

**DATED**

**2016**

**THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL**

**and**

**NHS HEREFORDSHIRE CLINICAL COMMISSIONING GROUP**

**and**

**[PROVIDER]**

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**FRAMEWORK FOR THE PROVISION OF CARE FOR ADULTS  
IN A CARE HOME AND WITH OR WITHOUT NURSING**

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**THIS FRAMEWORK** is made the ..... day of ..... **2016**

**BETWEEN:**

- (1) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane, Hereford, Herefordshire HR4 0LE (the Authority);
- (2) NHS HEREFORDSHIRE CLINICAL COMMISSIONING GROUP** of Plough Lane, Hereford, Herefordshire HR4 0LE (the NHS); and
- (3)** ..... (the Provider).

**WHEREAS:**

- (A)** The Authority and the NHS working together have agreed to adopt a shared and consistent approach to purchasing the Services through the use of this Framework Agreement (the Agreement).
- (B)** This Agreement sets out the terms and conditions governing the provision of the Services should either the Authority or the NHS (the Commissioners and each one a Commissioner) make a Placement with the Provider.
- (C)** The Provider understands that appointment to this Framework does not provide any guarantee of business and that any Placement made will be on a spot purchase basis in accordance with the terms of this Agreement.
- (D)** The Services shall comprise accommodation with board, lodging and personal care for persons in need of personal care and registered nursing care (including placements funded through Continuing Healthcare and Section 117 Placements made under the Mental Health Act 1983).
- (E)** The Provider acknowledges that the Commissioners do not have joint and several liability under this Agreement and that each is liable for its own obligations to the Provider.

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, except where the context otherwise requires, the following words and expressions shall have the following meanings:

Abuse	A single action or repeated actions or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to a person. This could include physical, emotional, financial, sexual, racial abuse, neglect and abuse through the misapplication of drugs.
Authorised NHS Person	The NHS and any other body or person authorised by the NHS and concerned with the provision of the Services or the care of a Service User.
Care Home	Residential accommodation with board, lodging and personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder.
Care Home without Nursing	The care home as defined by the Health and Social Care Act 2008 that is providing the care to the Service User.
Care Home with Nursing	A care home with qualified nurses permanently on site registered to provide nursing care.
Care Manager/Social Worker/Case Coordinator	The officers of the Authority and/or the NHS responsible for ensuring that the assessed needs of the Service User are identified and met.
Change of Circumstance Form	The form to be used for the notification of a variation in care arrangements for a Service User, which will affect the Placement Fee. In the case of the Authority this shall be the Remittance Advice <a href="#">[link to relevant form]</a>
Change Control Note	The written record of a variation or change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
Change Control Procedure	The procedure to be followed to effect any change or variation to this Agreement <a href="#">[link to Change Control Procedure]</a>
Commencement Date	26 September 2016
Commercially Sensitive Information	The information listed in a schedule if any, comprised of trade secrets and information provided by the Provider to the Commissioners in confidence.
Confirmation Letter	The letter issued by the NHS which incorporates the Determination of FNC Statement and confirms arrangements for payment of the FNC/CHC to the Provider <a href="#">[link to relevant document]</a> .
Continuing Care Service Agreement	The agreement issued by the NHS to the Provider to underpin the placement of a Service User in receipt of Continuing Healthcare (CHC), which details the appropriate fee details, date of admission, and length of stay (where known);

Continuing Health Care (CHC)	A package of ongoing care, for an individual aged 18 or over, that is arranged and funded solely by the NHS. This applies where the individual has been found to have a 'primary health need' as set out in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised).
Continuing Health Care (CHC) Eligibility Date	The date from which an individual is eligible for Continuing Healthcare (CHC) funding.
Contracts Officers	The contract officers of the Authority and/or the NHS appointed to administer the Agreement.
Counter Fraud and Security Management Service (CFSMS)	The Counter-Fraud and Security Management Service established and maintained by the NHS Business Services Authority pursuant to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Directions issued by the Secretary of State under the National Health Service Act 1977 <a href="#">[provide link]</a> .
CSSIW	The Care and Social Services Inspectorate Wales being the body responsible for the registration and regulation of all care homes in Wales.
CQC	The Care Quality Commission being the body responsible for the registration and regulation of all care homes in accordance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the Care Quality Commission (Registration) Regulations 2009.
CQUINS	The Commissioning for Quality and Innovation Scheme available to the Provider as described in the Commissioning for Quality and Innovation Guidance 2016/17 issued by NHS England March 2016. <a href="#">[Link]</a>
Day	Each of the twenty-four-hour (24) periods, reckoned from one midnight to the next.
Determination of Funded Nursing Care (FNC)	An assessment in relation to a Service User's needs for FNC which is made by reference to the assessment process set out in pages 9-14 NHS Funded Nursing Care Practice Guide (revised) 2012 and carried out in accordance with the National Framework for CHC.
Determining Nurse	An authorised officer of the NHS who is a registered nurse and carries out the Determination of FNC or Continuing Healthcare Determinations using the tools as defined in the national framework for CHC and FNC (revised 2012).
Emergency Admissions	Unplanned admissions of an urgent nature, at times of crisis, in order to alleviate situations of risk until such time as assessment and a programme of care can be implemented.
FCO Contribution	The financial contribution towards incontinence products, payable by Herefordshire CCG in respect of any Service User in receipt of Funded Nursing Care paid by Herefordshire CCG.
Financial Year	The period from 1 April to 31 March inclusive in any year.
FNC Contribution	The financial payment for Funded Nursing Care in England as set out by the Government (as amended from time to time).

FNC Eligibility Date	The date from which the Service User is entitled to the FNC as set out in the Determination of Funded Nursing Care Contribution Statement and the Agreement for Placement of Service User.
FNC Review	A review of a Service User's FNC needs.
Law	Any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Provider is bound to comply.
Long Term Care	A period of stay in a care home which exceeds six (6) weeks.
Major Concern	Under the CQC Judgement Framework where major concerns are identified, people who use the service are not protected from unsafe or inappropriate care. The provision of care does not meet the safety and quality regulation.
Moderate Concern	Under the CQC Judgement Framework where moderate concerns are identified, people who use the service are generally safe but are not always experiencing the outcomes relating to this standard and there is an impact on their health and well-being because of this. Provision of care is inconsistent and may not always meet the safety and quality regulation.
National Framework for CHC	Sets out the principles and processes of the National Framework for NHS Continuing Health Care and NHS-funded nursing <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf</a>
NHS Funded Nursing Care	The funding provided by the NHS specifically for the service(s) provided by a registered nurse which involve either the provision of care or the planning, supervision or delegation of the provision of care for the Service User. This does not include any time spent by any other personnel, such as care assistants who may be involved in the provision of care, but would include the registered nurse input into monitoring care delegated to others. The CCG responsible for payment of FNC is dependent on the GP practice with which the Service User is registered.
NHS Standard Fee	The standard fee applicable for NHS Continuing Healthcare funded placements.
Outcome	Describes the end result of the Services provided by a Provider, which can be used to measure the effectiveness of the Services. An outcome may be a strategic outcome which is applicable to all Service Users, or an individual outcome which pertains to the individual Service User and is identified in the Service User's Support Plan/Care Plan.
Patient Health Record	A record which consists of information relating to the particular physical or mental health or conditions of the Service User.

Patient Safety Incident	Any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to harm to that Service User.
Personnel	All persons (whether clinical or non-clinical) employed by the Provider together with the Provider's volunteers, servants, agents and sub-contractors used in the performance of the Services.
Personnel Vetting Procedures	the Provider's procedures and policies for the vetting of personnel for: <ul style="list-style-type: none"> <li>(a) eligibility to work in the UK;</li> <li>(b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure; and</li> <li>(c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.</li> </ul>
Placement	A place in the Care Home for a Service User which is arranged by the Care Manager/Social Worker/Case Co-ordinator.
Placement Fee	<p><u>For the Authority</u></p> <p>(a) For Placements made in the County of Herefordshire, the Placement Fee shall be the usual rate set by the Authority for the cost of the care and accommodation and Services for the Authority's Placements with the Provider as set out in the Purchase Order. For younger adults (under 65 years of age) the Placement Fee shall be the rate determined by the Authority through an individually costed care plan;</p> <p>(b) For Placements made outside the County of Herefordshire, the Placement Fee shall be either the usual rate (as described in (a) above) or the rate paid by the relevant local authority, whichever is the lower. For younger adults (under 65 years of age) the Placement Fee shall be the rate determined by the Authority through an individually costed care plan.</p> <p><u>For the NHS</u></p> <p>For Placements made under the NHS Continuing Healthcare Framework the Placement Fee shall be determined by the assessed need in line with the published basic fee and increments as determined by assessment of need under the National Decision Support Team.</p>
Policies and Procedures	The various policies and procedures of the Commissioners made available to the Provider on the Authority's website <a href="#">[provide link to website here]</a> on or before the Commencement Date and as subsequently made available to the Provider from time to time and with which in providing the Services the Provider is required to comply.

Provider Support Plan/Care Plan	A plan developed by the Provider which identifies how the outcomes in the Service User's Support Plan are to be met. The Provider's Support Plan/Care Plan, and any subsequent amendments required to meet changing circumstances, shall be agreed with the relevant Care Manager/Social Worker/Case Co-ordinator.
Purchase Order	The Authority's confirmation of the details of the assessed care for the Service User, the Placement Fee, date of admission, and length of stay (where known).
Quality Assurance Framework	The Authority's approach to monitoring and maintaining the quality of Services, Provider failure and suspension of Services. The framework is a multi-agency approach with CCG, CQC/CSSIW and police. Further details can be found at <a href="http://www.herefordshire.gov.uk/health-and-social-care/adult-care-services/adult-care-services-and-information/policies-and-local-account">www.herefordshire.gov.uk/health-and-social-care/adult-care-services/adult-care-services-and-information/policies-and-local-account</a> .
Section 117 Placement	A Service User placed into a care home under Section 117 of the Mental Health Act 1983. <a href="#">[link]</a>
Serious Untoward Incident	An incident or accident or near-miss where the individual, a member of staff or a member of the public suffers serious injury, major permanent harm or unexpected death where the actions of the Provider, the staff, the Authority and/or the NHS are likely to be of significant public concern.
Service User/Patient	An individual receiving the Services from the Provider, in accordance with the Specification(s) and related documents. Any reference to the Service User shall, where appropriate, include the Service User's duly authorised representative.
Service User Contribution	The portion of the Total Placement Fee for which the Service User is responsible and which it shall pay to the Authority directly.
Service User's Support Plan/Care Plan	The plan drawn up by the designated Care Manager/Social Worker, following the assessment of the Service User, which identifies the Service User's needs and agreed Outcomes, and how these are to be met; and which shall be updated from time to time in accordance with the Service User's needs. In the case of NHS Continuing Health Care funded Service Users, this shall be 'the Care Plan'.
Services	The services provided under this Agreement in the Care Home and those additional services that the Provider is obliged to provide to Service Users including for the avoidance of doubt the Services set out in the Specification and the Service User's Support Plan/Care Plan.

Short Term/Respite Care	Care services that may provide periods of respite or short term care which can help individuals through periods of crisis in their health or social circumstances, sustain people in their ability and desire for independent living and offer the necessary respite to their carers. Short term care may also be provided as a result of a placement under Section 117 of the Mental Health Act 1983.
Specification(s)	The documents setting out the Services and the standards that apply to the provision of Services under the Agreement. <a href="#">[link]</a>
Third Party Contribution	The contribution made by a third party and underpinned by an agreement between the Authority and the third party, for more expensive preferred accommodation which exceeds the Placement Fee as a result of meeting the expressed choice of the Service User.
Total Placement Fee	The total fee payable (comprising the Authority Fee and any other contributions such as the FNC, FCO, Service User Contribution and Third Party Contribution) to the Provider by the Commissioners for the Services.
Working Days	Means Monday to Friday inclusive but not including any declared Public Holiday

## 1.2 In this Agreement:

- (i) Headings do not affect its interpretation or construction;
- (ii) Words importing the singular include the plural and vice versa;
- (iii) References to numbered conditions and appendices are references to the relevant condition in or appendix to this Agreement;
- (iv) Words importing any gender include every gender;
- (v) Any reference to an enactment includes a reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- (vi) The provisions of any Schedules, Appendices, Policies and Procedures and links from definitions or elsewhere in this Agreement are incorporated into the Agreement;
- (vii) Any period of time referred to in this Agreement and expressed in days shall refer to calendar days unless stated otherwise.

## 2. DURATION OF THE AGREEMENT

2.1 The Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of the Agreement.

## 3. SERVICES

3.1 The Provider shall provide the Services as detailed in the following documents:

3.1.1 the Specification(s);

3.1.2 the Authority Service User's Support Plans and/or Care Plan which details:

- the Service User's requirements.
- the Outcomes to be achieved through the delivery of the Services

3.1.3 the Purchase Order/Continuing Care Service Agreement;

3.2 The Provider shall ensure that the Services comply with:

3.2.3 the Law, in particular and including all provisions or regulations made under the Care Act 2014, Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and Care Quality Commission (Registration) Regulations 2009 and any equivalent in Wales;

3.2.4 any special conditions imposed on the registration of the Provider by the CQC/CSSIW;

3.2.5 the Commissioners' Quality Assurance Framework; and

3.2.6 the Policies and Procedures.

#### **4. BROKERING**

4.1 The Commissioners shall operate a brokering system for securing Placements when required.

#### **5. SERVICE CONTINUITY**

5.1 The Provider shall have contingency arrangements in place to ensure continuity of the Services at all times at no extra cost to the Commissioners. The Provider shall make details of these contingency arrangements available to the Commissioners on request.

5.2 The Provider shall demonstrate that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services.

5.3 The Commissioners reserve the right to request detailed evidence of contingency plans such as sight of the Provider's business continuity plan, and to require review and/or amendment of the plans and any other contingency arrangements to meet the Commissioners' requirements.

5.4 As required by the Care Act 2014 the Commissioners reserve the right to intervene where there is evidence that Service may be interrupted due to business failure and/or other major incident. Where appropriate the Commissioners will seek to recoup any costs incurred from the Provider.

#### **6. PROVIDER'S STATUS**

6.1 In delivering the Services the Provider shall be acting as Principal and not as the agent of the Commissioners.

6.2 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

6.3 The Provider shall ensure that its Personnel do not say or do anything that might lead another person to believe that the Provider is acting as an agent of the Commissioners.

## **7. VARIATIONS AND WAIVERS**

- 7.1 Any change or variation required to this Agreement and/or the Services shall be carried out in accordance with the Change Control Procedure [\[link\]](#).
- 7.2 Failure by the Commissioners or the Provider to insist on strict performance of the Agreement or to exercise any right or remedy on breach of any provision of the Agreement shall not constitute a waiver of the Agreement or a waiver of any subsequent breach or default in the performance of the Agreement. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by Law.

## **8. THE COMMISSIONERS' OBLIGATIONS**

- 8.1 The Care Manager/Social Worker/Case Co-ordinator shall be responsible for co-ordinating the assessment and identifying the Service User's needs and for co-ordinating any re-assessment of the needs and making any necessary adjustments to the Service User's Support Plan/Care Plan. The Determining Nurse will be responsible for carrying out the Determination of FNC assessment. The Continuing Healthcare Nurse will be responsible for carrying out a CHC assessment.
- 8.2 The Commissioners will ensure that the Provider is in receipt of the completed Service User Support Plan/Care Plan prior to the commencement of the Services.
- 8.3 The Commissioners will ensure that the Provider is in receipt of a completed Purchase Order and/or Continuing Care Service Agreement for each Placement within ten (10) Working Days of the Placement being made.
- 8.4 The Commissioners shall each monitor and review the provision of Services through measures detailed in the Specification(s), this Agreement and the Quality Assurance Framework and take any action necessary to resolve any non-compliance.

## **9. PROVIDER'S OBLIGATIONS**

### **Registration**

- 9.1 The Provider shall ensure that at all times the Care Home is registered as a care home as required by Law and in particular as defined by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the Care Quality Commission (Registration) Regulations 2009 or any equivalent in Wales and is registered and inspected by the CQC/CSSIW which is responsible for seeing that standards are maintained.
- 9.2 The Provider will make available for inspection by the Commissioners and/or Service Users any published CQC/CSSIW inspection report. The Commissioners reserve the right to use CQC/CSSIW inspection reports to determine whether the Provider is compliant with the obligations set out in this Agreement and action may be taken in accordance with clause 32 – Monitoring Arrangements.
- 9.3 In the event of the Provider receiving a Major or Moderate Concern from the CQC or any Notice of Decision or order concerning the registration of the Provider, the Provider will forward a copy of any such notice or order to the Commissioners within three (3) Working Days.
- 9.4 The Commissioners will review the situation and/or in relation to any Major or Moderate Concerns and if in the view of the Commissioners these amount to a non-

compliance under the terms of this Agreement, the provisions of the Quality Assurance Framework shall apply.

### **Service Provision**

- 9.5 The Provider shall provide the Services with reasonable care and skill to the highest standard in accordance with the provisions of this Agreement, the Specification, the Service User's Support Plan/Care Plan, the Purchase Order and/or the Continuing Care Service Agreement and all relevant Law and regulations applicable to the provisions of the Services.
- 9.6 The Provider shall at all times allow the Commissioners, and such persons as may from time to time be authorised by the Commissioners, reasonable access to documents, records and procedures for ensuring satisfactory performance of the Services.
- 9.7 The Provider will ensure that they facilitate access for the Independent Mental Capacity Advocacy Service when a Service User is determined to lack mental capacity and has no relatives or friends appropriate to assist them in making key decisions including decisions relating to a change in accommodation such as residential or nursing care, or serious medical treatment not covered by the Mental Health Act 2007.
- 9.8 The Provider shall comply with all requirements of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards.
- 9.9 The Provider shall comply with NHS Counter-Fraud and Security Management for non-NHS Providers.
- 9.10 The Provider may be required to provide at any time during this Agreement and within five (5) Working Days of the request being made by the Commissioner:
- A satisfactory financial reference;
  - Proof of adequate insurance as specified in clause 29 - Insurance.
- 9.11 The Provider shall comply with the applicable brand policies and guidelines and in particular the NHS brand policy and guidelines, as revised, updated or re-issued from time to time by the Department of Health, and which are located at [www.nhsidentity.nhs.uk](http://www.nhsidentity.nhs.uk).
- 9.12 For Service Users funded by NHS Continuing Health Care, the Provider shall create, maintain, store and retain Patient Health Records for the Service User receiving treatment as part of the Services. Patient Health Records shall be kept by the Provider in an appropriate secure location for seven (7) years from the start of the Placement. Subject to compliance with the Law and the common law duty of confidentiality, the Authorised NHS Persons shall be granted access by the Provider to such Patient Health Records and may inspect them and require copies to be provided by the Provider at the Provider's cost.
- 9.13 In the event of a change in ownership of the Care Home, the Provider shall notify the Commissioners of the planned change **at least** four (4) weeks in advance of the change.
- 9.14 The Provider must, where applicable, comply with the duty of candour obligations under regulation 20 Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 in respect of any Notifiable Safety Incident. If the Provider fails to comply with any of its obligations under regulation 20 the co-ordinating commissioner may:

- 9.14.1 notify the CQC/CSSIW of that failure; and/or
- 9.14.2 require the Provider to provide the relevant person with a formal, written apology and explanation for that failure, signed by the Provider's chief executive and copied to the relevant Commissioner; and/or
- 9.14.3 take further enforcement action as set out in the Quality Assurance Framework and clause 35 – Termination.

## **10. EQUIPMENT**

- 10.1 The Provider shall ensure that it provides, maintains and replaces any equipment that is necessary for the proper care of the Service User and the provision of the Services, in accordance with Equipment in Care Home Policy.
- 10.2 The Provider shall at all times comply with the Law, the Policies and Procedures and the quality standards set out in this Agreement or otherwise in relation to the equipment and shall ensure that it is safe, suitable for its intended purpose and efficient at all times. The Provider shall store, use and maintain all equipment strictly in accordance with the manufacturer's instructions. The Commissioners reserve the right to inspect the Provider's equipment at any reasonable time.

## **11. PERSONNEL**

- 11.1 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 11.2 The Provider shall:
  - 11.2.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
  - 11.2.2 monitor the level and validity of the checks under this clause 11.2 for each member of the Provider's Personnel;
  - 11.2.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users;
  - 11.2.4 develop and implement such policies for safeguarding and human resource matters as may be required to promote the safe and efficient performance of the Services.
- 11.3 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 11.4 The Provider shall within five (5) Working Days provide the Authority with any information that it reasonably requires to enable it to be satisfied that the obligations of this clause 11 have been met.
- 11.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users.
- 11.6 The Provider will provide the Services using suitably qualified Personnel.

- 11.7 The Provider will at all times employ and assign to the Services Personnel who are fit and competent to provide the Services and of sufficient number to ensure that the Services are provided at all times in accordance with this Agreement.
- 11.8 The Provider shall give and shall ensure that its Personnel give all reasonable assistance to the Commissioners in the investigation of complaints, disciplinary matters, claims for damages and similar matters.
- 11.9 The Commissioner may request the Provider to take such action as is consistent with the Provider's safeguarding and HR policies to restrict or remove any Personnel from involvement in the Services whose continued presence would in the reasonable opinion of the Commissioner be undesirable.
- 11.10 The Commissioner shall in no circumstances be liable either to the Provider or to any Personnel in respect of any award, cost, expenses, liability, loss or damage occasioned by such removal and the Provider shall fully indemnify the Commissioner in respect of any claims made.

## **12. PLACEMENTS**

### **Assessment of Need**

- 12.1 The assessment procedure for a Service User will be carried out in accordance with each Commissioner's eligibility criteria.
- 12.2 The Authority will be responsible for co-ordinating the assessment and identifying the needs of the Service User, which may involve the nursing practitioner and any other professionals involved in supporting the Service User. The Care Manager will seek, where appropriate, medical and nursing advice when considering care arrangements.
- 12.3 As part of the care and support planning process, the Authority will be responsible for providing the Service User with a Personal Budget, except in circumstances set out in the Care and Support (Personal Budget Exclusion of Costs) Regulations 2014.
- 12.4 Once the eligibility determination has been made, the Authority will then carry out a financial assessment to determine whether or not the person must pay towards their care and support.
- 12.5 The Commissioners and the Provider will involve Service Users throughout the care management process and support them to exercise choice and control.
- 12.6 The Provider acknowledges that the assessment does not constitute a Determination of Funded Nursing Care Contribution, which if required, shall be carried out by the authorised nurse of the NHS.
- 12.7 Where the assessment shows that the Service User does not meet the criteria for FNC, neither Commissioner shall guarantee funding.
- 12.8 Where the assessment identifies the need for care with nursing, the Commissioners shall identify the level of care required and shall fund at the agreed appropriate level.

## **Determination of Funded Nursing Care Contribution (FNC)**

- 12.9 The Determining Nurse will be responsible for carrying out the Determination of the FNC assessment.
- 12.10 Within three (3) Working Days of the day on which a new Service User is admitted to the Care Home:
- 12.10.1 the Provider will inform the Service User and the NHS of the Service User's potential eligibility for FNC unless the Service User and the NHS are already aware of the Service User's potential eligibility; and
  - 12.10.2 the Provider will, where necessary, supply the Service User or his/her representative with the relevant information as supplied to the Provider by the NHS from time to time.
- 12.11 Upon receipt of a signed consent form from, or on behalf of the Service User, the NHS will arrange for a Determination of FNC of the Service User to be undertaken by a Determining Nurse.
- 12.12 Service Users or their authorised representatives will be involved throughout the Funded Nursing Care process.
- 12.13 Within fourteen (14) days of the Determination of FNC, the NHS will provide the Provider, the Authority and the Service User with a Confirmation Letter (incorporating a Determination of Funded Nursing Care Statement) setting out:
- 12.13.1 the amount of the FNC which the NHS will pay the Provider for the provision of Funded Nursing Care and continence products (FCO) for that Service User; and
  - 12.13.2 details of any further equipment or services which are to be provided to the Service User by the NHS.
- 12.14 The NHS will ensure that the Provider is notified in writing of the agreement to FNC Funding.

## **Continence Services**

- 12.15 From the date set out in the Purchase Order the Provider will provide appropriate continence products to the Service User to meet their assessed needs.
- 12.16 Neither Service Users nor their families must be charged for continence products. For the avoidance of doubt, if a Service User chooses a different product the Commissioners shall not be liable for any additional costs.

## **Role of CHC Manager in the determination of Funded Nursing Care Contribution**

- 12.17 The Lead CHC Manager for FNC shall be responsible for:
- 12.17.1 liaising with the Provider for the purpose of identifying Service Users who may be eligible for FNC;
  - 12.17.2 co-ordinating and managing the Determination of FNC in respect of each Service User in accordance with these Conditions;
  - 12.17.3 authorising each Determination of FNC on behalf of the NHS;

- 12.17.4 supplying the Provider and Service User with a copy of each Service User's Determination of FNC Statement;
- 12.17.5 acting as the initial contact on behalf of the NHS and Service User for any complaints made in respect of the Determination of FNC.

#### **Role of Determining Nurse**

12.18 The Determining Nurse (who may be the same individual) shall:

- 12.18.1 monitor the quality and consistency of the Determination of Funded Nursing Care provided to Service Users using the forthcoming national audit tool or such other audit tool as shall be implemented and used from time to time; and
- 12.18.2 provide professional nursing advice to the Provider and, where appropriate, the Nursing Home Co-ordinator, about the carrying out of the Determination of Funded Nursing Care Contribution.
- 12.18.3 will act on a request for completion of a Continuing Healthcare checklist or Decision Support Tool in accordance with the National Framework for Continuing Healthcare and Funded Nursing Care November 2012 (revised).

#### **Provider's pre-assessment**

- 12.19 The Provider has an obligation to carry out its' pre-admission assessment within two (2) days and confirm the outcome of that assessment to the Authority. If the Provider refuses to complete the pre-admission assessment within this timeframe, the Authority reserves the right to seek an alternative provider.
- 12.20 The Provider has a duty to refuse a Placement where it is unable to meet the assessed needs of that Service User.
- 12.21 The Support Plan/Care Plan will be formulated with the involvement by the Care Manager/Case Manager, the Service User and their duly authorised representative and the Provider as appropriate. The Provider shall ensure that all relevant information from the Support Plan/Care Plan is clearly communicated to the Provider's Personnel who will be working with the Service User.
- 12.22 The Provider shall determine how the key Outcomes in the Service User's Support Plan/Care Plan will be achieved and prepare its own Provider Support Plan to demonstrate the activities required to achieve the Outcomes, how this will be monitored and how the achievement of the Outcomes will be measured.
- 12.23 The Provider must comply with the guidelines for the planning and delivery of person-centred services, as provided by the Commissioners.
- 12.24 The Provider shall encourage Service Users to remain as independent as possible and the Provider shall ensure that the delivery of the Services fully encompasses the principles of promoting independence and re-ablement.
- 12.25 The Provider shall ensure that all Personnel providing the Services are trained and developed to ensure a full understanding of promoting independence, which must be clearly evidenced in the delivery of the Services.

### **Service User choice**

- 12.26 Services shall be provided in accordance with the standards outlined in the Specification(s), and the Service User's Support Plan/Care Plan which detail the principles of individual choice.
- 12.27 The Commissioner(s) and the Provider shall ensure that the Service User is offered a choice of available rooms within the Care Home which meets their individual requirements as specified in the Service User's Support Plan/Care Plan. Adequate information will be given to the Service User or their duly authorised representative to enable them to make the most appropriate choice.
- 12.28 If the Service User chooses to share a room within the Care Home with another resident the Placement Fee payable shall be reduced by five per centum (5%) and the Provider will be paid an amount equivalent to ninety-five per centum (95%) of the Placement Fee.
- 12.29 The Service User will be allocated a room on a permanent basis, as specified within the Purchase Order and/or a Continuing Care Service Agreement provided that the room is maintained and remains suitable accommodation. Under no circumstances will the Service User be transferred to another room, unless there is an emergency or a transfer is necessary to preserve the safety of the Service User or an express wish has been made by the Service User in agreement with the Care Manager for a transfer to more suitable accommodation that is better equipped to meet the Service User's needs. The Purchase Order/Continuing Care Services Agreement will be updated accordingly.
- 12.30 Where the Service User is unable to express a preference and this has been proven through a suitable risk assessment, the Authority shall act on the preferences expressed by the Service User's duly authorised representative as long as such authorisation complies with the requirements of the Mental Capacity Act 2005.
- 12.31 The Service User has a right, at any time, to request a transfer to another Care Home. Any such request shall be referred to the Care Manager/Case Manager who will investigate the reasons for such a request, and if the request is reasonable will serve notice appropriately in accordance with clause 12.75 – Ending a Placement.
- 12.32 If the Service User expresses a view, to either the Authority or the Provider, that the services provided are not meeting his/her needs, a review shall be undertaken, which shall include the Service User. A Purchase Order shall not be amended in any way without the consent of the relevant Commissioner.

### **Service take-up**

- 12.33 Following the Service User's assessment and the identification of the Care Home the Provider will be issued with Service User's Support Plan/Care Plan as appropriate together with such other documents as appropriate to underpin the Services to be provided to the Service User. These may include the details of the assessed care for the Service User, the Total Placement Fee, the date of admission, and length of stay (where known), etc.

### **Third Party Contributions**

- 12.34 Where the Service User chooses a Care Home that is more expensive than the amount identified for the provision of accommodation in the personal budget, the payment of a Third Party Contribution must be agreed prior to the commencement of the Placement.

- 12.35 The Authority shall undertake a financial assessment to ensure that the Third Party is willing and able to meet the additional cost for the likely duration of the Placement, recognising that this may be for some time into the future.
- 12.36 If the Authority is satisfied that the Third Party is able to meet the additional cost, the arrangement will be underpinned by an agreement between the Authority and the person who will be paying the Third Party Contribution.
- 12.37 The Provider is not permitted to enter into arrangements for, or charge or a third party contribution without the written consent of the Commissioners as appropriate.

#### **Private fee payers**

- 12.38 Where the Provider accepts a private fee payer into the Care Home, the Provider will make reasonable endeavours to assess the financial position of the private fee payer and advise the private fee payer of the consequences of the private fee payer's income falling below the threshold, including making it clear that the private fee payer may be required to leave the Care Home.
- 12.39 In the event of the private fee payer's assets and/or income falling below the threshold an assessment of needs shall be carried out by the Commissioner(s) to identify the eligibility of the individual for public funding.
- 12.40 The private fee payer will be required to continue paying the private fee rate to the Provider whilst the assessment is conducted by the Commissioners.

#### **Emergency admissions**

- 12.41 Where the Care Manager/Case Manager cannot be contacted outside normal working hours, the Provider shall contact the "Out of Hours" Service (telephone number: 0330 123 9309) to seek authorisation for an Emergency Admission.
- 12.42 The Authority shall pay the Provider the Placement Fee in respect of a Service User who is an Emergency Admission to the Care Home provided that the Service User's Placement has been authorised by the Authority's Care Manager or the Out of Hours Service orally and followed with a confirmatory email within twenty-four (24) hours.
- 12.43 Where an Emergency Admission has been authorised, the Care Manager shall complete a full assessment of the Service User's needs within seven (7) days of admission. The Authority guarantees payment of the Placement Fee to the Provider for the seven (7) day period following admission.
- 12.44 The NHS shall pay the Provider the nationally agreed FNC contribution for the Service User from the FNC Eligibility Date.
- 12.45 Where the Emergency Admission is confirmed, a Purchase Order and/or Continuing Care Service Agreement shall be completed and financial assessment undertaken.
- 12.46 Where the Emergency Admission is not confirmed the Commissioners shall only be responsible for making a financial contribution in respect of the seven (7) day period following the Service User's admission, or the period of the stay, whichever is the shorter.

### **Short term care and respite care**

- 12.47 Where a Service User requires Short Term or Respite Care, a Purchase Order and/or Continuing Care Service Agreement shall be completed and a financial assessment undertaken. The length of stay will be detailed in the Purchase Order and/or Continuing Care Service Agreement, subject to a maximum period of six (6) weeks.
- 12.48 The NHS will only arrange for a Determination of Funded Nursing Care Contribution to be carried out if a Placement is likely to last more than six (6) weeks. This will be carried out if it is known at the outset, or soon after, that the Placement is likely to exceed six (6) weeks.
- 12.49 For Short Term Placements (such as periods of Respite Care) of less than six (6) weeks where the Service User requires or is likely to require registered nursing care, the NHS will normally assign the Service User to FNC for the duration of the Placement based on information from the records available to the NHS.
- 12.50 When a period of Respite Care has been arranged by the Authority but is cancelled, the following shall apply.
- 12.50.1 No payment shall be made to the Provider if the Authority gives seven (7) or more days' notice of the cancellation.
- 12.50.2 The Authority shall pay the Provider the Placement Fee for the seven (7) days less the number of days' notice given where less than seven (7) days' notice is given.
- 12.51 If a Service User leaves the Care Home or is admitted to hospital during a period of Respite Care, the Authority shall pay the Provider the Placement Fee for the remainder of the booked period of Respite Care, or for a further seven (7) days whichever is shorter. In the event of the Provider accepting an admission by the Authority to the vacated room during the period for which the Provider is receiving a payment from the Authority under this clause 12.51 the Provider shall reimburse the Authority for the period for which the room has been double funded.
- 12.52 For the avoidance of doubt, the NHS shall be under no obligation to make payments to the Provider of the FNC in respect of cancelled periods of Respite Care.

### **Long Term Care**

- 12.53 Where a Service User is identified as requiring long-term care (a period of more than six (6) weeks) a Purchase Order shall be completed and a financial assessment undertaken.
- 12.54 The first four weeks shall be regarded as a trial period in order to ensure that the Placement is satisfactory in meeting the needs of the Service User. During this four (4) week trial period, the arrangement may be terminated by the Commissioners, the Provider or the Service User giving one week's notice in accordance with clause 12.75 – Ending a Placement.
- 12.55 A review will be held within three (3) months of placement to ensure all parties are satisfied that the Service User's needs are being met, and to consider any aspect of the arrangement or performance of the service. The Service User, the Provider and the NHS shall be included in such a review. Dependent upon the outcome of the review, the Placement may be extended for a further period.

- 12.56 Where the Placement is confirmed following the review, with the agreement of all parties, the arrangement shall continue as detailed in the Purchase Order and/or the Continuing Care Service Agreement.
- 12.57 Where the Placement is not confirmed, the Commissioners shall make arrangements for the Service User to leave the Care Home. Notice shall be served as appropriate in accordance with clause 12.75 – Ending a Placement.
- 12.58 The Service User has a right, at any time, to request a transfer to another Care Home. Any such request should be referred to the Care Manager/Case Manager who will investigate the reasons for the request, and if the request is reasonable the Commissioners will, following the outcome of the investigation, serve notice appropriately in accordance with clause 12.75 – Ending a Placement.
- 12.59 If the Service User expresses a view to the Commissioners or the Provider that the Services are not meeting his/her needs, a review of the Services being provided shall be undertaken with the Service User and if appropriate the Purchase Order shall be amended.

#### **Review of need**

- 12.60 Every Service User has the right to have their need for ongoing care reviewed at regular intervals. The Provider, in conjunction with the Authority, shall ensure that the necessary arrangements exist and are known to the Service User.
- 12.61 The Authority is responsible for re-assessing the needs of the Service User at appropriate intervals, and also to re-assess a Service User's needs where the Provider, the Service User, their duly authorised representative, and/or authorised manager asserts that there may be a need to do so.
- 12.62 After the first three months and thereafter every twelve months a CHC/FNC review shall be carried out by the NHS. Where there is a significant and sustained change in a Service User's Nursing Care needs, the Provider must request a review by the Nursing Home Co-ordinator immediately.
- 12.63 Within three months of the CHC Eligibility Date and thereafter at least yearly while the Purchase Order remains in force (and at such other intervals as they may agree), the Commissioners and the Provider shall review the Provider's performance of the Services and compliance with the Agreement in relation to the Service User, the Support Plan and the status of the Service User, as well as any other matters they consider necessary.
- 12.64 Where, outside of the formal review process, the Provider identifies a **significant change** in the care needs of the Service User, the Provider may ask the Care Manager to undertake a formal re-assessment.

#### **Variation to Purchase Order/Continuing Care Service Agreement**

- 12.65 The Purchase Order and/or the Continuing Care Service Agreement may be varied with the agreement of the Commissioners, the Provider and Service User. Any such variation shall be confirmed by the Commissioners.
- 12.66 If the Service User is found to be ineligible for FNC, a reimbursement payment shall be made by the Provider to the NHS. Any balancing or reimbursement payment to be made under this clause shall be for the period commencing on the effective date of the change in FNC eligibility.
- 12.67 Where, following a review, it is concluded that services are required beyond that

which the Provider can provide, or where hospitalisation is required, the Purchase Order shall terminate three (3) Working Days after alternative arrangements for the services have been agreed.

- 12.68 Where, following a review, it is concluded that the Provider is able to continue to provide the Services identified, the provision of Services may continue. Where the re-assessment demonstrates an increase/decrease in the needs of the Service User, the Placement shall be re-arranged to meet this need. The Authority shall not be liable for any increase in Placement Fee unless agreement has been reached by all parties and underpinned by a new Purchase Order and/or Continuing Care Service Agreement.
- 12.69 Where there is a significant change in the level of Services required by the Service User, the Provider must request a review from the Care Manager immediately. Where it is concluded that the Provider is able to continue to provide the Services to meet the identified needs, the Service User may remain in the Care Home. Any change in the Placement Fee will take effect when signed off by relevant Commissioner.

#### **Temporary absence from the Care Home**

- 12.70 Where the Service User is absent from the Care Home for more than forty-eight (48) hours, including through admission to hospital, the Provider shall inform the Care Manager/Case Manager within twenty-four (24) hours of the absence occurring.
- 12.71 The Provider shall, in addition to informing the Care Manager/Case Manager under clause 12.70 above, notify the Authority at [broker@herefordshire.gov.uk](mailto:broker@herefordshire.gov.uk) and the NHS at [continuinghealthcare.herefordccg@nhs.net](mailto:continuinghealthcare.herefordccg@nhs.net).
- 12.72 The Authority will continue to pay the Placement Fee for up to four (4) weeks from the start of the absence. During the four (4) week period the Care Manager will carry out a review to determine the length of time the Service User is expected to be absent from the Care Home and whether or not the Service User is likely to return.
- 12.73 After a Service User has been absent from the Care Home for four (4) weeks the Authority shall pay the Provider a maximum of 80% of the Placement Fee, or Total Placement Fee as appropriate, until the Service User returns to the Care Home or the Purchase Order is terminated in accordance with clause 12.75 – Ending a Placement.
- 12.74 If the Care Manager determines that the Service User is not expected to return to the Care Home, they will give the appropriate notice in accordance with clause 12.75 – Ending a Placement.

#### **Ending a Placement**

- 12.75 A Placement may be ended in any of the following circumstances:

12.75.1 Placements for Short Term/Respite Care:

Where a Placement has been made for a fixed period this Placement will either:

12.75.1.1 end on the expiry of the fixed period, unless renewed for a further fixed period; or

12.75.1.2 end three (3) Working Days or if agreed such lesser period after one party giving the parties giving notice to terminate the Placement in accordance with this clause 12.75.

12.75.2 Initial Trial Period – long term placements:

12.75.2.1 During the initial four (4) week trial period, the Commissioners, the Provider or the Service User (or their duly authorised representative), may end the Placement by giving notice to the other parties. Such notice will take effect upon the expiry of seven (7) days or on such date as is agreed between all the parties. During the period of notice, the Service User will continue to be liable for the payment of their financial contribution. The Provider agrees that the departure of the Service User from the Care Home will be conditional on the Care Manager securing suitable arrangements for the future care of the Service User.

12.75.2.2 After the initial trial period, any party may end the agreement by giving twenty eight (28) days' notice. During the notice period the Service User will continue to be liable for their financial contribution.

12.75.3 Death of the Service User:

If the Service User dies during the Placement, the Placement will end after three (3) Days (including the Day of death) and the following will apply:

12.75.3.1 The Commissioners shall pay the Provider the Total Placement Fee for three (3) Days (including the Day of death) excluding the NHS's FNC and FCO contribution, in accordance with the clause 12.76 – 12.78 – Death of a Service User.

12.75.3.2 The Service User's Contribution to the Total Placement Fee shall be payable to the Authority for three (3) Days (including the Day of death) and the Authority reserves the right to claim this from the Service User's estate if necessary.

12.75.4 Service User's request to transfer to another Care Home

12.75.4.1 If the Service User's request to transfer to another Care Home is agreed the Commissioner(s) shall serve appropriate notice on the Provider according to the outcome of the Care Manager/Case Co-ordinator's investigation as follows:

12.75.4.1.1 Where the Authority has determined that the Provider has either in whole or part failed to comply with this Agreement the Commissioner(s) shall pay the Provider the Placement Fee for the Services only whilst the Service User is resident at the Care Home;

12.75.4.1.2 Where the investigation has confirmed that the Service User's request to transfer does not relate to any breach of Agreement on the part of the Provider, the Authority shall give the Provider two (2) weeks' notice to terminate the Purchase Order.

12.75.4.1.3 Where the Care Manager/Case Co-ordinator has determined that the Care Home can no longer meet the needs of the Service User, the

Commissioner(s) shall pay the Provider the Placement Fee only for the Services provided whilst the Service User is resident at the Care Home.

12.75.5 Temporary absences from the Care Home

12.75.5.1 Where the Service User is admitted to hospital and his/her stay is expected to exceed four (4) weeks, the Care Manager/Case Co-ordinator will during the first four (4) weeks of absence, if it becomes known that the Service User will not be returning to the Care Home, notify the Provider giving two (2) weeks' notice; or

12.75.5.2 Where the Service User has an unplanned absence from the Care Home for a period exceeding two (2) weeks for any reason other than being admitted to hospital, the Care Manager/Case Co-ordinator shall determine the reason for, and length of, the absence. If it is determined that the Service User's absence will be for a prolonged period or if the Service User does not intend to return to the Care Home, the Purchase Order will be terminated by the Commissioner giving two (2) weeks' notice to the Provider.

12.75.6 General

12.75.6.1 The Provider may request the removal of the Service User where, in the reasonable opinion of the Provider, continuation of the Placement would give rise to serious risk to the life, health and well-being of the Service User, or other Service Users. The Care Manager/Case Co-ordinator shall investigate whether the Provider has reasonable grounds for making the request to remove the Service User. Where it is deemed appropriate for the Service User to be removed, the Care Manager/Case Co-ordinator will be responsible for securing alternative arrangements. In such circumstances, the Commissioner shall only pay the Provider the Placement Fee whilst the Service User is resident at the Care Home.

12.75.6.2 Where a Service User has assets that when realised result in the Service User no longer being eligible for public financial support, the Purchase Order will terminate with effect from the day the assets are realised.

12.75.6.3 The Authority reserves the right to end the Placement with immediate effect where, in the reasonable opinion of the Authority, the Service User is at risk of detriment to their physical, mental or financial well-being whether through the Provider being in breach of the Agreement in relation to Services provided to the Service User or otherwise. The views of the Service User and/or their representative will be sought and taken into account. The final decision in respect of ending the Purchase Order will be taken by the Authority in accordance with what it deems are the best interests of the Service User.

12.75.6.4 The Provider will advise the Commissioners in writing at least four (4) weeks in advance if it plans to close or transfer ownership of the Care Home. In such circumstances, the Authority reserves the right to end the Placement immediately, particularly if there is likely to be a serious risk to the life, health and well-being of the Service User, or other Service Users.

## **Death of a Service User**

- 12.76 The Provider must notify the Commissioners within twenty four (24) hours of the death of a Service User and complete and submit a Change of Circumstance Form.
- 12.77 The Provider shall be responsible for requesting the Service User's next of kin (or where appropriate the relevant local authority) to make the necessary arrangements, including funeral arrangements.
- 12.78 The Authority shall pay the Provider for the Total Placement Cost excluding the NHS's FNC and FCO contribution for three (3) Days (including the Day of death). The NHS's obligation to pay the Provider the FNC and FCO for the Service User shall cease on the date of death.

## **Financial arrangements**

### Placement Fee

- 12.79 The Placement Fee shall be reviewed and set by the Authority each year following an open, transparent and robust review and consultation and the decision/outcome shall be advised to Providers.
- 12.80 The Placement Fee will be calculated on a weekly rate, comprising seven (7) days. The FNC contribution payable by the NHS for Service Users is determined by the Government on an annual basis with no guarantee of any increase. The FNC rate payable each year will be advised to Providers.
- 12.81 The Placement Fee shall be detailed in the Purchase Order/Continuing Care Service Agreement and in relation to Section 117 Placements in a Care Home with Nursing the Commissioners will both contribute to the Total Placement Fee. A Purchase Order will underpin the Authority's contribution and a confirmation letter will be issued by the NHS for its contribution.
- 12.82 After completion of a Purchase Order, the Authority's Finance Assessment Officer shall complete a full financial assessment of the Service User's personal financial circumstances in order to determine the correct amounts to be paid by the Authority, Service User and third party (if relevant).
- 12.83 The Financial Assessment Officer will confirm amounts to be paid to both the Service User and the Provider. For avoidance of doubt, the FNC element of the Total Placement Cost is payable by the NHS regardless of the Service User's financial circumstances.
- 12.84 The Authority shall pay the Provider monthly in arrears for the Services received by the Service User.
- 12.85 Where the Provider submits an invoice to the Authority in accordance with this clause 12 the Authority will consider and verify the invoice within seven (7) Working Days.
- 12.86 The Authority shall pay any undisputed sums due under such invoice no later than seven (7) Working Days from the date on which the Authority determined that the invoice was valid and undisputed.
- 12.87 Where the Authority fails to comply with clause 12.86 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 12.86.

- 12.88 Where the Provider enters into a sub-contract, the Provider shall include in that sub-contract provisions having the same effect as clause 12.85 to clause 12.87 of this Agreement.
- 12.89 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 30 – Resolution of Disputes. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 14 days after resolution of the dispute between the parties.
- 12.90 Subject to clause 12.89, interest shall be payable on the late payment of any undisputed Placement Fee properly invoiced under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Provider shall not suspend the supply of the Services if any payment is overdue unless it is otherwise entitled to terminate this Agreement.
- 12.91 The Authority shall only be liable to pay the Total Placement Cost excluding the NHS's FNC and FCO in respect of a Service User if:
- 12.91.1 the Service User has been assessed and placed by the Authority in the Care Home, in accordance with the Authority's assessment and care management procedures;
  - 12.91.2 a Purchase Order and Support Plan have been completed for the Service User;
  - 12.91.3 in the case of an Emergency Admission, where the Service User is placed by the Care Manager or authorised by the Authority's Out of Hours Service.

#### NHS Funded CHC Placement /FNC Payments

- 12.92 The NHS shall pay to the Provider the CHC/FNC Fee for each Service User from the determined Eligibility Date in respect of the provision of the Services and will provide to each Service User, where appropriate, such bespoke equipment and additional services as are set out in the Service User's Care Plan.
- 12.93 The NHS shall pay to the Provider the FNC and FCO elements monthly, by the end of the month concerned, in respect of the funded nursing care services received by the Service User.
- 12.94 For invoiced fees, the NHS will make every reasonable effort to pay the Provider within thirty (30) days from the invoice date. Invoices should be submitted for calendar months at the beginning of the month concerned i.e. invoice for May on 1 May.
- 12.95 For FNC and FCO payments, unless an alternative individual arrangement is in place, the NHS shall forward a schedule directly to the Provider for each Placement with full details regarding the next payment. This must be returned with a completed declaration by Provider staff before payment will be made.
- 12.96 The NHS will not make NHS FNC payments for Service Users who are deemed eligible for NHS CHC funding (namely fully funded by the National Health Service).
- 12.97 The NHS will stop payment and reclaim payment from the Provider in relation to FNC and FCO payments from the date of CHC eligibility.

12.98 The Provider may be eligible for CQUIN related payments and if appropriate the NHS shall make such payments to the Provider, upon receipt of an appropriate invoice.

#### General

12.99 The Placement Fee payable by the Commissioners shall be inclusive of all costs, overheads and expenses (including items for the Service User's daily living e.g. food and drink, basic toiletries and continence products) but exclusive of VAT (which is not applicable). For the avoidance of doubt, the Service User may choose to purchase/pay more for extras which are not included in the Placement Fee but, under no circumstances will the Commissioners be liable for or be required to meet the cost of these extras.

12.100 All payments will be made in sterling and payment shall be made directly into the Provider's bank account.

12.101 If the Authority intends to withhold all or any part of a payment it will give notice to the Provider to that effect, which notice shall specify the amount proposed to be withheld and the grounds for doing so.

12.102 The Provider is required to notify the Authority of any overpayment made by the Authority and repay the full amount within one (1) month.

12.103 The Provider and its Personnel shall not under any circumstances have deputyship/Power of Attorney to act on behalf of the Service User in relation to their financial affairs. This will be considered a conflict of interest and amount to a breach of the Agreement.

#### Arrangements where Service User assets exceed capital limit

12.104 The Authority shall inform the Provider when a Service User's assets are realised and result in the Service User no longer being eligible for public financial support and the provisions of clause 12.75 – Ending a Placement shall apply. In such instances the NHS shall remain responsible for payment of the FNC and FCO elements of the Total Placement Cost but the Authority's obligation to make payment of the Placement Fee shall cease.

12.105 If the outcome of the financial assessment identifies that the Service User has assets in excess of the upper capital limit, the arrangement will be terminated immediately. The Provider will be expected to make the necessary arrangement to collect the full cost of care from the Service User with effect from the commencement of the placement and account to the Authority for any payments made during this period by the Authority to the Provider.

### **13. HUMAN RIGHTS**

13.1 The Provider shall at all times when providing the Services act in a way that is compatible with the Convention Rights within the meaning of section 1 Human Rights Act 1998.

13.2 The Commissioners shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance with this clause by the Provider. The Provider shall not resume provision of the Services or any part of the Services until the Commissioners are satisfied that the non-compliance has been rectified.

## **14. MENTAL CAPACITY**

- 14.1 The Provider will comply at all times with the requirements of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards in the provision of the Services.
- 14.2 The Provider will ensure that it facilitates access for the Independent Mental Capacity Advocacy Service when a Service User is determined to lack mental capacity and has no relatives or friends appropriate to assist them in making key decisions including decisions relating to a change in accommodation such as residential or nursing care, or serious medical treatment not covered by the Mental Health Act.
- 14.3 The Provider shall, as part of the admission process, assess whether a Service User is likely to have their liberty deprived within the meaning of the Act.
- 14.4 The Provider shall inform the Commissioners within three (3) Working Days should an existing Service User be assessed as having their liberty deprived because of an increase in dementia or deterioration of their mental health.
- 14.5 The Commissioners will undertake a best interests' assessment to establish whether deprivation of liberty is occurring or is likely to occur and if so whether:
  - 14.5.1 it is in the best interests of the Service User;
  - 14.5.2 it is necessary for them to be deprived of liberty in order to prevent harm to themselves;
  - 14.5.3 deprivation of liberty is a proportionate response to the likelihood of the Service User suffering harm and the seriousness of that harm.

## **15. INFORMATION**

- 15.1 The Provider must maintain accurate documented information as required under this Agreement.
- 15.2 The Provider shall manage a system which details occupied bed days for each Service User. These records must be accessible to the Commissioners upon request.
- 15.3 The Provider shall make available to the Commissioners any information relating to changes in the Service User's circumstances which may affect the Support Plan, and any change in financial circumstances.
- 15.4 Medical records are regarded as separate and distinct from the Provider's records. The Commissioners may access such medical records with the approval of the Service User.
- 15.5 The Service User shall be informed about what is written on their personal records and have access to them, upon request.
- 15.6 The Commissioners or their authorised representatives may, acting reasonably, (i) inspect all documents and other records held by the Provider; and (ii) enter the Care Home without notice; and (iii) obtain such explanations as may be considered necessary in so far as they concern matters pertaining to the provision of the Services and the individual agreements with Service Users.
- 15.7 The Provider shall ensure that all information held pertaining to Service Users is kept secure and reasonable steps are taken to prevent theft or loss.

## 15.8 Serious Untoward Incidents and Patient Safety Incident Reporting

15.8.1 The Provider shall promptly send the Commissioners a copy of any notification it gives to a regulator where that notification directly or indirectly concerns the Service User.

15.8.2 The Parties shall comply with:

15.8.2.1 the arrangements for notification and investigation of Serious Untoward Incidents and Patient Safety Incidents; and

15.8.2.2 the procedures for implementing and sharing lessons learned in relation to Serious Untoward Incidents and Patient Safety Incidents, that are agreed between the Provider and the Commissioners and evidenced in writing from time to time and, to avoid doubt, the Provider shall notify the Commissioners of all Serious Untoward Incidents and Patient Safety Incidents involving the Service User immediately following occurrence.

15.8.3 The Commissioners shall have complete discretion to use the information provided by the Provider under this clause 15.8 in any report which it makes to any regulator, any NHS Body, any office or agency of the Crown, or any other appropriate regulatory or official body in connection with such Serious Untoward Incident or Patient Safety Incident or in relation to the prevention of Serious Untoward Incidents or Patient Safety Incidents, provided that it shall in each case notify the Provider of the information disclosed, and the body to which they have disclosed it.

15.9 The provisions of this clause 15 shall in respect of any Services performed under this Agreement survive its expiry or its termination for any reason.

## 16. **LOCAL HEALTHWATCH**

16.1 In accordance with the provisions of the Local Government and Public Involvement in Health Act 2007 as amended by the Health and Social Care Act 2012, the Provider shall allow members of the Local Healthwatch to inspect Services commissioned under this Agreement, so as to enable members of the community to contribute their views in relation to health and social care service development and delivery.

## 17. **AUDIT**

17.1 Subject to any express provision contained elsewhere in this Agreement, the Provider shall keep and maintain until six (6) years after the Agreement has ended or as otherwise may be required by Law, full and accurate records of the Services provided, all expenditure reimbursed by the Commissioners and all payments made by the Commissioners.

17.2 The Provider shall on request afford the Commissioners or the Commissioners' representatives such access to those records as may be required by the Commissioners in connection with the Agreement at no cost to the Commissioners.

## 18. **CONFIDENTIALITY**

- 18.1 Each party, its Personnel or any other person associated with either party will keep confidential:
- 18.1.1 the terms of this Agreement; and
  - 18.1.2 any and all confidential information that it may acquire in relation to any other party or Service User.
- 18.2 No party will use or disclose the other party's confidential information, without prior written consent, except to persons and for the purpose of performing this Agreement, or where disclosure is expressly permitted under this Agreement.
- 18.3 The Provider shall only use the Commissioners' confidential information for the purposes of this Agreement.
- 18.4 The Provider shall take reasonable steps to ensure the Commissioners' confidential information is only given to its Personnel, professional advisors or consultants as strictly necessary for the performance of this Agreement. The Provider shall ensure its Personnel, professional advisors or consultants are aware of the Provider's confidentiality obligations under this Agreement.
- 18.5 The obligations on a party set out in clauses 18.1 to 18.4 will not apply to any confidential information which:
- 18.5.1 a party can demonstrate is or becomes public knowledge otherwise than by breach of this Agreement;
  - 18.5.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
  - 18.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 18.5.4 is independently developed without access to the confidential information;
  - 18.5.5 is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000.
- 18.6 Nothing in this clause shall prevent the Commissioners from:
- 18.6.1 disclosing any confidential information for the purpose of:
    - 18.6.1.1 the examination and certification of the Commissioners' accounts; or
    - 18.6.1.2 any examination pursuant to section 6(1) National Audit Act 1983 of the economy, efficiency and effectiveness with which the Commissioners have used their resources; or
  - 18.6.2 disclosing any confidential information obtained from the Provider:
    - 18.6.2.1 to any government department or any other contracting authority;
    - 18.6.2.2 to all government departments or contracting authorities receiving

such confidential information shall be entitled to further disclose the confidential information to other government departments 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 government department or any contracting authority; or

18.6.2.3 to any person engaged in providing any services to the Commissioners for any purpose relating to or ancillary to this Agreement; provided that in disclosing information under sub-clause 18.6.2 the Commissioners disclose only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

18.7 Information which the Service User wishes to be regarded as confidential information shall not be disclosed unless particular circumstances dictate otherwise, for example where there is prima facie evidence of a crime having been committed, or the information is directly relevant to the Services being provided or withholding the information would place Service Users or potential Service Users at risk, in which case the information must, in the first instance, be shared with the Commissioners.

18.8 As the security, safety and well-being of Service Users takes precedence over issues of confidentiality, where the Provider has received information that a Service User has been subject to Abuse whilst in receipt of the Services or is at risk of Abuse, the Provider shall report this immediately to the Commissioners and/or the police as appropriate and shall co-operate fully with any subsequent procedures. In the same way, where the Commissioners have received information that a Service User has been the subject of Abuse or is a risk of Abuse, the Commissioners shall report this immediately to the police and/or other agencies with a responsibility for the protection of vulnerable adults.

18.9 In the event that the Provider fails to comply with this clause 18, the Commissioners reserve the right to terminate the Agreement by notice in writing with immediate effect.

18.10 This clause 18 shall survive termination of this Agreement indefinitely.

## **19. DATA PROTECTION**

19.1 The Commissioners and the Provider shall assist and co-operate with each other to meet their respective obligations under the Data Protection Act 1998 (DPA) which arise in connection with this Agreement.

19.2 Personal data as defined in the DPA supplied by and/or processed on behalf of the Commissioners (electronic or manual) is owned by the Commissioners.

19.3 The Provider shall maintain appropriate confidentiality and security arrangements in respect of all personal data supplied by and/or processed on behalf of the Commissioners or produced by the Provider in the course of providing the Services, which includes taking appropriate technical and contractual measures to guard against unauthorised or unlawful processing and prevent accidental loss, destruction or damage to the personal data, and must comply fully with the principles of the DPA and the instructions of the Commissioners when processing that personal data.

19.4 The Provider shall provide to the Commissioners, upon request, such information as

they may reasonably require to satisfy themselves that the Provider is complying with its obligations under the DPA which, for the avoidance of doubt, is a fundamental condition of this Agreement.

- 19.5 The Provider shall promptly notify the Commissioners of any breach of the security measures required to be put in place pursuant to clause 19.3.
- 19.6 The Provider shall ensure it does not knowingly or negligently do or omit to do anything which places the Commissioners in breach of their obligations under the DPA.
- 19.7 The provisions of this clause 19 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
- 19.8 In the event that the Provider fails to comply with this clause 19, the Commissioners reserve the right to terminate the Agreement by notice in writing with immediate effect.

## **20. FREEDOM OF INFORMATION**

- 20.1 The Provider acknowledges that the Commissioners are subject to the requirements of the Freedom of Information Act 2000 (FOIA) and shall assist and co-operate with the Commissioners (at the Provider's expense) to enable the Commissioners to comply with their information disclosure requirements.
- 20.2 The Provider shall:
  - 20.2.1 transfer all requests for information to the Commissioners (where it is reasonably apparent that such are intended to be requests for information for the Commissioners) as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
  - 20.2.2 provide the Commissioners with a copy of any information in their possession or power in the form that the Commissioners require within five (5) Working Days (or such other period as the Commissioners may specify) of the Commissioners requesting that information; and
  - 20.2.3 provide all necessary assistance as reasonably requested by the Commissioners to enable the Commissioners to respond to a request for information within the time for compliance set out in section 10 FOIA.
- 20.3 The Commissioners shall be responsible for determining at their absolute discretion whether Commercially Sensitive Information and/or any other information:
  - 20.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOIA; or
  - 20.3.2 is to be disclosed in response to a request for information.
- 20.4 In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Commissioners.
- 20.5 The Provider acknowledges that the Commissioners may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOIA, be obliged to disclose information:
  - 20.5.1 without consulting with the Provider; or

20.5.2 following consultation with the Provider and having taken its views into account.

20.6 The Provider shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Commissioners to inspect such records as requested from time to time.

20.7 The Provider acknowledges that any lists or schedules provided by it outlining commercially sensitive information are of indicative value only and that the Commissioners may nevertheless be obliged to disclose confidential information in accordance with clause 18 – Confidentiality.

## **21. COMPLAINTS, REPRESENTATIONS AND COMPLIMENTS**

21.1 The Provider shall establish and maintain a log of complaints and a procedure for examining Service Users' complaints regarding the Services. Service Users must be informed of the means of registering a complaint. The procedure will indicate how complaints are dealt with, give a time-scale for responses and show how Service Users are informed of the outcome of a complaint. The process shall be approved by the Commissioners.

21.2 The complaints procedure adopted by the Provider must recognise the difficulty some Service Users may feel in raising a complaint because of their potential vulnerability. The procedure shall ensure that Service Users are encouraged and facilitated to make complaints through a range of methods with representation if necessary.

21.3 The log of complaints shall be accessible to the Commissioners on request. In addition, the Provider must supply to the Commissioners an analysis of complaints and their outcomes if requested.

21.4 Where a complaint remains unresolved, it shall be recorded in the Provider's log book and a copy of the record shall be forwarded to the Commissioners within two (2) Working Days of the Service User notifying the Provider that they remain unsatisfied.

21.4 Where a Service User remains dissatisfied following a complaint the Provider will inform the Service User of the complaints procedure operated by the Commissioners as appropriate, which may then be instigated if the Service User so wishes.

21.5 The Provider and its Personnel shall co-operate fully with the Commissioners in investigating and resolving complaints and shall use complaints as a learning process to improve the Services and reduce the likelihood of future complaints.

## **22. SAFEGUARDING VULNERABLE ADULTS**

22.1 The Provider shall comply with the requirements of The Adults Safeguarding: Multi-agency policy and procedures for the protection of adults with care and support needs in the West Midlands [\[link\]](#).

22.2 The Provider should have an appointed and named safeguarding lead for the Care Home. The safeguarding lead shall be fully conversant with the requirements of the safeguarding policy and procedures referred at clause 22.1. In addition the safeguarding lead should ensure that there is a clear method to enable Service Users and relatives to recognise and report Abuse.

- 22.3 The Provider will not permit any of its Personnel who are subject to an enhanced Disclosure & Barring Service (DBS) check to commence any duties under the Agreement until the DBS check has been completed and the Provider has made all reasonable efforts to ensure that the deployment of the Personnel will present no risks to the Service User or any person with whom they have contact who may be at risk.
- 22.4 The Provider must maintain appropriate records in accordance with DBS requirements to evidence that a DBS check and any associated risk assessment of the Personnel's suitability has been completed.
- 22.5 The Commissioners retain the right to request the Provider to consider in accordance with the Provider's safeguarding and HR policies withdrawing from providing the Services any Personnel in the event of any DBS or Protection of Vulnerable Adults information coming to light which in the reasonable opinion of the Commissioners deems the Personnel unsuitable to work with the Service User. The Provider shall immediately notify the Commissioners in the event that it becomes aware of such information.
- 22.6 The Provider must evidence that a robust staff recruitment, training and supervision programme is in place which ensures all reasonable steps are taken to ensure the suitability and competency of the Personnel deployed to the Service User. The staff recruitment process must comply with all good practice safeguarding processes.

### **23. EQUALITY**

- 23.1 The Provider shall at all times operate a policy of equal opportunity in both staffing recruitment and service delivery. The Provider shall be required to forward a copy of this policy to the Commissioners when required and demonstrate its operation in the performance of the Services.
- 23.2 The Provider shall not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, religion or belief or age and, without prejudice to the generality of the foregoing, shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation.
- 23.3 The Provider shall take all reasonable steps to secure the observance of this clause by all Personnel engaged in the Services.
- 23.4 In the event of a finding of discrimination being made by any court or employment tribunal against the Provider or any sub-contractor appointed by the Provider during the performance of the Services, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of the Services, the Provider shall inform the Commissioners of this finding, (unless the finding is subject to the terms of a binding confidentiality agreement), and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 23.5 Subject to clause 28, the Provider shall indemnify the Commissioners in respect of any claims against the Commissioners which arise directly by reason of the Provider's breach of the legislation referred to in clause 23.2 where such breach arises in the performance of its obligations under this Agreement.

## **24. HEALTH AND SAFETY**

- 24.1 The Provider shall comply with the Health and Safety at Work etc Act 1974, and all other acts, orders and regulations and codes of practice relating to health and safety in relation to the Care Home and the performance of the Services.
- 24.2 The Commissioners shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance by the Provider with its legal duties in relation to health and safety matters. The Provider shall not resume provision of the Services or such part until the Commissioners are satisfied that the non-compliance has been rectified.
- 24.3 The Provider shall promptly notify the Commissioners of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Services.
- 24.4 The Provider shall make its health and safety policy statement available to the Commissioners on request.

## **25. ASSIGNMENT AND SUB-CONTRACTING**

- 25.1 The Provider shall not transfer, assign or sub-contract directly or indirectly to any person or persons any part of this Agreement without the previous written permission of the Commissioners.
- 25.2 Sub-contracting any part of this Agreement shall not relieve the Provider of any obligation or duty attributable to the Provider under this Agreement.
- 25.3 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 25.4 Any such permitted transfer, assignment or sub-contracting shall be on the same terms as this Agreement, unless otherwise agreed between the parties.
- 25.5 The Commissioners shall be entitled to assign the benefit of the Agreement or any part and shall give written notice of any assignment to the Provider.

## **26. RIGHTS OF THIRD PARTIES**

- 26.1 Save for the rights reserved in this Agreement for the benefit of Service Users, in accordance with the Contracts (Rights of Third Parties) Act 1999, a person who is not a party to this Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Commissioners or the Provider) shall not have any rights under or in connection with it.

## **27. WARRANTIES**

- 27.1 The Provider warrants and represents to the Commissioners that:
- 27.1.1 it has the full capacity and authority to enter into and perform the Services and that the Agreement is executed by a duly authorised representative of the Provider;
- 27.1.2 it will perform the Services using reasonable care and skill and with suitably qualified Personnel, volunteers and agents, and to a standard which conforms to generally accepted industry standards and practice;

- 27.1.3 it will use its best endeavours to achieve the outcomes in the Service Specifications and that the outcomes will be in accordance in all material respects with the Service Specifications and accompanying documents;
  - 27.1.4 the Provider's Personnel will have the necessary skills, professional qualifications and experience to perform the Services in accordance with the Service Specification and industry standards and practice, being responsible for all costs, fees, expenses, and charges for training necessary or required for the Provider to perform the Services;
  - 27.1.5 it has obtained all necessary and required licences, consents and permits to perform the Services;
  - 27.1.6 the Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.
- 27.2 Each of the parties acknowledges that in entering into this Agreement it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by Law.

## **28. LIABILITIES AND INDEMNITIES**

- 28.1 No party excludes or limits liability to the other parties for death or personal injury caused by its negligence or that of its Personnel, agents or sub-contractors, or for fraud by it or its Personnel, or for any breach of obligations implied by section 2 Supply of Goods and Services Act 1982.
- 28.2 The Provider shall indemnify the Commissioners fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising out of or in connection with this Agreement, caused directly by any act or omission of the Provider which shall include any claim brought by a third party who suffers damage or loss as a result or consequence of the Provider's failure to comply with its obligations under clause 19 - Data Protection, unless such injury, loss, damage, cost or expense is caused by the negligence or wilful misconduct of the Commissioners.
- 28.3 The annual aggregate liability of the Provider resulting in direct loss or damage or otherwise in connection with the Agreement shall be limited to the insurance levels set out in clause 29.
- 28.4 Subject to clauses 28.1 and 28.2, neither party shall be liable to the other in any event for any loss of profits, turnover, business opportunities, damage to goodwill or anticipated savings and/or indirect or consequential loss or damage.
- 28.5 The Commissioners shall not, under any circumstances, be liable for any damage caused by the Service User to the Provider's property or premises.
- 28.6 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 28 is held to be invalid under any law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 28.

28.7 Nothing in this clause 28 shall act to reduce or affect a party's general duty to mitigate its loss.

## **29. INSURANCE**

29.1 The Provider shall at all times effect and maintain **appropriate** insurance policies with a reputable insurer in relation to the provision of the Services which may include some or all of the policies referred to in clauses 29.2 – 29.6 inclusive.

29.2 Public liability insurance shall be maintained in such sum as is deemed prudent in all the circumstances by the Provider and in any event with a minimum level of indemnity of £5 million for any one claim.

29.3 Medical malpractice cover shall be maintained with a minimum level of indemnity of £10 million in aggregate.

29.4 Employer's liability cover shall be maintained with a minimum level of indemnity of £10 million for any one claim.

29.5 The Provider shall maintain motor vehicle insurance to cover all liabilities to third parties arising from the performance of the Services.

29.6 The Provider shall produce evidence of the insurances in force before the commencement of the Services, and on each anniversary of this Agreement if requested by the Commissioners.

29.7 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Agreement, the Commissioners may make alternative arrangements to protect their interests and may recover the reasonable costs of such arrangements from the Provider. Such failure may be regarded as a material breach of this Agreement.

29.8 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Agreement.

## **30. RESOLUTION OF DISPUTES**

30.1 In the event that any disagreement or difference of opinion arises out of this Agreement which cannot be resolved by the Contracts Officers and the Provider's representative, the matter shall be dealt with as follows:

30.1.1 the contract managers for the Commissioners and the Provider shall meet to seek resolution. In the event that they do not meet within ten (10) Working Days of the date on which either party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred to the Authority's Director of Adult Wellbeing, the NHS's Chief Nurse and the Provider's Chief Executive (or equivalent) or their respective nominees for immediate resolution.

30.1.2 if within fourteen (14) Working Days of the matter having been referred for resolution in accordance with clause 30.1.1 no agreement has been reached as to the matter in dispute, the parties shall thereafter seek to determine the matter in dispute by mediation in accordance with the CEDR Model Mediation Procedure.

- 30.1.3 Unless otherwise agreed, the mediator shall be nominated by CEDR Solve.
- 30.1.4 To initiate the mediation, a party must serve notice in writing on the other party to the dispute requesting mediation. A copy of the notice should be set to CEDR Solve.
- 30.1.5 The mediation will commence not later than thirty (30) days after the date of the notice.
- 30.1.6 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the dispute.

## **31. QUALITY ASSURANCE AND CONTROL**

- 31.1 The Provider shall adhere to the standards of care detailed in the Specification, the Service User's Support Plan and the Quality Assurance Framework.
- 31.2 The Provider shall demonstrate compliance with its obligations under this Agreement and maintain its own quality control programme. This must include individual Service User feedback processes using formats which are accessible to all Service Users. Information must be made available to the Commissioner in respect of all aspects of contract compliance and quality control on request. Particular emphasis will be placed on the following areas:
- Recruitment, selection, management of Personnel, supervision and training.
  - Service provision and outcomes. The Provider shall achieve the measurable outcomes specified in the Service User's Support Plan and demonstrate forward planning and consistency of delivery.
  - Representation and the handling of Service User complaints.
  - Policies and procedures operated by the Provider and resultant practices within the Provider's organisation.
- 31.3 For the avoidance of doubt, nothing in this Agreement is intended to prevent the Provider from achieving higher quality standards than those required by this Agreement, the Quality Assurance Framework and/or any regulator.
- 31.4 The Provider shall comply with all reasonable written requests made by any regulator, the National Audit Office, the Public Sector Audit Appointments Ltd or its appointed auditors, the Commissioners, any Authorised NHS Person, or the authorised representatives of Healthwatch for information relating to the provision of the Services. The Provider shall give all reasonable assistance and provide all reasonable facilities to facilitate this.
- 31.5 Within ten (10) Working Days of the Commissioners' reasonable request, the Provider shall send the Commissioners the results of any audit, evaluation, inspection, investigation or research in relation to the Services carried out by the Provider.
- 31.5.1 The Provider shall implement all relevant recommendations:
- 31.5.1.1 in any report by a regulator;
  - 31.5.1.2 agreed with the National Audit Office or the Public Sector Audit Appointments Ltd as to be made following any audit; or

31.5.1.3 of any appropriate clinical audit; or

31.5.1.4 that are otherwise agreed by the Provider and the Commissioners to be implemented.

31.6 The parties shall maintain accurate accounts and records of all payments, receipts and financial and other information relevant to the provision of the Services.

31.7 The Provider shall carry out the Services in accordance with the Law, good clinical and healthcare practice as defined in the Specifications and any national and/or local quality standards:

31.7.1 comply with the core standards and recommendations from time to time contained in the Standards for Better Health;

31.7.2 consider and respond to the recommendations arising from any audit, Serious Untoward Incident report or Patient Safety Incident report;

31.7.3 comply with the standards and recommendations from time to time issued by any relevant professional body and agreed in writing between the Commissioners and the Provider; and

31.7.4 comply with applicable standards and recommendations from time to time issued by the National Institute for Health and Clinical Excellence (or any successor) or required by any regulator.

## **32. MONITORING ARRANGEMENTS**

32.1 The Commissioners' Care Manager/Social Worker/Case Co-ordinator shall be responsible for the regular review and re-assessment of the care arrangements for the Service User. This re-assessment process will clearly demonstrate that the views and wishes of the Service User are represented and taken into account wherever practicable.

32.2 The Provider shall be responsible for the regular review of the care arrangements to the Service User and shall evidence in the Service User's Support Plan how the Outcomes are being met.

32.3 The Provider shall supply the Commissioners with a copy of the Provider's latest published CQC/CSSIW compliance report if and when requested.

32.4 In addition to the CQC/CSSIW inspections, the Commissioners have a duty to jointly monitor compliance of the standards of services provided to Service Users within the Care Home, as detailed in this Agreement and Specification(s). Monitoring will be carried out to measure whether the Service standards defined in the Specification(s) and the Outcomes in the Service User's Support Plan are being met.

32.5 The Contracts Officers will be responsible for monitoring these standards and will continue to work with Providers to help support with the development of quality services as part of the Commissioners' commitment to achieving excellence in service provision for Herefordshire residents.

32.6 The Contracts Officers shall be responsible for arranging and/or carrying out the monitoring of the Services using various approaches, depending on the purpose of the monitoring, e.g. a routine monitoring visit, Service User surveys or interviews, a visit instigated as a result of a specific concern regarding the quality of service being provided by the Provider and/or a follow-up visit. These visits may be planned or unannounced depending on the nature of the visit and may occur at any time during

the twenty four (24) hour day. Unannounced visits and visits undertaken during unsociable hours will be limited to where concerns have been raised regarding the quality of service being provided by the Provider or there is reasonable concern that individual Service Users may be at risk. In relation to the Commissioners' visits:

32.6.1. for planned visits such as routine monitoring and routine follow-up visits, the Provider shall be contacted in advance of the monitoring visit. If the suggested time and date is not convenient, the Provider shall contact the Authority within twenty four (24) hours to arrange a mutually convenient time.

32.6.2. all other visits will be carried out by the Commissioners without giving prior notice to the Provider.

- 32.7 Where there are areas of non-compliance with the terms of this Agreement, the Provider shall be notified in writing. Agreement shall be reached between the Commissioners and Provider as to the action required and progress will be monitored through follow-up visits to the Provider. This shall not prevent the Commissioners taking alternative action at their discretion to remedy the non-compliance in accordance with the terms of this Agreement.
- 32.8 Where the Commissioners deem it is required, the Commissioners retain the right to revisit the Provider, which may include visits without prior notice.
- 32.9 The Commissioners will also review the Provider's CQC/CSSIW compliance reports on a regular basis and may at its discretion act on the findings of such reports in accordance with the provisions of clause 9 – Provider's Obligations, and the Quality Assurance Framework.
- 32.10 Where the Commissioners identify areas of non-compliance which in their reasonable opinion affect the well-being of Service Users, they retain the right to advise all the Commissioners' care management staff, and to suspend new Placements in accordance with the Quality Assurance Framework
- 32.11 The Commissioners reserve the right in their absolute discretion, to seek from and share relevant information with other care and medical service providers, the CQC/CSSIW, other local authorities, the police and other Clinical Commissioning Groups (as appropriate to the Services), in response to concerns raised in relation to standards of service provision or in relation to any adult/child protection investigation.
- 32.12 The Provider shall co-operate fully with the Commissioners in the conduct of service re-assessments.
- 32.13 The Provider shall comply with all records and monitoring requirements, as specified in the Agreement and the Specifications.
- 32.14 The Commissioner and the Provider shall ensure that Service Users and their carers are central to the review and re-assessment process and their views and opinions shall be sought during all review processes.

### **33. SEVERANCE**

- 33.1 If any clause of this Agreement is declared by any judicial or other competent authority or considered by the parties to be void, voidable, illegal or otherwise unenforceable:

33.1.1 the parties shall amend that provision in such reasonable manner as mutually agreed.

33.1.2 at the discretion of the parties it may be severed from this Agreement and the remaining conditions of this Agreement shall except whether otherwise provided remain in full force and effect unless otherwise terminable.

#### **34. PREVENTION OF CORRUPTION**

34.1 The Commissioners shall be entitled to terminate the Agreement immediately and recover from the Provider the amount of any loss or damage resulting from such cancellation if, in relation to this Agreement or any agreement with the Commissioners, the Provider or any person employed by him or acting on his behalf shall have committed:

34.1.1 any fraud; or

34.1.2 an offence under the Bribery Act 2010; or

34.1.3 shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

#### **35. TERMINATION**

35.1 The Commissioners may by notice in writing to the Provider terminate this Agreement as from the date of service of such notice if:

35.1.1 the Provider passes a resolution or a court makes an order that the Provider be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or

35.1.2 circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation to make a winding-up order regarding the Provider; or

35.1.3 the Provider undergoes a change of control, within the meaning of section 1124 of the Corporation Tax Act 2010, which impacts adversely and materially on the performance of the Agreement; or

35.1.4 the Provider becomes the subject of a voluntary arrangement under section 1 Insolvency Act 1986;

35.1.5 the Provider has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up;

35.1.6 the Provider has a petition presented to any court for its winding up or for an administration order;

35.1.7 the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

35.1.8 the Provider suffers any distraint, execution or other process to be levied or enforced on any of its property by any third party and is not paid out, withdrawn or discharged within seven (7) days;

35.1.9 the circumstances specified in clause 34 – Prevention of Corruption or elsewhere in this Agreement arise.

- 35.1.10 the Provider has become bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of the business for voluntary arrangements for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986; or
- 35.1.11 the Provider has been convicted of a criminal offence or act of grave misconduct in the conduct of its business; or
- 35.1.12 the Provider has failed to comply with any obligations relating to the payment of any taxes or social security contributions.
- 35.2 The Commissioners may only exercise their rights under clause 35.1.3 within six (6) months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Provider shall notify the Authority's Contracts Officer in writing immediately any change of control occurs.
- 35.3 The Commissioners may at any time by notice in writing to the Provider terminate this Agreement as from the date of service of such notice whenever any of the following events occurs:
- 35.3.1 the Provider commits a material breach of any of its obligations under or in relation to this Agreement which is not capable of remedy or, if capable of remedy, is not remedied within thirty (30) days after receipt of written notice from the Commissioners of their intention to terminate; or
- 35.3.2 the Provider is continually in breach or commits a series of repeated breaches of this Agreement, which cannot be remedied with thirty (30) days of written notice from the Commissioners of their intention to terminate; or
- 35.3.3 if in the Commissioners' reasonable opinion continuation of the Agreement would cause risk to the life, health or well-being of any Service User or potential Service User; or
- 35.3.4 if the Provider:
- (i) has for any reason had its registration cancelled by the CQC/CSSIW;  
or
  - (ii) has failed to remedy following an agreed reasonable period any issues highlighted by CQC/CSSIW which have caused the Provider to be issued with a Major Concern.
- 35.4 The Commissioners and the Provider may terminate the Agreement at any time on giving to the other not less than twelve (12) months' notice in writing. Termination by one Commissioner will automatically terminate the Agreement in relation to the other Commissioner.
- 35.5 In any case where immediate termination is permitted, the Commissioners may, at their discretion, initially suspend the Agreement.
- 35.6 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of any party accrued at or prior to termination and subject thereto no party shall have any further obligations to the other under this Agreement. The provisions of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## **36. CONSEQUENCES OF SUSPENSION OR TERMINATION**

- 36.1 Following termination of this Agreement by the Commissioner(s), the Provider shall be entitled to such proportion of the Total Placement Fee as represents a fair and reasonable value of that part of the Services carried out up to the date of termination provided always that the Commissioners reserve the right to deduct from any such sum the amount of any claim the Commissioners may have in respect of any breach, Non-Compliance and/or failure by the Provider to perform its obligations under this Agreement.
- 36.2 The Commissioners shall not in any circumstances be liable to the Provider for any losses or expenses arising out of termination or suspension, and no payment shall be due from the Commissioners under this Agreement during any period of suspension.
- 36.3 Where the Commissioners terminate or suspend the Agreement as a consequence of a breach by the Provider, the Commissioners shall be entitled to recover from the Provider:
- 36.3.1 any costs (including any administration costs) reasonably incurred by the Commissioners in respect of the supply of any part of the Services by the Commissioners or a third party; and
  - 36.3.2 the amount of any other loss (including any administration costs) incurred by the Commissioners as a result of having to suspend or terminate the Agreement,

**PROVIDED THAT** the Commissioners have taken reasonable steps to mitigate any additional expenditure.

- 36.4 The Provider shall upon the termination of the Agreement immediately deliver up to the Commissioners all correspondence, documents and other property belonging to the Commissioners which may be in its possession or under its control.
- 36.5 The provisions of this clause shall survive the termination or expiry of this Agreement.

## **37. FORCE MAJEURE**

- 37.1 No party shall be liable for any delay in, or non-performance of, any obligation under the Agreement (other than the payment of money) caused by an event beyond the reasonable control of that party including but not limited to acts of God, war, explosion, fire, strike, flood, riot or civil commotion or a force majeure event affecting a supplier, sub-contractor or a third party.
- 37.2 In the event such circumstances persist beyond ten (10) Working Days, then the other parties shall have the right to terminate this Agreement by giving not less than thirty (30) Working Days' written notice to the other party.

## **38. LAW AND JURISDICTION**

- 38.1 This Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English courts.
- 38.2 This Agreement is binding on the Commissioners and the Provider their successors and assignees.

## **39. CHANGE IN LAW**

- 39.1 The Provider shall neither be relieved of its obligations to perform its obligations under this Agreement nor be entitled to an increase in the Total Placement Fee as a result of a change in Law, if the change and its effect is known, or should reasonably have been known, at the commencement of the Agreement.
- 39.2 If a change in Law occurs or is shortly to occur which will significantly affect the provision of, or the cost of providing, the Services, the Provider shall notify the Commissioners of the likely effects of the change including:
- 39.2.1 whether any change is required to the Services, the Total Placement Fee or this Agreement; and
  - 39.2.2 whether the Provider requires any relief from compliance with its obligations.
- 39.3 If the parties to this Agreement agree upon the effects of the change in law and any financial consequences such agreement shall be implemented in accordance with clause 7 – Variations and Waivers.
- 39.4 In the case of any dispute arising under this clause, it shall be resolved in accordance with clause 30 – Resolution of Disputes.

## **40. CONFLICT OF INTEREST**

- 40.1 The Provider shall use reasonable endeavours to ensure that it and any of its Personnel are not placed in a position where in the reasonable opinion of the Commissioners there is or may be an actual or potential conflict between the pecuniary or personal interests of the Provider and others and the duties owed to the Commissioners under the provisions of this Agreement. The Provider will immediately disclose to the Commissioners full particulars of any such conflict of interest which may arise.
- 40.2 Where such a conflict does arise the Provider shall take any reasonable steps as are required by the Commissioners for ending or avoiding the actual or potential conflict of interest or alleviating its effect. If the Provider fails to comply or is unable to comply with such measures, then the Commissioners shall have the right by notice in writing to terminate this Agreement immediately without any liability to the Provider.

## **41. RIGHT OF SET OFF**

- 41.1 Without prejudice to any other rights and remedies available to them, the Commissioners shall be entitled to set off all or any of their liabilities to the Provider against all or any of the Provider's liabilities to it, and any liability, damage, loss, charge or expense which the Commissioners have incurred in consequence of any breach by the Provider of its obligations under the Agreement.

## **42. ENTIRE AGREEMENT**

- 42.1 This Agreement contains the whole agreement between the parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

**43. LEGAL/OMBUDSMAN PROCEEDINGS**

43.1 On written request from either of the Commissioners, the Provider or any of its Personnel shall provide to the appropriate Commissioner (as the case may be) all relevant information (including but not limited to documentation and statements from any Personnel) and shall co-operate fully with and provide assistance and give evidence in connection with:

43.1.1 any legal or quasi-legal inquiry, arbitration or court proceedings in which the Commissioners may become involved; or

43.1.2 any internal disciplinary hearing of either Commissioner arising out of or in connection with the Services, or the Purchase Order; or

43.1.3 any investigation by an Ombudsman.

**44. STATUTORY FUNCTIONS**

44.1 Nothing in the Agreement shall be read as preventing or inhibiting either Commissioner from carrying out any such statutory or regulatory duty as each may be under respectively, or as derogating therefrom, or as inhibiting or fettering the exercise of any statutory or regulatory power which either may respectively possess.

**45. NOTICES**

45.1 Any notice to be given under this Agreement shall be in writing and shall be hand delivered or sent by first class mail to the address of the Provider or the Commissioners at the address set out at the head of this Agreement or such other address as that party may from time to time notify to the other party in accordance with this clause.

45.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:

45.2.1 if delivered by hand before 1600 hours on a Working Day, at the time of delivery, otherwise receipt shall be deemed to occur at 0900 hours on the next following Working Day; or

45.2.2 if delivered by first class mail, two (2) Working Days after the day of posting.

45.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted.

**SIGNED BY:**

**The Provider**

Authorised Signatory .....

For and on behalf of .....

Printed Name: .....

Designation: .....

Dated .....

**The Authority**

Authorised Signatory .....

For and on behalf of Herefordshire Council

Printed Name:

Designation:

Dated .....

**The NHS**

Authorised Signatory .....

For and on behalf of Hereford - Clinical Commissioning Group

Printed Name:

Designation:

Dated .....

DRAFT