the purposes of referrals from the Council.

67.2 The Council reserves the right to cancel the use of the block booked beds by giving the Provider three Months prior written notice. The right reserved by the Council to cancel the use of the block booked beds is due to the uncertainty relating to the need of block booked beds.

67.3 The price payable by the Council to the Provider for the block booked beds is as set out in Schedule 2 of this Contract. Where this clause becomes operational during the Contract Period the Council shall notify the Provider with additional governance principles and terms applicable to the block booked beds. The Change Control procedure in Schedule 5 shall apply.

68. VACANCY INFORMATION AND ADVERTISING

68.1 The Provider shall register with the Council's online care service directory (or any site that succeeds it). The Provider shall keep their contact details up to date on the site and any failure to do so may result in a contract sanction. The Provider shall update the Council with the number of current vacancies they have within their home weekly and by the close of business each Friday using the Council's online care service directory. This is important to ensure that the Provider maximises the opportunity to receive placements from the Council and for business continuity purposes. The Provider's contact details shall be used to communicate with the Provider, including any service changes, enhancements, developments, changes to price and vacancy information on a weekly basis.

68.2 The online care service directory is a public-facing website and will be used by the Council as a tool to help service users to make an informed choice about which Care home they would like to live in. It is the responsibility of the Provider to ensure that the information held on the online care directory is full, accurate and up to date.

Schedule 1
Specification

Date	Version	Details
12/11/15	1.0	Final
20/09/16	2.0	KPI update
10/04/17	3.0	Revisions within sections 1, 3, 4 and Annex F
04/06/17	4.0	Annex B - Equipment in Care Homes Protocol removed as now a separate document

Service	This document defines the Older Persons Residential and Nursing services purchased by Kent County Council
Strategic Commissioning Lead	Contract Manager
Provider Lead	KiCA and NCA Board members and all other Residential and Nursing care home Providers



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1. OVERVIEW

1.1 - Introduction

This document sets out a Service Specification relating to the provision of care by registered care homes for Older People in Kent. It describes the key features of the service being commissioned, and should be read in conjunction with the Terms and Conditions section of the Contract.

The Specification sets the broad standards that the Council requires from its Service Providers for Care Home Services. However, the Council may from time to time vary this Specification. Any variation shall only be carried out after consultation and shall be recorded in writing.

The purpose of the Service is to provide accommodation, care, support and stimulation to those people in the client group for whom it is not appropriate, either in the short or longer term, to live in their own homes. The Service Provider should offer Residents the opportunity to enhance their quality of life by providing a safe, manageable and comfortable home environment.

The provision of residential and nursing care is influenced by health and social care policy relevant to older people, carers, and the management of long-term health conditions. This includes Long Term Conditions or progressive conditions mental health conditions which may affect older people, especially dementia, depression and anxiety.

It is a requirement that all Service Providers will be registered with the Regulator and will maintain registration throughout the duration of this contract. Therefore, the regulations required for registration (and their associated standards), and the monitoring of the achievement of those regulations and standards are not replicated in full in this Specification.

Kent County Council expects all Service Providers to strive for excellence. Service Providers are required to comply with the relevant regulation standards including Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, NICE guidance, other appropriate National and Local guidelines and relevant successor documents. The Specification could also be subject to change in response to any future changes in Legislation or Government guidance.

Older people need services which achieve good outcomes, offer good quality and provide care with safety and dignity. Performance of services will increasingly be judged according to the experience of people who use services, with transparent sharing of information so that people needing services can make informed choices, including the knowledge of what other people think of services.

Older people need to have information about homes and what they provide. There needs to be transparency of the performance and standards they can expect, including the views of other Service Users and their representatives, to enable them to make an informed choice when deciding which provider to use.

At the heart of the Care Act 2014 there are a set of key principles which include promoting individual well-being and preventing needs for care and support. Care Homes will be expected to support these principles, as set out in the Care Act, ensuring that older people can access the right health care and treatment, stay as well as possible, and can live well with long-term conditions and care needs. Care Homes will be expected to ensure people have control over their day to day lives, promote independence and to prevent or delay any deterioration in their health and well-being. They will do this through the provision of an outcomes focused service and by ensuring access to appropriate services.

The location and layout of the home will be suitable for its stated purpose: it will be accessible, safe and well maintained; meets the Residents individual and collective needs in a comfortable and homely way and designed with reference to relevant guidance.

Services and the atmosphere in which they are provided must take full account of the personalities, interests and lifestyle, and physical, sensory and mental health needs of each Resident. Within the overall constraints of the care setting and the requirements of a Resident's Care and Support Plan, each Resident's age, gender, ethnic origin, language, culture, religion, spirituality, sexuality and disability will be taken into account. Services will be designed to address the needs of individual Residents to ensure Outcomes in the Care and Support Plans are met including, where necessary, providing additional support such as Interpreting services. The needs and preferences of minority ethnic communities, social/cultural or religious groups catered for are respected, understood and met in full

All work required by the Resident's Care and Support Plan must be carried out in a manner which respects their privacy, wishes, and feelings of the Resident (and carer where this is appropriate). Residents will be encouraged to assume control, whenever possible, over the delivery of their Care and Support Plan. Residents should expect that their privacy is strictly respected by all support workers, and that nothing concerning them is discussed or passed to other parties other than in circumstances set out in this Service Specification. Residents and their families should feel confident that they are protected from avoidable harm in a safe environment.

Effective multi-agency working with all stakeholders including Healthcare Professionals and Clinical Commissioning Groups (CCGs) will be undertaken to ensure Residents receive a coordinated approach to support. A positive relationship and open communication with NHS services will be maintained to prevent unnecessary attendances at A&E Departments and crisis admissions to acute or community hospitals. The Service Provider will work closely with Healthcare Professionals where they have been aligned to support the home to ensure optimum healthcare is provided to Residents.

The Service Provider will actively engage with the CCG and KCC to ensure an understanding of developments in the commissioning agenda for older people.

1.2 – General

The Service Provider shall deliver a care and support residential Service for older people usually, but not limited to, those over 65 years of age, living in residential, nursing or dual-registered care homes who are ordinarily resident within the administrative area of Kent County Council.

The Service Provider shall deliver a Service where Residents are at the heart of adult social care activities, receiving Services that are easy to access, are of good quality, that maximise their ability and potential in relation to physical, spiritual, intellectual, emotional and social capacity and maximise their opportunity to live independently and safely in their community. Where the stay is temporary the objectives will also be to re-enable, rehabilitate or build recovery.

The Service Provider will develop an individualised care and support plan for all Residents. Older people in residential care shall be entitled to expect and receive a service that is delivered with dignity and respect for their individual needs and preferences and that their Equality and Human Rights are protected.

The Service shall comprise a single room (unless Residents have expressly wished share a room), access to toilet, washing (shower or bathing) facilities (preferably en-suite), full board, personal care, medical support, supervision on a 24-hour basis and a range of stimulating activities as agreed and documented with Residents.

Where Residents have expressed a wish to share a room the Provider must ensure that their privacy, dignity and respect are maintained.

The Service Provider shall hold regular Residents and relatives meetings to design activity programmes and provide other ways to record feedback and shall be able to demonstrate how changes have been made as a result.

The Service will be available 24 hours a day, 365 days of the year (366 days in the event of a leap year).

The Service Provider shall ensure that there are enough appropriately trained Staff (employees, volunteers and Agency workers) on duty at all times to ensure the safe and effective delivery of services to meet Residents assessed needs.

The Service Provider shall recognise that Residents' needs shall vary depending on individual Residents' care dependencies and therefore the service shall categorise the needs of individual Residents into four categories of **Residential** needs, **Residential High** needs, **Nursing** needs and **Nursing High** needs. Details of the assessed needs are specified in the Annex to this document (*Annex A – Levels of Need*), and they are designed to support the needs of each Resident.

The Service Provider shall provide the placement, where reasonable and practicable, for as long as the Resident requires it. This shall include any modification to arrangements should the needs of the Resident change.

In order to facilitate hospital discharges Service Providers will ensure a visit is made to the hospital within 48 hours of the request to assess prospective or returning Residents (where their needs have changed), including at weekends. The Service Provider will notify the Council and ward staff of their decision within 48 hours of the request. Where the Resident's needs have not changed following an acute stay, the Service Provider will arrange for the Resident to return on the same day.

The Service Provider will use its reasonable endeavours to maintain the care home and grounds in a way which will promote Residents' safety and security.

Service Providers must comply with all relevant legislation and have in place a range of policies and procedures which will be subject to review by Kent County Council as required. All policies and procedures must take account of:

- the number of Residents and their care needs;
- the requirements of the Regulator;
- principles identified within specific Department of Health guidance, for example 'Living Well with Dementia – a National Strategy';
- cultural, religious and spiritual needs of Residents;
- the Human Rights Commission guidance;
- the Mental Capacity Act; and
- the Multi-agency Safeguarding Adults Policy, Protocols and Guidance for Kent and Medway

2. INDIVIDUAL OUTCOMES

The Individual Outcomes in this Specification are based on the Social Care-Related Quality of Life domains¹ as defined below:

2.1 - Control over daily life

The service user can choose what to do and when to do it, having control over his/her daily life and activities

2.2 - Personal cleanliness and comfort

The service user feels he/she is personally clean and comfortable and looks presentable or, at best, is dressed and groomed in a way that reflects his/her personal preferences

2.3 - Food and drink

The service user feels he/she has a nutritious, varied and culturally appropriate diet with enough food and drink he/she enjoys at regular and timely intervals

2.4 - Personal safety

The service user feels safe and secure. This means being free from fear of abuse, falling or other physical harm and fear of being attacked or robbed

2.5 - Social participation and involvement

The service user is content with their social situation, where social situation is taken to mean the sustenance of meaningful relationships with friends and family, and feeling involved or part of a community, should this be important to the service user

2.6 - Occupation

The service user is sufficiently occupied in a range of meaningful activities whether it be formal employment, unpaid work, caring for others or leisure activities

2.7 - Accommodation cleanliness and comfort

The service user feels their home environment, including all the rooms, is clean and comfortable

2.8 - Dignity

The negative and positive psychological impact of support and care on the service user's personal sense of significance

3. SERVICE DELIVERY

The following types of responsibilities which the Service Provider shall deliver shall neither be exhaustive nor needed in all cases, and shall depend on which responsibilities are identified as being required to meet agreed individual's Outcomes, in accordance with the individual needs of Residents. The list below shall not be prescriptive and shall not preclude imaginative and alternative solutions which may better suit a Resident. The Principles of the Mental Capacity Act 2005, including Deprivation of Liberty Safeguards, shall be applied at all times with all Residents. Where a Resident is unable to make care/treatment decisions for themselves, the Service Provider shall comply with the Mental Capacity Act by following due process relating to capacity assessments and Best Interests decisions.

3.1 - Prior to Admission

Care and Support Plan

Funding for residential care will be agreed by the Council following needs assessment and application of the National Eligibility Criteria and a Care and Support Plan has been completed to confirm the person's outcomes will be met in a care home, whether this is for the short or long term.

The Care and Support Plan is owned by the Resident and it identifies the Outcomes for the Resident. The Care and Support Plan is agreed by the Case Manager with the Resident. Where the Resident lacks capacity to make decisions the plan may be signed by the Resident's legal representative; where there is no legal representative the plan will be developed and agreed following the Mental Capacity Act and KCC policy requirements.

For new placements, when an individual is currently within a hospital setting, the Service Provider will conduct a pre-admission screening within 48 hours of the request being made, seven days a week, and satisfy themselves that they can meet the person's needs, either by visiting them or accepting the Council's Assessment and Care and Support Plan and accept/decline the placement. Notification of acceptance or decline will be communicated to the Council and the hospital ward within 24 hours.

The Service Provider shall also need to set out how they can meet Residents' needs within five Working Days of admission describing in sufficient detail how the Service Provider shall help the Resident to achieve the Outcomes specified in the Care and Support Plan. The Service Provider shall show how care shall be delivered to meet individual needs of Residents specified in the Care and Support Plan and provide details of how the Service Provider shall help the Resident to achieve their desired Outcomes. The Service Provider shall update the Care and Support Plans in accordance with the individual needs of Residents. Where there are specific decisions in the Care and Support Plan which the Resident is unable to make for

themselves, these should be clearly stated in the Care and Support Plan as Best Interests decisions which have been made by Case Management in consultation with the Resident's family and friends, advocates, all relevant professionals and the Service Provider. The Service Provider shall continue to encourage participation of the Resident in these decisions and notify Case Management of any changes of circumstances which may necessitate a review of the specific Best Interests decisions. The Mental Capacity Act should be observed at all times with all Residents.

The Service Provider shall follow the key statutory principle of supporting decision making and assist in maximising and developing the Resident's decision making capacity. The precise details of the responsibilities to be completed with any Resident will need to be negotiated and agreed between them, relatives, carers, advocates and the Service Provider in order to achieve the Outcomes stated in the Care and Support Plan and signposting to helpful websites and services given. The details of the responsibilities will be clearly recorded in the Care and Support Plan and linked to Outcomes.

Information

The Service Provider shall provide an information pack and shall ensure that this is available to all Residents before the start of the placement. The information pack shall be in an accessible format, e.g. large print, and shall be made available to Residents and their care workers. The information pack shall include:

- the aims of the Service, philosophy of care and support, who the Service is for, including the range and level of support services provided, cultural and social needs catered for and support for care workers;
- contact details for the Service, including telephone numbers for the Service (including out of hours and emergency contact numbers);
- service provision, including the type of Service, facilities, and range of activities;
- a statement of Resident's rights to self-determination;
- a statement regarding the consequences of unacceptable behaviour;
- the procedures/contingency arrangements in place in the event of emergency temporary closure, service reduction or permanent closure;
- a clear written record/agreement maintained between the care home and privately funded Residents about those circumstances when individuals might become eligible for KCC funding – both in terms of eligibility on Needs Assessment and/or the KCC threshold for funding assistance due to wealth depletion
- Safeguarding information, including procedures followed and contacts;
- the process of quality assurance;
- information regarding where a copy of the most recent CQC and/or other relevant inspection reports or information can be obtained;
- complaints procedure; and

- details of how to contact the Regulator and HealthWatch

A home website page/s shall be provided to include access to all of the above information and be clearly laid out, in Plain English and meet web accessibility requirements.

Funded Nursing Care (FNC) (Care Homes with Nursing only)

Assessment of Existing Residents:

Either the care home or the relevant Clinical Commissioning Group (CCG) shall arrange for an assessment of the Resident to be undertaken by a Registered Nurse as delegated by the CCG on notification of change and completion of a consent form.

The Service Provider shall use reasonable endeavours to co-operate with the CCG in facilitating the assessment in accordance with individual Residents' needs, by:

- allowing the CCG's agents or representatives access to the Care Home
- ensuring that the relevant CCG has access to up-to-date and complete care notes in respect of each of its Residents

Upon completion of the assessment of each resident, the CCG shall provide to the Council, the Contractor and the resident the following information:

- the current national rate for FNC contribution
- the date upon which those payments will commence

Assessment of New Residents:

Within 48 hours after a new Resident is admitted to the Care Home the following shall happen:

- the Contractor shall inform the Resident or their representative of their potential eligibility for FNC (this may be via the provision of leaflets to Service Providers);
- upon receipt of a consent form the CCG is required to arrange for an assessment of the Resident to be undertaken by a Registered Nurse as delegated by the CCG; and
- the CCG representative shall provide the Service Provider and the Resident with a written statement setting out the amount of the FNC contribution which

the CCG is required to pay the Service Provider for the provision of nursing care

Reassessment of Residents:

The CCG representative shall re-assess each eligible resident at least three months after their admission to the Care Home, and every 12 months thereafter. The CCG representative shall ensure GP involvement in this process.

Where the need for a change in the level of nursing care arises in respect of a resident, the Service Provider shall inform the CCG immediately. The CCG representative shall arrange for a re-assessment of the Resident's needs to be made as soon as possible after the date of referral.

Upon request being made by a Resident or their representative for a re-assessment, the CCG shall arrange for a re-assessment to be made if it is satisfied that there has been a change in the Resident's nursing care needs. The CCG representative shall advise the Resident or their representative of the outcome of the re-assessment within 28 days.

3.2 - Daily Life

Personal Care

The Service Provider shall deliver personal care and support for Residents, providing physical assistance and/or encouragement and/or training and/or advice to perform the following, in accordance with the individual care needs of Residents, helping Residents to be as independent as possible:

- getting up or going to bed;
- transferring from or to bed/chair/toilet;
- washing and bathing using equipment if necessary, shaving and hair care, denture and mouth care, hand and fingernail care, foot care (excluding any aspect of nail care which requires a state registered chiropodist or podiatrist, surgical or cosmetic procedures);
- accessing toilet facilities, including necessary cleaning and safe disposal of waste/continence pads;
- emptying or changing catheter or stoma bags where this is an existing care requirement and associated monitoring;
- skin care such as moisturising very dry skin;
- skin inspection to identify any pressure or moisture damage;
- deciding what to wear for the day;
- dressing and undressing;

- putting on appliances with appropriate training for example leg calliper, artificial limbs and surgical stockings and assistance with visual and hearing aids e.g. glasses care, hearing aid battery checks;
- dealing with correspondence;
- accessing social activities, both in-house and externally;
- settling for the night when Residents need and/or want;
- managing medication;
- accessing timely health appointments as required;
- managing health;
- eating and drinking and monitoring and recording weight; and
- monitoring food and fluid balance if there is an assessed need

Where a resident requires assistance through pressing a call alarm, the Service Provider shall respond as soon as possible with immediate response to emergency alarms.

Case Management

According to the individual Resident's needs, the Service Provider shall notify Case Management immediately of any:

- Safeguarding concerns in respect of any individual;
- persistent refusal from Residents to accept support to meet Outcomes mutually agreed in the Care and Support Plan;
- failure to provide care and/or support to Residents;
- deterioration in Residents' health or well-being;
- improvement in Residents' circumstances;
- serious accidents or incidents involving Residents or care workers;
- hospital admissions and/or deaths of residents or otherwise;
- hospital admissions specifically following a fall;
- other changes in the service resulting from a change in circumstances or emergency;
- contact with the emergency services where the circumstances indicate that this is the appropriate course of action
- Mental Capacity issues including the improvement or deterioration of Residents' Mental Capacity in relation to decisions specified in Care and Support Plans; and
- use of restrictive measures and consideration of Deprivation of Liberty Safeguards (DoLS)

Case Management Reviews

A formal review of Residents' Care and Support Plans shall be conducted by the Council. The first review shall be held within eight weeks following the commencement of an individual placement. Thereafter, a review of the Residents'

Care and Support Plans shall be carried out as often as the Council, the Service Provider and the Resident feels is necessary, but at least annually. The Service Provider shall note that this review process may change as part of the Council's Transformation programme and review of Care Pathways and Optimisation.

The review shall involve as a minimum the Resident and their family or other representative, and the designated Council representative. The Service Provider shall only be present if the Resident wishes them to be, but the Service Provider must contribute to, and provide information for, the review. Any other individuals, who are able to actively contribute and whose input the Resident has requested, may also be present.

The review shall address the extent to which the initial Outcomes, which shall be specified in the Care and Support Plan, are being met, determine whether or not eligibility criteria continues to be met and whether the Resident still requires the Service or if the level of service needs to change.

Provider Reviews

The Service Provider shall:

- review all personal records at least once a month, or where the needs of the Resident have changed, to ensure receipt of feedback from Residents, carers and Staff and to inform whether a more formal Service Provider or Council review is necessary;
- review any special requirements for Residents regularly and ensure these requirements are reflected in individual personal records the Service Provider holds including the Care and Support Plan;
- consider Residents' requests for adjustments in the Service and make changes in arrangements to accommodate the individual needs of Residents where appropriate;
- if there is a substantial change in the Resident's circumstances or needs, the Service Provider shall liaise with Case Management to reassess the needs of the Resident or, if required, request an assessment for Continuing Health Care;
- ensure processes are in place so that Staff can and know how to notify the Service Provider and Case Management of any increase or deterioration in physical or mental health and/or any other relevant events and record these in the Resident's Care and Support Plan and/or personal records as appropriate;
- ensure that care workers have adequate English communication skills to undertake their duty to record and communicate clear, legible, concise and relevant information; and
- ensure that all financial transactions are carried out in accordance with Residents' Care and Support Plan and care workers shall be supported to fully understand policies and procedures

The Service Provider shall satisfy themselves that they can meet individual Residents' needs using Barthel Index (or an equivalent recognised tool), at least every six months.

The Service Provider shall ensure that they complete a recognised or validated pain tool for all Residents, for use with the GP during the pre-admission screening processes/planned GP Visits. The Service Provider shall review the management of pain periodically in accordance with the individual needs of Residents.

Activities and Social Interaction

The Service Provider shall support and/or escort and/or facilitate access to social, vocational and recreational activities, both on and off-site, in accordance with the individual care needs of Residents, including, but not limited to the following:

- day services;
- arranging transport;
- shopping and handling their own money;
- accessing Arts and Culture events;
- access to books, newspapers, radio and television;
- assisting with tasks in and out of the home (following appropriate risk assessments);
- local community based services such as church services, social clubs, etc. and;
- hospital and other medical appointments

The Service Provider will actively encourage and promote a community hub approach, engaging with other local providers and groups such as voluntary organisations, schools, colleges, churches, arts and crafts groups, libraries etc.

Environment

The Service Provider shall maintain a safe, clean environment for all Residents, in accordance with the individual needs of Residents, by:

- maintaining an effective cleaning schedule to minimise odours and to ensure high standards of health and hygiene;
- providing regular laundry services, including making beds and changing linen, washing clothes or household linens, including fouled linen, drying, necessary ironing, storage and simple mending;
- disposing of all rubbish regularly in accordance with the local Council's waste policies;
- identifying and managing areas of any potential slip or trip hazards, subject to a risk assessment;
- identifying and mitigating as far as possible any hazards or risks around the home and implementing solutions e.g. non slip rugs or removing obstacles;

- operating a maintenance schedule and work plan, which includes regular servicing of all equipment, electrical safety checks and planned maintenance of the fabric of the building, e.g. redecoration of walls, replacement of bathroom fittings, etc. and
- complying with The Provision and Use of Work Equipment Regulations (1998) which are available from the Health and Safety Executive and the Workplace (Health Safety and Welfare) Regulations 1992

The Service Provider will recognise and respect the need for individual Residents to have their own space. Where possible within the constraints of the physical building the Service Provider will ensure that multiple areas are available for different physical activities and mental states, e.g. sensory room, quiet lounge, outdoor seating areas, etc.

Nutrition and Hydration

The Service Provider shall provide a full kitchen service for three full meals a day and access to food outside of regular mealtimes for those Residents who are absent or unwell at the time the meal is served. Meals shall have nutritional value, be culturally specific for Residents requiring them and be of sufficient serving for the Resident to maintain a healthy balanced and consistent weight.

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

- operate a flexible approach to nutrition and hydration;
- work with Healthcare Professionals to ensure health needs are known and recognised;
- use the Malnutrition Universal Screening Tool (MUST)ⁱⁱ, the recognised industry standard, and act on the outcome of the assessment undertaken by Case Management; and
- have a robust food first policy, rather than request prescriptions for dietary supplements for Residents

The Service Provider will seek advice from Healthcare Professionals with any areas of concern.

Money Matters

The Service Provider shall have policies and procedures in place for Staff on the safe handling of money and property belonging to the Resident, which shall cover:

- recording the amount and purpose of all financial transactions undertaken on behalf of the Resident (all records shall be signed and dated by the care worker and the Resident or nominated advocate);
- the collection of pensions or benefits;
- safeguarding the property of the Resident whilst supporting the Resident; and

- reporting the loss or damage to the property whilst providing support

Where personal allowance payments and ad-hoc expense refunds are made on behalf of a Resident by the Council's Client Financial Affairs team the Service Provider must be able to evidence the reconciliation of payments made to demonstrate that the money has been allocated to the correct Resident and credited to their personal account at the home. The Client Financial Affairs team will request a reconciliation expense sheet from each home for each Resident at six-monthly intervals in order to check a sample of transactions, and further checks may be carried out as part of the ongoing contract monitoring.

The Service Provider's safeguarding policies and procedures shall make clear that Staff shall not:

- use credit or debit cards belonging to residents or have knowledge of the Resident's Personal Identification Number (PIN), accept gifts or cash;
- use loyalty cards belonging to Residents;
- undertake personal activities during time allocated to provide support for Residents;
- make personal use of Residents' property (e.g. telephone);
- involve Residents in gambling syndicates (e.g. national lottery);
- borrow from or lend money to Residents;
- sell or dispose of goods belonging to Residents and their families;
- sell goods or services to Residents and/or buy goods or services from Residents;
- incur a liability on behalf of Residents;
- take responsibility for looking after any valuables on behalf of Residents;
- allow any unauthorised person (including children) or pets to accompany them when visiting Residents without their permission and approval of Case Management; and
- make or receive telephone calls not regarding the Resident whilst caring for the Resident i.e. the time allocated to Residents shall be used to support the individual needs of Residents

Promoting Safety and Positive Risk Taking

The Service Provider shall empower Residents to take appropriate risks in their recovery journey and shall manage the tension between promoting safety and positive risk taking. The Service Provider shall empower Residents to take appropriate risks, in accordance with the individual needs of Residents, by:

- ensuring Residents are supported by a 'trusted team' and not receiving care from numerous care workers;

- recognising that continuity of support is important in building trusting relationships;
- identifying, assessing and then managing risks whilst understanding that risk is a normal everyday experience;
- assessing risk dynamically, understanding that decision-making can be enhanced through positive collaborations;
- understanding that risks can be minimised, but not eliminated;
- taking responsibility in encouraging a no-blame culture whilst not condoning poor practice;
- working with the Council to understand and meet the changing needs and expectations of Residents and their families and supporting them to have more control over their health and care; and
- conducting risk assessments where there is potential for significant harm, self-neglect injury or death. Examples could be, but are not limited to, the following:
 - choking
 - falling
 - scalding
 - transfers (hoisting)
 - not following specialist instruction
 - skin integrity
 - infection control
 - Control of Substances Hazardous to Health (COSHH)
 - labelling and signage to assist residents living with dementia

Transport

The Service Provider shall ensure that when a Resident is being transported, this is done so safely and appropriately and in accordance with the legal requirements. The Service Provider shall ensure that if the Resident is transported by a vehicle owned by the Service Provider or by an employee of the Service Provider there is appropriate insurance. The driver and any escort shall be DBS and reference checked and shall have received the appropriate mandatory training.

The Service Provider shall have a responsibility to arrange appropriate transport for hospital appointments and elective admissions to hospital, in accordance with the individual needs of the Resident.

Discharge from Hospital

The Service Provider shall support discharge from hospital for known Residents clinically assessed as ready to leave hospital (who are already placed with the Service Provider, and are funded by the Council) seven days per week, where there is no change in need and the Council does not need to reassess the needs of the individual. This will be on the same day unless agreed otherwise with the integrated discharge team in consultation with the home and ward manager. The Resident shall

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

- inform the Council;
- follow the Resident's progress through the acute pathway by communicating directly with the hospital ward and Resident, promoting self-care for some needs from the outset (where appropriate);
- have guidance in place and work with hospital staff to determine when the Resident is fit for a safe discharge;
- ensure they are aware of all that has happened, which shall be relevant to the Resident's continued care and shall either visit the Resident in the acute setting or speak to them via the telephone to ensure they keep in contact;
- be pro-active in making formal requests for multi-disciplinary case discussions where there are concerns or issues developing

The Service Provider shall keep Case Management informed whilst a Resident is in hospital and upon their discharge, as the Care and Support Plans may need to be altered to reflect any changes in needs.

Dementia Care

When meeting the needs of Residents in a residential setting who have Dementia needs, in accordance with the individual needs of Residents, the Service Provider shall:

- follow dementia friendly design principles in the layout of the home;
- ensure all Staff are trained in a level of dementia awareness appropriate to their role, including cleaning, catering and other domestic staff consistent with their roles and responsibilities and be able to evidence this training throughout the work that they do;
- promote understanding of dementia amongst families/carers/other visitors to the home in line with the Dementia Friendly Communitiesⁱⁱⁱ project aims for Kent;
- ensure dementia-related medication reviews are timely and use of drugs closely monitored;
- comply with the National Institute for Health and Care Excellence (NICE) quality standard guidance for the care of those with mental health needs in residential care settings;
- ensure that dementia is considered as part of Care and Support Planning;
- consider wider community involvement within their care setting in order to improve awareness of dementia and that the setting becomes part of the dementia community:

- ensure that the Resident with dementia is afforded the same opportunities that Residents without a diagnosis of dementia are offered within the care setting;
- be aware and be vigilant for signs of cognitive impairment with those without a formal diagnosis and ensure that the appropriate referral is made to promote early diagnosis and best outcome for the resident; and
- comply with the NICE guidelines on supporting people with dementia and their carers in Health and Social Care

Tissue Viability (Care Homes with Nursing only)

In accordance with the individual care needs of Residents, the Service Provider shall:

- ensure that all policies and procedures comply with good practice guidelines regarding tissue viability and are in alignment with CCG policies and procedures such as First Choice Dressings List^{iv};
- ensure that all Staff in the care home are aware of their role in wound care prevention and treatment;
- ensure that the care home has a nominated Tissue Viability Link Nurse that shall be a qualified nurse, and that shall be responsible for tissue viability in the care home;
- ensure that the Tissue Viability Link Nurse undertakes sufficient training in wound care so that they shall recognise complications as they occur and seek specialist advice from appropriate sources such as the Tissue Viability Nursing (Kent) team;
- ensure that the nominated Tissue Viability Link Nurse attends accredited training sessions and disseminates information from this training to other staff in the care home;
- ensure that all pressure ulcers at Grade 3 or above are reported as a clinical incident to the Regulator as per registration requirements; and
- collaborate with the appropriate organisation or personnel within the CCG to consider the cause of all pressure care and wound care clinical incidents and take preventative action with all residents

End of Life Care

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

- access training as appropriate provided by Healthcare Professionals to ensure the needs of the Resident are met in accordance with best practice guidance;
- work proactively with Healthcare Professionals for Residents with known medical conditions which are likely to worsen at End of Life;
- as early as possible, identify Residents who are approaching the end of their life (where death is expected within the next 12 months) and seek the appropriate multidisciplinary support including palliative care;

- ensure that Residents and their families/carers are encouraged to have conversations around their individual preferences, including place of death and interventions and that all such conversations are appropriately recorded in the personal records;
- ensure that discussions are approached sensitively, at the appropriate time (within one month of admittance and revisited after 6 months) and that discussions include: physical, psychological, social, spiritual and cultural needs and preferences;
- support Residents and their families to consider advance decisions such as Do Not Attempt Cardiopulmonary Resuscitation (DNACPR), and encourage registration on an Electronic Palliative Care Co-ordination system (EPACCs);
- ensure families shall be involved as much as the Resident wishes;
- be familiar with DNACPR forms and ensure that all Staff are aware of their existence for an individual Resident where that it is the case;
- comply with the Mental Capacity Act 2005;
- ensure that Staff are trained on End of Life care including communication skills and dealing with bereavement and stress;
- actively work to achieve a Resident's preferred place of death rather than referring to hospital during the last few days of life, seeking support from Healthcare Professionals where appropriate; and
- ensure Residents can access appropriate prescriptions for symptom management from primary care, which may be needed ad hoc or regularly

Absence, Discharge, Dying and Death

The Service Provider must know whether Residents are in the home, on a recreational outing or attending a pre-arranged appointment. A written procedure for dealing with missing Residents must be held in the home and will include:

- time for assumption of a person missing
- search of building(s) and grounds
- telephoning likely places
- informing Police
- informing relatives where appropriate
- informing the Case Manager

The Service Provider must inform the Case Manager when a Resident is absent from the home due to being unexpectedly admitted to hospital, or going to relatives or friends for an unplanned visit.

In cases of hospitalisation, the Resident's representative must also be told unless the Resident has specifically requested otherwise.

The Service Provider will hold a Resident's room for a period of up to forty two (42) days when he/she is admitted to hospital. During this time the Resident's room should not be used.

If the Resident is in hospital or absent for longer than forty two (42) days, a Care and Support Plan review must be arranged with the Case Manager and any other relevant party.

The Service Provider must have a policy and procedure relating to the care of people who are dying and the tasks to do in the event of a death.

There must be a record of the Resident's wishes regarding his/her funeral.

When a Resident dies you must tell sensitively but without delay, people closest to him/her, other Residents and, within 24 hours of the death, the Case Manager. If there are no relatives the relevant District Council must be told as they may be responsible for arranging the funeral.

When a Resident who is subject to a Deprivation of Liberty dies whilst in the home the death must be reported to the Coroner or the Police.

3.3 – Health and Safety

Accidents and Injuries

The Service Provider shall ensure that Staff are informed and deal confidently with accidents, injuries and emergencies by:

- all Staff being aware of and following all of the Service Provider's policies and procedures for dealing with medical emergencies;
- reporting to Case Management and noting in the Resident's records any accidents or injuries to the Resident that require hospital or GP attendance that the care worker has knowledge of;
- reporting all incidents subject to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) to the Regulator and where applicable the Health and Safety Executive (HSE); and
- having a falls policy in place that includes specific information on dealing with falling from a chair or bed and suggests safety measures to prevent such falls. Information and training on this can usually be found from the local falls prevention service, which is usually the local Community Health Trust.

Transmittable Diseases

The Service Provider shall ensure that the Resident, his/her family, staff and visitors are protected from transmittable diseases, by:

- having a policy in relation to transmittable diseases (e.g. HIV/AIDS and Hepatitis A, B and C) that is available and followed by all Staff;
- all Staff being trained to work safely with Residents at all times; and

- ensuring that Staff and Residents are vaccinated against influenza in line with NHS guidelines

Security

The Service Provider shall ensure the resident's possessions are secure, by:

- making Staff aware of the risk of unintended breaches of confidentiality and making sure Staff are able to identify situations in which it may occur through the provision of appropriate training;
- ensuring that Staff do not carry with them more confidential information than they need to;
- ensuring, when it is necessary for Staff to keep written information detailing passwords or keypad numbers with them, that they understand the need to preserve security;
- where appropriate, considering whether a change of access code number is required if a change of Staff or a suspected breach of security occurs; and
- having policies and procedures in place to ensure that Staff who leave or change duties do not retain any written information about the resident

Hygiene and Infection Control

The Service Provider shall maintain good hygiene and infection control by:

- complying with the requirements detailed in the Department of Health Infection Control Guidance for Care Homes 2006, the Health and Social Care Act 2008 Code of Practice on the prevention and control of infections and related guidance^v, and any other relevant national or local policies and guidance as they arise;
- ensuring all catering facilities are kept clean and meet the requirements of the local Environmental Health Officers;
- ensuring that all Staff complete adequate training on health and hygiene and food handling and preparation;
- ensuring that all those entering and leaving the care home are aware of the need for high standards of hygiene to be maintained at all times, by making sure the provision of hand gel or an equivalent hand hygiene measure is available and used; and
- putting in place the necessary emergency plan to respond to any disease outbreaks e.g. norovirus and reporting any incidents to the Health Protection Agency and other relevant public health authorities

Safety Inspections of Premises

The service Provider must inspect the premises regularly and records of safety inspections must be kept. Any faults must be recorded together with details of

actions to isolate equipment or rectify the fault and the date of completion of the action.

All hazardous materials used for cleaning or gardening must be stored in a locked cupboard in accordance with Control of Substances Hazardous to Health (COSHH) and they must not be left unattended when in use.

Fire Safety

The Service Provider shall:

- comply with all Fire Safety requirements as advised by Kent Fire and Rescue^{vi}
- comply with the Regulatory Reform (Fire Safety) Order 2005 or any replacement provisions;
- comply with the HM Government Guide – Fire Safety Risk Assessment – Service User Care Premises^{vii} to provide the appropriate fire-fighting equipment, fire detection and warning system for the care home and will also ensure the maintenance of the equipment provided. The Service Provider shall also carry out and record periodic checks of the equipment as advised to ensure that it is working properly;
- ensure that the care home has a fire risk assessment which has been carried out by a competent person and is updated annually or when there is any significant change in risk;
- ensure that the ‘responsible person’ (as defined in the Regulatory Reform (Fire Safety Order 2005)) undertakes a fire risk assessment which focuses on the safety in case of fire of all “relevant persons” (as defined in the Regulatory Reform (Fire Safety) Order 2005);
- where relevant a personal emergency evacuation plan (PEEP) shall be developed and incorporated into each Resident’s Care and Support Plan. The Service Provider shall ensure adequate staffing levels during day and night which take into account all persons on the premises including those who may need assistance to escape; and
- have written fire safety/prevention and staff evacuation procedures which shall ensure that all members of Staff are trained (including refresher training) in the use of the care homes fire detection and fire-fighting equipment. The Service Provider shall ensure that this training includes action to be taken on discovering a fire/hearing the fire alarm (respond in an emergency); raising the alarm; the location/use of equipment; calling the fire and rescue service and the method of evacuation/escape routes

4. WORKFORCE

Recruitment

The Service Provider will ensure that they employ Staff (employees, volunteers and Agency workers) who respect the Resident and their property, and who keep information about them confidential. The Service Provider will only recruit Staff who have satisfied all necessary recruitment checks. All Staff will be trained in Safeguarding of Vulnerable Adults (SOVA) and actively support the Multi-agency Safeguarding Adults Policy, Protocols and Guidance for Kent and Medway.

Nursing homes will ensure that the recruitment of nursing staff will follow the guidance published by the Nursing and Midwifery Council and that all nurses working within the home will maintain their registration according to the legislation as set out in the Nursing and Midwifery Order 2001 (or any successor legislation).

The Service Provider will ensure that there are handover arrangements in place at the beginning of each shift and that Staff providing Services are properly briefed as to the Resident's needs and respect Resident wishes, their independence, their race and their gender. Where Residents have a disability, Service Providers must respect their need for independence and right to be consulted and must always work with them in an enabling manner.

The Service Provider shall have a written recruitment and selection procedure, which reflects equality and diversity policies. The Service Provider shall have recruitment strategies that attract candidates that exhibit empathy, and possess awareness of the importance of their personal attitude towards Residents and the impact that has on the quality of the Service. The recruitment and selection procedures shall meet regulatory minimum standards; ensuring records are maintained to demonstrate best practice in this area. The Service Provider shall comply with Disclosure and Barring Service (DBS) requirements for Staff.

All roles within the Service Provider's organisation shall have written job descriptions and person specifications. In accordance with the Employment Rights Act 1996, the Service Provider must ensure that each member of Staff is issued with a contract that clearly states the terms and conditions of his/her employment, the contract must be signed by the appropriate representative of the Service Provider and the Staff member and a copy of the contract must be kept in the Staff member's personnel file.

The Service Provider shall have in place an equal opportunities policy for the recruitment, development and care of the workforce (including volunteers).

Induction and Training

The Service Provider shall be registered with the Skills for Care National Minimum Dataset for Social Care (NMDS-SC)^{viii} and shall develop Staff in accordance with the following criteria:

- all care homes shall complete a NMDS-SC organisational record and shall update all of its organisational data at least once each financial year, in line with Skills for Care deadlines;
- all care homes shall fully complete individual NMDS-SC worker records for a minimum of 90% of its total workforce (this includes any staff who are not care-providing);
- individual records for workers, which are included in the 90% calculation, shall be both fully completed and updated at least once each financial year; and
- all care homes shall agree to share information via the facility within NMDS-SC with the Council, CQC and NHS Choices

The Service Provider shall comply with the relevant regulations covering staff competence and training. The Service Provider shall ensure the completion of the Care Certificate (or other standards as set out by the Regulator) for all new care workers and other employees within 12 weeks of starting their employment. This induction shall specifically include Mental Capacity Act, Safeguarding and Dementia training.

The Service Provider shall assess workforce training levels, the training already achieved and skills gap for individual Staff and the workforce as a group. The Service Provider shall have financially resourced plans in place to address workforce development requirements. The Service Provider shall have a training plan, a training matrix and keep records of successfully completed training on individual members of Staff and a central file to continuously monitor and develop this.

The Service Provider will actively engage staff in appropriate training provided by the Healthcare Professionals or CCG.

Workforce Development

All Staff shall meet formally on a one to one basis with their line manager to discuss their work in accordance with the staff member's needs, but at least every three months and written records of these supervisions shall be kept to demonstrate the range, content and outcome of the discussion at each meeting.

The Service Provider shall be able to demonstrate how Staff are supported and advised between supervisions and that additional meetings are facilitated where required.

With the consent of the Resident, at least one supervision a year should incorporate direct observation of the care worker providing support to the Resident with whom they regularly work to observe competencies.

The Service Provider shall hold regular meetings at least quarterly with peers and/or other team members to discuss and share issues and best practice; minutes from these meetings shall be recorded.

All Staff shall have an annual appraisal and this shall include identification of training and development needs with their line manager. A copy of the appraisal shall be placed on the personnel file for each care worker.

The Service Provider shall ensure that there is a clear link between staff appraisals, identified training and development needs and the training plan. Managers and supervisors shall receive training in supervision skills, undertaking performance appraisals and planning for workforce development.

The Service Provider shall keep a record of any disciplinary incidents and details shall be entered in the personnel file of the care worker concerned. Referrals to the Disclosure and Barring Service must be made, if appropriate, and recorded on the care worker's personnel file.

The Service Provider shall have a written policy for the management of violence towards Staff and ensure that suitable training is provided to reduce the risk of violence towards Staff. The Service Provider shall comply with the Health and Safety at Work Act 1974 to ensure that Staff are safe whilst at work.

The Service Provider shall ensure that there is strong leadership and management that ensures the service has a strong care and support focus that is person centred and affords dignity, respect and independence for all Residents. The Service Provider shall develop their management staff and the management team shall take responsibility for the delivery of a high quality service and retaining high quality staff.

The Service Provider shall ensure that Registered Managers complete the Manager Induction Standards^{ix} and have, or be undertaking a recognised qualification for Registered Managers within their first year of employment. This shall be completed within two years of employment. Managers shall undertake periodic management training to update their knowledge, skills and competencies to manage the Service.

The Council recognises the value of the Social Care Commitment within selection, induction and development processes and where employers have signed up to, and embody the principles of, the Social Care Commitment the Council shall view this as a positive commitment to quality. The Council expects all Providers to sign up to the Social Care Commitment.

Staff shall be supported to ensure appropriate skills are maintained to ensure that the highest level of support is provided by qualified and competent Staff. The Service Provider shall source and fund training, information, advice and guidance. The Service Provider shall ensure:

- all Staff are competent and trained to undertake the activities for which they are employed and responsible;
- there are sufficient Staff with the right skills mix, training and practice of person-centred care to meet the individual needs of Residents;
- basic care training happens such as:
 - hand washing

- recognition of the deterioration of the Resident
 - pressure ulcer prevention training
 - falls screening
 - dementia awareness;
 - nutrition and hydration
 - promoting continence
 - end of life care including DNACPR
 - basic life support skills
 - first aid
- care workers receive specific advice and training about human rights in relation to residential care services;
 - all Staff have training on the prevention of abuse within three months of employment and this shall be updated annually;
 - all Staff hold a relevant national occupational standard such as Level 2 Diploma in Health and Social Care through the Qualifications Credit Framework (those who do not already hold a relevant standard shall be supported to achieve the above qualification as a minimum);
 - consider a minimum of two members of staff trained as Infection Prevention and Control link workers available via the Kent Community Health Foundation Trust;
 - young staff (16-18 year olds) are supported in their work (young staff shall be undertaking an approved training programme; the Service Provider shall consider using the Health and Social Care Apprenticeship framework where appropriate);
 - specialist advice, training and information is provided to support care workers working with specific care needs and/or medical conditions to ensure they are professionally qualified to do so;
 - all Staff are aware of their Safeguarding responsibilities both for Children and Adults;
 - all Staff are aware of and familiar with the Service Provider's policies and procedures; and
 - all Staff receive communication training and demonstrate a good standard of verbal and written communication

The Service Provider will ensure that they demonstrate a culture which values and respects all members of Staff, enabling them to give a high standard of support to all Residents.

5. MEDICATION

The Service Provider shall ensure medication is administered in accordance with current best practice, including The Care Homes Use of Medicines Study, Quality Safety Health Care 2009; 18:341-346, National Institute for Health and Care Excellence (NICE) guidance (including Managing Medicines in Care Homes) and other relevant National and Local guidance.

The Service Provider shall ensure there is a well-developed culture of safety to protect Residents and Staff from harm that can be caused by medicines. This shall include the following:

- ensuring that an appropriately qualified member of Staff is on site to administer medication. All care homes shall have “The Handling of Medicines in Social Care” document^x as issued by the Royal Pharmaceutical Society of Great Britain available as a reference for Staff, specifically including injectables that could otherwise have been delivered in a home setting by family members, such as insulin;
- delivering the Service in accordance with the NICE quality standard guidance for the management of medicines within care home environments;
- ensuring well-established links with the GP, supplying Community Pharmacy, and where relevant Care Homes Support Team, for appropriate advice and support;
- establishing what medicines a Resident has been prescribed and is to be taking on admission to the care home;
- checking the medication against the medication administration chart prior to administration, ensuring the right medications are given to the right Resident at the right time via the right route and recording accurately;
- implementing infection control measures during the administration of medicines;
- undertaking monthly audits of medication administration charts, liaising with the Resident and their GP to avoid duplication;
- using alerts, reminders, posters and facilities which aid Staff and Residents to follow the correct procedures for managing medicines;
- ensuring sufficient Staff and procedures that allow the administration of medicines within a short period of time and with minimal distraction;
- using a well-established procedure for reporting, analysing and learning from incidents i.e. near-misses and errors relating to medicines;
- ensuring sufficient personalisation of care is recorded in a Care and Support Plan in particular around the administration of ‘when required’ medication;
- promoting a reflective learning culture to enable Staff to address previous medicines incidents including near-misses and errors;
- the registered person ensuring that there is a policy and that Staff adhere to procedures for the receipt, recording, storage, handling, administration and disposal of medicines, and Residents are able to take responsibility for their own medication if they wish, within a risk management framework;
- considering the safe disposal of medication waste;
- considering homely remedies in accordance with the individual needs of each Resident;
- ensuring a robust system for ordering of medication to ensure medication is available for administration at the appropriate time;
- checking all stock levels before ordering;
- ensuring **EITHER** that there is an evidence-based procedure for the on-going management of urinary and supra-pubic indwelling catheters (this procedure

should also include guidance on escalation of concerns regarding indwelling urinary devices) **OR** all Residents with an indwelling urinary/supra-pubic catheter have a catheter passport **OR** all care homes will enrol in the Kent Community Health Trust Urinary Catheter Passport scheme; and

6. SAFEGUARDING

The Service Provider shall identify and report safeguarding concerns such as possible domestic and/or sexual abuse, etc. The Service Provider shall report back to Case Management where risks or hazards have been identified which may require a risk assessment. When a Resident is in a hospital, the Service Provider shall report any safeguarding concerns relating to the Resident's stay in hospital in the usual way and shall work with the Acute Trust to encourage safe discharges from acute settings.

6.1 - Provider Responsibilities

The Service Provider shall ensure that Residents are free from abuse and appropriate action is taken where it is suspected by:

- responding to alerts;
- attending serious case review meetings;
- complying with the requirement that Serious Case Review Panel requests for Management Reports are completed within six weeks;
- making representation in court as and when necessary;
- ensuring there is a Safeguarding Adults policy available that compliments the Kent and Medway Multi-agency Safeguarding Adults Policy, Protocols and Guidance;
- ensuring staff are familiar with the Kent & Medway Multi Agency Adult Protection Policy, Protocols and Guidance and with the Service Providers' own policy and procedures on Safeguarding and Adult Protection;
- ensuring the appropriate Adult Protection Alert Form is completed to notify the Council if adult abuse is witnessed or reported;
- ensuring that there is a designated Staff member to handle complaints against employees within the service including Whistleblowing;
- ensuring managers and Staff co-operate fully with adult protection assessments and investigations and comply with any recommendations in post abuse action plans;
- ensuring staff training is provided in safeguarding, that the training is refreshed at regular intervals and that Staff attend relevant multi-agency safeguarding adults training appropriate to their position;
- complying with the Regulator's and Disclosure and Barring Service requirements for all Staff prior to an individual commencing unsupervised employment;
- taking positive action to combat discrimination (needs arising from the specific ethnic, religious, cultural, gender, sexuality, disability or age requirements of Residents shall be identified in their Care and Support Plans; the Service Provider shall ensure that Staff are able to meet these needs);
- demonstrating a culture that encourages all Staff to Whistleblow as safely and confidentially as possible; and

- falls screening (a simple set of questions which can identify those people who are at greater risk of falling. Those identified should then be referred to the local falls prevention service, which is usually the local Community Health Trust)

Service Providers will be expected to comply with the Adult Safeguarding statutory expectations set out in the Care Act 2014, Sections 42-45. This is detailed in:

- Chapter 14 of Care and Support Statutory Guidance;
- The Multi-agency Safeguarding Adults Policy, Protocols and Guidance for Kent and Medway

Key expectations will include:

- Providing information to support the Local Authorities Enquiries under Section 42 of the Care Act;
- Undertaking Enquiries in circumstances when the Local Authority has caused the Service Provider to undertake these as set out in Section 42 of the Care Act and detailed in the Care and Support Guidance/Multi-agency Safeguarding Adults Policy, Protocols and Guidance. As set out these will have to be concluded to the standard set out by the Local Authority;
- Fully Cooperate with Safeguarding Adults Reviews (section 44 Care Act 2014);
- Meet the requirements for all Agencies set out by the Kent and Medway Safeguarding Adults Board.

6.2 - MCA/DoLS

The Service Provider shall comply with the Mental Capacity Act 2005 (MCA), including Deprivation of Liberty Safeguards (DoLS), by having the relevant policies and procedures in place, by:

- ensuring MCA and DoLS training is mandatory for all staff;
- ensuring records kept include specific capacity assessments and Best Interests decisions;
- ensuring records kept include evidence of any Lasting Powers of Attorneys or Deputies held by families and friends of the resident;
- ensuring records kept include use of restraint and the promotion of least restrictive measures at all times;
- ensuring consideration and timely application of DoLS where appropriate; and
- reporting to The Regulator all applications and outcomes of DoLS

7. PERFORMANCE MONITORING AND MANAGEMENT

7.1 - Key Performance Indicators

The Council shall measure quality and performance data via Key Performance Indicator (KPI) data returns from Service Providers.

The Service Provider and the Council shall manage the performance of the Service Provider to ensure current delivery meets the required standard. The Council shall implement electronic methods for collecting and collating Key Performance Indicator data and the Service Provider shall work with the Council to deliver this effectively and to ensure compatibility with the Council's systems and requirements. The returns shall be analysed and published to inform the public and professionals on the performance of care homes. This will develop to provide a benchmark of quality and performance expectation and inform future commissioning.

Any future additional performance monitoring requirements shall be introduced through discussion with Residents and Service Providers and will be informed by the review and development of the service. Details of the current data returns required are contained within an Annex to this document (*Annex F - Key Performance Indicators*), the content of which shall be updated should any amendments be required during the lifetime of this Contract.

If the Service Provider fails to provide the information in accordance with the Key Performance Indicator schedule, and fails to provide any KPI for two or more of the requested reporting periods, then the Council has the right to withdraw the Service Provider from receiving new placements under the Dynamic Purchasing System as defined in *Schedule 6 – Contract Management*.

7.2 - Requirements Relating to Actions by the Regulator

The Service Provider shall inform the Council when a regulatory inspection has taken place and shall share the result of the inspection within 24 hours of receipt.

The Service Provider shall notify the Council of any Regulator Warning Notices or Notices of Proposal (NOP) placed on the Service/Service Provider regarding the Service Provider and/or its associated activities within 24 hours of receipt. The Service Provider shall also inform the Council of any advice and/or comments received from the Regulator.

The Regulator can place fines or formal warnings on the Service Provider or suspend or cancel the Service Provider's registration. The Service Provider shall inform the Council of any such activity and a failure to do so will mean that the

Council shall seek to recoup costs and damages incurred and may terminate the Contract without notice in accordance with the Terms and Conditions of the Contract. The Service Provider shall keep its Residents and their families informed of any such activity.

7.3 - Registered Manager

The Service Provider shall keep the Council informed of Registered Manager vacancies and any fines this attracts from the Regulator. The Service Provider shall inform the Council when new Registered Managers are appointed and their updated contact details.

The Service Provider shall ensure that an appropriate person will be available to deputise for the Registered Manager in the event of a short term absence from the home, for example due to annual leave or sickness, and that a person with managerial responsibility will be available for the Staff and Residents of the home at all times including weekends and Bank Holidays.

7.4 - The Council's Quality Assurance Requirements

The Service Provider shall ensure that a quality management system is in place to ensure internal control of quality and consistency of practice and be committed to a process of continuous service improvement. Outcomes and Key Performance Indicators shall be reviewed throughout the life of the contract and the Council shall reserve the right to utilise a third party representative to manage this on behalf of the Council.

The Service Provider (including owners, corporate managers and local managers) shall participate in local Service Provider meetings organised by the Council and its partners. The Service Provider shall take part in any events in relation to any legislative and Market Position Statement work.

The Council shall reserve the right to:

- publish any information in relation to contract sanctions or any contractual or quality audits undertaken by the Council or representatives of the Council;
- publish lists of Service Providers who attend events managed by the Council and those who do not;
- recoup any costs incurred in supporting the recovery or managed exits of services, where the Service Provider has done little to improve or manage this;
- alter the sanctions policy at any time and provide notice to the Service Provider of any changes

The Service Provider shall inform the Council of any regulatory Warning Notices or other actions required by this Contract that relate to service delivery and service quality.

Residents and their carers shall be asked to provide feedback on the quality of the Service received via completion of the Adult Social Care Survey. This will measure the Resident's/carer's satisfaction with the quality of service delivery and whether the Service has achieved the Outcomes identified.

In addition the Service Provider will carry out their own annual survey of customer satisfaction and make the outcomes of that survey, and any actions arising as a result of the responses, available to the Council on request.

7.5 - Complaints and Compliments

The Service Provider shall ensure an easily understood, well-publicised and accessible procedure is in place to enable an individual to make a complaint or compliment and for complaints to be investigated. The Service Provider's complaints and compliments policy shall also refer to the Regulator, Local Government Ombudsman (LGO) and the Council's Complaints Team if the complaint requires an alternate signposting route. The Service Provider shall be expected to investigate any complaints, compliments or quality issues that arise in a clear and concise way with all evidence clearly documented. The Service Provider shall be able to evidence how they ensure learning from complaints improves the quality of the service provided.

The Service Provider shall welcome complaints and compliments as an opportunity to continuously improve and develop the service. Where there is a local advocacy or Service User Forum, the Service Provider shall make constructive use of these organisations at all times and specifically to help resolve complaints and problems as early as possible. All complaints, whether they have been formally or informally resolved, shall be recorded.

A record of compliments shall be maintained together with evidence if available and be used to reinforce good practice. The Service Provider shall be able to evidence how they share feedback on the Service via their quality assurance process.

The record of the complaint/compliment shall include:

- the date of the complaint/compliment;
- details of the investigation and response to the complaint/compliment;
- full details of the actual complaint/compliment;
- the date the complaint/compliment was received (if different);
- the date when the complaint/compliment was responded to;
- the outcome of the complaint;
- details of whether the complainant was satisfied with the response/outcome; and any further actions arising from the complaint/compliment

In the event that the complainant has exhausted the Service Provider's own complaints procedure and is still not satisfied with the response, the Service Provider shall then follow the Council's Statutory Complaints procedure **before** going to the LGO. The LGO shall expect to see this process has been followed prior to responding officially. In the case of self-funders, the Resident shall be given the opportunity to raise their complaint with the LGO once the Service Provider has concluded their complaints process.

7.6 - Records

The Service Provider shall comply with and store all information in accordance with Data Protection legislation.

The Service Provider shall ensure that records and details of support given are comprehensive and shared as appropriate by:

- recording any refusal of support agreed within the Care and Support Plans and feed this refusal to accept support back to Case Management as soon as possible;
- reporting any significant occurrence or changes in circumstances/support needs to Case Management (where the Resident does not agree, the Service Provider shall record this refusal on the personal file held by the Service Provider);
- allowing the Council's authorised staff to see records required by this Specification at any time;
- accommodating visits by the Councils' authorised staff, which may take place at any time and could be unannounced;
- ensuring appropriate sections of the Residents' personal files are accessible to relevant care staff;
- ensuring Staff are aware of the Service Provider's policy in regard to confidentiality of records and have training on Information Governance;
- ensuring acceptable standards of literacy in English;
- informing Residents about what is written in records and Residents shall have access to their Care and Support Plan and any contents past or present;
- making records available to the Resident's family and/or carer - this shall be on consent of the Resident unless the Resident has been assessed as lacking the Mental Capacity to make a decision relating to this, or Lasting Powers of Attorney have been granted

Records shall include:

- assistance with medication;
- care provided, including any refusal of care;
- any financial transactions undertaken;

- details of changes in the Resident's circumstances, support needs, health condition and any Mental Capacity concerns, which raise questions about the Resident's ability to consent with specific decisions of the care and support arrangements;
- any use of restraint;
- any accident to Residents and/or care workers;
- any other untoward incidents;
- activities undertaken and any particular achievements;
- any information that shall assist any future care worker to ensure consistency in the Service

7.7 - Information Governance

In order to comply with the Council's Information Governance Toolkit the Council must have a process in place to check that Service Providers are meeting basic information governance standards. This is an assurance questionnaire that must be completed annually; Service Providers will receive a request from the Council as a reminder to complete this. Responses are risk-assessed, and the Council is required to apply controls if the responses do not meet basic information security standards.

Where a Service Provider holds a recognised information security certification such as ISO27001 (international standard for information security) or Cyber Essentials or current 'satisfactory' NHS IG Toolkit^{xi}, this will need to be indicated on the questionnaire by placing a tick in the appropriate box on the form and returning the form to the Council; no further action is needed.

7.8 - Information Sharing

Information shall be shared between the Service Provider, the Council and other statutory agencies e.g. Clinical Commissioning Groups, CQC.

When transferring personal or confidential information/data, the Service Provider shall ensure that they use secure or encrypted email systems or that passwords are sent separately from the main body of the message.

8. GLOSSARY AND DEFINITIONS

Abuse

Abuse is a violation of an individual's human and civil rights by other person or persons. Abuse may consist of single or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm, or exploitation of, the person subjected to it. (Based on No Secrets, Department of Health (DoH) and Home Office guidance 2000)

Adult Social Care Outcomes Framework (ASCOF)

Developed by the Department of Health, the Adult Social Care Outcomes Framework measures how well care and support services achieve the Outcomes that matter most to people.

Advocate

Someone who speaks on behalf of the Resident

Assessment

An assessment of a Resident's needs co-ordinated by the Council

Assistive Technology (AT)

Assistive technology or adaptive technology (AT) is an umbrella term that includes assistive, adaptive, and rehabilitative devices. AT promotes greater independence by enabling Residents to perform tasks that they were formerly unable to accomplish, or had great difficulty accomplishing, by providing enhancements to, or changing methods of interacting with the technology needed to accomplish such tasks

Bariatric

A branch of medicine that deals with the control and treatment of obesity and allied diseases. In the context of this contract 'Bariatric' refers to services for Residents who are morbidly obese and the specific requirements as set out in *Annex D – Bariatric Beds*

Best Interests decision

A decision made on the behalf of a Resident who has been assessed as lacking the Mental Capacity to make a decision relating an aspect of their life due to a mental disorder and an inability to understand, retain and/or weigh up information and/or to communicate their decisions to others, following consultation with all relevant people.

Care and Support Plan

The details of the care/support required and the way the Resident's assessed needs are to be met

Care Home with Nursing

A place where personal care and accommodation are provided together with additional care provided by qualified nurses in order to ensure that the full needs of Residents are met

Care Home without Nursing

A place where personal care and accommodation are provided together

Care Quality Commission (CQC)

The independent Regulator of health and adult social care services in England, whose responsibilities include the registration and inspection of services such as care homes

Case Manager

The person deployed by the Council to arrange and review residential care for people who have been found on assessment to be owed a duty the Care Act 2014 (Chapter 23, Part 1, Section 18)

Clinical Commissioning Group (CCG)

Refers to NHS organisations set up by the Health and Social Care Act 2012 to organise the delivery of NHS services in England

Commissioning Organisation

Refers to Kent County Council

Continuing Health Care (CHC)

NHS Continuing Health Care (NHS CHC) applies to a package of care that is arranged and funded solely by the NHS for people aged 18 years and older, who are assessed and meet the nationally determined NHS Continuing Health Care criteria (NHS CHC Criteria). On-going eligibility is subject to regular review and assessment by the relevant Responsible Commissioner's NHS Continuing Health Care Assessment Team. Residents who meet NHS CHC Criteria have a 'primary health need' and typically have care needs that are complex, intense and unpredictable and therefore require high quality care delivered by well trained staff who can provide a flexible and reliable service. Care packages may involve long term care or short term interventions and are tailored to meet individual need

Contract

The agreement entered into between the Commissioning Organisation and the Contractor incorporating all the Contract documents

Contractor

Refers to the Service Provider as defined in the Terms and Conditions of this Contract

Council

Refers to Kent County Council

Deferred Payments

The Deferred Payments scheme allows a Resident with a property to defer part of the contribution they must make to the cost of their care home. The Council will fund their care and therefore the contract for this placement is between the Council and the Service Provider for this period

Deprivation of Liberty Safeguards (DoLS)

The process that shall be followed if an incapacitated Resident is to be deprived of their liberty in a lawful manner, to prevent harm in their best interests

Disclosure and Barring Service (DBS)

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups. It replaced the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA)

Emergency Respite

A short term placement for a person that is required urgently, for example due to a breakdown of a home care package or a change in the persons needs

End of Life

The diagnosis of a life limiting condition where the Resident is going to die within the next 12 months; and can include: Cancer, cardiovascular disease, respiratory disease, neurological disorders and dementias

Equipment

Equipment comprises aids to daily living, nursing aids and rehabilitation equipment. Items fall into the following categories: bathing equipment, beds and accessories, chair raising equipment, mobility aids, Resident handling/lifting/transfer, pressure care, seating and toileting. The Equipment in Care Homes Protocol (as specified in *Annex B - Equipment*) details the responsibilities of care homes and the Integrated Community Equipment Service for the provision of items of equipment

Falls Screening

Falls Screening is a simple set of questions which can identify those people who are at greater risk of falling. Those identified should then be referred to the local falls prevention service, which is usually the local community health trust

Former Self-funder

A Resident who was previously paying privately for their care but whose funds have reached the upper capital limit and they become eligible for local authority funding. Following financial and needs assessment, the Council will confirm the contractual arrangement for the individual with the Service Provider

Funded Nursing Care

The financial contributions from the NHS towards the costs of nursing care to which a Resident may be entitled. The precise amounts are set by Central Government

and are subject to regular review. Also known as 'Registered Nursing Care Contribution'

Guide Price

The Guide Price is the amount that KCC usually expects to pay for Residential or Nursing care within Kent. It is determined by assessing the costs of care and is reviewed on a regular basis. The Guide Price when applied for the amount a Resident would top up is subject to the availability of accommodation at the time of placement.

Healthcare Professionals

An individual who provides preventative, curative, promotional or rehabilitative healthcare services to people, families or communities

Indicative Price

The Indicative Price is the maximum price (or not to exceed price) that a Provider on the DPS framework contract can charge for any KCC funded placement. Providers set a price for a placement according to the individual needs of the person and the price of every placement should therefore be between the KCC Guide Price and the Indicative Price

Key Performance Indicators (KPIs)

Performance measures that will be recorded and reported by the Service Provider to the Council - current KPI criteria and reporting intervals are specified in *Annex F – Key Performance Indicators*

Local Government Ombudsman (LGO)

The Local Government Ombudsman looks at complaints about Local Authorities and Adult Social Care Service Providers and investigates complaints as an independent organisation

Mental Capacity

A Resident's ability to make their own specific decisions at specific times

Moving and Handling

When providing care and support to Residents, Staff may need to support them to move around. It is essential that Staff know about and can deliver safe Moving and Handling which upholds the dignity of Residents so they don't hurt themselves or other Residents

NHS IG Toolkit

The IG Toolkit is a Department of Health (DH) Policy delivery vehicle that the Health and Social Care Information Centre (HSCIC) is commissioned to develop and maintain. It draws together the legal rules and central guidance set out by DH policy and presents them in a single standard as a set of information governance requirements. The organisations in scope of this are required to carry out self-assessments of their compliance against the IG requirements

Nursing Care

The care and support provided by a qualified nurse to promote the health and well-being of Residents

Nursing needs

Refers to the needs and dependencies as defined in *Annex A – Levels of Need*

Nursing High needs

Refers to the needs and dependencies as defined in *Annex A – Levels of Need*

Outcomes

Goals that Residents wish to achieve

Person-centred Care

Person-centred care sees Residents as equal partners in planning, developing and assessing care to make sure it is most appropriate for their needs. It involves putting Residents and their families at the heart of all decisions

Personal Care

The provision of assistance to enable an individual Resident to carry out personal hygiene assistance and to assist with bodily functions

Personalisation

Putting Residents at the centre of the process identifying their needs

Planned Respite

A short term placement for a person to give the carer and the cared for person a period of respite, as far as is possible on dates of their choosing e.g. for a family holiday

Reablement

Reablement is defined as social care services provided to a Resident with poor physical or mental health over a short period to enable them to learn or re-learn skills for daily living

Registered Manager

Refers to the person managing the home on a daily basis as registered with the Regulator

Regulator

The body which is established by statute and to whose regulatory powers the Service Provider is subject. This is currently the Care Quality Commission (CQC)

Resident

The person in receipt of a residential or nursing care home service

Residential needs

Refers to the needs and dependencies as defined in *Annex A – Levels of Need*

Residential High needs

Refers to the needs and dependencies as defined in *Annex A – Levels of Need*

Review

The process, including a meeting, and Outcomes by which the Council and the Service Provider evaluate and record the adequacy of their respective current Care and Support Plan to meet Resident need and achieve desired Outcomes

Safeguarding Adults

The process by which abuse is reported, investigated and harm to Residents is prevented

Self-Directed Support

A process which gives Residents choice and control over their social care support

Service

All the services to be provided by the Service Provider under this Contract

Service Delivery Order (SDO)

Used in the context of Day Services, the SDO initiates and tailors the service for a Service User

Service Outcomes

Outcomes the Service Provider shall achieve in order to demonstrate contracted care is being delivered

Service Provider

The Contractor responsible for providing the Service

Service Specification

This document

Service User

A person aged 65 years or over who has been found on assessment to be in need of accommodation together with care and to qualify under our eligibility criteria for our financial support

Short Term

A placement of up to 6 weeks to enable a Resident to return home or to be moved on to the right setting for that individual, either following a hospital stay or where an individual has experienced a health or social care crisis in their own home

Social Care, Health and Wellbeing

The Council's Directorate responsible for this contract

Social Care-Related Quality of Life (SCRQoL)

Social Care-Related Quality of Life (SCRQoL) refers to those aspects of people's quality of life that are relevant to, and the focus of, social care interventions

Staff

Within the context of this Specification, Staff refers to the group of people, working under the direction of the Registered Manager, which is responsible for delivering care and support to deliver Resident specific Outcomes and includes employees, volunteers and Agency workers

Stakeholders

Within the context of this Specification, Stakeholders is an all-encompassing term which may refer to Residents and their support network, care home Service Providers, the Local Authority, the NHS, Case Management, General Practitioners and other Healthcare Professionals

Support Network

This may refer to a Resident's relative, carer, friend or Advocate

Terms and Conditions

Refers to the document 'Dynamic Purchasing System Agreement for the supply of Older Persons Residential Care Services'

Vacancy

A vacant (empty) bed for use within a care home (residential or nursing) reported to, and available for use by, the Council

Whistleblowing

Whistleblowing involves a person or group of people who tell someone in authority (i.e. the Council, CCGs in Kent, the Registered Manager or the Regulator) about alleged dishonest or abusive practices occurring in a care setting

Working Days

Within the context of this Specification, Working Days means Monday to Saturday, excluding Bank Holidays

ANNEX A - LEVELS OF NEED

Clients will be assessed by a Case Manager using the Levels of Need table. The summaries below indicate the typical characteristics attributable to an individual with Residential needs, Residential High needs, Nursing needs or Nursing High needs. This does not attempt to be an exhaustive list but a guide to the typical needs of each category of dependency.

Residential:

- requires care and support over a 24 hour period, including observation/supervision to maintain safety;
- low to medium level of assessed care needs;
- requires assistance with some activities of daily living to maintain skills and independence;
- requires input by carers on a daily basis;
- nursing care provided by community services

Residential High:

- requires care and support over a 24 hour period, including observation/supervision to maintain safety;
- high level of assessed care needs;
- requires assistance with most activities of daily living to maintain skills and independence;
- requires a high level of input by carers on a daily basis;
- nursing care provided by community services;
- requires additional equipment, activities or measures such as DoLS

Nursing:

- requires care and support over a 24 hour period, including observation/supervision to maintain safety;
- moderate level of assessed care needs;
- FNC funded;
- requires assistance with most activities of daily living with a focus on essentials of care;
- requires input by carers on a daily basis;
- requires nursing care on a daily basis

Nursing High:

- requires care and support over a 24 hour period, including observation/supervision to maintain safety;
- high level of assessed care needs;

- FNC funded;
- requires assistance with most activities of daily living with a focus on essentials of care;
- requires a high level of input by carers on a daily basis;
- requires a high level of nursing care on a daily basis

Category of Need	No Needs	Low Needs	Medium Needs	High Needs
Behaviour*	No evidence of 'challenging' behaviour.	Some incidents of 'challenging' behaviour. A risk assessment indicates that the behaviour does not pose a risk to self, others or property or a barrier to intervention. The person is compliant with all aspects of their care.	'Challenging' behaviour that follows a predictable pattern. The risk assessment indicates a pattern of behaviour that can be managed by skilled carers or care workers who are able to maintain a level of behaviour that does not pose a risk to self, others or property. The person is nearly always compliant with care.	'Challenging' behaviour that poses a predictable risk to self, others or property. The risk assessment indicates that planned interventions are effective in minimising but not always eliminating risks. Compliance is variable but usually responsive to planned interventions.

<p>Cognition*</p>	<p>Some minor evidence of impairment, confusion or disorientation.</p>	<p>Cognitive impairment which requires some supervision, prompting or assistance with more complex activities of daily living, such as finance and medication, but awareness of basic risks that affect their safety is evident OR Occasional difficulty with memory and decisions/choices requiring support, prompting or assistance. However, the individual has insight into their impairment.</p>	<p>Cognitive impairment (which may include some memory issues) that requires some supervision, prompting and/or assistance with basic care needs and daily living activities. Some awareness of needs and basic risks is evident. The individual is usually able to make choices appropriate to needs with assistance. However, the individual has limited ability even with supervision, prompting or assistance to make decisions about some aspects of their lives, which consequently puts them at some risk of harm, neglect or health deterioration.</p>	<p>Cognitive impairment that <u>could</u> include frequent short-term memory issues and maybe disorientation to time and place. The individual has awareness of only a limited range of needs and basic risks. Although they may be able to make some choices appropriate to need on a limited range of issues they are unable to consistently do so on most issues, even with supervision, prompting or assistance. The individual finds it difficult even with supervision, prompting or assistance to make decisions about key aspects of their lives, which consequently puts them at high risk</p>
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Annex A – Levels of Need

				of harm, neglect or health deterioration.
Psychological and Emotional Needs*	Psychological and emotional needs are not having a major impact on their health and well-being.	Mood disturbance, hallucinations or anxiety symptoms, or periods of distress, which are having an impact on their health and/or well-being but respond to prompts and reassurance OR Requires prompts to motivate self towards activity and to engage them in care planning, support, and/or daily activities.	Mood disturbance, hallucinations or anxiety symptoms, or periods of distress, which do not readily respond to prompts and reassurance and have an increasing impact on the individual's health and/or well-being OR Due to their psychological or emotional state the individual has withdrawn from most attempts to engage them in care planning, support and/or	Mood disturbance, hallucinations or anxiety symptoms, or periods of distress, that have a severe impact on the individual's health and/or well-being OR Due to their psychological or emotional state the individual has withdrawn from any attempts to engage them in care planning, support

Annex A – Levels of Need

			daily activities.	and/or daily activities.
Communication*	Able to communicate verbally or non-verbally. May require translation if English is not their first language.	Needs assistance to communicate their needs. Special effort may be needed to ensure accurate interpretation of needs or additional support may be needed either visually, through touch or with hearing.	Communication about needs is difficult to understand or interpret or the individual is sometimes unable to reliably communicate, even when assisted. Carers or care workers may be able to anticipate needs through non-verbal signs due to familiarity with the individual.	Unable to reliably communicate their needs at any time and in any way, even when all practicable steps to assist them have been taken. The person has to have most of their needs anticipated because of their inability to communicate them.

Annex A – Levels of Need

<p>Mobility*</p>	<p>Independently mobile but with occasional need for support.</p>	<p>Able to weight bear but needs some assistance and/or requires mobility equipment for daily living.</p>	<p>Not able to consistently weight bear OR Completely unable to weight bear but is able to assist or cooperate with transfers and/or repositioning OR In one position (bed or chair) for the majority of time but is able to cooperate and assist carers or care workers OR At moderate risk of falls (as evidenced in a falls history or risk assessment).</p>	<p>Completely unable to weight bear and is unable to assist or cooperate with transfers and/or repositioning OR Due to risk of physical harm or loss of muscle tone or pain on movement needs careful positioning and is unable to cooperate OR At a high risk of falls (as evidenced in a falls history and risk assessment) OR Involuntary spasms or contractures placing the individual or others at risk.</p>
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<p>Nutrition - food and drink*</p>	<p>Able to take adequate food and drink by mouth to meet most nutritional requirements.</p>	<p>Needs supervision, prompting with meals, or may need feeding and/or a special diet OR Able to take food and drink by mouth but requires additional/supplementary feeding.</p>	<p>Needs feeding to ensure adequate intake of food and takes a long time (half an hour or more), including liquidised feed OR Unable to take any food and drink by mouth, but all nutritional requirements are being adequately maintained by artificial means, for example via a non-problematic PEG.</p>	<p>Dysphagia requiring skilled intervention to ensure adequate nutrition/hydration and minimise the risk of choking and aspiration to maintain airway OR Subcutaneous fluids that are managed by the individual or specifically trained carers or care workers OR Nutritional status “at risk” and may be associated with unintended, significant weight loss OR Significant weight loss or gain due to identified eating disorder OR Problems relating to a feeding device (for example PEG.) that require skilled assessment and review.</p>
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<p>Continence*</p>	<p>Mostly continent of urine and faeces.</p>	<p>Continence care is routine on a day-to-day basis; Incontinence of urine managed through, for example, medication, regular toileting, use of penile sheaths, etc. AND is able to maintain full control over bowel movements or has a stable stoma, or may have occasional faecal incontinence/constipation.</p>	<p>Continence care is routine but requires monitoring to minimise risks, for example those associated with urinary catheters, double incontinence, chronic urinary tract infections and/or the management of constipation.</p>	<p>Continence care is problematic and requires timely and skilled intervention, beyond routine care (for example frequent bladder wash outs, manual evacuations, frequent re-catheterisation).</p>
<p>Skin Integrity (including tissue viability)*</p>	<p>Minor risk of pressure damage or skin condition.</p>	<p>Risk of skin breakdown which requires preventative intervention once a day or less than daily without which skin integrity would break down OR Evidence of pressure damage and/or pressure ulcer(s) either with 'discolouration of intact skin' or a minor wound OR A skin condition that requires monitoring or reassessment less than daily and that is responding to treatment or does not currently require treatment.</p>	<p>Risk of skin breakdown which requires preventative intervention several times each day, without which skin integrity would break down OR Pressure damage or open wound(s), pressure ulcer(s) with 'partial thickness skin loss involving epidermis and/or dermis', which is responding to treatment OR A skin condition that requires a minimum of daily treatment, or daily monitoring/reassessment to ensure that it is</p>	<p>Pressure damage or open wound(s), pressure ulcer(s) with 'partial thickness skin loss involving epidermis and/or dermis', which is not responding to treatment OR Pressure damage or open wound(s), pressure ulcer(s) with 'full thickness skin loss involving damage or necrosis to subcutaneous tissue, but not extending to underlying bone,</p>

			<p>responding to treatment.</p>	<p>tendon or joint capsule', which is/are responding to treatment OR Specialist dressing regime in place; responding to treatment.</p>
<p>Breathing*</p>	<p>Normal breathing, occasional issues with shortness of breath.</p>	<p>Shortness of breath which may require the use of inhalers or a nebuliser and has no impact on daily living activities OR Episodes of breathlessness that readily respond to management and have no impact on daily living activities.</p>	<p>Shortness of breath which may require the use of inhalers or a nebuliser and limit some daily living activities OR Episodes of breathlessness that do not respond to management and limit some daily living activities OR Requires any of the following: low level oxygen therapy (24%); room air ventilators via a facial or nasal mask; other therapeutic appliances to maintain airflow where individual can still spontaneously breathe e.g. CPAP (Continuous Positive Airways Pressure)</p>	<p>Is able to breathe independently through a tracheotomy that they can manage themselves, or with the support of carers or care workers OR Breathlessness due to a condition which is not responding to treatment and limits all daily living activities.</p>

			<p>to manage obstructive apnoea during sleep.</p>	
<p>Drug Therapies & Medication*</p>	<p>Symptoms are managed effectively and without many problems, and medication is not resulting in any unmanageable side-effects.</p>	<p>Requires supervision/administration of and/or prompting with medication but shows compliance with medication regime OR Mild pain that is predictable and/or is associated with certain activities of daily living. Pain and other symptoms do not have an impact on the provision of care.</p>	<p>Requires the administration of medication (by a registered nurse, carer or care worker) due to: non-concordance or non-compliance, or type of medication (for example insulin) or route of medication (for example PEG,) OR Moderate pain which follows a predictable pattern; or other symptoms which are having a moderate effect on other domains or on the provision of care.</p>	<p>Requires administration and monitoring of medication regime by a registered nurse, carer or care worker specifically trained for the task because there are risks associated with the potential fluctuation of the medical condition or mental state, or risks regarding the effectiveness of the medication or the potential nature or severity of side-effects. However, with</p>

				such monitoring the condition is usually non-problematic to manage OR Moderate pain or other symptoms which is/are having a significant effect on other domains or on the provision of care.
Altered States of Consciousness (ASC)*	No evidence of altered states of consciousness.	History of ASC but it is effectively managed and there is a low risk of harm.	Occasional (monthly or less frequently) episodes of ASC that require the supervision of a carer or care worker to minimise the risk of harm.	Frequent episodes of ASC that require the supervision of a carer or care worker to minimise the risk of harm OR Occasional ASCs that require skilled intervention to reduce the risk of harm.
Hygiene (washing/grooming)	Independent with occasional assistance required.	Some assistance required.	Most assistance required.	Full assistance required.
Dressing	Independent with occasional assistance	Some assistance required.	Most assistance required.	Full assistance required.

Annex A – Levels of Need

	required.			
Sleeping	Sleeps well, may require occasional supervision and/or assistance during the night	Sleeps well, may require occasional supervision and/or assistance during the night.	Requires reassurance during the night to settle, may require supervision and/or assistance during the night.	Unsettled nights, may be unaware of day and night, requires assistance to avoid disturbing other residents. May require repositioning and/or supervision and/or assistance, usually more than once, during the night.

* - category titles and wording based on the NHS Continuing Healthcare Decision Support Tool:

<https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

ANNEX B - EQUIPMENT IN CARE HOMES PROTOCOL

The Equipment in Care Homes Protocol is now a separate document and is available on the Kent County Council website:

<http://www.kent.gov.uk/business/grow-your-business/doing-business-with-kent-county-council/supply-goods-and-services/join-our-approved-suppliers-list/social-care-commissioning/specifications-and-terms>

ANNEX C - SHORT TERM BEDS

The Short Term Bed service will provide Short Term provision in our communities, offering a range of Residential and Nursing beds for the following purposes:

- carers can book a short break (Planned Respite), which must be booked at least 7 days in advance;
- emergency/crisis support can be provided, for example when a carer has to go into hospital or to prevent breakdown of the caring role (Emergency Respite);
- individuals can receive Intermediate Care Services from Health;
- Health and Social Care Professionals can assess individuals over a period of up to six weeks

The Service is being commissioned to primarily meet the needs of carers and individuals accessing our services within our older population but should also be made available to other adults where their Short Term needs can be facilitated within these settings and there is supply available.

The purpose of a Short Term Bed is to enable a Service User to return home or to be moved on to the right setting for that individual. Short Term Beds will be available to individuals following a hospital stay or to an individual who has experienced a health or social care crisis in their own home. They will also be available to be pre-booked for a carer's short break. Placements will be managed by a bed coordinator who will be employed by the Council and will be a central point of contact for all bed bookings.

Short Term Beds will be available for a maximum period of six weeks and during the period there will be no charge to the Service User, unless the bed is to be used for respite purposes. However, most people will stay for a shorter period than six weeks. Anyone staying longer than six weeks may be charged for the use of the bed.

The support need will be agreed prior to admission, however, there will be a period of assessment once the individual arrives at the care home and the Provider will be expected to create a Care and Support Plan, involving the Service User and/or their representative wherever possible and their key worker. The Provider will be responsible for the provision of care and support as detailed in the Council's Older Persons Residential and Nursing Care Homes Service Specification.

When the Short Term Bed is used for respite purposes, the Service User will be charged their assessed contribution (based on a standard residential/nursing rate, as appropriate) by the Council. Unless there are exceptional circumstances, respite placements are limited to four weeks per year as identified on the Service User's support plan.

Outcomes

Outcomes for the Service Users which are specific to this element of the Residential and Nursing service include:

- Service Users will be supported to return to a suitable provision or to return home following a stay in a Short Term Bed;
- Service Users will be made to feel welcome during their short stay;
- Service Users will be able to take part a range of appropriate, personalised, activities;
- Service Users will be offered opportunities to engage in conversation with Staff and other residents;
- Service Users health will be maintained and/or improved.
- Service Users, with the support of the Intermediate Care Team, will have a detailed assessment of their needs completed and an appropriate Care and Support Plan identified for implementation by the Provider and visiting professionals;
- An effective Care and Support Plan will be created for Service Users within 48 hours of them accessing the Short Term Bed, wherever possible involving the Service User and/or their representative in the creation of their Care and Support Plan;
- Service Users will be enabled to carry out everyday tasks, such as making their bed or making a cup of tea and transferring this safely from one place to another;
- Service Users will be able to have a varied and healthy diet and be supported to be able to exercise (where appropriate);
- Service Users will be enabled to get in and out of bed as independently as possible;
- Service Users will be enabled to get in and out of a chair as independently as possible;
- Service Users will not feel vulnerable during their stay;
- Service Users will feel confident and safe during their stay;
- Service Users will be assisted to integrate into the home by the Provider ensuring that a key worker is on duty when the Service User is admitted; and
- Service Users will be enabled to communicate their likes and dislikes.

In order to support the outcomes required within the context of a Short Term Bed Providers will:

- Identify one key worker to work with the Service Users accessing the Short Term Beds. If the key worker is not working, a secondary key worker will be available so that there is always someone known to the Service User;
- Ensure that there is a process to record preference information;
- Ensure Staff are able to make time to have conversations with individuals;
- Work within a multi-disciplinary approach for Support planning and review processes;
- Work with the Intermediate Care Team and the Service User's Case Manager with regard to intermediate care placements to achieve the outcomes agreed with the Service User and any other professionals involved;

- Support the Service User to meet dietary and/or exercise plans/regimes that have been developed by health professionals;
- Ensure that the room has a variable height bed with appropriate mattress and that variable height chairs, or blocks to allow chairs to be raised in height, are available for use;
- Provide space for the safe storage of equipment;
- Ensure that there are processes and policies in place to safeguard individuals accessing the Short Term Beds;
- Ensure that Staff are trained to a suitable level;
- Ensure that the Service User is supported to maximise their independence;
- Ensure that there is limited impact on permanent Residents;
- Ensure that, as part of the Care and Support Plan, Staff are aware of tasks that Service Users want to continue to carry out;
- Ensure that staff are able to support Service Users to carry out tasks, supporting Service Users that access the Short Term Beds rather than care for them; and
- Ensure that communications are appropriate to an individual's needs.

To ensure that service meets the requirements of the specification the Service Provider will;

- manage the referral process prior to commencement of the contract to enable immediate use of the beds commissioned, carrying out appropriate ongoing assessments where necessary;
- ensure beds within single rooms are available and suitable for the provision of an assessment, intermediate service or a short break in the care home;
- have the beds, within single rooms, purchased by us, available at all times during the contract period;
- ensure that the care home's designated GP is responsible for any medical emergency arising whilst the Service User occupies the Short Term Bed;
- in all cases visit the individual prior to discharge to ensure that they can meet their needs, as per the Regulator's requirements;
- commence discharge planning from the care home upon admission to the Short Term Bed and set a date of discharge;
- not be responsible for transport to the Short Term Care bed, which is arranged via the referrer (transport back home following the short term placement is the responsibility of the Service User or their representative);
- work with the Council's bed coordinator to record any occasions where the Provider is unable to accept a Service User into a Short Term Bed and the reason for this refusal; and
- evidence a performance monitoring process to ensure a high quality service.

ANNEX D - BARIATRIC BEDS

The Bariatric and Physical Disability Short Term Bed (BPDSTB) service shall provide Short Term provision in our communities offering a range of Residential and Nursing beds for the following purposes:

- carers can book a short break (Planned Respite), which must be booked at least 7 days in advance;
- emergency/crisis support can be provided, for example when a carer has to go into hospital or to prevent breakdown of the caring role (Emergency Respite);
- individuals can receive Intermediate Care Services from Health;
- Health and Social Care Professionals can assess individuals over a period of up to six weeks

The Service is being commissioned to primarily meet the needs of carers and individuals accessing our services within our older Bariatric population and for adults with a Physical Disability but should also be made available to other adults where their Short Term needs can be facilitated within these settings and there is supply available.

The purpose of a BPDSTB is to enable a Service User to return home or to be moved on to the right setting for that individual. A single BPDSTB will be available to individuals following a hospital stay or to an individual who has experienced a health or social care crisis in their own home. They will also be available to be pre-booked for a carer's short break. Placements will be managed by a bed coordinator who will be employed by the Council and will be a central point of contact for all bed bookings.

Each BPDSTB will be available for a maximum period of six weeks for each Service User for the purposes of assessment and/or targeted interventions by Health and Social Care professionals and during the period there will be no charge to the Service User, unless the bed is to be used for respite purposes. However, most people will stay for a shorter period than six weeks. Anyone staying longer than six weeks may be charged for the use of the bed.

The support need will be agreed prior to admission, however, there will be a period of assessment once the individual arrives at the care home and the Provider will be expected to create a Care and Support Plan, involving the Service User and/or their representative wherever possible and their key worker. The Provider will be responsible for the provision of care and support as detailed in the Council's Older Persons Residential and Nursing Care Homes Service Specification.

When the BPDSTB is used for respite purposes, the Service User will be charged their assessed contribution (based on a standard residential/nursing rate, as appropriate) by the Council. Unless there are exceptional circumstances, respite placements are limited to four weeks per year as identified on the Service User's support plan.

Room requirements

The Service Provider shall deliver a single ground floor respite care bedroom and en-suite flush-floor shower room and WC which can meet the needs of a Bariatric Service User or a Service User with a Physical Disability.

Access

Minimum clear door opening of 1800mm (recommended split door of 1200mm and 600mm) is required to allow 'side on' access via the communal hallway.

Doors to open into the room with 180 degree hinges to ensure they do not obstruct access.

Level threshold to ensure a bariatric motorised wheelchair can be manoeuvred smoothly and easily over it.

Bedroom

The room will need to be able to accommodate two carers and the following equipment: a bariatric profiling bed accessible from both sides; a static bariatric riser recliner chair with access to both sides; a bariatric dining chair and a bariatric commode chair which can be used in the bedroom area or within the shower area and over the WC. The room layout shall have sufficient space for a Service User to move around using a bariatric motorised wheelchair.

Hard washable flooring, (not suspended because of weight tolerances and therefore room must be on the ground floor), to allow for ease of manoeuvring of wheelchair and shower/commode chair and to ensure hygiene can be maintained where a Service User may suffer from weeping cellulitis.

H track bariatric ceiling mounted hoist installed allowing access to all parts of the room when a Service User is non-weight bearing and where the room shape does not allow for furniture to be positioned in a straight line for transfers. Service Provider to ensure that S, M, L, XL and XXL slings are available for use with the H track bariatric ceiling mounted hoist.

Shower Room

Ideally, the shower room shall be an integral part of the bedroom, approached by an 1800mm split door positioned on an angle to the bedroom.

The shower room will need to allow space for 2 carers and manoeuvring of the bariatric shower chair within the shower area and over the WC.

All grab handles shall be attached to reinforced walls with expanded weight tolerances.

Communal Access and Social Areas

There shall be level access and adequate manoeuvring space within communal areas and corridors leading to the Service User's own bedroom to enable the Service User to access their room initially and to socialise and eat with other residents during their stay.

It should be noted that a bariatric wheelchair can be difficult to negotiate around bends and shall require a wide turning circle.

The Service Provider shall ensure that when a Bariatric Service User is occupying the room a bariatric dining or lounge chair is provided for use in the communal lounge to facilitate social interaction with other Service Users.

Storage

There shall be adequate storage space for equipment that is not required for individuals at the time outside of the room. This equipment shall include hoist slings, a pressure mattress or a commode/shower chair if a Service User is ambulant and is expected to include the specialist Bariatric equipment when it is not required, for example when a non-Bariatric Service User is occupying the room.

The provider shall arrange the safe storage and transfer of furniture and equipment as necessary in the timeframe between different Service Users occupying the bed.

Equipment

The Service Provider shall provide, service and maintain the essential equipment including specialist bariatric equipment: bariatric profiling bed with removable bed guards and pressure relieving mattresses and appropriate bedding; bariatric dining chair; bariatric riser recliner lounge chair; bariatric dining chair; bariatric commode/shower chair and H track bariatric ceiling hoist. Essential bariatric equipment should have at least a 40 stone / 252kg weight tolerance.

The Service Provider shall provide, service and maintain the essential standard nursing equipment for Service Users with a Physical Disability.

The Service Provider shall be responsible for the cleaning of the room and equipment and shall ensure that the room and equipment is maintained to meet hygiene standards.

Outcomes

Outcomes for the Service Users which are specific to this element of the Residential and Nursing service include:

- Service Users will be supported to return to a suitable provision or to return home following a stay in a Short Term Bed;
- Service Users will be made to feel welcome during their short stay;
- Service Users will be able to take part a range of appropriate, personalised, activities;
- Service Users will be offered opportunities to engage in conversation with Staff and other residents;
- Service Users health will be maintained and/or improved.
- Service Users, with the support of the Intermediate Care Team, will have a detailed assessment of their needs completed and an appropriate Care and Support Plan identified for implementation by the Provider and visiting professionals;
- An effective Care and Support Plan will be created for Service Users within 48 hours of them accessing the Short Term Bed, wherever possible involving the Service User and/or their representative in the creation of their Care and Support Plan;
- Service Users will be enabled to carry out everyday tasks, such as making their bed or making a cup of tea and transferring this safely from one place to another;
- Service Users will be able to have a varied and healthy diet and be supported to be able to exercise (where appropriate);
- Service Users will be enabled to get in and out of bed as independently as possible;
- Service Users will be enabled to get in and out of a chair as independently as possible;
- Service Users will not feel vulnerable during their stay;
- Service Users will feel confident and safe during their stay;
- Service Users will be assisted to integrate into the home by the Provider ensuring that a key worker is on duty when the Service User is admitted; and
- Service Users will be enabled to communicate their likes and dislikes.

In order to support the outcomes required within the context of a Short Term Bed Service Providers will:

- Identify one key worker to work with the Service Users accessing the Short Term Beds. If the key worker is not working, a secondary key worker will be available so that there is always someone known to the Service User;
- Ensure that there is a process to record preference information;
- Ensure Staff are able to make time to have conversations with individuals;
- Work within a multi-disciplinary approach for Support planning and review processes;
- Work with the Intermediate Care Team and the Service User's Case Manager with regard to intermediate care placements to achieve the outcomes agreed with the Service User and any other professionals involved;
- Support the Service User to meet dietary and/or exercise plans/regimes that have been developed by health professionals;

- Ensure that the room has a variable height bed with a mattress that is appropriate to the needs of the Service User, including the use of bed guards if there is a risk of rolling/falling;
- Ensure variable height chairs, or blocks to allow chairs to be raised in height, are available for use;
- Provide space for the safe storage of equipment outside of the room;
- Ensure that there are processes and policies in place to safeguard individuals accessing the Short Term Beds;
- Ensure that Staff are trained to a suitable level, including moving and handling techniques, use of the H track bariatric hoist and the other specialist bariatric equipment;
- Ensure that the Service User is supported to maximise their independence;
- Ensure that there is limited impact on permanent Residents;
- Ensure that, as part of the Care and Support Plan, Staff are aware of tasks that Service Users want to continue to carry out;
- Ensure that staff are able to support Service Users to carry out tasks, supporting Service Users that access the Short Term Beds rather than care for them; and
- Ensure that communications are appropriate to an individual's needs.

To ensure that service meets the requirements of the specification the Provider will;

- manage the referral process prior to commencement of the contract to enable immediate use of the beds commissioned, carrying out appropriate ongoing assessments where necessary;
- ensure beds within single rooms are available and suitable for the provision of an assessment, intermediate service or a short break in the care home;
- have the beds, within single rooms, purchased by us, available at all times during the contract period;
- ensure that the care home's designated GP is responsible for any medical emergency arising whilst the Service User occupies the Short Term Bed;
- in all cases visit the individual prior to discharge to ensure that they can meet their needs, as per the Regulator's requirements;
- commence discharge planning from the care home upon admission to the Short Term Bed and set a date of discharge;
- not be responsible for transport to the Short Term Care bed, which is arranged via the referrer (transport back home following the short term placement is the responsibility of the Service User or their representative);
- work with the Council's bed coordinator to record any occasions where the Service Provider is unable to accept a Service User into a Short Term Bed and the reason for this refusal; and
- evidence a performance monitoring process to ensure a high quality service.

The cost of the BPDSTB Service shall not include such costs as the cost of telephone calls made by the Service User during their placement, or charges made by third parties to Service Users for services that the Service User chooses to receive (i.e. hairdressing); such charges should be made directly by the Provider to the Service User.

Performance Monitoring

The Service Provider shall provide reports to the Council on a quarterly basis detailing for that quarter:

- the bed occupancy including Service User information and type;
- Service User satisfaction survey results and any action taken as a result of feedback;
- evidence of activities offered and uptake of activities; and
- evidence of therapeutic input by professionals

Service User Feedback:

The Service Provider shall actively seek feedback from Service Users during their stay and upon discharge shall provide a feedback questionnaire establishing the Service Users' level of satisfaction (on a 1- 4 scale where: 1 = very dissatisfied, 2 = dissatisfied, 3 = satisfied and 4 = very satisfied) with each of the following:

- equipment and room;
- nursing/personal care provided by the Staff;
- relationship with the key worker;
- activities offered; and
- overall level of satisfaction of the service

The feedback questionnaire shall provide an opportunity for the Service User to comment on any areas where they felt dissatisfied (a score of 1 or 2) and also a space for suggested improvements. The Service Provider shall retain the original completed questionnaires for a period of one calendar year.

ANNEX E - DAY SERVICES

The Day Service as specified in this document relates to a service being provided in or from a Residential or Nursing care home. This document forms part of the Older Persons Residential and Nursing Care Home Service Specification and is an appendix to the requirements within the main Specification in terms of Workforce, Safeguarding, Health and Safety, etc unless otherwise specified below.

Introduction

An effective Day Service should aim to provide a service for older persons, including those living with dementia, which promotes individual health, wellbeing and independence. The service should aim to ensure that individuals can participate in and help steer the services provided, taking into account their specific needs. The Day Service should also enable Service Users to make informed decisions and to facilitate access to services across the health, social and voluntary sectors. The specific service for each Service User must be delivered in accordance with the requirements of the Service Delivery Order and the Care and Support Plan provided by the Case Manager, and must not be significantly varied without the prior agreement of the Case Manager and the Service User. Case Managers monitor compliance to Service Delivery Orders through regular reviews.

To be eligible for the Day Service, the older person must meet Kent County Council's eligibility criteria. This service is primarily aimed at older persons who have a high level of need, but rules are relaxed in special cases where the need is felt to overcome barriers created by age, culture, disability or language.

Where services are provided as part of the main home, the existing Residents must be consulted to let people not living in the home join their service and participate in activities and lunch.

Where services are provided in a separate part to the main Residential or Nursing Care Home, it would not be expected for Residents to be consulted as it would be expected that the service would be run separately to the main Home activity.

The Purpose of the Service

The purpose of the Day Service is to support the older person in improving their quality of life, through promoting wellbeing and independence. The Day Service should assist the Service User to lead an independent and fulfilling life, help them to maintain their good health, and to promote and enhance effective personal support networks. The Day Service should support the Service User to take greater control of

their life and allow them to remain as independent as possible within their own home, the community and within their chosen way of life.

The Service User must be at the centre of all decisions about how they are supported. The Service Provider should provide services in such a way that the Service User is able to feel secure, confident and included in all decisions regarding the service provided to them.

Activities

Time must be spent with the Service User finding out what activities they would like to undertake.

Staff should create a lively, positive and changing environment, which is not bound by routine.

A range of activities must be provided that are appropriate to the needs and interests of the Service Users and should be enjoyable.

The following, non-exhaustive list, gives examples of the type of activities expected to be provided and could be part of the activities to the Residents living in the home:

- Exercises designed to maintain or improve physical abilities and wellbeing, e.g. seated or other exercise such as Tai Chi;
- Health promotion including health checks, falls screening, nutritional advice and where necessary straightforward rehabilitation programmes prepared by Community Assessment and Rehabilitation Team (CART) or other professionals must be followed;
- Social interaction, e.g. group activities/discussions and contact with local schools, charities etc.;
- Assisting Service Users to seek advice appropriately, e.g. security and safety in the home;
- Hobbies and interests, e.g. art, craft, internet access, speakers, music, newspapers;
- Additional services, such as hairdressing, toenail cutting and complementary therapy must be made available as required and will be paid for by Service Users.

In addition to the above, the following activities should be available to all people using the services, and must be available to people with mental health needs:

- Maintaining existing life skills as well as offering the opportunity to learn new skills;
- Ordinary activities of daily living within the day service, to enable Service Users to regain skills, such as cooking, gardening, washing up etc.;
- The activities on offer should be purposeful to take account of past history, interests and strengths;
- The service will support the use of life history work with the Service User and family/carer.

Required Outcomes

Working with you to achieve this aim, we have set the following four outcomes we require from the provision of the Day Service for Older Adults:

Self-Worth/Promoting Independence

Defined as:

The Service User being supported in the enhancement of their self-value. A Service User will feel valued if they are certain that the support they receive is from known and trusted people, whose allocation is managed, monitored and recorded. A Service User's feeling of self-worth is increased further by a service that enables the individual to be as self-determining as possible in all day to day matters, and also in the major decisions as to how they wish to live their life. Personal choice and autonomy define and express the way people live.

Ability to Realise Aspirations/Promoting Wellbeing

Defined as:

The Service User is encouraged to define and realise their own goals and aspirations and has the opportunity to engage in a range of activities that promote their individual physical and emotional health and wellbeing. A Day Service assists the Service User in their aspirations by supporting long-term learning or social opportunities; or shorter-term activities. A Day Service offers the Service User focussed encouragement, motivation and support in order to achieve these aspirations, and any practical assistance necessary for their facilitation.

Social Life/Reducing Social Isolation

Defined as:

The Service User has the right to choose how they spend their time and who they wish to socialise with. Often Service Users find their social opportunities are restricted due to lack of confidence, adequate information or restraints imposed by unmet needs. A Day Service assists the Service User to visit, use, contribute to and be valued members of the local community. With this support, the Service User feels more confident about facing new social experiences. A desirable outcome is that the Service User feels confident enough to participate in social opportunities without the need for support. A Day Service models, advises and supports Service Users with every day issues e.g. personal relationships.

Being Valued as a Member of One's Community/Promoting Social Inclusion

Defined as:

For the Service User, feeling confident and valued within their local community is key to successful independent living. The Service User has access to and is able to participate in the multitude of resources and social experiences which make up community life. A Day Care Service supports these aspirations in everyday community life; from supporting and participating in various activities including leisure, to assisting the Service User to become part of their community.

ANNEX F - KEY PERFORMANCE INDICATORS

	Expected Outcome	KPI Description	Target	Reporting Period
1	Providers proactively deal with all complaints, suggestions and compliments	<p>a) No. complaints recorded during the quarterly reporting period</p> <p>b) No. complaints responded to within 28 days of receipt</p>	100%	Quarterly
2	Residents receive committed, consistent, quality care	<p>a) No. staff employed at the care home (all staff) at the end of the quarterly reporting period</p> <p>b) No. care staff employed in the home at the end of the quarterly reporting period</p> <p>c) No. care staff who hold or who are working towards a qualification in Health and Social Care through the Qualifications Credit Framework (<i>Care staff includes any staff carrying out hands-on care i.e. care workers, seniors, team leaders</i>) at the end of the quarterly reporting period</p> <p>d) No. staff having completed or currently undertaking an induction in line with Skills for Care's Care Certificate</p>	100%	Quarterly

	Expected Outcome	KPI Description	Target	Reporting Period
3	Residents receive committed, consistent, quality care	a) No. of new staff employed within the care home during the quarterly reporting period b) No. staff leaving employment during the quarterly reporting period c) No. agency staff used during the quarterly reporting period d) No. days absence as a result of sickness during the quarterly reporting period e) No. staff employed on zero hours contracts at the end of the quarterly reporting period	Target to be set at the end of March 2017	Quarterly
4	Managers have the skills to lead and manage the service effectively	a) No. managers at the care home (include home manager, unit manager/s, deputy managers etc) at the end of the quarterly reporting period b) No. managers enrolled in or completed a leadership or management training programme at the end of the quarterly reporting period	100%	Quarterly
5	Any negative effects arising from unplanned hospital admissions are minimised	a) No. residents admitted to hospital via a planned admission during the quarterly reporting period b) No. residents admitted to hospital as an emergency during the quarterly reporting period	Target to be set at the end of March 2017	Quarterly

	Expected Outcome	KPI Description	Target	Reporting Period
6	Residents are safeguarded from physical and emotional abuse, harassment, neglect and self-harm	a) All staff are subject to an enhanced DBS check prior to commencing employment b) All staff receive Adult Protection Training Level 1 within 12 weeks of commencement of employment	100%	Quarterly
7	Short-term residents move on from the service in a planned way	a) No. short term placements made during the quarterly reporting period b) No. short-term placements resulting in a return home (e.g. own home, extra care scheme, retirement housing) during the quarterly reporting period	Target to be set at the end of March 2017	Quarterly

	Management Information	
1	No. of permanent residents	Quarterly
2	No. of permanent self-funding residents	Quarterly
3	No. of permanent KCC funded residents	Quarterly
4	No. of permanent CHC funded residents	Quarterly
5	No. of permanent residents funded by other local authorities	Quarterly
6	No. of beds registered with CQC	Quarterly

Annex E – Day Services

7	No. of DoLS applications made during the quarterly reporting period	Quarterly
8	No. of DoLS applications made but not yet granted standard authorisation during the quarterly reporting period	Quarterly

ANNEX G - REFERENCE SECTION

The following is a summary of the regulatory information on specific items shown in the Specification. Statutes and statutory instruments can be downloaded free at <http://www.legislation.gov.uk>

Statutes:

- Care Act 2014
- Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2015
- Care Standards Act 2000
- Race Relations Amendment Act 2000
- Data Protection Act 1998
- Human Rights Act 1998
- Public Interest Disclosure Act 1998
- Disability Discrimination Act 2005
- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR)
- Management of Health and Safety at Work and fire precautions (workplace) (Amendment) Regulations 2003
- Management at Work Regulations 1992
- Manual Handling Operations Regulations 1992
- Personal Protective Equipment Regulations 2002
- Provision and Use of Workplace Equipment Regulations 1998
- Lifting Operations and Lifting Equipment Regulations 1998
- Workplace (Health Safety and Welfare) Regulations 1992
- NHS & Community Care Act 1990
- Control of Substances Hazardous to Health Regulations 2002
- Sex Discrimination Act 1986
- Mental Health Act 2007
- Race Relations Act 1976
- Health and Safety at Work etc Act 1974

Staff:

- Criminal Records Bureau Disclosure Service 2000
- Care Standards Act 2000
- National Minimum Wage Act 1998 and Regulations 1999
- Working Time Regulations 1998
- Public Interest Disclosure Act 1998 (Whistle Blowing)
- Part V Police Act 1997
- Employment Rights Act 1996
- Rehabilitation of Offenders Act 1974
- The Provision and Use of Work Equipment Regulations (1998)
- National Association for the Care and Resettlement of Offenders leaflet

Catering facilities:

- The Food Safety and hygiene (England) (Amendment) Regulations 2014
- Food Safety Act (1990)
- Food Safety (General Food Hygiene) Regulations 1995

Other Documents:

- Multi-agency Safeguarding Adults Policy, Protocols and Guidance for Kent and Medway
<http://www.kent.gov.uk/social-care-and-health/information-for-professionals/adult-protection/adult-protection-forms-and-policies/national-adult-protection-legislation>
- Managing Medical Devices - Guidance for healthcare and social services organisations:
<http://www.dhsspsni.gov.uk/dbni-2014-02.pdf>
- A NICE–SCIE Guideline on supporting people with dementia and their carers in health and social care
<http://www.scie.org.uk/publications/misc/dementia/dementia-fullguideline.pdf>

Links to Websites:

- Kent online care directory:
<http://local.kent.gov.uk/kb5/kent/directory/results.page?adultchannel=0>
- CQC:
www.cqc.org.uk
- NHS England:
<http://www.england.nhs.uk/>
- The National Institute for Health and Care Excellence:
www.nice.org.uk
- Skills for Care:
www.skillsforcare.org.uk
- Information regarding Social Care-Related Quality of Life domains and the ASCOT tool:
<http://www.pssru.ac.uk/ascot/index.php>

Schedule 2

Pricing

1. Guide Prices

The Guide Prices are formally agreed in February each year once the Council has confirmed the annual budget.

The Council can confirm that the current residential and nursing Guide Prices for the County of Kent are:-

Residential Care	Guide Price
Older Person Residential Needs	£399.82
Older Person Residential High Needs	£487.53
Older Person Nursing Needs	£544.72
Older Person Nursing High Needs	£572.29

The Guide Prices will also be taken into consideration for out of county placements made by the Council.

2. National Living Wage

Providers are expected to have considered the impact on the National Living Wage when submitting their Indicative Prices.

3. Indicative Price

All prices shall be fully inclusive to deliver the specified services.

All prices shall be exclusive of VAT.

The Indicative Price for each Lot will be set, fixed and firm from the date the Contract is executed by the Parties and will be reviewed in line with Section 4 of this Schedule.

Providers **cannot** exceed their Indicative Price for an individual placement funded by the Council, which includes those who have their own means. This includes people who are placed and pay the Council the full cost of their placement, people who are accepted to the Deferred Payments Scheme and any other placement where the Council has a Contract with the Care Home for an individual. Failure to comply with this may result in sanctions in accordance with Schedule 6.

4. Indicative Price Review

The Provider can, through the Dynamic Purchasing System, alter their Indicative Price(s). The Provider can submit new Indicative Price(s) via the Kent Business Portal on 1 October and 1 April each year.

The revised Indicative Price(s) will be re-evaluated together with the revised quality score, as outlined in Schedule 6 Contract Management, on the above dates to take into account the new overall tender score. Indicative Prices will not be adjusted if a Quality and Capability Questionnaire has not been submitted.

Acceptance of the revised Indicative Price will not alter the price for **any** existing Service User.

The Council will publish the overall ranking of all Providers on the DPS on the Kent Business Portal.

5. Existing Service Users and Price Reviews

The Council shall adjust the Guide Price for each Need Category in April of each Contract Year by multiplying the relevant amount by the percentage change in the CPI published for the 12 months ended on 31 December prior to the start of the applicable Contract Year.

Where a Providers Indicative Price is equal to the current Guide Price, this will automatically be increased to the new Guide Price.

For the annual review, all Individual Placement Contract Prices will be increased by the rate determined by the CPI published for the 12 months ended on 31 December prior to the start of the applicable Contract Year.

6. Treatment of Former Self-Funders

If a self-funder's wealth depletes and they become eligible for the Council's funding, the price payable in respect of the Service User will temporarily revert to the Providers Indicative Price.

The Council will then decide on the sustainability of the placement at this rate and will use the relevant Guide Price and average placement prices to negotiate the appropriate rate with the Provider and if necessary seek alternative arrangements.

Providers should not expect that Former Self-Funders revert and remain at their Indicative Price for the relevant category Level of Need and the Council will look to obtain the best price and reserves the right to move Service Users.

Where appropriate, a new placement may need to be sought and the Individual Placement Process will be followed as documented in Schedule 4.

7. Treatment of Individuals eligible for Deferred Payments

In some cases, an existing resident privately funded may apply and become eligible for Deferred Payments. Where this is the case, the price payable in respect of the

individual will automatically revert to the Providers Indicative Price for the relevant category Level of Need.

For new placements, where the Individual Placement Process has been followed and an individual is eligible for Deferred Payments, the price agreed is the price determined through the Individual Placement Process.

To ensure a Providers compliance with the terms of this Contract, there may be a need to arrange for a Bespoke Contract in exceptional circumstances . This will be on approval from the Head of Commissioning.

Please complete the schedule below for the service(s) that are being tendered for.

**Where a service is not being provided please enter 'N/A'.
Please complete a separate schedule for each Care Home where you are providing the service.**

Care Home Name: _____

Residential services - Unit Price per Resident per Week

<i>Lot 1</i>	Long Term (£)	Short Term/Respite (£)
Residential Needs		
Residential High Needs		

Nursing services - Unit Price per Resident per Week

<i>Lot 2</i>	Long Term (£)	Short Term/Respite (£)
Nursing Needs <i>(not including FNC)</i>		
Nursing High Needs <i>(not including FNC)</i>		

Bariatric care services - Unit Price per Resident per Week

<i>Lot 3</i>	Short Term (£)
Bariatric Needs	

Respite care services (Block contract) to be contracted in multiples of two beds, with the requirement that beds are to be in a Care Home within a 15 mile radius of a Kent or Medway Acute Hospital site - Unit Price per Bed per Week

<i>Lot 4</i>	Minimum No. of beds	Maximum No. of beds	Respite (£)
Residential Needs			
Residential High Needs			
Nursing Needs			
Nursing High Needs			

Day Services in a Residential setting - Unit Price per Resident per Session

<i>Lot 5</i>	Minimum No. of placements	Maximum No. of placements	Half Day Session (£)	Full Day Session (£)
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				

Saturday				
Sunday				

8. Payment & Invoicing Arrangements

On placement of a Service User, the Council will issue you with a Financial Activation Notice (FAN) letter.

On the first day after the payment cycle recorded on the FAN letter ends, the Provider will be responsible for sending an invoice for the agreed weekly amount.

On receipt of the invoice by the Council, we will pay the Provider once every four weeks (two weeks in advance and two weeks in arrears) by BACS (Bankers' Automated Clearing Services).

The Council does not currently operate e-billing however it may do so during the term of this contract. Therefore it is not currently a mandatory requirement for the Provider to operate such a system, although the Council requires that Providers highlight their ability to operate e-billing. This ability will require the submission of batches of invoices by electronic means i.e. enclosed in an e-mail or posted to a dedicated web server. This must be in a consistently structured file e.g. XML, CSV and EDI which contains all data necessary to process the invoice and meets statutory requirements.

This data will cover the following areas as a minimum:

- The nature of the charge (e.g. long term placement, respite)
- The basis of charge (e.g. number of weeks, individual placement contract price)
- Dates where appropriate (e.g. placement start/end dates)
- Unit costs and quantities
- Invoice references (number and date)
- Delivery/Invoice addresses
- VAT codes and rates at line level
- VAT codes, rates and amounts at invoice summary and batch level
- Statutory information (e.g. Provider's VAT number)
- Provider identification
- Batch control totals

9. Guide Price Review & Indexation

The Council shall adjust the Guide Price for each Need Category, as specified above, with effect from April of each Contract Year (starting from April 2017) by multiplying the relevant amount by the percentage average change in the CPI (Consumer Price Index) prior to the start of the applicable Contract Year.

This Guide Price review will occur prior to the Price Review as outlined above, to allow any Providers whose Indicative Price is at the current Guide Price to at least equal the new Guide Price. Any existing Service Users below the Guide Price will be raised to equal the new Guide Price and this will commence at the beginning of the applicable Contract Year.

Irrespective of any increase in Care Home costs the Council shall not be required to increase the Guide Price and/or Prices for existing Service Users, if there is no corresponding increase in the budget available for the Services and dependent on required authorisation by the Councils elected Members in relation to any increase to the Guide Price. Any agreed Guide Price increases will be capped at the average CPI rate (12 months).

10. Glossary and Definitions

Bariatric Needs	A branch of medicine that deals with the control and treatment of obesity and allied diseases
Bespoke Contract	Placement agreed outside of the DPS Framework in exceptional circumstances, for a specific reason and usually time-limited
Block contract	Refers to the guaranteed purchase of the agreed beds. A Block Contract will usually carry with it a negotiated reduction in the Contract price. It will be monitored and reviewed regularly at intervals to be agreed with the Contract Manager
Day Services	A service to support Service Users to improve their quality of life and promote independence, assisting Service Users to lead independent and fulfilling lives, helping to maintain good health, and to promote and enhance effective personal support networks
Funded Nursing Care	The financial contributions from the NHS towards the costs of nursing care to which a Resident may be entitled. The precise amounts are set by Central Government and are subject to regular review. Also known as 'Registered Nursing Care Contribution'
CPI	Consumer Price Index is the official measure of inflation for consumer prices in the United Kingdom. CPI is the index which will be used by the Council when reviewing any increases to the Guide Price
Guide Price	The Guide Price is the amount that the Council usually expects to pay for Residential or Nursing care within Kent. It is determined by assessing the costs of care and is reviewed on a regular basis
Indicative Price	The Indicative Price is the ceiling or maximum price that a Provider on the DPS framework contract can charge for any Council funded placement. Providers set a price for a placement according to the individual needs of the person and the price of every placement should therefore be between the Guide Price and the Indicative Price

Long Term	A permanent placement of a Resident into a residential or nursing Care Home
Nursing High Needs	Refers to the needs and dependencies as defined in Specification Annex A – Levels of Need
Nursing Needs	Refers to the needs and dependencies as defined in Specification Annex A – Levels of Need
Resident	The person in receipt of a residential or nursing Care Home service
Residential High Needs	Refers to the needs and dependencies as defined in Specification Annex A – Levels of Need
Residential Needs	Refers to the needs and dependencies as defined in Specification Annex A – Levels of Need
Respite	A short-term placement for a person that is required urgently, for example due to a breakdown of a home care package or a change in the person's needs (Emergency Respite) or a short term placement for a person to give the carer and the cared for person a period of respite, as far as is possible on dates of their choosing e.g. for a family holiday (Planned Respite)
Service User	A person aged 65 years or over who has been found on assessment to be in need of accommodation together with care and to qualify under our eligibility criteria for our financial support
Short Term	A placement of up to 6 weeks to enable a Resident to return home or to be moved on to the right setting for that individual, either following a hospital stay or where an individual has experienced a health or social care crisis in their own home

Schedule 3

Individual Placement Contract Conditions

This Individual Placement Contract (“IPC”) forms part of the main Contract and the two documents shall be read to be mutually explanatory of one another.

Definitions

Care and Support Plan	The plan produced by the Case Manager that gives particulars of the intended outcomes for the Service User meeting his or her needs which the Provider is required to deliver
Case Manager	The person the Council has deployed to arrange and review residential or nursing care for people who have been found on the assessment to be owed a duty under the Care Act 2014 (Chapter 23, Part 1, Section 18)
Contract Manager	The person appointed and nominated from time to time by the Council to oversee and supervise the management of this Contract.
Dynamic Purchasing System (“DPS”)	The tender process used by the Council for the procurement of the Services in accordance with the Public Contracts Regulations 2015
Financial Activation Notice (FAN)	The form that shall be issued by the Council and shall trigger the first payment to the Provider. It confirms the Individual Placement Contract Price
Gross Price	The total amount the Council shall pay for the Individual placement Contract Price including any other Third Party Contribution
Home	The Care Home registered with the Regulator to provide care for older persons with or without Nursing
Indicative Price	The Indicative Price is the maximum price (or not to exceed price) that a Provider on the DPS framework contract can charge for any Council funded placement. Providers set a price for a placement according to the individual needs of the person and the price of every placement should therefore be between the Council Guide Price and the Indicative Price
Individual Placement Contract	The agreement between the Council and the Provider in respect of the Service User’s placement within the Home.
Individual Placement Contract Price	The contract price the Council shall pay for individual placements.
Long Term	The stay of Service User in the Home where it is considered their place of residency

Notice Period	The period where notification to end a placement is given by either the Provider or the Council in accordance with the conditions set out in clause 4
Personal Expenses Allowance	The benefit paid by the Department of Work and Pensions to a Service User for his or her personal use
Provider	The company or organisation providing the Services to the Council
Reassessment	Re-assessment of individual Service User's needs carried out by the Council's Case Manager
Registered Manager	Refers to the person managing the home on a daily basis as registered with the Regulator
Service User	The person usually aged 65 years or over who has been found on assessment to be in need of accommodation together with care and to qualify under our eligibility criteria for the Council's financial support
Specification	The Council's specification for Older Persons Residential Care as described in the Contract and as set out in Schedule 1
Staff	Refers to the group of people, working under the direction of the Provider's Key Personnel including its Registered Manager responsible for delivering care and support to the Service User's specific outcomes together with employees, volunteers and Agency workers
Third Party	The person who the Council names as making the Third Party Contribution
Third Party Contribution	The sum that a Third Party agrees to pay to the Council where the Individual Placement Contract Price of a Service User's preferred Care Home is more than the Council would usually expect to pay
Trial Period	The first 28 consecutive days of a Service User's long term, permanent placement

1 Start and Duration of Individual Placement

- 1.1 The Council shall include the start date of the placement within the Financial Activation Notice ("FAN").
- 1.2 The parties agree that the placement shall last until the Service User leaves the Home in accordance with clauses 4 or 7.

- 1.3 The Provider shall not move a Service User to another bedroom in the Home or to other accommodation unless an emergency necessitates it or if the Service User and Case Manager's consent is gained beforehand in writing.

2 Individual Placement Contract Price

- 2.1 The Council shall be responsible for paying the Gross Price for each Service User placed under the arrangement who receives the Service as specified in their individual Care and Support Plan.
- 2.2 Under this agreement, the Provider is not permitted to request or take any other Contribution above the Individual Placement Contract Price, either directly from the Service User or from a Third Party as it is included within the Gross Price paid by the Council.

3 Payment Arrangements

- 3.1 On placement of a Service User, the Council shall issue the Provider with a FAN
- 3.2 On the first day after the payment cycle recorded on the FAN ends, the Provider shall be responsible for sending an invoice for the agreed weekly amount.
- 3.3 On receipt of the invoice by the Council, the Council shall pay the Provider once every four weeks (two weeks in advance and two weeks in arrears) by banks' automated clearing system (BACS) and in accordance with the Contract and Pricing Schedule.
- 3.4 The Provider will be responsible for recovering the Registered Nursing Care Contribution element of payment direct from the relevant Clinical Commissioning Group, for any Service User who has been assessed in accordance with the NHS-funded Nursing Care Practice Guide.

4 Termination of a Placement

- 4.1 Either the Council or the Provider may terminate a Short Term (i.e. Trial Period, Assessment Bed, Emergency Respite bed etc) IPC by giving to the other party at least 5 Working Days' notice in writing, or at least 2 Working Days' notice if the placement is for less than a week.
- 4.2 In the case of Longer Term placements the Council may terminate an IPC by giving the Provider at least 20 Working Days' notice in writing in the event that the Council considers that the Service User no longer requires the Service, in line with Schedule 9 and the escalation process outlined.
- 4.3 Where both parties agree that the needs of the Service User change to the extent that the Home is no longer able to provide appropriate care either the Council or the Provider may terminate a Long Term IPC without notice. Payment will continue until such time that a new placement is sourced as per Schedule 4 Individual Placement Process and will cease on the date that the Service User leaves the home.
- 4.4 If any of the parties fail to provide the requisite notification as set out in clauses 4.1 and 4.2 then such party shall be responsible for paying to the other party the full notice period or number of outstanding days remaining, unless agreed in writing between the Provider and the Contract Manager.

- 4.5 If the Service User's condition or behaviour is having a persistent and detrimental effect on the well-being of other Service Users then the Provider shall inform the Case Manager in writing within 48 hours. The Council will work with the Provider to enable additional short term support to be provided as an alternative to terminating the placement, through an exceptional payment mechanism if required. The Provider may terminate an IPC without notice only when a Service User's condition or behaviour continues to have a persistent and detrimental effect on the well-being of other Service Users despite any additional support provided and the Case Manager has not arranged alternative accommodation within 20 Working Days after a written request has been issued by the Provider to the Council.
- 4.6 The Council may terminate an IPC without notice in the event that the Service User has to be moved due to closure of the Home. Payment will cease on the date that the Service User leaves and no payments will be made past the date of the closure of the Home.

5 Temporary Absence from the Home

- 5.1 The IPC may be reviewed where a Service User becomes absent from the Home for a continuous period of more than forty two (42) days in the case of hospitalisation or twenty one (21) days in the case of other absences or in the case of any such other period as agreed between the Provider and the Case Manager.
- 5.2 For placements over the periods stated in Clause 5.1, the Individual Placement Contract Price shall be reduced by 25%, until the Service User returns to the Home or the placement is terminated.
- 5.3 The Parties agree that they shall not re-let or otherwise use the Service User's allocated room during any absence without prior consent of the Service User, his or her representative.
- 5.4 For Service User's that have been hospitalised, should there be no change in need the home needs to make arrangements to accept that Service User the same day they are assessed for discharge.

6 Reassessment

- 6.1 On reassessment, any Service User that is identified by the Council as experiencing a significantly increased level of need, (as specified in the Specification, Annex A - Levels of Need), within a Care Home either with or without Nursing:
- 6.1.1 Can be accommodated within their existing home, with a revised Individual Placement Contract Price, or exceptional payment process for additional support, determined by the Council and agreed with the Provider.
- 6.1.2 Where the needs cannot be accommodated within the current Home an alternative Home will be sourced using the Council's purchasing protocols in place at that time.

7 Death or Discharge of a Service User

- 7.1 The Provider shall notify the Case Manager within 24 hours when a Service User either dies or discharges himself or herself from the Home.

- 7.2 When a Service User dies, the Individual Placement Contract shall come to an end two (2) days after his or her death (counting from the first day after the day of death) or any other period agreed between the Provider and the Contract Manager.
- 7.3 The Provider shall contact the Service User's next of kin or where appropriate the local District or Borough Council to make necessary arrangements, including a funeral, upon the death of a Service User.
- 7.4 In the event a Service User discharges himself or herself from the Home, the date of discharge shall be deemed as the start of the period of notice from the Council as stated in clause 4.1 for a Short Term placement or 4.2 for a Longer Term placement.

8 Statutory obligations

- 8.1 Both Parties shall comply with all the relevant current and future legislation applicable to the provision of the Service.

9 Handling of Service User's Money

- 9.1 The Provider shall ensure that they shall inform the Case Manager if a Service User's capacity to manage his/her affairs diminishes.
- 9.2 As soon as the Provider becomes aware that a Service User has or acquires substantial financial or property assets, the Provider shall immediately inform the Case Manager in writing.
- 9.3 The Provider shall ensure that the Personal Expenses Allowance (i.e. the Service User's personal income) shall not be used to supplement the Individual Placement Contract Price that the Council pays the Provider for meeting the Service User's assessed care needs.
- 9.4 Any money handled by Staff on the Service User's behalf must be fully accounted for at all times and shall be held either in individual accounts for each Service User or in one account which is separate from the Provider business account/s and that all the Service User's records and receipts must be held in the Service User's personal record.
- 9.5 In the event that the Provider is administering finance on behalf of Service Users, the Provider shall ensure that any interest earned is given to the Service User within 30 days.
- 9.6 All essential toiletries shall be made available to all Service Users and shall ensure that should a Service User wish to purchase additional toiletries of their choice they should be allowed to do so.
- 9.7 The Provider must keep a documented record of all items which are purchased on behalf of the Service Users and shall allow the Council access to inspect at any time the Service User's expenditure and any income received by the Provider from the Service User in accordance with the Contract. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for periods specified in the main Contract.
- 9.8 The Provider will ensure that there are processes and procedures in place to ensure that its staff do not profit from any Service User's vulnerability. Such procedures shall

be produced to the Council on request and shall be in place for the duration of the Contract Period.

10 Probity

- 10.1 The Provider shall ensure that they have in place a written policy relating to probity and this should also form part of the terms and conditions of staff employed, including any agency staff and Sub-contractors.
- 10.2 All Staff shall not agree to be an executor of a Service User's will.
- 10.3 Staff or relatives of staff shall not accept gifts or agree to be a beneficiary of a Service User's estate and shall, if they are named as a beneficiary, report in writing to the Registered Manager and to the Service User's Case Manager immediately.
- 10.4 Staff and/or the Provider making any purchases on behalf of the Service Users shall not benefit from the purchases and shall ensure that any purchases are recorded as outlined in Clause 9.

11 Business Continuity

- 11.1 In accordance with the Civil Contingencies Act 2004 the Council is required to continue providing essential services such as housing support at all times regardless of emergencies or business interruptions. The Provider shall also have their own resilient contingency arrangements in place.
- 11.2 The Provider shall assist the Council in meeting these duties by:
 - 11.2.1 developing and adopting a Business Continuity Plan which complies with the Civil Contingencies Act 2004;
 - 11.2.2 operating the Business Continuity Plan for the duration of this Contract;
 - 11.2.3 providing the Council with a copy of any such plan upon request
- 11.3 The Provider acknowledges that its obligations under this Clause 11 shall include regular risk assessments and business impact analysis in relation to this Contract to be carried out on an annual basis or more frequently if the Council requests that additional testing be undertaken.

12 Closure of the Home

- 12.1 The Provider agrees that they shall provide the Contract Manager with three months' notice in the event of a planned closure of the Home, or as soon as it is known that there will be an actual or potential emergency closure of the Home.
- 12.2 Any costs incurred by the Council as a result of the closure of the Home will be reclaimed by the Council as set out in clause 9 of the Terms and Conditions.

Schedule 4

Individual Placement Process

This Individual Placement Contract (“IPC”) forms part of the main Contract and the two documents shall be read to be mutually explanatory of one another

Definitions

Case Manager	The person the Council has deployed to arrange and review residential care for people who have been found on the assessment to be owed a duty under the Care Act 2014 (Chapter 23, Part 1, Section 18)
Deferred Payment	The Deferred Payments scheme mainly applies to people in residential care and can help them avoid having to sell their former home to pay for their care. It enables an individual to defer or delay paying some or all of the cost of their care until a later date
Financial Activation Notice (FAN)	The form that shall be issued by the Council and shall trigger the first payment to the Provider. It confirms the Individual Placement Contract price
Former Self-funder	Service Users who have been paying the full cost of their care and their money has now reduced to below the upper capital limit. If they are ordinarily resident in Kent, they are entitled to a needs assessment with a view to financial support from the Council
Home	The Care Home registered with the Regulator to provide care for older persons with or without Nursing
Individual Placement Contract Price	The contract price the Council shall pay for individual Service User placements
Level of Need	The needs of the Service User as determined by the Case Manager using the Levels of Need document in the Specification Annex A
Long Term	The stay of Service User in the Home where it is considered their place of residency
Preferred list	The list of Care Homes, selected by the Service User and/or their representative, who will receive information regarding the assessment and potential placement of the Service User
Provider	The company or organisation providing the Services to the Council
Regulator	The body which is established by statute and to whose regulatory powers the Service Provider is subject. This is currently the Care Quality Commission (CQC)

Service User	The person usually aged 65 years or over who has been found on assessment to be in need of residential or nursing Care Home support and to qualify under the Council's eligibility criteria for the Council's financial support
Shortlist	The list that is sent to the Service User and/or their representative which identifies which Providers would be able to meet the assessed needs of the Service User according to the information provided by the Providers on the online care directory

1. Assessment of Service User

- 1.1 An Assessment will be completed by a Case Manager to determine the Level of Need of the Service User and their eligibility for funding by the Council.

2. Matching Process

- 2.1 The Case Manager will complete the information needed that confirms the Level of Need and any other specialist service required by the Service User.
- 2.2 A search will be undertaken using the Council's online care directory, using the location (area, place name or postcode) determined by the Service User, through assessment, as a reference point, for homes where Providers that have indicated that they provide a service which is able to meet the relevant needs and have a vacancy.
- 2.3 Where assessed, the search will also look for specialist services, as indicated by the Provider as a service that they can deliver, such as Parkinson's Disease, Huntingdon's Disease, Dementia, etc.
- 2.4 A Shortlist will be completed of homes that can potentially meet the needs of the Service User which will be provided to the Service User (and their representative if required). A minimum of three homes will be required for a Shortlist. If it is considered that there are insufficient responses based on the contracted Providers, a search of non-contracted providers may be required, which would include a preferred home if identified and not contracted.

3. Choice of Home

- 3.1 The Service User and/or their representative will be supported to identify their Preferred List.
- 3.2 Full assessment details of the Service User will be sent to the Providers on the preferred list by secure email with a request for a response within 24 hours where it is a short term placement or 48 hours in the case of a Long Term placement.
- 3.3 The Providers will respond by secure email to confirm:
- 3.4.1 that they can meet the needs shown on the full assessment;

3.4.2 that a vacant bed is available;

3.4.3 the Individual Contract Placement Price based on the assessed needs of the Service User

3.4 The Service User and/or their representative will be advised of the homes which are able to accept the placement and their prices.

3.5 The Case Manager and/or the Service User or their representative may arrange to view one or more of the homes prior to agreeing the placement. At this point the Provider may make their own arrangements to complete a pre-admission screening of the Service User.

3.6 Once a home has been chosen the Case Manager and/or the Service User or their representative will arrange a start date for the placement and the Case Manager will arrange the necessary paperwork to confirm the Contract.

4. Person already in a Care Home

4.1 Where a person already resides in a Care Home it is assumed that a contract will exist between the Provider and the Service User. Once the Service User's wealth depletes to the level where they could be eligible for local authority funding (a "Former Self-funder") the Individual Placement Process may be instigated in accordance with Schedule 2. The purpose of this is to establish a contractual relationship between the Provider and the Council.

4.2 Providing the person meets the minimum national eligibility criteria, financial support should start on the date that the Council's assistance was requested or later if the capital only depleted to the relevant level at a later date.

4.3 Similarly, where a person applies for a Deferred Payment the process may be followed to establish a contractual relationship and ensure that responsibility for payment to the home is clear.

4.4 Should the Service User be ineligible for a Deferred Payment, or if a Deferred Payment agreement is refused, the Council will inform the home and discuss how the contractual relationship can be confirmed between the Service User and the home.

4.5 The Provider will be responsible for assessing the financial viability of Service users who enter the service under a private arrangement. If the Service User's wealth depletes and they become eligible for the Council's funding, as a Former Self Funder, the price payable in respect of the Service User will automatically revert to the Providers Indicative price, as set out in Schedule 2.

4.6 In these circumstances the Provider must contact and inform the Council, within 14 days, with all relevant details.

Schedule 5

Change Control

1. "Change" shall mean any revision (including revision of any dates or alterations or additions to the Services or any part thereof) in the performance or delivery of the Services that does not arise consequent upon a failure by the Provider properly to carry out the Services in accordance with this Contract and shall be without prejudice to the generality of the Provider's obligations under this Contract.
2. The Council may in writing to the Provider request a Change setting out a detailed description of the Change sought ("Change Request Form") in the form set out in Appendix 1 below.
3. Within ten Working Days (or sooner if the urgency of the situation so dictates) of sending the written Change Request to the Provider, the Provider may confirm the effect such Change will have on the Services and what adjustment, if any, will be required to the Contract Price and any dates specified for performance or delivery of the Services or any part or aspect of them.
4. The Provider shall consider the Change Request at its own costs and without having any impact on the provision of the Services.
5. In effecting the Change the Parties shall take the following into consideration:
 - 5.1 a description of any further impact analysis work to be undertaken together with anticipated time scales and costs, if any.
 - 5.2 a description of the impact of the change or new requirement (as appropriate) quantified in terms of input required from each party, timescales, performance and cost.
6. No Change shall invalidate this Contract. This Contract shall continue in full force and effect (subject to any agreed Change).
7. Any Change involving an increase or decrease in the Contract Price and/or any dates specified for delivery of the Services or any part of them shall be deemed to have been made with effect from the date of the relevant acceptance by the Council as aforesaid.

Appendix 1: Contract Change Control Form

CCF NO / CONTRACT NUMBER.	TITLE:	DATE RAISED:
ORIGINATOR :		REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
DETAILED JUSTIFICATION FOR MAKING THE CHANGE :		
PROPOSED ADJUSTMENT TO THE PRICING WITH DETAILED COSTINGS RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL PRICING AND MEANS FOR DETERMINING THESE – THESE WILL BE BASED ON PROVIDER COSTS PLUS ACCEPTABLE MARGIN):		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY KEY PERFORMANCE INDICATOR'S AFFECTED:		
DETAILS OF IMPACT ON EXIT PLAN:		
DETAILS OF IMPACT ON SPECIFICATION :		
DETAILS OF IMPACT ON DOCUMENTATION :		
DETAILS OF ANY OPERATIONAL SERVICE IMPACT:		
DETAILED RISK ASSESSMENT:		
APPROVED FOR SIGNATURE:		
Name	Signature:	
Date:		
AUTHORISED ON BEHALF OF THE COUNCIL:	AUTHORISED ON BEHALF OF THE PROVIDER:	
Signature:_____	Signature:_____	
Name:_____	Name:_____	
Position:_____	Position:_____	
Date:_____	Date:_____	

Schedule 6

Contract Management

Overview

This Schedule sets out how the Contract will be managed and monitored during the Contract Period and may be modified by agreement of the Parties. Where applicable this Schedule will be read in conjunction with Schedule 9 Sanctions and Escalation Process. The Council will during the Contract Period monitor the improvement, compliance, sustainability and value added to the Services by the Provider. The Contract Manager will be based in the Commissioning team for Social Care, Health and Wellbeing. However, any changes throughout the lifetime of the Contract will be communicated to Providers.

The Contract Manager is accountable to senior management for maintaining a contractual relationship that delivers the Contract required.

1. Performance Measurements

Key Performance Indicators (KPI's), Escalation Process, Sanctions and accountability are key tools that the Council will utilise during the contract management process.

- 1.1 The Council and the Provider will utilise the measurable indicators set out in this Schedule to continue delivering a continuously improving service, thereby increasing value and reducing process and supply chain waste and costs whilst culminating in a better value operation.
- 1.2 The Key Operational Indicators (KOIs) and Key Management Indicators (KMIs) will be submitted by Providers to the Council using a web based online form. This information will then be collated and performance reports will be published for the benefit of Providers, health and social care professionals and the public to enable them to make more informed choices.

2. Reporting

- 2.1 Reporting will be needed by the Council from the Commencement Date of this Contract - information relating to the KMI's and KOI's; which will be consolidated, in certain cases, to support statistical reporting. The Council reserves the right to request additional information, if required, during the Contract Period.
- 2.3 Information in these Reports may be used by the Council to populate various information such as bulletins, papers etc. as seen appropriate for the benefit of Residents in Kent. This information will be gathered quarterly.
- 2.5 The Quality Data will be made available to other Government organisations and operating partners, including: The Clinical Commissioning Groups, Care Quality Commission and the NHS. Information may also be required for issue under statutory legislation and for Public distribution, if deemed in the public interest and not in breach of Statutory Regulations i.e. Data Protection Act.
- 2.6 KPI reporting Schedule
 - 2.6.1 The Council will publish a reporting schedule, to all Providers operating under the DPS, which will highlight the reporting dates and time of submission. This schedule will be issued annually. The first schedule will be made available within 10 Working Days of the Contract Commencement Date.

2.7 Report Submission

2.7.1 All submissions will be required via a Web form. Details of the link to use will be communicated to Providers within 10 days for the Contract Commencement Date.

3 Key Performance Indicators (KPI's)

3.1 The two types of indicator set out below will be used to manage this contract.

- Key Management Indicators (KMI's)
- Key Operational Indicators (KOI's)

The quarterly submission deadlines or cut-off date/s will be communicated to Providers prior the Commencement Date. The Council reserves the right to vary the number and type of KPI and KOI information requested from Providers and this will be notified to Providers as appropriate via change control (Schedule 5).

The table set out below outlines all KPI's that Providers must complete and submit under the agreed terms of this Contract.

	Expected Outcome	KPI Description	Requirement	Target
1	Providers proactively deal with all complaints, suggestions and compliments	a) No. complaints recorded during the quarterly reporting period b) No. complaints responded to within 28 days of receipt	Total number of occurrences during the quarter	100%
2	Residents receive committed, consistent, quality care	a) No. staff employed at the care home (all staff) at the end of the quarterly reporting period b) No. care staff employed in the home at the end of the quarterly reporting period c) No. care staff who hold or who are working towards a qualification in Health and Social Care through the Qualifications Credit Framework (<i>Care staff includes any staff carrying out hands-on care i.e. care workers, seniors, team leaders</i>) at the end of the quarterly reporting period d) No. staff having completed or currently undertaking an induction in line with Skills for Care's Care Certificate	Total number as at end of quarter	100%
3	Residents receive committed, consistent,	a) No. of new staff employed within the care home during the quarterly reporting period	a), b), c), d) - Total number of occurrences during the	No formal target set in Year 1

	Expected Outcome	KPI Description	Requirement	Target
	quality care	<p>b) No. staff leaving employment during the quarterly reporting period</p> <p>c) No. agency staff used during the quarterly reporting period</p> <p>d) No. days absence as a result of sickness during the quarterly reporting period</p> <p>e) No. staff employed on zero hours contracts at the end of the quarterly reporting period</p>	<p>quarter</p> <p>e) - Total number as at end of quarter</p>	
4	Managers have the skills to lead and manage the service effectively	<p>a) No. managers at the care home (include home manager, unit manager/s, deputy managers etc) at the end of the quarterly reporting period</p> <p>b) No. managers enrolled in or completed a leadership or management training programme at the end of the quarterly reporting period</p>	Total number as at end of quarter	100%
5	Any negative effects arising from unplanned hospital admissions are minimised	<p>a) No. residents admitted to hospital via a planned admission during the quarterly reporting period</p> <p>b) No. residents admitted to hospital as an emergency during the quarterly reporting period</p>	Total number of occurrences during the quarter	No formal target set in Year 1
6	Residents are safeguarded from physical and emotional abuse, harassment, neglect and self-harm	<p>a) All staff are subject to an enhanced DBS check prior to commencing employment</p> <p>b) All staff receive Adult Protection Training Level 1 within 12 weeks of commencement of employment</p>	Yes or No answers	100%
7	Short-term residents move on from the service in a planned way	<p>a) No. short term placements made during the quarterly reporting period</p> <p>b) No. short-term placements resulting in a return home (<i>e.g. own home, extra care scheme, retirement housing</i>) during the quarterly reporting period</p>	Total number of occurrences during the quarter	No formal target set in Year 1

3.1.2 Failure to submit KPIs to the published dates may result in the imposition of a contract sanction. In addition, failure to submit a complete set of KPI data for the preceding six month period will result in the performance score of zero (0) out of a maximum of 20 points for the Provider for the following six months until the next review period as detailed in Schedule 2 Pricing.

3.1.3 A Default will be discussed and resolved by using the escalation process in compliance with Clause 58 of the main body of the Contract. An unsuccessful completion of the escalation process will result in the termination of Services or temporary suspension, as per Schedule 9 Sanctions and Escalations Process.

3.2 Ranking and Review (Quality and Performance)

3.2.1 Both quality (40%) and performance (20%) will be measured six monthly (twice per year) in April and October each year for all Providers who have entered into and signed a Contract with the Council and who have held a DPS Contract for a minimum of three months prior to the Review date. The original quality score awarded will, therefore, be reassessed every six months.

3.3 Quality

3.3.1 The Provider's score resulting from the quality and capability questions that was used as part of the tender will be reset to zero every six months. Providers must complete the quality and capability questions at each review period during the lifetime of the Contract. The responses to these questions will determine the Provider's quality score (maximum of 40 points) and all Providers will subsequently be re-ranked on the DPS.

3.3.2 In April 2017, once the Fundamental Standards CQC inspection framework ("CQC Framework") is available to all Kent Care Home Providers and all Providers have received a rating under the new CQC Framework, the quality and capability questionnaire that was used as part of the tender process, will be revised to include a question concerning the ratings for each of the five key tests (as set out below) for each Care Home on the DPS. The additional question will ask each Care Home to state what the outcomes of the most recent CQC inspection was for each of the following:

- Is it Safe? Outstanding/Good/Requires Improvement/Inadequate
- Is it Effective? Outstanding/Good/Requires Improvement/Inadequate
- Is it caring? Outstanding/Good/Requires Improvement/Inadequate
- Is it Responsive to people's needs? Outstanding/Good/Requires Improvement/Inadequate
- Is it well led? Outstanding/Good/Requires Improvement/Inadequate

3.3.3 This additional question will replace 50 % of the current quality score thus equating to 20 points. Therefore the existing questions will total the remaining 20 points required. This is explained in Appendix A.

3.3.4 Providers must request and complete a new quality and capability questionnaire if CQC re-inspect a contracted Care Home throughout the Contract Period. A new quality score will then be awarded. Introducing this mechanism of reviewing the quality score will allow all Providers to improve their current score and introduce flexibility into the quality ranking of providers on the DPS.

3.4 Performance (KPIs)

Of the KPI's stated in section 3.1 of this document, the following 4 have been identified as critical to the provision of the Services and have therefore been allocated an equal weighting of 5% or 5 points for each individual KPI. The total of

these determines the Providers Performance score, out of a maximum of 20 points, as stated in the original Tender evaluation.

No.	Expected Outcome	KPI Description	Target	Reporting Period	Weighting
1	Providers proactively deal with all complaints, suggestions and compliments	No. complaints recorded during the quarter No. complaints responded to within 28 days of receipt	100%	Quarterly	5
2	Service Users receive committed, consistent, quality care	No. care staff who hold or who are working towards a qualification in Health and Social Care through the Qualifications Credit Framework	100%	Quarterly	5
5	Managers have the skills to lead and manage the service effectively	No. managers enrolled in or completed a leadership or management training programme	100%	Quarterly	5
7	Service Users are safeguarded from physical and emotional abuse, harassment, neglect and self-harm	All staff are subject to an enhanced DBS check prior to commencing employment All staff receive Adult Protection Training Level 1 within 12 weeks of commencement of employment	100%	Quarterly	5

3.4.1 Each critical KPI will be allocated a score between 0 and 4. The table below defines mechanism of how each score will be applied. This performance score will be published on the Council's Online Care Directory and will form part of the ranking sheet on the Kent Business Portal.

Evaluation of Performance Data

Score	Evaluation Criteria	Guidance for Evaluators								
4	An excellent example of a collaborative relationship, accurate, meaningful contributions and delivering targets.	<p>Service Provider has achieved 100% for 2 consecutive reporting periods.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Month 3 (%)</th> <th style="text-align: center;">Month 6 (%)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">100.00</td> <td style="text-align: center;">100.00</td> </tr> </tbody> </table>	Month 3 (%)	Month 6 (%)	100.00	100.00				
Month 3 (%)	Month 6 (%)									
100.00	100.00									
3	Good performance, suggesting improvements to service, takes on board all comments and actions.	<p>Service Provider has achieved improvement over 2 consecutive reporting periods and has managed to achieve 100% by the second quarter; for example:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Month 3 (%)</th> <th style="text-align: center;">Month 6 (%)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">80.00</td> <td style="text-align: center;">100.00</td> </tr> </tbody> </table>	Month 3 (%)	Month 6 (%)	80.00	100.00				
Month 3 (%)	Month 6 (%)									
80.00	100.00									
2	Reasonable improvement and shows willingness to co-operate and improve.	<p>Service Provider has achieved improvement of more than 10% over 2 reporting periods; for example:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Month 3 (%)</th> <th style="text-align: center;">Month 6 (%)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">60.00</td> <td style="text-align: center;">75.00</td> </tr> </tbody> </table>	Month 3 (%)	Month 6 (%)	60.00	75.00				
Month 3 (%)	Month 6 (%)									
60.00	75.00									
1	Some minimal performance improvement, but little Contract Management engagement.	<p>Service Provider has achieved improvement of up to 10% over 2 reporting periods; for example:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Month 3 (%)</th> <th style="text-align: center;">Month 6 (%)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">80.00</td> <td style="text-align: center;">90.00</td> </tr> </tbody> </table> <p style="text-align: center;">OR</p> <p>The performance of the Service Provider has remained static over 2 reporting periods; for example:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Month 3 (%)</th> <th style="text-align: center;">Month 6 (%)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">90.00</td> <td style="text-align: center;">90.00</td> </tr> </tbody> </table> <hr style="width: 20%; margin-left: auto; margin-right: auto;"/>	Month 3 (%)	Month 6 (%)	80.00	90.00	Month 3 (%)	Month 6 (%)	90.00	90.00
Month 3 (%)	Month 6 (%)									
80.00	90.00									
Month 3 (%)	Month 6 (%)									
90.00	90.00									

0	Frequent KPI failure and/ no increase in performance, including any contract sanctions.	Service Provider has failed to comply (i.e. less than 2 consecutive ' quarters worth of KPI data)
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3.4.2 Both the Quality and Performance score can be improved six monthly as part of the review period as the re assessment takes place. This may occur earlier, for quality, if CQC re-inspect a contracted Care Home after 1 April 2017 when this question is to be included within the quality and capability questionnaire.

3.4.3 No formal targets will be set for the first year of the contract for KPI 4, 6 or 8. In these cases the Council will analyse the KPI data returned from all Providers on the Contract for the first four reporting quarterly reporting periods and then set a target expectation for the second year of the Contract (April 2017 - April 2018).

3.4.4 The Council will review the KPI reporting requirements annually during the lifetime of the Contract and any changes will be made following consultation and communication with all contracted Providers.

3.4.5 The Council reserves the right to change a Providers score if performance either improves or reduces during the Contract Period.

4 Key Operation Information (KOI)

4.1 In addition Providers will also need to submit Key Operational Information quarterly using an online web form intervals, as outlined in the following table:

	Management Information	Reporting Period
1	No. permanent Service Users	Quarterly
2	No. of permanent self-funding Service Users	Quarterly
3	No. permanent KCC funded Service Users	Quarterly
4	No. of permanent CHC funded Service Users	Quarterly
5	No. of permanent Service Users funded by other local authorities	Quarterly
6	No. beds registered with CQC	Quarterly
7	No. of Service Users subject to DOLS (Deprivation of Liberty Safeguards)	Quarterly
8	No. of short-term placements during the quarter	Quarterly
9	No. staff employed	Quarterly

5 Contract Monitoring

- 5.1 The Council will conduct contract monitoring activities within an intelligence framework using information from a variety of sources not limited to the following:
- Inspection findings from the Regulator (currently the Care Quality Commission-CQC) and intelligence including any Warning Notices or Notices of Proposal
 - Complaints
 - Whistleblowing
 - Safeguarding alerts/Serious Case Reviews
 - Monitoring reports from other public bodies e.g. Public Health England, Kent Fire and Rescue Service, Health and Safety Executive, Environmental Health, other local authorities
 - Reports from Health watch Kent or other body representing consumers
- 5.2 The frequency of announced or unannounced visits to the Provider will be determined by the above intelligence.
- 5.3 Within 12 months of the Contract Commencement Date (and yearly thereafter) the Provider shall submit to the Council a completed contract monitoring form by email for each of the Care Homes that operate within the Contract. The format of the form will be published to all Providers within three months of the Contract Commencement Date prior to the annual contract review. The evidence presented by the Provider will then be reviewed at the Annual Contract Review. Monitoring of care homes that have not formally joined the Contract, but operate within the terms of the Contract by way of individual placements linked to the terms and conditions of the Dynamic Purchasing System Agreement, will be determined by factors including the number of KCC funded placements at the home and the percentage of KCC funded placements where this is a high proportion of the total care home capacity.
- 5.4 The purpose of the Annual Contract Review is to identify:
- Providers adherence to the Service Specification
 - An objective and a subjective review of the last 12 months service delivery and performance specifically dealing with the Provider's contribution to the Service activities such as planning, business continuity, contract management, training, people development, value for money, innovation and continuous improvement.
 - The performance measures, which demonstrate the Provider's contribution to meeting the Council's transformation objectives in relation to the Services.
 - The cumulative year-to-date view of how the Provider is meeting (or has met) the performance criteria set out in this Schedule.

6 Strategic Business Meetings

- 6.1 The Council's Strategic Commissioning will meet with Provider organisations with three or more Care Homes operating in Kent on a strategic basis to review

performance, quality and contracting issues across the group on a regular basis and no less than twice per year.

6.2 The purpose of these meetings will be to provide for:

6.2.1 A strategic overview of the Supplier's performance over the preceding period and shall contain all information on quality, performance and pricing to enable strategic oversight

6.2.2 Sharing of business priorities and an exploration of how the Provider could meet the Councils strategic objectives.

7. Meetings

7.1 All meetings shall be attended by the Council's Contract Manager and the Provider's Key Personnel for each service area (or any other Council or Provider officer with delegated authority to act in relation to the Services).

7.2 The Parties shall meet at a time and in a location specified by the Council's Contract Manager in the meeting notice.

7.3 The agenda will be as circulated by the Council's Contract Manager in advance of the meeting.

8. Sanctions and Escalations

8.1 Full details of the Sanctions and Escalations procedures, relevant to this Contract can be found in Schedule 9 Sanctions and Escalations Process.

Schedule 7

Commercially Sensitive information

Part A In this Schedule the Parties have sought to identify the Provider's Commercially Sensitive Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest or is information within the scope of the exemptions in the Freedom of Information Act 2000.

Part B Where possible the Parties have sought to identify where any relevant information will cease to fall into the category of information to which this Schedule applies.

Part C Without prejudice to the Council's general obligation of confidentiality and to disclose information in accordance with Freedom of Information Act:

- the Parties acknowledge that the Council may have to disclose information in or relating to this Agreement following a Request for Information pursuant to clause 25 (Freedom of Information).
- the Council will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in Section 43 of the Freedom of Information Act 2000 to the Commercially Sensitive Information listed below.

Information Title	Actual Information Detail
Provider to complete	

Question 1 (mandatory)

Please confirm that you have completed the above 'Table of potentiality confidential information' in your Tender return by inputting X in the box provided as appropriate.

Yes		No	
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Schedule 8

Caldicott Principles

Part A Summary of the 6 Caldicott General Principles

Principle 1: Justify the purpose(s)

Every proposed use or transfer of personally-identifiable information within or from an organisation should be clearly defined and scrutinised with continuing uses regularly reviewed by an appropriate Guardian.

Principle 2: Do not use personally identifiable information unless it is absolutely necessary

Personally identifiable information items should not be used unless there is no alternative.

Principle 3: Use the minimum necessary personally identifiable information

Where use of personally identifiable information is considered to be essential each individual item of information should be justified with the aim of reducing identifiability.

Principle 4: Access to personally-identifiable information should be on a strict need to know basis

Only those individuals who need access to personally identifiable information should have access to it and they should only have access to the information items that they need to see.

Principle 5: Everyone should be aware of their responsibilities

Action should be taken to ensure that those handling personally identifiable information – both practitioner and non-practitioner staff – are aware of their responsibilities and obligations to respect an individual's confidentiality.

Principle 6: Understand and comply with the law

Every use of personally-identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

Part B Information Governance

Information Security Requirements

The Provider shall apply appropriate technical and organisational measures to adequately secure the Council's personal data during processing, storage and transfer. These measures must fulfil the Council's legal obligation to comply with data protection principle 7 (Information Security) of the Data Protection Act 1998. In furtherance of this the Provider shall indemnify the council for loss or damages caused by any action, authorised or unauthorised, taken by himself, his employees, servants, agents or sub-contractors.

1. Information security policy shall be in place, approved by management, communicated to employees and sub-contractors and available for inspection.
2. Information security responsibilities shall be assigned to one or more competent individuals.
3. The Provider shall notify the Council's Information Security Officer of any incidents of breach or loss of the Council's data as soon as reasonably practical and in any case no later than 72 hours after becoming aware of an incident.
4. Background checks are undertaken and employment contracts and sub-contracts include appropriate terms, conditions and disciplinary sanctions to minimise risks to the confidentiality and integrity of Council data.
5. Business continuity / Disaster recovery plan(s) shall be in place (or will be at service commencement) to address unavailability event(s) or incident(s).
6. The Provider shall comply with any reasonable request for change to its service that is required to ensure the council's continued compliance with the Public Service Network (PSN) Code of Connection (CoCo). This applies a baseline security standard to which all PSN connected parties are required to adhere.
7. Appropriate controls shall be in place to protect Council data from malicious code or cyber-attacks.
8. Assets storing or processing Council data shall be appropriately protected against physical tampering, loss, damage or seizure.
9. Audit logs shall record relevant user activity, exceptions and information security events such that incidents or suspicious activity can be adequately investigated and attributed.
10. Measures shall be in place to identify and treat technical vulnerabilities (e.g. patching and updates) in a timely and appropriate manner.
11. Controls shall be in place to ensure other customers of your service are unable to access the Council's data or threaten its service (either maliciously or as a result of their own service being compromised).
12. Controls shall be in place to minimise the risk of portable or online storage devices and/or services being used by the Provider's employees or sub-contractor for the unauthorised copying or removal of Council data.
13. Provider employee and sub-contractor accounts shall be revoked in a timely manner in the event of termination of employment or change of role.
14. System Administrator accounts shall not be shared and shall only be allocated to named individuals who are accountable for their actions.

15. User accounts shall be created or revoked in a timely manner in response to requests from the Council or on your termination of employee agent or sub-contractor.
16. Secure Remote Access shall be available as an option.
17. The Provider shall agree to supply to the Council personal information relating to employees, agents and sub-Provider s with access to Council information for the purpose of completing background checks in accordance with our obligations under PSN CoCo.
18. The Provider's employees, agents and sub-Provider s shall complete specialist data protection training designed for those who handle data at this classification within the first six months of service commencement.
19. Networks shall be managed and controlled in a way that is appropriate to this classification of data.
20. Measures shall be in place to enable the detection and attribution of misuse or unauthorised activity.

Cloud Security Requirements

The Provider shall comply with ALL of the following requirements for any part of their service that uses web hosting, web applications or cloud services:

Requirements for OFFICIAL or Personal Data
1. User access via browsers shall be configured to use HTTPS security and using Transport Layer Security version 1.2 as a minimum (TLS1.2).
2. Cryptography certificates shall be issued by a current member of the Certificate Authority Security Council (CASC).
3. A Penetration Test of web facing services shall be performed by a CREST registered tester and high risk issues remediated before service commencement.
4. Appropriate controls shall be in place to protect Council data from malicious code or cyber-attacks.
5. Appropriate technical controls shall be in place to protect Council data in the event of the theft, loss or transfer of ownership of a privately owned device previously used to access the service.
6. Two-factor authentication (2FA) shall available as an option.

Requirements for OFFICIAL-SENSITIVE or Sensitive Personal Data¹ or CONFIDENTIAL INFORMATION²
1. Extended Validation (EV or Green Bar) cryptography certificates shall be provided (or will be at service commencement) by a current member of the Certificate Authority Security Council (CASC).
2. The Provider shall supply to the Council such personal information relating to employees with access to Council data in this classification as is necessary for background checks to be initiated as required for the council to comply with its PSN Code of Connection.
3. The Provider's employees will complete specialist data protection training designed for those who handle data at this classification within the first six months of service commencement.
4. Networks shall (or will at service commencement) be managed and controlled in a way that is appropriate to this classification of data.
5. Web applications and/or Cloud services shall (or will be prior to service commencement) be penetration tested by a CREST approved Provider at annual intervals. Test results shall be made available to the contracting Council on request.
6. Two-factor authentication (2FA) shall be provided.

¹ 'Sensitive Personal Data' means Data Protection Act definition relating to an individual's health, race, ethnicity, political or religious beliefs.

² 'Confidential Information' relates to an individual's health or ADULT social care (Health and Social Care Act 2012).

Schedule 9

Sanctions and Escalation Process

1. Introduction

- 1.1 This Schedule sets out how any contract sanctions will be managed and how issues will be escalated.

2. Outcomes

- 2.1 The Council shall, during the Contract Period and in managing this Contract, Take the following key areas into consideration:

- Improved quality of service and customer focus
- Achieving value for money and financial control
- Decrease in the level of risk
- Clarification of roles and responsibilities of the Contract Manager, Providers and Service Users
- Early identification and resolution of poor performance, other problems or disputes
- Evaluation of the specification against contract performance and identification of contract changes or variations
- A structured approach to delivering Strategic outcomes
- Improved relationships
- More Openness, Transparency and Equitability
- Auditability

- 2.2 The Council shall, during the Contract Period, monitor the outcomes of the Services on both Operational and Strategic management levels.

2.3 Operational

The Provider shall provide to the Council necessary information that enables this Contract to be managed at minimal cost and resource but maximum benefit to the Service Users. This information will deliver statistics and performance data enabling the Council and the Provider to recognise and enhance the service delivery.

2.4 Strategic

The Provider shall, during the Contract Period, co-operate with the Council to improve and promote change to the market. The Provider will address future requirements relating to contract development and support the Council's ongoing strategic objectives.

2.5 Relationships

The Provider shall be transparent and open in sharing information of its supply chain to improve flexibility and response time for Service Users. The development of technology will assist with information gathering, but this needs to be accompanied by training and/or familiarisation. Publishing and access to the related strategies of the Council will allow Providers to be ready for change and assist with financial planning.

3. Escalation Process

3.1 Tenderers should give details of appropriate staffing to support the escalation processes within their organisation for use in the event the Council may experience problems with any aspect of the Contract. Please provide details in the tables below:

3.2 Escalation accountability and timescales (Information to be included in returned documentation):

3.3 Service Delivery Failure

Level	The Council	Provider	Maximum Timescales
1	First Line Contract Support	XXX	5 day from notification
2	Authorised Representative of the Council	XXX	5 days from notification to enact.
3	Senior Representative of the Council.	XXX	5 Working days from notification

List of Providers Key Personnel associated with the above table:

Level	Name	Title
1	XXX	XXX
2	XXX	XXX
3	XXX	XXX

3.4 Fast Track Escalation - Service Delivery Failure

Level	The Council	Provider	Maximum Timescales
3	Senior Representative of the Council.	XXX	Within 7 days

List of Providers Personnel associated with the above table:

Level	Name	Title
3	XXX	XXX

3.5 Escalation Path relating to Contracting Issues

Level	The Council	Provider	Timescales
2	Authorised Representative of the Council	XXX	5 Working days from notification
3	Senior Representative of the Council.	XXX	5 Working days from

			notification
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List of Providers Key Personnel associated with the above table:

Level	Name	Title
2	XXX	XXX
3	XXX	XXX

3.6 Fast Track Escalation relating to Contracting Issues

Level	The Council	Provider	Maximum Timescales
3	Senior Representative of the Council.	XXX	Within 7 days

List of Providers Key Personnel associated with the above table:

Level	Name	Title
3	XXX	XXX

4. Sanctions

The sanctions to be used by this Council during the Contract Period are set out below with the addition of a visible indicator of Provider performance and accessibility.

A Traffic Light system of Green, Amber, and Red will be applied to care homes.

This information will be made visible to the general public including health and social care organisations via the Council's Online Care Directory and when either an Amber or Red sanction is applied by the Council, Providers will be expected to place a notice within the relevant Care Home that a sanction is in place until such time as that sanction has been lifted.

Colour	Definition
Green	Provider is operating within the acceptable levels of Performance and Quality
Amber	The Provider has been issued a Restriction Notice and is in the process of corrective action
Red	The Provider is under a Suspension notice.

5. Sanctions Process

There may be times when it is considered appropriate to place a temporary Suspension or Restriction on a Provider where it is believed that there is serious risk to the health or wellbeing of people receiving a care service.

REASONS FOR TEMPORARY SUSPENSION

There are a number of reasons which may influence a decision to place restrictions or Suspensions upon a Provider including:

- Concerns about abuse/risk to people receiving a care service
- Persistent failure to comply with contractual requirements
- Non-return of contractual Key Performance Indicators (KPIs)
- Under performance issues identified via KPIs
- Complaints (from people receiving a care service, cares/relatives, Case Management, Health, Advocacy organisations etc.)
- Withdrawal of registration or intervention by the Care Quality Commission
- Non-compliance with Care Quality Commission Essential Standards
- Notices issued by the Care Quality Commission
- Building emergencies
- Sustainability of the service for financial reasons
- Infectious/notifiable disease
- Severe staffing/management crisis leaving people receiving a care service vulnerable
- Non-adherence to pricing mechanisms

NOTE: SAFEGUARDING VULNERABLE ADULTS

If there is concern over abuse then the Multi-Agency Safeguarding Vulnerable Adults procedures must be followed and override other processes.

SANCTIONS

Where concerns have been raised and an investigation is to be instigated a **RESTRICTION** will be placed on the Provider's contract.

A **RESTRICTION** means that any potential new placements will need to be risk assessed to ensure that the concerns would have no detrimental effect on the Service User being placed.

If there are major grounds of concerns which prejudice the effective operation of the Provider or are so serious as to prejudice the Provider's future viability then a **SUSPENSION** may be placed on the contract.

A **SUSPENSION** means that no new placements will be made until sustained improvements have been evidenced. There may also be a need to risk assess all current placements to ensure their continued safety.

NOTE: SHORT TERM/RESPITE

*When considering a **SUSPENSION** it will be determined whether short term/respice placements can proceed. Where short term/respice placements have already been planned, and where making alternative arrangements would be detrimental to the person receiving the service, permission may be given for the placement to proceed. This will be considered on a case by case basis.*

ACTION TO BE TAKEN

If there is professional concern about the quality of care provided, supported by the Case Management information, by a Provider which does not relate to the Safeguarding of Vulnerable Adults then the Council will place a **RESTRICTION** on the contract and convene a meeting with the Provider to discuss and agree what action should be taken to rectify the

issues of concern. This could be a multi-disciplinary meeting involving colleagues from Case Management, Health, CQC or regulator, Contract Manager and other key stakeholders.

Failure by the Provider to attend a meeting would be construed as obstructing the investigation and could lead to an escalation in the sanction applied.

Following a meeting with the Provider, Strategic Commissioning will request that the Provider completes a 'Service Improvement Plan' identifying the actions to be taken to remedy any non-compliance issues, who is responsible for the actions and a timescale for completion. The 'Service Improvement Plan' will be regularly monitored by Strategic Commissioning through consultation with the Provider and may be shared with other relevant parties including Case Management, CQC or regulator and Health colleagues. A template 'Service Improvement Plan' will be issued to the Provider.

If the actions are not completed or there are concerns such that there is continuing serious risk to people receiving a care service and/or financial or reputational risk to KCC, then a brief will be prepared for the Head of Strategic Commissioning and the relevant Assistant Director recommending a temporary suspension of the Provider for an agreed period or until resolved.

The Contract Manager, or Commissioning Officer, will continue to manage the relationship with the Provider until a decision is made to recommence placing with the Provider and will:

- Notify the Provider in writing of the decision to temporarily suspend placements with them, and
- Agree a monitoring and review plan with agreed timescales with the Provider

It is also agreed that the Contract Manager will notify the following of any temporary suspensions;

- Case Management Teams
- Clinical Commissioning Group and other linked health personnel
- Care Quality Commission or regulator
- Other placing authorities
- KCC Out of Hours teams

The Provider will be issued with a Notice which should be displayed on a Noticeboard within the home to inform Service Users and visitors that there is a **RESTRICTION** or **SUSPENSION** in place.

PUBLIC INFORMATION

KCC's online care directory will identify Providers who have a **RESTRICTION** or **SUSPENSION** on their contract. This is a public facing directory and Providers may be asked for information regarding the contract sanction by people funding their own care or other Local Authorities.

MEDIA MANAGEMENT

The Council will be mindful of potential media interest in situations where suspensions/restrictions are imposed on Providers, as this could result in distress for existing people receiving a care service and carers/relatives. The Council's Press Office will in all cases be consulted before any comment is made to the Press. Providers should contact the Contract Manager if there is any adverse media attention to their service/s.

LIFTING OF TEMPORARY SUSPENSIONS

Following review of the Provider's progress in meeting the agreed targets in the 'Service Improvement Plan', if the actions required have been complied with then the Contract Manager will recommend that the temporary suspension is lifted. Once this is agreed, it will be confirmed in writing with the Provider and all relevant parties.

If the Provider does not demonstrate on review that they have made progress on those matters which led to the suspension then further action will be undertaken. Continued lack of progress or a further escalation of concerns could lead to contract termination, which is the ultimate sanction that can be applied. In these instances, the Council reserves the right to seek reimbursement of any costs incurred by the Council according to clause 9 - Service Levels and Service Credits of the Dynamic Purchasing System Agreement.

Schedule 10

Parent Company Guarantee

N/A

Schedule 11

GENERAL DATA PROTECTION REGULATION (GDPR)

1. New data protection legislation is due to come into force during 2018, which aims to protect the privacy of all EU citizens and prevent data breaches. It will apply to any public or private organisation processing personal data. Established key principles of data privacy remain relevant in the new Data Protection Legislation but there are also a number of changes that will affect commercial arrangements, both new and existing, with suppliers.
2. The Data Protection Legislation comprises: i) the General Data Protection Regulation (GDPR) which comes into force on 25 May 2018; and ii) the Data Protection Act (DPA) 2018 which is anticipated to come into force (subject to Parliamentary approval) on 6 May 2018 for law enforcement processing, and 25 May for GDPR.

3. STANDARD DEFINITIONS

Party: a Party to this Contract;

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Provider is bound to comply;

Provider Personnel: means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.

4. GDPR CLAUSE DEFINITIONS

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

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: take the meaning given in the GDPR;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

DPA 2018: Data Protection Act 2018;

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

LED: Law Enforcement Directive (Directive (EU) 2016/680);

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

Sub-processor: any third Party appointed to process Personal Data on behalf of the Provider related to this Contract.

5. DATA PROTECTION

5.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Schedule 11 Annex 1 by the Council and may not be determined by the Provider.

5.2. The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

5.3. The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

5.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;

5.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;

5.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

5.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

5.4. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

5.4.1. process that Personal Data only in accordance with Schedule 11 Annex 1, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

5.4.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

5.4.3. ensure that:

- (a) the Provider Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 11 Annex 1);
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Providers duties under this Clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training use, care, protection and handling of Personal Data; and

5.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (a) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations);
- (d) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

5.4.5. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Provider is required by Law to retain the Personal Data.

5.5. Subject to Clause 5.6, the Provider shall notify the Council immediately if it:

5.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);

5.5.2. receives a request to rectify, block or erase any Personal Data;

5.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

5.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

5.5.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

5.5.6. becomes aware of a Data Loss Event.

5.6. The Providers obligation to notify under Clause 5.5 shall include the provision of further information to the Council in phases, as details become available.

5.7. Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- 5.7.1. the Council with full details and copies of the complaint, communication or request;
 - 5.7.2. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 5.7.3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 5.7.4. assistance as requested by the Council following any Data Loss Event;
 - 5.7.5. assistance as requested by the Council with respect to any request from the Information Commissioners Office or any consultation by the Council with the Information Commissioner's Office.
- 5.8. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- 5.8.1. the Council determines that the processing is not occasional;
 - 5.8.2. the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 5.8.3. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 5.9. The Provider shall allow for audits of its Data Processing activity by the Council or the Councils designated auditor.
- 5.10. The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 5.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:
- 5.11.1. notify the Council in writing of the intended Sub-processor and processing;
 - 5.11.2. obtain the written consent of the Council;
 - 5.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 11 such that they apply to the Sub-processor; and

- 5.11.4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 5.12. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 5.13. The Provider may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 5.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' Notice to the Provider amend this agreement to ensure that it complies with any Guidance issued by the Information Commissioner's Office.

GENERAL DATA PROTECTION REGULATION (GDPR)
ANNEX 1
Schedule of Processing, Personal Data and Data Subjects

Provider: [ENTER PROVIDER NAME]
Contract: [ENTER CONTRACT NAME, CONTRACT REFERENCE]

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule.
3. Part A and/or Part B, as appropriate, describe the Data relationship(s) between the Parties. Only completed Part(s) apply and an uncompleted Part indicates that the Data relationship pertaining to that Part does not exist within the Contract. At least one Part must be completed and apply and both Parts may be completed and apply but the latter can only apply to different Data within the Contract.

PART A

The Kent County Council Data Controller
[ENTER PROVIDER NAME] Data Processor

Description	Details
Subject matter of the Processing	<p>Processing of personal or sensitive data in relation to the provision of Adult Social Care service provision</p> <p>All Providers delivering a service on behalf of Kent County Council are contractually obliged to manage personal or sensitive data to enable the delivery of the service commissioned. This may be through a framework contract, individual or spot contract or other arrangement whereby payment is made.</p> <p>Personal or sensitive data includes that of the person receiving the service, as commissioned or purchased on behalf of Kent County Council.</p>
Duration of the Processing	<p>The Terms and Conditions of the Contract state the duration of Processing throughout the duration of the contract and held for the agreed period of time after contract expires.</p> <p>The information is required to be held in accordance with the subject matters use, in line with the organisations' record retention policy or governing body / legislation whichever is the greatest.</p> <p>On early termination of contract, refer to the Contract particulars as detailed in the Terms and Conditions of the Contract.</p>
Nature and purposes of the Processing	<p>In the delivery of this Contract Kent County Council are the Data Controllers for information provided on service users referred to the service. The Provider is the Data Processor for the personal and sensitive information relating to this contract. . [Where the Provider collects data in excess of the requirements of this Contract, the Provider will be the Data Controller of that</p>

data. The Provider is the Data Controller of its employee information; where reviewed through Contract Monitoring, the Council will be the Processor of that data.]

Due to the nature of the service provided, the high-risk area of information will be that which is collected manually. The information will either be transferred to a computerised system with paper records filed in locked cabinets. This could be for client records, staff files or other requirements. The expectation is that where records are filed in locked cabinets, the keys are kept in a locked storage box in a locked office and the office is locked each time it is not in use.

Computerised records would need to be backed up with up to date security software. Email accounts are specific to the service and are not utilising Gmail, Yahoo or other generic or personal accounts and need to be enabled to use secure email to and from KCC and other necessary organisations.

Information that is portable and used in the community, for instance service delivery that requires a visit to hospital, GP or for an outing must be kept to a minimum with key relevant information being transported. This information has to be kept secure in a folder in a closed bag, preferably with a lock. If information is left unattended in a car for a short period, this must be locked in the boot out of sight.

Fire grab packs containing personal or sensitive information held within services must be secured in a break-glass (or similar) unit with key access for regular reviewing and updating. It must be accessible in the case of emergency. Further information and advice around the suitability of storage, transfer and handling of information can be found at <https://ICO.org.uk>

The nature of the Processing under this Contract will cover the following: receiving, collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.

Information must be Processed and reported according to: Data Protection Act Information Governance – general responsibilities section of this Contract (Contract Terms and Conditions) and Schedule - General Data Protection Regulation (GDPR)

The purpose of the Processing are as follows:

- To measure, accept suitability of care packages,
- To liaise with Kent County Council Case/Care Managers
- To inform staff of service to be delivered and escalation routes.

	<ul style="list-style-type: none"> • To deliver services to Specification according to need. • To manage unforeseen situations, and emergencies • To invoice KCC according to the individual's details. • To analyse current and future service provision via KPI data • To ensure safe working practice via monitoring of training, DBS collection, registration and insurances. <p>Information will be shared with the Commissioner, the Regulator, the NHS/CCG and Ambulance Trust where and when necessary in a timely and legitimate manner, obtaining consent where required.</p> <p>Due to the nature of the data collected GDPR compliance will also be appended to any contract management schedules for monitoring progress</p>
Type of Personal Data	<p>Personal and sensitive data required includes:</p> <p>Information on Service recipients: name, address, date of birth, NHS details, social care identification number, NI number, telephone number, medical conditions and assistance needs, key safe information as needed, next of kin information, risk assessment information.</p>
Categories of Data Subject	<p>Service users/Individuals/Residents/Clients – the person using the service</p> <p>Next of Kin to the person using the service.</p> <p>Witness and Investigation information in relation to complaint, safeguarding and criminal investigations (may include photographic evidence)</p>
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	<p>Retention of data as per 'Contract particulars' in the Terms and Conditions</p> <p>Or Retention as required by legislation or governing bodies such as CQC.</p> <p>whatever period is the greatest.</p> <p>Storage, Transfer and Destruction of data as per Data Protection Act Information Governance – general responsibilities section of the Contract Terms and Conditions</p> <p>On early termination of contract all data to be returned to Kent County Council as per section 'recovery upon termination' within the Contract Terms and Conditions.</p>

PART B

The Kent County Council Data Processor
[ENTER PROVIDER NAME] Data Controller

Description	Details
Subject matter of the Processing	<p>Additional information received relating to the individual using the service and shared with the Council</p> <p>Employee information collated by the Provider to deliver the Service and shared with the Council through Contract</p>

	Monitoring, Safeguarding or other legitimate requirement
Duration of the Processing	For the duration of the Service and Contract – refer to the Terms and Conditions of the Contract or Safeguarding and other Legislation
Nature and purposes of the Processing	<p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose to include employment processing, statutory obligation, recruitment assessment etc.</p>
Type of Personal Data	<p>Staff/Volunteers. professional registrations, insurances, proof of ID, NI details, Bank details, training details, DBS information</p> <p>Additional Personal or Sensitive information collated in relation to a Service recipient in order to deliver the Service</p>
Categories of Data Subject	<p>Service users/Individuals/Residents/Clients – the person using the service</p> <p>Next of Kin to the person using the service.</p> <p>Staff (including volunteers, agents, and temporary workers)</p> <p>Suppliers/third parties in the delivery of the service, including trainers</p> <p>Witness and Investigation information in relation to complaint, safeguarding and criminal investigations (may include photographic evidence)</p>
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	<p>Retention of data as per 'Contract particulars' in the Terms and Conditions</p> <p>Or Retention as required by legislation or governing bodies such as CQC.</p> <p>whatever period is the greatest.</p> <p>Storage, Transfer and Destruction of data as per data protection act information governance – general responsibilities section of the Contract Terms and Conditions</p> <p>On early termination of contract all data to be returned to Kent County Council as per section 'recovery upon termination' within the Contract Terms and Conditions.</p>

Appendix A

Scoring Method and Evaluation Criteria

The following scoring methodology will be used to evaluate each answer of the quality and capability questionnaire:

Question No.	Question	Description	Question Weighting %	Points
1	Have you had a Registered Manager vacancy for this Home, for more than a total of three months over the previous 12 months?	The lack of a Registered Manager within a Care Home is a key factor in the quality of service provision.	10	No = 4 Yes = 0
2	Have you received any Notice of Proposal notifications from CQC for this Home over the past 12 months?	These Notices are issued when CQC have serious concerns regarding the quality of care within a Care Home and may result in the closure of a Home if the appeal by a Provider is unsuccessful.	20	No = 8 Yes = 0
3	Have you received any Warning Notices from CQC for this Home over the past 12 months?	These Notices are issued when CQC have serious concerns regarding the quality of care within a Care Home.	15	No = 6 Yes = 0
4	Have you had a Suspension Notice placed on this Home by the Council /other Local Authority (LA) to prevent further placements at any time over the	These Notices are issued when the Council or another LA has serious concerns regarding the quality of care within a Care Home.	15	No = 6 Yes = 0

	past 12 months?			
5	Have you had any complaints regarding this Home escalated to the Local Government Ombudsman over the past 12 months?	Complaints will only be escalated to the Local Government Ombudsman if the complainant has not been satisfied at either the Provider or the Council level.	5	No = 2 Yes = 0
6	Have you achieved accreditation to a recognised Quality Assurance Standard e.g. ISO9001?	The implementation of a QA standard accreditation within a Home ensures that processes concerning quality are well defined and managed.	5	Yes = 2 No = 0
7	Have you completed the most recent Skills for Care, National Minimum Dataset for Social Care (NMDS) return for this Home?	This is a key reporting requirement for the sector and relates closely to the induction and training of the staff working within a Care Home.	10	Yes = 4 No = 0

8	Have you participated in and engaged with a recognised or accredited quality improvement programme for this Home e.g. Ladder to the Moon, My Home Life?	These programmes are proven to result in improved quality outcomes for both staff and residents within Care Homes where there is engagement by the home management.	5	Yes = 2 No = 0
9	Do you have a Quality Management System that ensures internal control of quality and consistency of practice for this Home?	Key to ensuring that the Provider is able to demonstrate that they have a robust system in place to monitor and report on quality in care within a Care Home.	10	Yes = 4 No = 0
10	Do you have an activity programme for this Home that maximises social interaction and wellbeing of residents e.g. varied weekly events, community involvement?	Engagement of residents and the wider community in a varied programme of activities is a key component of quality in care.	5	Yes = 2 No = 0
Total			100%	40

Quality Review

The Provider's score resulting from the quality and capability questions will be reset to zero every six months. Providers must complete the quality and capability questions at each review period during the lifetime of the Contract, as outlined in Schedule 6 Contract Management. The responses to these questions will determine the Provider's quality score and all Providers will subsequently be re-ranked on the DPS.

Once the Fundamental Standards CQC inspection framework ("CQC Framework") is available to all Kent Care Home providers and all Providers have received a rating under this CQC Framework, the quality and capability questionnaire will be revised to include a question concerning the ratings for each of the five key tests for each Care Home on the DPS. This additional question will ask each Care Home to state the outcomes of the most recent CQC inspection for each of the following

7. What was the outcome for this Care Home of the most recent CQC inspection for each of the five key outcomes?

- Is it Safe?
- Is it Effective?
- Is it Caring?
- Is it Responsive to people's needs?
- Is it Well led?

The following scoring methodology will be applied to each rating:

Rating	Score
Outstanding	4
Good	2
Requires Improvement	1
Inadequate	0

At each Review Date throughout the lifetime of this Contract, the weightings for each individual question will be revised so that this additional question will equate to a maximum of 20 points and Questions 1 to 10 above will comprise the remaining 20 points.

Appendix B

Quality and Capability Questionnaire

This questionnaire will be used by the Council to calculate the Care Home's quality score.

Please complete a questionnaire *for each Care Home*.

Please delete **YES/NO** and **Outstanding / Good / Requires Improvement / Inadequate / Not Yet Rated** as appropriate. Each question has an individual weighting with a maximum total score of 40% as shown in the table below

Question	Weighting
1 to 10	20%
11	20%

The scoring methodology for all of the questions in this questionnaire is outlined in Appendix A.

The Council will validate all answers to the questions given below.

Care Home Name: _____

Question	Answer
1. Have you had a Registered Manager vacancy for this Home, for more than a total of three months over the previous 12 months?	YES/NO
2. Have you received any Notice of Proposal notifications from CQC for this Home over the past 12 months?	YES/NO
3. Have you received any Warning Notices from CQC for this Home over the past 12 months?	YES/NO
4. Have you had a Suspension Notice placed on this Home by the Council /other Local Authority to prevent further placements at any time over the past 12 months?	YES/NO
5. Have you had any complaints regarding this Home escalated to the Local Government Ombudsman over the past 12 months?	YES/NO
6. Have you achieved accreditation to a recognised Quality Assurance Standard e.g. ISO9001 or an equivalent standard?	YES/NO
7. Have you completed the most recent Skills for Care, National Minimum Dataset for Social Care (NMDS) return for this Home?	YES/NO

8. Have you participated in and engaged with a recognised or accredited quality improvement programme for this Home e.g. Ladder to the Moon, My Home Life?	YES/NO
9. Do you have a Quality Management System that ensures internal control of quality and consistency of practice for this Home?	YES/NO
10. Do you have an activity programme for this Home that maximises social interaction and wellbeing of residents e.g. varied weekly events, community involvement, volunteering?	YES/NO
11. What was the outcome for this Care Home of the most recent CQC inspection for each of the five key outcomes?	
a) Is it Safe?	Outstanding Good Requires Improvement Inadequate Not yet rated
b) Is it Effective?	Outstanding Good Requires Improvement Inadequate Not yet rated
c) Is it Caring?	Outstanding Good Requires Improvement Inadequate Not yet rated
d) Is it Responsive to people's needs?	Outstanding Good Requires Improvement Inadequate Not yet rated
e) Is it Well led?	Outstanding Good Requires Improvement Inadequate Not yet rated

NB: For those new Care Homes without a current rating, the Home will be allocated an average score for their initial rank and they will then need to complete this quality and capability questionnaire at the next six-month Review Date i.e. either 1 April or 1 October each year.

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- i <http://www.pssru.ac.uk/ascot/domains.php>
 - ii http://www.bapen.org.uk/pdfs/must/must_full.pdf
 - iii www.dementiafriends.org.uk
 - iv <http://www.southkentcoastccg.nhs.uk/about-us/prescribing-recommendations/?categoryesct19275711=9951>
 - v <https://www.gov.uk/government/publications/the-health-and-social-care-act-2008-code-of-practice-on-the-prevention-and-control-of-infections-and-related-guidance>
 - vi <http://www.kent.fire-uk.org/>
 - vii www.communities.gov.uk/publications/fire/firesafetyrisk5
 - viii <https://www.nmds-sc-online.org.uk/>
 - ix <http://www.skillsforcare.org.uk/Standards/Manager-Induction-Standards/Manager-Induction-Standards.aspx>
 - x <https://www.rpharms.com/social-care-settings-pdfs/the-handling-of-medicines-in-social-care.pdf>
 - xi <https://www.igt.hscic.gov.uk/>