

**PROVIDER LIST AGREEMENT FOR THE PROVISION OF  
BREAK TIME, DAY TIME AND NIGHT TIME SHORT BREAKS SERVICES FOR  
CHILDREN AND YOUNG PEOPLE WITH DISABILITIES.**

-

between

**LANCASHIRE COUNTY COUNCIL**

and

**PROVIDER**

KH CYP/LCC/21/1065

**THIS AGREEMENT** is dated as per the Commencement Date.

**BETWEEN**

**THE PARTIES**

- (1) **Lancashire County Council** whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ (the "**Authority**") and
- (2) the entity which as a sole trader, partnership or with another trading status has its principal place of business (or as a limited company has its company number and registered office) as set out in Part 1 of the Appendix 3 - Selection Criteria Questionnaire submitted to the Authority and selected by the Authority to be an eligible Provider to join the Authority's Provider List (the "**Provider**").

**BACKGROUND**

- (A) The Authority sought proposals for the provision of a Provider List for Break Time, Day Time And Night Time Short Breaks Services For Children And Young People With Disabilities by means of a public tender exercise. The Authority placed a Find a Tender Notice 2021/S 000-023244 on 17th September 2021 seeking expressions of interest from potential providers for the provision of Break Time, Day Time And Night Time Short Breaks Services For Children And Young People With Disabilities under a Provider List .
- (B) On the basis of the Provider's Request to Participate, the Authority, by way of Award Letter, admitted the Provider onto the Provider List to enable it to bid for Service Contracts or for Service Contracts to be allocated to the Provider by the Authority for Lots(s) as stated in the letter sent to the Provider by the Authority confirming acceptance on to the Provider List (Award Letter) in accordance with the Call-off Procedure Schedule 2.
- (C) All providers applying to join the Provider List indicated in their Requests to Participate that they would comply with all relevant legislation, codes of conduct and regulations governing the subject matter of the Provider List.
- (D) This Agreement sets out the award and ordering procedure for Service Contracts which may be required by the Authority, details of the terms and conditions applicable to any Service Contract, and the obligations of the Provider during and after the validity period of the Provider List.
- (E) The parties acknowledge that this Provider List is part of a multiprovider arrangement (the "Provider List") and an Order of Services may be awarded using any of the procedures set out in Schedule 2, however the parties accept that not all Service will be offered or awarded via this Provider List Agreement at all.

IT IS AGREED as follows:-

**1. INTERPRETATION AND NOTICES**

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Agreement or APL Agreement or Provider List Agreement" means this means this Agreement together with all schedules and appendices attached hereto

"Award Letter" means the letter sent to the Provider from the Authority which confirms the Authority's acceptance of the Provider's Request to Participate, which confirms the Commencement Date of this Agreement and which binds the parties to the terms of this Agreement.

"Provider List or Approved Provider List " means the Provider List established in accordance with the Public Contracts Regulations 2015 to which this Agreement relates.

"Auditor" means the National Audit Office or an auditor appointed by the Audit Commission as the context requires.

"Best Interests Decision" has the meaning set out in the Mental Capacity Act.

"Business Day" means 9:00a.m – 5.00p.m on any day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

"Business Transition" has the meaning set out in the Service Contract

"Call-Off Procedure" means the method by which Service Contracts are awarded to Providers as set out at Schedule 2;

"Call-Off Terms and Conditions" the terms and conditions at Schedule 1;

"Care Plan/Childs Plan" has the meaning set out in the Service Contract;

"Change of Control" means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

"Charges" means the agreed price and charges which shall become due and payable the Authority to the Provider in respect of the Services in accordance with the provisions of clause 11 of the Service Contract and as further particularised in the Service Contract Data Form/Childs Plan/Short Breaks Request Form.

"Commencement Date" means the date as contained in the Award Letter sent to the Provider by the Authority notifying them of their acceptance onto the Authority's Provider List for Break Time, Day Time And Night Time Short Breaks Services For Children And Young People With Disabilities

"Confidential Information" means:-

- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive personal data within the meaning of Data Protection Legislation; and
- (b) commercially sensitive information

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party

"EIR" means The Environmental Information Regulations 2004.

"Find a Tender Notice" means the contract notice published on [www.find-tender.service.gov.uk](http://www.find-tender.service.gov.uk)

"FOIA" means The Freedom of Information Act 2000.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Authority.

"Information" has the meaning given under Section 84 of the Freedom of Information Act 2000.

"Information Sharing Protocol" shall mean the policy in place between the Authority and other public bodies which permits the sharing of information about the Provider and other providers relating to concerns about the Services (including safeguarding concerns), the accommodation provided or the Provider itself.

"Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

"Initial term" means the period commencing on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement or it is otherwise lawfully terminated or otherwise extended in accordance with clause 2) ending on the 31<sup>st</sup> March 2027.

"Invitation to Participate" means the Authority's invitation to Providers to participate in the Provider List.

"Law" the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier must comply;

"Location" means the area where the Services are provided;

"Lot" means:

- 1a Break Time
- 1b Break Time Plus
- 2a Day Time Short Breaks
- 2b Day Time Personal Care
- 3 Night Time Overnight Short Breaks
- 4 Intensive Positive Behaviour Support

"Month" means a calendar month.

"Order" means an order for Services sent by the Authority to the Provider in accordance with the Call-Off Procedure;

"Party" means the Authority and or the Provider;

"Personal Data" is as defined in the Data Protection Legislation.

"Personnel" all directors, officers, employees, agents, consultants and providers of the Provider and/or of any Sub- Contractor engaged in the performance of its obligations under this Agreement;

"Processor" is as defined in the Data Protection Legislation.

"Prohibited Act" to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

- (a) induce that person to perform improperly a relevant function or activity; or reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Provider List;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Provider List or any other contract with the Authority; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

"Providers" the organisations who have been appointed to the Provider List and where applicable this shall include the Provider's employees, Sub-Contractor, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members;

"Regulations" The Public Contracts Regulations 2015;

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Provider List Agreement or any other affairs of the Authority.

"Requests for Information" means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

"Request to Participate" means the submission by a provider in response to the Find My Tender Notice seeking admission onto the Provider List, also referred to as Offer in the Award Letter.

"Request for Services" means the Authority's request to eligible Provider List providers to take part in a Call-off Procedure for the award of Services under a Service Contract;

"Response" means the documents submitted to the Authority by the Provider in response to a Request for Services held by the Authority for the provision of Services.

"Services" the services described in the Specification, to be supplied by the Provider where appointed in accordance with this Agreement and the Call-Off Procedure;

"Service Contract" as set out at Schedule 1, the legally binding agreement (made pursuant to the provisions of this Provider List Agreement) for the provision of Services made between the Authority and the Provider comprising:

- (i) the Service Contract Data, Short Break form, Child's Plan and any documents Annexed to it
- (ii) the Call-Off Terms and Conditions; and
- (iii) the Response (where applicable)

"Service Contract Data" means the document at Schedule 4 to the Service Contract, forming part of the Service Contract and supplementing the Specification, setting out the key details and specifics of the Authority's requirement for Services following the Call-Off Procedure;

"Short Breaks Referral Form" means the document at Schedule 5 to the Service Contract, forming part of the Service Contract and supplementing the Specification, setting out the key details and specifics of the Authority's requirement for Services following the Call-Off Procedure;

"Specification" the document detailing the Services to be delivered by the Provider set out at Schedule 3;

"Service User" means any individual notified by the Authority to the Provider as requiring the Services or their adult parent/carer(s);

"Subcontract" any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

"Sub-Contractor" means the service providers that enter into a Subcontract with the Provider.

"Term" means the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 2; or
- (b) the earlier termination of this agreement in accordance with its terms.

"Termination Date" means the date of expiry or termination of this Provider List Agreement.

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

"Working Days" means any day other than a Saturday, Sunday or public holiday in England and Wales.

"Year" means a calendar year.

1.2 The interpretation and construction of this Provider List Agreement shall be subject to the following provisions:-

1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.2 words importing the masculine include the feminine and the neuter;

1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.2.6 headings are included in this Provider List Agreement for ease of reference only and shall not affect the interpretation or construction of this Provider List Agreement;

1.3 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be given by electronic mail (confirmed by letter). Notices shall be sent by email to [cyp-shortbreaks@lancashire.gov.uk](mailto:cyp-shortbreaks@lancashire.gov.uk) and confirmed by post to Short Breaks Team, Lancashire County Council, County Hall, PRESTON PR1 8XJ. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted (save with the exception of post delivered by second class, in which case service shall be deemed to have occurred on the third Working Day after posting), or 4 hours, in the case of electronic mail or sooner where the other party acknowledges receipt of such letters, or item of electronic mail.

## **2. AGREEMENT PERIOD**

### **DURATION, TERM , COMMENCEMENT AND EXTENSION**

2.1 The Provider List Agreement will take effect from the Commencement Date and (subject to the provisions for early termination set out in clause 5 shall continue until 31<sup>st</sup> March 2027 following which the Authority may elect by giving written notice to the Service Provider to extend the Agreement for further periods up and not exceeding 31<sup>st</sup> March 2029.

2.2 If the Authority wishes to extend this Provider List Agreement, it shall give the Service Provider at least 6 months' written notice of such intention before the expiry of the Initial Term or extension period.

- 2.3 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 2.4 If the Authority does not wish to extend this Provider List Agreement beyond the Initial Term this Provider List Agreement shall expire on the expiry of the Initial Term and the provisions of clause 5 shall apply.
- 2.5 Upon termination or expiry of this Provider List Agreement the following provisions shall apply:
- (a) the Authority shall no longer be entitled to submit further Requests for Services from the Service Provider for the purposes of providing Services under the terms of this Agreement;
  - (b) Following expiry of this Agreement its terms and conditions shall automatically apply to those Service Contract Data Forms/ Short Break Forms/Child's Plans holding over until such time as the parties have entered into a further agreement and upon the parties entering into such a further agreement the terms of that agreement shall apply to Service Contract Data Forms/Child's Plans/ Short Break Form and the terms and conditions of this agreement holding over shall then automatically terminate; and
  - (c) The terms of the Exit Management Plan contained at Schedule 12 shall apply
- 2.6 Should the parties fail to enter into a further agreement within the timescale specified by the Authority (acting reasonably) the Service Contract Data Forms/Short Breaks Form shall either continue or terminate with the Service Provider on such date as shall be specified by the Authority.

### **3. WARRANTIES**

- 3.1 The Provider warrants to the Authority that:
- 3.1.1 it has full power and authority to enter into this Provider List Agreement and any Service Contract and all governmental or official consents and all necessary consents have been obtained and are in full force;
  - 3.1.2 all obligations of the Provider pursuant to this Agreement and under any Service Contract shall be performed by appropriately experienced, certified, qualified and trained staff with all due skill, care and diligence;
  - 3.1.3 it will ensure that it and all its staff, agents, subcontractor, self-employed staff or personnel employed in connection with the Services will comply with all applicable Laws governing the delivery of the Services;
  - 3.1.4 this Agreement is executed by a duly authorised representative of the Provider;
  - 3.1.5 in entering into this Agreement or any Service Contract it has not committed any Fraud;
  - 3.1.6 as at the Commencement Date, all information, statements and representations contained in the Request to Participate (including statements made in relation to the exclusion grounds referred to in regulation 57 of the Regulations) are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
  - 3.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations

under this Agreement and/or any Service Contract which may be entered into with the Authority;

- 3.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and/or any Service Contract which may be entered into with the Authority;
- 3.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 3.1.10 in the three (3) years prior to the date of this Agreement:-
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
  - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement;
- 3.1.11 it shall perform any Service Contract awarded under this Provider List Agreement in a conscientious and timely manner in accordance with any standards set out in this Agreement and the Service Contract awarded under it or as is otherwise reasonably required by the Authority;
- 3.1.12 it shall notify the Authority immediately of any circumstances relating to the Provider and/or the Authority concerning the Services of which the Provider is aware or anticipates which may justify the Authority taking action to protect its interests (including its reputation and standing);
- 3.2 The warranties set out in this clause 3 are given on the execution of this Provider List Agreement and repeated on every day during the term of this Provider List Agreement and/or any Service Contract.

#### **4. CALL-OFFS**

- 4.1 The Authority appoints the Provider as a potential supplier of the Services and the Provider shall be eligible to be considered for the award of Orders for Services during the Term.
- 4.2 When admitted to the APL Agreement and where Orders for Services for those Services is to be the subject of a Request for Service, only Providers identified by the Authority, in its absolute discretion and in accordance with the Call Off Procedure, as being capable of performing the Services shall be eligible to be considered for Services.
- 4.3 Where the Authority has identified a need for Services, it shall
- (a) enter into a Service Contract with the Provider for the Services whose terms are materially in accordance with the Call-off Terms and Conditions, as further particularised in the Service Contract Data form, Short Breaks form and/or Child's Plan; and
  - (b) award the Services in accordance with the Call-Off Procedure for the appropriate Lot set out in Schedule 2.

4.4 Subject to Clause 4.5, the Authority, when ordering Services under the Agreement using a Request for Service pursuant to the Call-Off Procedure, shall:

- (a) Identify, in accordance with the Call-Off Procedure, the Providers capable of performing the Service Contract for the Services requirements;
- (b) conduct a Request for Service seeking a Response from eligible, invited Providers by issuing a Service Contract Data form or Short Breaks form document setting out the Authority's requirements, which incorporates the Child's Plan and a deadline by which the Response must be submitted;
- (c) evaluate all Response submissions received by the Request for Services deadline in accordance with the criteria set out in the Authority's Call-Off Procedure;
- (d) (on conclusion of the Response submission evaluation process) award the Service Contract Data form or Short Breaks form to the winning Provider(s) on the basis of the Criteria specified in the Authority's Call-Off Procedure;
- (e) prepare and send to the successful Provider(s) via E-mail (or such other system as the Authority may from time to time employ) a notification of award following which the Provider is required, within 14 days, to respond to the Authority to either:
  - (i) accept the invitation to deliver the specification set out in the Authority's Service Contract Data form or Short Breaks form and offer to enter into the arrangement in line with the terms of the Service Contract with the Authority; or
  - (ii) notify the Authority that it declines to deliver the Services set out in the Authority's Service Contract Data form or Short Breaks form (whereby the Service offer from the Provider shall lapse and the Authority may then send the Service Contract Data form or Short Breaks form to the next Provider that has submitted the next highest placed Response (and so on until all Providers decline and the Authority has to re-procure such Services)),

provided that if a Provider does not respond to the Authority's notification of award within 14 days and commences performance of the Services then the Provider is deemed to have accepted the invitation and offered to enter into the Contract;

- (f) where:
  - (i) on receipt of the Provider's response to the Authority's notification of award (where the Provider has accepted the invitation and offered to enter into the Service Contract); or
  - (ii) the Provider does not respond to the Authority's notification of award within 14 days of receipt and commences performance of the Services,

the Authority is deemed to have accepted the Provider's offer to enter into the Service Contract; and

- (g) the Provider shall provide the Services in accordance with the terms of the Service Contract.

4.5 The Authority may make a direct award of a Service (bypassing the Request for Service and submission of a Response by the Provider) where:

- (a) Service User Choice applies, in the circumstances further particularised in paragraph 9 of the Lot 1a Break Time Call-Off Procedure and paragraph 7 of the Lot 1b Break Time Plus and Lot 2-4 Short Breaks Call Off Procedure; or
  - (b) A Direct Award is appropriate in the circumstances further particularised in paragraph 10 of the Lot 1a Break Time Call-Off Procedure and paragraph 8 of the Lot 1b Break Time Plus and Lot 2-4 Short Breaks Call Off Procedure
  - (c) A Mini Competition is appropriate in the circumstances further particularised in paragraph 11 Lot 1a Break Time Call-Off Procedure and paragraph 6 of the Lot 1b Break Time Plus and Lot 2-4 Short Breaks Call Off Procedure;
  - (d) Creation of a Sub List is appropriate in the circumstances further particularised in paragraph 12 Lot 1a Break Time Call-Off Procedure and paragraph 9 of the Lot 1b Break Time Plus and Lot 2-4 Short Breaks Call Off Procedure;
- 4.6 Where a direct award of a Service Contract is made pursuant to clause 4.5, the provisions of clause 4.4(e) and (f) shall apply.
- 4.7 The Provider agrees that each Response submitted by the Provider in relation to a Request for Service for Services held pursuant to this Clause 4 shall remain open for acceptance for sixty (60) days from the specified commencement date for such Services (or such other period specified in the Request for Services issued by the Authority in accordance with this Clause 4).
- 4.8 Notwithstanding the fact that the Authority has followed the procedure set out above in this Clause 4 for Services, the Authority may cancel, postpone, delay or end the procedure without awarding a Service Contract. Nothing in this Agreement shall oblige the Authority to award a Service Contract.
- 4.9 The Parties acknowledge and agree that the issue of a Request for Services is an "invitation to treat" by the Authority. Accordingly, the Provider shall submit its Response as its offer to the Authority on the terms of the Service Contract. The Authority shall signal its acceptance of the Provider's offer by issuing a Service Contract Data Form/Short Breaks Form which once signed, dated and returned to the Authority shall form a contract incorporating the Call-Off Terms and Conditions and the Service Contract Data/Short Breaks form.
- 4.10 The Provider acknowledges that, in entering this Provider List Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for Services from the Provider. and that the Authority is at all times entitled to:
- 4.11 enter into other contracts and agreements with other Providers for the provision of any or all of the Services; or
- 4.12 enter into other contracts and arrangements with other providers for the provision of services which are the same as or similar to the Services.

## **5. TERMINATION**

- 5.1 The Authority or Provider may terminate this Provider List Agreement upon the provision of no less than six (6) months written notice to the other. Following termination under this Clause 5 the Provider shall no longer be invited to submit bids for Services nor shall the Provider be eligible for the direct award of Services.
- 5.2 The Authority may terminate this Agreement by serving written notice on the Provider with effect from the date specified in such notice where:-

- (a) the Provider is using staff that are not appropriately experienced, certified, qualified and trained in the delivery of the types of Services to which the Provider List relates;
  - (b) the Provider and/or its staff, agents, subcontractor, or personnel employed by the Provider in connection with the Agreement have failed to comply with any applicable Laws;
- 5.3 Subject to the Authority sharing any information in its possession concerning the financial standing of the Provider and providing the Provider with reasonable opportunity to clarify such information, the Authority may terminate this Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Authority), there is or seems likely to occur a material detrimental change in the financial standing and/or the credit rating of the Provider which will or may adversely impact on the Provider's ability to comply with its obligations under the Agreement.
- 5.4 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement or suspend the referral or acceptance of Service Contracts with immediate effect by giving written notice to the Provider if:
- 5.4.1 the Provider commits a Material Breach of any term of this Provider List Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 calendar days after being notified in writing to do so;
  - 5.4.2 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
  - 5.4.3 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
  - 5.4.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
  - 5.4.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
  - 5.4.6 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 5.4.7 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
  - 5.4.8 the Provider (being an individual) is the subject of a bankruptcy petition or order;
  - 5.4.9 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 (fourteen) days;
  - 5.4.10 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 5.4.1 to clause 5.4.8 (inclusive); or
  - 5.4.11 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 5.5 The Provider shall notify the Authority immediately if the Provider undergoes or anticipates undergoing a change of control within the meaning of section 1124 of the Corporation Tax Act 2010. ("**Change of Control**"). The Authority may terminate this Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:-

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where the Authority approved such a change prior to the Change of Control occurring.

5.6 The Authority reserves the right to terminate the Provider List Agreement where:

- (a) the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR; or
- (b) the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) PCR, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
- (c) the contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

## **6. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 6.1 Notwithstanding the service of a notice to terminate the Provider List Agreement under clause 5, the Provider shall continue to fulfil its obligations under the Provider List Agreement until the date of expiry or termination of the Provider List Agreement or such other date as required under this clause 6.
- 6.2 Termination or expiry of the Provider List Agreement shall not cause any Service Contracts to terminate automatically. For the avoidance of doubt, all Service Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 6.3 Termination or expiry of this Provider List Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Provider List Agreement prior to termination or expiry.
- 6.4 In the event of any termination of the Agreement, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Authority under this Agreement or otherwise, the Authority shall be entitled to obtain a refund of any monies paid in respect of any Services which have not been supplied by the Provider in accordance with the terms of the Agreement.
- 6.5 Termination by the Authority in relation to one Provider in accordance with clauses 5.2- 5.6 shall not have the effect of automatically terminating Provider List agreements in place with other providers.

## **7. SUSPENSION FROM PROVIDER LIST AND CONSEQUENCES OF SUSPENSION**

- 7.1 A suspension event shall have occurred if the Authority reasonably considers that there has been a breach by the Provider of any obligation under this Provider List Agreement or any Service Contract ("Suspension Event").
- 7.2 Where a Suspension Event occurs the Authority will follow the procedure as outlined within Clause 8 of Service Contract. The Authority may give written notice to the Provider and with immediate effect suspend the Provider from the Provider List , until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to perform the Service, to the required standard if successful in any Request for Services exercise.
- 7.3 During the suspension of any Service under this clause 7, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the

Authority's decision to suspend pursuant to this clause 7 has been referred to dispute resolution under clause 16 (Dispute Resolution).

## **8. ORDER OF PRECEDENCE**

- 8.1 The Provider shall perform all Service Contracts entered into with the Authority in accordance with:-
- 8.1.1 the requirements of this Provider List Agreement; and
  - 8.1.2 the Service Contract(s); and
  - 8.1.3 the Service Contract Data Form; or
  - 8.1.4 the Short Breaks Form
- 8.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Provider List Agreement, and the Service Contract, the application of the Clauses shall prevail in the following order:
- (a) the Service Contract;
  - (b) this Provider List Agreement
  - (c) Service Contract Data Form
  - (d) Short Breaks Form
  - (e) Child's Plan
  - (f) the Request for Services requiring a Response (where applicable);
  - (g) the Response (where applicable);
  - (h) the Invitation to Participate;
  - (i) the Request to Participate;
  - (j) any other document referred to in the Service Contract; and
  - (k) any other document referred to in this Agreement.

## **9. TRANSFER AND SUB-CONTRACTING**

- 9.1 The Provider List Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Provider List Agreement or any part thereof without the prior written consent of the Authority. The Provider shall not be entitled to subcontract any of its rights or obligations under this Provider List Agreement.
- 9.2 The Authority shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Provider List Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority provided that such assignment, novation or disposal shall not increase the burden of the Provider's obligations under the Provider List Agreement.

## **10. CQC/Ofsted REQUIREMENTS**

- 10.1 The Provider shall maintain at all times throughout the term of this APL Agreement and the term of the Service Contract(s) registration with the CQC/Ofsted for the Regulated Activity of Personal Care and must specify a nominated office for the purposes of delivering the Services under this APL Agreement and the Service Contract(s). Failure to comply with this requirement will amount to a Material Breach and the Authority may terminate this APL Agreement pursuant to the provisions of clause 5.4.
- 10.2 If at any time the Provider wishes to change its nominated office through the 'add and/or remove location(s)' procedure with the CQC/Ofsted, the Provider must have received approval from CQC/Ofsted where applicable to confirm the change before delivering Services from its chosen location.
- 10.3 If at any time the Provider wishes to change its nominated office by virtue of a complete change of business and location address outside of the CQC's/Ofsted's 'add and/or remove location(s)' regime but will be continuing to provide the Services to the same Service Users as it originally did, the Provider must have received approval from CQC/Ofsted in the form of an updated certificate before delivering Services from its new location.

- 10.4 Further to paragraph 10.3 above, for any periods of time the new location is not rated by CQC/Ofsted, the Authority is at liberty to carry out reasonable further and additional inspections beyond the scope carried out with other APL Providers.
- 10.5 If at any time during the term of this APL Agreement or the term of any Service Contract(s), the Provider is inspected by the CQC/Ofsted and receives an overall rating by the CQC of "inadequate" or "requires improvement" or an "inadequate" rating against any one of the CQC's five key questions or Ofsted "inadequate" or "Not Met – Enforcement Actions" or "an "inadequate" rating for the office out of which the Provider is operating, for the purposes of delivering Services under the Service Contract (or equivalent by any successor body or system of evaluation), the Provider shall inform the Authority immediately and, within a timeframe to be stipulated by the Authority, share an Improvement Plan with the Authority. If the Authority is not satisfied with the Provider's response, this shall amount to a Material Breach and the Authority may suspend the award of Service Contracts to the Provider or terminate this APL Agreement pursuant to the provisions of clause 5.4.
- 10.6 Where the Provider is engaged as part of a consortium, all consortium members, subject to CQC/Ofsted regulation, including the Provider, must maintain the CQC/Ofsted requirements detailed within this clause 4 throughout the term of this Agreement.
- 10.7 The Authority shall have the ability to terminate contracting with the entire consortium or, in the alternate, and at its absolute discretion, require the Lead Member of the consortium to terminate its arrangements with the failing consortium member, allowing the remaining consortium members to continue to deliver the Services.

## **11. CONFIDENTIALITY**

- 11.1 Subject to clause 11.2, the Parties shall keep confidential all matters relating to this Provider List Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:
- 11.2.1 required by any applicable law, provided that clause 13 shall apply to any disclosures required under the FOIA or the EIR;
  - 11.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Provider List Agreement;
  - 11.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11.1;
  - 11.2.4 by the Authority of any document to which it is a party and which the Parties to this Provider List Agreement have agreed contains no Confidential Information;
  - 11.2.5 to enable a determination to be made under clause 16;
  - 11.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
  - 11.2.7 by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
  - 11.2.8 by the Authority relating to this Provider List Agreement and in respect of which the Provider has given its prior written consent to disclosure.
  - 11.2.9 information disclosed by the Authority to other local authorities under the Information Sharing Protocol.

## **12. NOT USED**

## **13. FREEDOM OF INFORMATION**

- 13.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to comply with these information disclosure requirements.

- 13.2 The Provider shall and shall procure that its Subcontractors shall:
- 13.2.1 transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - 13.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - 13.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

13.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

13.4 The Provider acknowledges that the Authority may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

13.4.1 without consulting with the Provider; or

13.4.2 following consultation with the Provider and having taken its views into account,

provided always that where clause 13 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

13.5 The Provider shall ensure that all Information produced in the course of the Provider List or relating to the Provider List is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

13.6 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 13.

#### **14. PUBLICITY**

14.1 Unless otherwise directed by the Authority, the Provider shall not make any press announcements or publicise this Provider List in any way without the Authority's prior written consent.

14.2 The Authority shall be entitled to publicise this Provider List in accordance with any legal obligation on the Authority, including any examination of this Provider List by the Auditor or otherwise.

14.3 The Provider shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

#### **15. PREVENTION OF BRIBERY**

15.1 The Provider:

15.1.1 shall not, and shall procure that the Personnel and all Sub-Contractor personnel shall not, in connection with this Provider List Agreement and any Service Contract made under it commit a Prohibited Act; and

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

15.2 The Provider shall:

- 15.2.1 if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
  - 15.2.2 within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 15 by the Provider and all persons associated with it or other persons who are supplying services in connection with this Provider List Agreement. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 15.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Personnel or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 15.4 If any breach of clause 15 is suspected or known, the Provider must notify the Authority immediately.
- 15.5 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 15, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Provider List Agreement.
- 15.6 The Authority may terminate this Provider List Agreement by written notice with immediate effect if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 15.
- 15.7 Any notice of termination under clause 15 must specify:
- 15.7.1 the nature of the Prohibited Act;
  - 15.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and
  - 15.7.3 the date on which this Provider List Agreement will terminate.
- 15.8 Despite clause 16, any dispute relating to:
- 15.8.1 the interpretation of this clause 15; or
  - 15.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.
- 15.9 Any termination under this clause 15 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## **16. DISPUTE RESOLUTION**

- 16.1 If a dispute arises between the Authority and the Provider in connection with the Provider List, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 16.2 If a dispute is not resolved within fourteen (14) days of referral under clause 16.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 16.3 Provided that both parties consent, a dispute not resolved in accordance with clauses 16.1 and 16.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- 16.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

## **17. VARIATIONS TO THE PROVIDER LIST AGREEMENT**

17.1 Any variations to the Provider List Agreement must be made in writing and agreed by the Authority and all Providers on the Provider List.

17.2 Any variation to the Provider List Agreement must not amount to a material change in the Provider List or the Services.

## **18. THIRD PARTY RIGHTS**

Except as explicitly provided in this Agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **19. SEVERANCE**

19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

19.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **20. RIGHTS AND REMEDIES**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **21. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **22. ENTIRE AGREEMENT**

22.1 This Provider List Agreement including all Schedules constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

22.2 Each of the Parties acknowledges and agrees that in entering into this Provider List Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Provider List Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Provider List Agreement.

22.3 Nothing in this clause 22 shall operate to exclude Fraud or fraudulent misrepresentation.

## **23. NOT USED**

## **24. LAW AND JURISDICTION**

24.1 The Parties accept the exclusive jurisdiction of the English courts and agree that the Provider List Agreement is to be governed by and construed according to English law.

This Agreement has been entered into on the Commencement Date

Schedule 1- Call-Off Terms and Conditions

**SERVICE CONTRACT FOR THE PROVISION OF  
BREAK TIME, DAY TIME AND NIGHT TIME SHORT BREAKS SERVICES FOR CHILDREN AND  
YOUNG PEOPLE WITH DISABILITIES.**

between

**LANCASHIRE COUNTY COUNCIL**

and

**PROVIDER**



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**THIS AGREEMENT** is made between

**PARTIES**

- (1) Lancashire County Council whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ (**The Authority**).
- (2) the entity which as a sole trader, partnership or with another trading status has its principal place of business (or as a limited company has its company number and registered office) as set out in Part 1 of the Appendix 3 – Selection Criteria Questionnaire submitted to the Authority and selected by the Authority to be an eligible Provider to join the Authority's Provider List (the "**Provider**").

individually the "party" and together the "parties".

**BACKGROUND**

- (A) The Authority has been seeking proposals for the provision of a Break Time, Day Time And Night Time Short Breaks Services For Children And Young People With Disabilities. The Authority placed a Find a Tender Notice 2021/S 000-023244 on 17th September 2021 seeking expressions of interest from potential providers for the provision of the provision of Break Time, Day Time And Night Time Short Breaks Services For Children And Young People With Disabilities under a Provider List.
- (B) Following the Provider's application, the Authority has appointed the Provider as a potential provider of the Services in accordance with the Provider List Agreement.
- (C) The Authority sent a Request for Services via Email or any subsequent systems in order to request the supply of Services from the Service Provider following the Call Off Procedure.
- (D) Then following the procedure outlined in the Provider List Agreement, the Authority has selected the Provider to provide the Services on the terms set out in this Service Contract and in respect of the Lot(s) specified by the Authority in the Award Letter sent to the Provider.
- (E) The specific instructions and details of the Services to be provided and the Charges to be paid shall be included in the Service Contract Data Form/Short Break Form.
- (F) For the avoidance of doubt the issue of this Service Contract does not imply any payment of Services, payment will only be made in accordance with the specific details of any Service Contract Data/Short Breaks Form which may be issued to the Service Provider.
- (G) It is the Authority's intention that the Authority not have any obligation to award Service Contract Data Forms/Short Break Form to the Provider under this Agreement or at all.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Achieved Service Levels:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Schedule 8).

**Agreed Purposes:** the data to be processed as part of the Services.

**Agreement:** means this Service Contract between the Authority and the Provider together with all schedules and appendices hereto

**Assessed Need** in respect of assessed to be in need through the Children Act and/or the Chronically Sick and Disabled Persons Act.

**Provider List:** means the Provider List established in accordance with the Public Contracts Regulations 2015 to which this Service Contract relates

**Provider List Agreement:** means the Provider List Agreement between the Authority and the Provider together with all schedules and appendices under which this Service Contract is awarded

**Applicable Laws:** means all applicable laws, statutes, regulations and codes from time to time in force.

**Associated Company:** any holding company from time to time of the Provider and any subsidiary from time to time of the Provider, or any subsidiary of any such holding company.

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Provider, as set out in relevant Service Contract Data Form and Short Break Form

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

**Break Time Block Booked Sessions:** means the number of sessions booked in advance by the Authority from the Service Provider as detailed in the Service Contract Data form in accordance with the Call Off procedure with the Provider List Agreement Schedule 2.

**Break Time Services:** the Services delivered as described in the Service Specification and associated documents, Schedule 1-7 as applicable.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Business Continuity Plan:** the plan to be prepared and delivered by the Provider pursuant to Schedule 9.

**Business Transition:** the process by which existing Services will be recommissioned through the Provider List over a period expected to last approximately 3-6 months following the commencement date of the Provider List Agreement

**Care Plan/Child's Plan:** A plan which follows a Child and Family Assessment and identifies support and care needs, how these needs will be met and outcomes for the child, young person and family. The individualised plan will be issued by the Authority to the Provider on award of a Service via the Call Off Process.

**Catastrophic Failure:** any action by the Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

there is a safeguarding issue which cannot be remedied.

**Change:** any change to this agreement including to any of the Services.

**Change Control Procedure:** the procedure for changing this agreement, as set out in 011.

**Charges:** the charges which shall become due and payable by the Authority to the Provider in respect of the Services in accordance with the provisions of clause 11 this agreement and as further particularised in the Service Contract Data form/Child's Plan/Short Breaks Form.

**Commencement Date:** means the date as set out in the Service Contract Data Form/Short Break Form.

**Commercially Sensitive Information:** the information listed in 014 comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Provider significant commercial disadvantage or material financial loss.

**Confirmation:** the submission an invoice and/or claim form or subsequent form, via email or an alternative system specified by the Authority, of actual Short Break hours delivered/ Break Time sessions delivered by the Provider

**Consistent Failure:** shall have the meaning set out in Part 13 of Schedule 8.

**Contingency Hours:** a requirement identified in the Child's Plan for support hours to enable the Provider to respond to and manage known and potential Service User risk, fluctuating needs and or crisis situations or to manage planned care and support.

**Contingency Plan:** the element of the Child's Plan relating to the provision of Contingency Hours.

**Contract Year:** a period of 12 months, commencing on the Commencement Date.

**Controller, Processor, Data Subject, Joint Controller, Personal Data, Personal Data Breach, Processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation in force at the time.

**CQC:** Care Quality Commission

**Authority:** means Lancashire County Authority of PO Box 78, County Hall, Preston, Lancashire PR1 8XJ.

**Data Discloser:** a party that discloses Shared Personal Data to the other party.

**Default Notice:** is defined in clause 5.1.

**Did Not Attend:** Where Service User/Parent carers or Authority has cancelled with less than 1 weeks' notice or the Service User did not attend the Break Time session

**Dispute Resolution Procedure:** the procedure set out in clause 21.

**Disturbed Sleep:** means a disturbance, or number of disturbances, equating to 30 minutes or more disturbed minutes occurring in any one night (such period being further particularised in the Short Breaks Form/Child's Plan) for Provider's staff undertaking sleep-in support in accordance with the Child's Plan

**Disturbed Sleep Payments:** shall have the meaning set out in Schedule 15.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Exit Management Plan:** the plan to be prepared and delivered by the Provider pursuant to clause 10 and in accordance with the principles set out in 12.

**Find a Tender Notice:** the contract notice published on [www.find-tender.service.gov.uk](http://www.find-tender.service.gov.uk)

**Fraud:** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the agreement or defrauding or attempting to defraud or conspiring to defraud the Authority

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

**Frustrated Support Hours:** where a Service User/parent carers has cancelled an individual visit (not the whole Care and Support Plan) with less than 24 hours' notice to the Service Provider's office or where the Service User has unreasonably, at the determination of the Authority, refused or not able to gain access to the Service Provider.

**Information:** has the meaning given under section 84 of FOIA.

**Intellectual Property:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of the Authority's, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Key Personnel:** those personnel identified in the Service Contract Data/Short Breaks Request Form who are identified by each party as being key to the success of the implementation and/or operation of the Services as a whole, as modified pursuant to clause 14.

**LED:** means the Law Enforcement Directive (Directive (EU) 2016/680).

**Management Reports:** the reports to be prepared and presented by the Provider in accordance with clause 18 include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

**OFSTED:** Office for Standards in Education, Children's Services and Skills

**Payment Period:** a period of 4 (four) weeks the commencement of which will be defined by the Authority and set out in a schedule to be issued to the Provider.

**Permitted Recipients:** the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

**Premises:** means the location from which the Services are, or can be, provided as set out in the Service Contract Data/Child's Plan/Short Breaks Request Form as necessary, as amended with the consent of the Authority.

**Prohibited Act:** the following constitute Prohibited Acts:

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

**Provider Party:** the Provider's agents and contractors, including each Sub-Contractor.

**Provider's Personnel:** all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Provider's Response** the response submitted by the Provider to the Authority in response to the Authority's Request for Services for formal offers to supply it with the Services and other associated documentation set out in 01-7.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulatory Bodies** those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the agreement or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.

**Relevant Transfer:** a relevant transfer for the purposes of TUPE.

**Remediation Notice:** a notice served by the Authority in accordance with clause (a).

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Provider.

**Replacement Provider:** any third party Provider of Replacement Services appointed by the Authority from time to time.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

**Request for Services:** the Authority's request to eligible Provider List providers to take part in a Call-off Procedure for the award of Services under this Service Contract;

**Scope:** the details of the specific Services to be delivered under this agreement in accordance with the Specification as further particularised in the Service Contract Data, Short Breaks Request Form and Child's Plan

**Service Contract Data:** the document at Schedule 7 and forming part of this Service Contract and supplementing the Specification for Break Time Services, setting out the key details and specifics of the Authority's requirement for Services following the Call-Off Procedure;

**Short Breaks Services:** the Services delivered as described as in Service Specification and associated documents, Schedule 1-7 as applicable.

**Short Breaks Form:** the document at Schedule 5 and forming part of this Service Contract and supplementing the Specification for Short Breaks Services, setting out the key details and specifics of the Authority's requirement for Services following the Call-Off Procedure;

**Service Failure:** a failure by the Provider to provide the Services in accordance with any individual Service Level.

**Service Levels:** the service levels to which the Services are to be provided, as set out in Schedule 8.

**Services:** the services to be delivered by or on behalf of the Provider under this agreement, as more particularly described in Schedule 1-7 (Specification and associated documents).

**Service User:** means any individual notified by the Authority to the Provider as requiring the Services.

**Shared Personal Data:** the personal data to be shared between the parties under clause 26.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

Data Subjects to include any or all of the following: staff (including volunteers, agents and temporary workers), service users, service users' family, suppliers or any other such data subjects as detailed in the main body of the Agreement and any Schedules and Appendices as appended to it.

The categories of data to be processed shall be defined only insofar as they relate to the detail of the main body of the Agreement and any Schedules and Appendices as appended to it.

**Sub-Contract:** any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or Providers that enter into a Sub-Contract with the Provider.

**Supplier Incentive Scheme:** means the Authority's programme to improve its pay to purchase processes to enable the Provider to benefit from the early payment of their invoices or the Charges in return for a small rebate of the Charges. If the Provider's Application indicated that they wished to be part of the scheme in relation to this contract, the terms of the Supplier Incentive Scheme shall be set out at Schedule 10.

**Term** means the period commencing on the Commencement Date and ending on the completion of the Services set out in Schedule 1 (unless it is otherwise terminated in accordance with the terms of this Agreement).

**Termination Date:** the date of expiry or termination of this agreement.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes email but not faxes.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression so far as a PARTY is aware or to a PARTY's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
  - (a) the clauses of the agreement;
  - (b) Schedule 1-7 to this agreement;
  - (c) the remaining schedules to this agreement other than 0;
  - (d) 0 to this agreement.

## COMMENCEMENT AND DURATION

### 2. DURATION, TERM AND COMMENCEMENT

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue for the Term unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated, or on completion of the Services whichever is sooner.

### 3. NOT USED

### 4. CONSENTS, PROVIDER'S WARRANTY AND DUE DILIGENCE

- 4.1 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 4.3 The Provider acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
  - (b) it has received all information requested by it from the Authority pursuant to clause 1(a)(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
  - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 1(a)(b);
  - (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
  - (e) it has entered into this agreement in reliance on its own due diligence.
- 4.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.
- 4.5 The Provider as at the Commencement Date, warrants and represents that:
- (a) all information contained in the Provider's Application and Response to Request for Services remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
  - (b) it shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during

such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.

- (c) warrants that if at any time during the term of this agreement the Service Provider is inspected by the CQC or Ofsted "Inadequate" or "Not Met" or "Not Met – Enforcement Actions" and receives an overall rating by the CQC of "inadequate" or "requires improvement" or Ofsted an "inadequate" rating against any one of the CQC's 5 key questions for the office out of which the Service Provider is operating, for the purposes of delivering Services under this agreement (or equivalent by any successor body or system of evaluation), the Service Provider shall inform the Authority immediately and, within a timeframe to be stipulated by the Authority, share an improvement plan with the Authority.
- (d) it has full capacity and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the agreement and that the agreement is executed by a duly authorised representative of the Provider;
- (d) in entering the agreement it has not committed any Fraud;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the agreement;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the agreement;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider 's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property that are necessary for the performance of its obligations under the agreement;
- (i) in the 3 years prior to the date of the agreement :
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the agreement.

4.6 The Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with clause 1(a)(b) save where such additional costs or

adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

- 4.7 Nothing in this clause 4 shall limit or exclude the liability of the Authority for Fraud or fraudulent misrepresentation.

## **THE SERVICES**

### **5. SUPPLY OF SERVICES**

- 5.1 The Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of the date(s) specified Service Contract Data Form/Short Break Referral Form in accordance with the provisions of this Agreement.
- 5.2 In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**).
- 5.3 If the Authority serves a Default Notice on the Service Provider the Service Provider shall at its own expense correct or remedy the default or defaults specified in the Default Notice:-
- (a) in accordance with the requirements of the Default Notice; and
  - (b) within such time as may be specified in the Default Notice,
- 5.4 and shall otherwise perform the Services in accordance with the requirements of this Agreement and any relevant Service Contract Data Forms/Request for Service Forms/Child's Plan.

### **6. SERVICE LEVELS / KEY PERFORMANCE INDICATORS**

- 6.1 The Provider shall ensure that any element of the Services which is subject to a specific Service Level or Key Performance Indicator is provided in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 6.2 The Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in the Service Specification.
- 6.3 In the event that any Achieved Service Level falls short of the Target Service Level, without prejudice to any other rights the Authority may have, the provisions of clause 30 (Termination) shall apply.

### **7. INSTRUCTION OF SERVICES**

- 7.1 As and when the Authority requires the Service Provider to perform Services in accordance with this Agreement (having complied with the provisions of the Provider List Agreement), and in particular

Schedule 2 of the Provider List Agreement the Authority will submit a Service Contract Data Form/Short Breaks Form/Child's Plan.

- 7.2 The needs and requirements of the Service User/Sessions as detailed within the Service Contract Data Form/Short Breaks Form/Child's Plan are subject to change in accordance with the Specification (Schedules 1-7) and, in the alternate, upon notice to the Service Provider and at the sole discretion of the Authority. Notwithstanding any changes to the Service Contract Data Form/Short Breaks Form/Child's Plan, the Service Provider must deliver the Services to the Service User as required by the Authority in line with an amended Service Contract Data Form/Short Breaks Form/Child's Plan will detail to the Service Provider:
- (a) the needs of the Service User(s)
  - (b) the Services to be delivered in meeting the Service User's needs and outcomes;
  - (c) details of when the Services will be delivered to the Service User(s);
  - (d) the Charges to be paid by the Authority for the relevant Services; and
  - (e) any Additional Clauses that apply.
- 7.3 All Service Contract Data Form/Short Breaks Form/Child's Plan will be sent Via Email. The aforementioned systems may change from time to time at the sole discretion of the Authority.
- 7.4 Following the delivery of an emergency provision any ongoing provision of Services for the Service User will revert to that provision commissioned and to be delivered in line with the Service Contract Data Form/Short Breaks Form/Child's Plan.
- 7.5 In addition, there may be occasions when it becomes apparent that there is an urgent need for an increase in the number of Short Break hours of Service to be provided to a Service User (Emergency Hours), or for the addition of a specific task(s) to alleviate risk arising from an emergency situation. Examples of acceptable use of Emergency Hours for Short Breaks Services include providing assistance following a fall or accompanying the Service User until the arrival of emergency services. The Service Provider may, in these circumstances, use his professional discretion to make a short term additional provision, up to a maximum of 4 hours in respect of any single occurrence.
- 7.6 Pursuant to clause 7.19, where Emergency Hours are delivered by the Service Provider on more than 6 occasions in any consecutive 3 Payment Periods and in respect of any single Service User, the Service Provider is required to notify the Authority's Customer Access Service by telephone on 0300 123 6720 to request a review of the Service User's needs.
- 7.7 The Service Provider, upon request from the Authority, must be able to provide justifiable reasons for the provision of the additional care to the Service User and acknowledges that such provision should only be made in emergency circumstances and to meet urgent needs. In the event that the additional provision is reasonably considered by the Authority to not be delivered in line with the aforementioned, the Authority is at liberty to withhold making payment to the Service Provider pertaining to the additional service provision delivered.

7.8 Save in an emergency, no Services shall commence and the Authority shall not be liable for payment of any Charges in relation thereto unless and until a Short Breaks Form/Child's Plan has been issued in accordance with this Clause 7, or, in the alternate, other instruction has been provided by the Authority in line with the terms of this agreement.

7.9 For the avoidance of doubt:-

(a) no Services should be provided against any form of instruction given other than in accordance with Clause 7 of this agreement; and

(b) this Agreement places no obligation on the Authority to procure any Services from the Service Provider.

## **8. SERVICE STANDARDS**

8.1 Without prejudice to clause 7, the Provider warrants that it shall provide the Services, or procure that they are provided:

(a) Diligently and with all skill and care as can be reasonably expected of an appropriately qualified and competent Service Provider or contractor experienced in performing the same or similar services and will perform the Services at all times in compliance with the Authority's requirements set out in this Agreement and the Specification contained at Schedule 1;

in all respects in accordance with the Authority's policies set out in Schedule 1; and

in accordance with all Applicable Laws and Polices.

8.2 Without limiting the general obligation set out in clause 8.1, the Provider shall (and shall procure that the Provider's Personnel shall) at all times when supplying the Services do so with all due skill, care and diligence and that the Provider's Personnel supplying the Services shall possess such qualifications, skills and experience as is necessary for the proper supply of the Services.

8.3 It shall be a condition of this agreement that the substance of the Provider's policies and procedures shall comply with all Applicable Laws and legislative requirements.

8.4 The Provider shall at all times comply with the Service Outcomes and Performance Monitoring as set out in the Specification at Schedule 1, see also 4.2 of the Service Specification, and where applicable shall maintain accreditation with any relevant Quality Standards authorisation body (including for the avoidance of doubt the Care Quality Commission and/or Ofsted).

8.5 If at any time during the term of this agreement, the Provider is inspected by the CQC and receives an overall rating by the CQC of "inadequate" or "requires improvement" or Ofsted "inadequate" or "Not Met", "Not Met – Enforcement Actions" or "an "inadequate" rating against any one of the CQC's five key questions for the office out of which the Provider is operating, for the purposes of delivering Services under this agreement (or equivalent by any successor body or system of evaluation), the Provider shall inform the Authority and the Authority immediately and, within a timeframe to be stipulated by the Authority (having consulted the Authority), share an improvement plan with the Authority and the Authority. The Authority shall discuss the Provider's improvement plan with the Authority and if the Authority (at its sole discretion) is not satisfied with the Provider's response, this shall amount to a Material Breach and the Authority may suspend the award of Services to the Provider

and/or the Authority may terminate this Agreement pursuant to the provisions of clause 30 of this agreement.

- 8.6 Further, where the Provider receives notification of an inspection outcome from the CQC of either 'requires improvement' or 'inadequate' against any one of the CQC's five key questions or Ofsted "Inadequate" or "Not Met – Enforcement Actions" for the office out of which the Provider is operating for the purpose of delivering Services under this agreement, the Authority may at its sole discretion suspend Services being commissioned via the Call Off process and schedule a Provider performance meeting with the Provider.
- 8.7 Where the Provider is failing to deliver the Services in accordance with this Agreement, the Authority may consult with the Authority and the Authority, at its sole discretion, may suspend the Provider and require the Provider to provide an improvement plan within a timeframe stipulated by the Authority. The improvement plan (to be approved by the Authority in consultation with the Authority) shall stipulate the Provider's proposals to deal with any failings or concerns of the Authority and/or the Contracting. If the Authority, having consulted with the Authority, is not satisfied with the Provider's response this shall amount to a Material Breach and the Authority may terminate this agreement pursuant to the provisions of clause 30 of this agreement.
- 8.8 During the period of suspension:
- (a) no further Request for Services will be awarded to the Provider;
  - (b) the Provider agrees to implement their improvement plan and meet the objectives contained within the same; and
  - (c) payments to the Provider for the provision of ongoing services shall not cease.
- 8.9 The Provider acknowledges that suspensions may be notified to other authorities, commissioners and providers as the Authority or the Authority sees fit. Should the Provider anticipate failure to comply with the terms of the agreements between the parties and the service standards, it may, at its discretion, approach the Authority and request for a voluntary suspension to take effect for a limited period to be agreed between the Authority and the Provider. This will be reviewed by the Authority. The Provider acknowledges that the Authority or the Authority is at liberty to record and monitor the reason for the voluntary suspension and acknowledges that the voluntary suspension may be notified to other authorities, commissioners and providers as the Authority or the Authority sees fit. Any approval of voluntary suspension will be at the sole discretion of the Authority.
- 8.10 Further to clause 8.9 above, any voluntary suspension sought by the Provider only has effect in relation to the award of new Request for Services to the Provider and, for the avoidance of doubt, does not affect the Provider's existing Services being delivered.
- 8.11 Timely provision of the Services shall be of the essence in this Agreement, including in relation to the commencement and ongoing provision of Services within the time (or on a specified date) agreed by the Parties as detailed within the Service Contract Data/Child's Plan/ Short Break Form.
- 8.12 Without prejudice to any other rights and remedies the Authority may have pursuant to this Agreement or otherwise, the Provider shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Provider's delay or failure in the performance of its obligations under this Agreement and which delay the Provider has failed to remedy following reasonable notice from the Authority.

8.13 The Provider shall provide the Services during the Term in accordance with this Agreement, in consideration of the mutual rights and obligations in this Agreement. The Authority and or any person authorised by the Authority shall have the power to visit inspect and examine (without notice) the performance of the Services at any time where the Services (or any part of them) are being performed or the Provider's nominated office.

## **9. HEALTH AND SAFETY**

9.1 The Service Provider must ensure a comprehensive health and safety policy compliant with acts, orders, regulations and codes of practice relating to health and safety is in place prior to this agreement being entered into between the parties. The policy must contain relevant and clear written procedures for the management of health and safety and make clear individual and organisational responsibilities.

9.2 For the purposes of the Provider List Agreement and this agreement, the Service Provider must nominate a representative responsible for health and safety issues and provide details of the nominee to the Authority immediately upon this agreement being entered into.

9.3 The Service Provider shall promptly notify the Authority's Key Personnel of any health and safety hazards immediately it becomes aware of the same, which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Service Provider of any health and safety hazards it is aware of at the location at which the Services are delivered and that may affect the Service Provider in the performance of the Agreement.

9.4 The Service Provider shall notify the Authority on request of all incidents that have occurred in the performance of the Agreement where the same have resulted in any personal injury or damage to property that could give rise to personal injury.

9.5 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974, any related Health and Safety Regulations and/or approved codes of practice and the Regulatory Reform (Fire Safety) Order 2005 relating to health and safety and fire safety, which may apply to those Service Users at the Premises.

9.6 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

9.7 The Service Provider shall ensure that its fire risk assessment (as required by the Regulatory Reform (Fire Safety) Order 2005) is made available to the Council on request.

9.8 The Service Provider must have in place an Infection Prevention and Control policy and procedure and must make the same available to the Authority upon request.

9.9 The Service Provider will ensure that it has a procedure in place for Support Workers to follow in the event of the Service Provider's Support Workers being unable to gain access to the Service User's home, using the entry arrangements agreed and, at a time previously agreed for the delivery of service.

9.10 Further to clause 9.9 above, the Service Provider will ensure that Support Workers and managers understand their individual responsibilities in relation to the procedure and as a minimum it is expected that the Service Provider's procedure will require the following:

- (a) Ensure Support Workers attempt to gain entry to the Service User's property using all the doors available and look through the ground level windows.
- (b) If it is discovered that the Service User is ill or can be seen in a dangerous situation the Support Workers should immediately contact the appropriate emergency service (police, ambulance, fire).
- (c) Check with the neighbours to ascertain whether the whereabouts of the Service User is known.
- (d) Support Workers to check with the Service Provider in case of a subsequent cancellation and establish if additional information is held on file and which may assist e.g. Service User telephone contact number.
- (e) Support Workers to check with a nominated family member/friend to ascertain if they are aware of the whereabouts of the Service User.
- (f) The Support Workers should keep the registered manager or immediate supervisor informed of all no entry visits and take advice including the opportunity for a return visit at a later time.
- (g) Report all Service User missed visits and incidents to the LCC Customer Access Centre, or the Authority's Emergency Duty Team outside normal office hours on 0300 123 6720.
- (h) Carefully record the date, time and all actions taken in relation to missed visits through no entry.
- (b) The Provider will take all reasonable measures to ensure the safety of the Service User when being transported by the Provider's staff on an activity in the community. This should include taking into account risk assessments associated with travel; and ensuring that the use of any Provider vehicle is fit for purpose (i.e. adequately maintained) and appropriately equipped to meet the needs of the Service User.

## **10. NOT USED**

## **11. EXIT MANAGEMENT**

- 11.1 The Provider shall, within six (6) weeks after the Commencement Date, prepare and supply a draft Exit Management Plan (which shall be consistent with the principles set out in Schedule 12) and deliver it to the Authority for its approval in a format to be determined by the Authority. Any amendments to the Exit Management Plan reasonably required by the Authority shall be made by the Provider forthwith.
- 11.2 The Exit Management Plan will be reviewed and tested by the Provider as and when required by the Authority.

- 11.3 Upon Exit, the Provider must carry out immediately all steps required by the Authority to ensure all material information and data relating to the delivery of the Services to the Service Users and all other reasonable information as required is transferred to the Authority or a Successor Provider immediately.

## **12. CHARGES AND PAYMENT**

- 12.1 In consideration of the performance by the Provider of its obligations under the Agreement, the Authority shall pay the Charges in accordance with this clause 11 and Service Contract Data Form and Short Breaks Form

### **Lot 1a Break Time and Lot 1b Break Time Plus**

- 12.2 In consideration of the provision of the Services by the Service Provider in accordance with this Agreement, the Authority shall pay the Break Time Block Booked Sessions to the Service Provider in accordance with the provisions set out in Service Contract Data form, Schedule 1 Service Specification, Child's Plan.
- 12.3 The Authority shall pay the Break Time Plus Sessions to the Service Provider in accordance with the provisions set out in the Service Contact Data / Short Breaks form as appropriate, Schedule 1 Service Specification, Child's Plan.
- 12.4 The Break Time Block Booked Sessions Charges will be fixed for the Services in accordance with the Service Contract Data / Short Break form, unless otherwise varied and detailed within the Service Contract Data / Short Break form. Service Provider will not levy additional charges to the that are agreed and are within the scope of Services commissioned and to be delivered to the Service User.
- 12.5 Provided that the Services/Sessions have been delivered to the satisfaction of the Authority, payment of the Break Time Block Booked Sessions, Break Time Sessions and Break Time Plus Sessions shall be made in accordance with this Clause 11
- 12.6 Payment to be made on 30 days after receipt of valid Confirmation for the relevant Payment Period.
- 12.7 The parent/carer contribution per hour per child shall be paid directly by the parent/carer to the Service Provider(s). The Authority will not be responsible for any part of this contribution.
- 12.8 In the event that a Service User/the Authority provides more than 7 days' notice of non-attendance at a session, the Parties agree that they will work collaboratively to find a replacement attendee. Should a replacement not be found, the Authority may at its discretion withhold payment for that attendee.
- 12.9 In the event that a Service Provider provides less than 7 days' notice of session cancellation, the Service Provider is not entitled to Invoice or claim for this session on the Confirmation.

Should a Service User/the Authority provide less than 7 days' notice of non-attendance, the Authority will pay the full amount for that session as per the terms of the Service Contract Data Form.

**Lot 2a Day Time Short Breaks, Lot 2b Day Time Personal Care, Lot 3 Night Time Over Night Short Breaks and Lot 4 Intensive Positive Behaviour Support.**

- 12.10 The Charges will be fixed for each of the Services in accordance with the Short Breaks Form and will be paid on a pro-rata basis in line with the agreed hourly rate fee submitted within the Service Provider's application included at Schedule 9 of this Agreement and as particularised within the Short Break Form. The Service Provider will not levy additional charges to the Service User for tasks that are agreed in the Short Break Form or Child's Plan and are within the scope of Services commissioned and to be delivered to the Service User.
- 12.11 The hours commissioned to be delivered by the Service Provider as detailed within the Short Break and Child's Plan include up to 10 minute travel time allowance for each visit to the Service User, only where this is necessary.
- 12.12 Save for Frustrated Visits and notwithstanding clause 11.1, should any element of the Services not be delivered or the duration of the same be reduced either at the request of the Authority or the Service User, then the Service Provider shall be precluded from claiming from the Authority for the entirety of the Charges detailed in the Short Break Form and Service User's Child's Plan and will instead claim an amount proportionate to the Services actually delivered.
- 12.13 Payment of the Charges (or any relevant part of it) shall be subject to completion and receipt by the Authority of a Confirmation (where required) of the Services delivered in the form of an Invoice (or any other such form agreed in advance by the Authority) and any approved notice to provide care in a form approved by the Authority. In response to a request from the Authority, the Service Provider must provide such information as the Authority shall reasonably request (including but not limited to financial statements, time sheets, records receipts, invoices, reports and service performance details) to enable the Authority to verify that the sums claimed are correct.
- 12.14 All Confirmations of Services delivered within the Payment Period in order for the Charges to be paid by the Authority must be provided within 14 calendar days of the end of the Payment Period via email or any other such methods as specified by the Authority from time to time. The aforementioned information must be provided to the Authority on at least a 4 weekly basis.
- 12.15 In submitting a Confirmation the Service Provider shall be deemed to have represented to the Authority the following information:
- a. that those Service Users in relation to which payment of the Charges is requested were in receipt of the Services on the dates specified in the Confirmation (or that the Service Provider is otherwise entitled to payment of the Charges) and that the Charges are properly due and payable by the Authority;
  - b. that it is managing the Services and the Child's Plan for those Service Users in respect of whom payment is being made in accordance with the requirements of Schedule 1 and the Short Break Form.

- c. that the Service Provider has included notification of adjustments applied in relation to a Service User that have been agreed with the Authority; and
  - d. Details of Frustrated Visits occurred.
  - e. Details of Disturbed Sleep Payments in accordance with Schedule 15
- 12.16 In the event that a Service Provider fails to manage a Child's Plan in accordance with the requirements of Schedule 1 and the Short Break Form, the Authority may if it reasonably considers that it is unable to verify properly that the Services have been provided as claimed at its discretion withhold payment and should the Authority withhold payment in accordance with this sub-clause, the Authority shall not be deemed to be in breach of contract.
- 12.17 The Service Provider shall notify the Authority of any relevant changes in the Service User's condition including improvements and deteriorations and shall do so within five (5) Working Days of becoming aware of such change.
- 12.18 The Service Provider shall not be entitled to receive any additional fee or charge in relation to those tasks specified in the Service User's Child's Plan and/Short Break Form which are funded by the Authority using the Service User's Personal Budget, nor to claim payment for any alternative or additional Services, without the prior written agreement of the Authority and subject to the provisions of clause 5 relating to Emergency Hours provision. For the avoidance of any doubt, this clause does not prevent the Service Provider from providing privately funded additional services to Service Users in addition to those Services funded by the Authority.
- 12.19 The Service Provider will not be precluded from claiming Charges where a Frustrated Visit has occurred.
- 12.20 Where a Service User is admitted to hospital or dies, or in any other circumstances where there is an unforeseen suspension or cessation of the delivery of Services, the Service Provider shall notify the Authority immediately and in any event no later than the Authority's next working day after any such change. In such circumstances, except where a Service User is taking payment of some or all of his/her personal budget via an direct payment, the Service Provider can claim up to 3 days of service delivery charge following the last day of service delivery in the event that Services would have otherwise been provided.
- 12.21 Where the Services in respect of individualised Short Break Form and Child's Plan provided to an individual Service User are ceased by the Authority in accordance with clause 31 and seven (7) calendar days' notice has been provided, no additional payment of the Charges shall be made to the Provider..
- 12.22 Where the Services in respect of Individualised Support provided to an individual a Service User are ceased by the Authority, and seven (7) calendar days' notice is not provided, the Provider can claim up to 3 days of Charges following the last day of service delivery in the event that Services would have otherwise been provided.

#### **EMERGENCY HOURS PROVISION – LOT 2A, LOT 2B, LOT 3 AND LOT 4**

- 12.23 There may be occasions in which it becomes apparent that there is an urgent need for an increase in the number of hours of Services to be provided to a Service User ("Emergency Hours"), or for the addition of a specific task(s) to alleviate risk arising from an emergency situation. Examples of acceptable use of Emergency Hours include providing assistance following a fall or accompanying the Service User until the arrival of emergency services. The Provider may, in these circumstances, use his professional discretion to make a short term additional provision, up to a maximum of 4 hours in respect of any single occurrence.
- 12.24 Pursuant to clause 11.17, where Emergency Hours are delivered by the Provider on more than 6 occasions in any consecutive 3 Payment Periods and in respect of any single Service User, the Provider is required to notify (in the case of a Service Contract concluded with the Authority, the Authority's Customer Access Service by telephone on 0300 123 6720 or such telephone number as the Authority may subsequently notify to the Provider, or in the case of a Service Contract concluded with another Authority, such arrangements as are agreed between the Parties) to request a review of the Service User's needs.
- 12.25 The Provider, upon request from the Authority, must be able to provide justifiable reasons for the provision of the additional care to the Service User and acknowledges that such provision should only be made in emergency circumstances and to meet urgent needs. In the event that the additional provision is reasonably considered by the Authority to not be delivered in accordance with this clause, the Authority may at its discretion withhold payment to the Service Provider pertaining to the additional service provision delivered.

#### **CONTINGENCY HOURS PROVISION – LOT 2A, LOT 2B, LOT 3 AND LOT 4**

- 12.26 The Authority may terminate the agreed Contingency Plan with immediate effect if the Authority reasonably considers that:
- a. The Provider is not complying with the Contingency Plan;
  - b. The Service User's needs and agreed outcomes are not being met as agreed in the Child's Plan;
  - c. The Provider exceeds the number of support hours agreed in the Contingency Plan
  - d. The Provider is utilising and claiming Contingency Hours in a way other than in accordance with the agreed Contingency Plan.

#### **SUPPLIER INCENTIVE SCHEME – ALL LOTS**

- 12.27 If as part of the Provider's Application, the Provider indicated that they wished to utilise the Supplier Incentive Scheme in relation to this agreement, the supplemental terms outlined in Schedule 10 shall apply. In the event of any conflict between the terms of Schedule 10 and this clause 11.28, the

provisions in Schedule 6 shall take priority until expiry or termination of Schedule 10 in which case only this clause 11 shall apply.

**APPLICABLE TO ALL LOTS/SERVICES**

- 12.28 All Confirmations of Short Break Services delivered or Break Time sessions within the Payment Period in order for the Charges to be paid by the Authority must be provided within 14 calendar days of the end of the Payment Period via email or any other such methods as specified by the Authority from time to time. The aforementioned information must be provided to the Authority on at least a 4 weekly basis.
- 12.29 The Authority shall pay the Charges which have become payable in accordance with this Agreement and on thirty (30) calendar days from the date of receipt of the relevant Confirmation accompanied by all supporting documents as required by the Agreement and payment is to be made 4 weeks in arrears.
- 12.30 The Authority will pay sums due to the Service Provider under the Agreement via the Banks Automated Clearing Services System (BACS). Details of Service Provider's accounts will be provided to the Authority. A payment remittance will be issued with each payment.
- 12.31 The Authority may withhold payment against any confirmation or any item shown on any confirmation which is not submitted in accordance with the Agreement or which covers or purports to relate to Services which have not been provided in accordance with the Agreement, or which it disputes for any other reason; the Authority shall notify the Service Provider within thirty 30 calendar days of receipt of the relevant confirmation giving reasons why, and any subsequent dispute shall be resolved in accordance with the provisions of Clause 20.
- 12.32 The Authority shall pay any amount withheld, which it has been agreed (or determined in accordance with Clause 20) to be payable by the Authority, within thirty (30) calendar days of such Agreement being reached or such determination being made.
- 12.33 The Service Provider shall advise the Authority forthwith of any changes, errors, overpayments, underpayments or other information which may affect the amounts paid or to be paid by the Authority for any Services under the Agreement.
- 12.34 Any overcharges will be deducted by the Authority from the next payment made to the Service Provider, overpayment of monies to the Service Provider in respect of delivery of the Services will be returned to the Authority on request. Where any sum of money shall be recoverable from or payable by the Service Provider as an overpayment, the same may be deducted by the Authority from any sum then due or which at any time thereafter may become due to the Service Provider under this or any other contract with the Service Provider. The Service Provider must notify the Authority as soon as possible and in any event no later than the Authority's next working day if -
- a Service User ceases to receive a Service under this Agreement for any reason;
- the Service Provider considers that the Service User may no longer be eligible to receive the Services; and

there is any other change in a Service User's circumstances which may affect the Charges.

- 12.35 Changes to which Clause 11.35 refer will be notified to the Authority in such form as the Authority shall require.
- 12.36 All sums due hereunder are exclusive of tax (details of which will be provided to the Authority by the Service Provider) which will be paid by the Authority at the rate and in the manner for the time being prescribed by law.
- 12.37 The Charges are stated exclusive of VAT. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this Agreement.
- 12.38 The Service Provider shall indemnify and keep the Authority fully and effectually indemnified against all losses, liabilities, damages, costs, charges, claims and expenses arising from or incurred by reason of any breach of Clause 11.38 by the Service Provider.
- 12.39 For the avoidance of doubt the parties agree and acknowledge that payment of any sums by the Authority under this Agreement shall be without prejudice to any claims or rights which the Authority may have against the Service Provider and shall not constitute any admission or waiver by the Authority as to the performance by the Service Provider of its obligations hereunder.
- 12.40 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 21. Provided that the sum has been disputed in good faith, interest on any sums in dispute shall not accrue until the earlier of thirty (30) calendar days after resolution of the dispute between the parties.
- 12.41 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for 7 years from the end of the Contract Year to which the records relate.
- 12.42 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 12.43 The Authority may retain or offset any sums owed to it by the Service Provider which have fallen due and are payable against any sums due to the Service Provider under this Agreement or any other Agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authority.

- 12.44 Should the Service Provider choose to appoint a Factoring or Invoice Management Agency to manage its payments received, the Authority will not liaise or discuss payments with the appointed agency and all communications regarding outstanding payments will remain solely between the Authority and the Service Provider.
- 12.45 Unless otherwise stated the Charges are inclusive of all costs and expenses which may be incurred by the Service Provider in carrying out its obligations hereunder and no additional charges will be payable by the Authority unless agreed in advance by the parties.
- 12.46 Late payment of the Charges by the Authority does not permit the Service Provider to delay or suspend service.
- 12.47 If applicable, and where there is a consortium of Service Providers operating, payments will be made to the lead Service Provider only. The lead Service Provider is then responsible for administering payments to consortium.

#### **REVIEW OF CHARGES**

#### **LOT 3 NIGHT TIME OVER NIGHT SHORT BREAKS - SLEEP IN SUPPORT - AUTHORITY STANDARD CHARGE**

- 12.48 The Parties agree that as part of its budget setting process, the Authority's cabinet meets each year to agree the annual price uplift that it will apply to the contracts its commissions and this uplift (to be agreed at the time by the Authority's cabinet) shall apply to the Charges from April 2022 and subsequent years.
- 12.49 For the avoidance of doubt, for the purposes of Pricing, Contract Years' will be financial years. Year one will start on the Service Commencement Date and Year two will start on 1st April 2023, and Year three will start on 1st April 2024 and so on.

#### **ALL LOTS (NOT INCLUDING SLEEP IN SUPPORT)**

- 12.50 Save for 11.49-11.50, on 1st April each year, the Authority shall implement an adjustment to the all other Charges payable in respect of the Services to cover Inflation. Inflation shall be measured as the Consumer Price Index as published by the Office for National Statistics in January of the same year.

#### **APPLIES TO ALL LOTS UNDER THIS AGREEMENT**

- 12.51 Without prejudice to clause 11.51 the Authority will only consider additional increases to the rate payable to the Service Provider as a result of the following evidenced circumstances only and in, in any event, only in circumstances where the Service Provider has incurred an increase of its costs due to factors entirely out of its control and manageability:

- a) Changes to the living wage or inflation resulting in the delivery of Services under the agreement being unsustainable for the Service Provider;
- b) An increase in auto-enrolment pension contributions;
- c) An increase in the Retail Price Index; and
- d) Any other evidenced circumstances or situation in the Authority's complete and sole discretion.

12.52 Prior to agreeing to any additional increase in rates, where appropriate, the Service Provider must agree to an open book exercise to demonstrate that cost increases are due to factors outside its control and the same cannot be offset by operational efficiencies. The Authority's budgetary constraints and any such other considerations that the Authority considers are relevant may also be taken into account in assessing any rate increase request from the Service Provider.

12.53 The Authority makes no representation and offers no guarantee that any increase will be applied to the Charges following any review or assessment carried out.

**13. NOT USED.**

**STAFF**

**14. KEY PERSONNEL**

14.1 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.

14.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority (which shall not be unreasonably withheld or delayed), except by reason of long-term sickness, maternity leave, paternity leave or termination of employment, resignation by the Key Personnel and other extenuating circumstances.

14.3 In the event that the Key Personnel stops providing the Services in accordance with clause 13.2, the Provider shall immediately notify the Authority.

14.4 Any replacements to the Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

14.5 Replacements to the Key Personnel shall not have a detrimental impact on the provision of the Services. Where the Provider reasonably considers the change in Key Personnel will have a detrimental impact on the Services, it shall immediately notify the Authority and the parties shall work in good faith to mitigate the risks to Service delivery.

- 14.6 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 28 Working Days (or such other reasonable period as may be agreed between the parties).
- 14.7 The Authority may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 14.8 If the Provider replaces the Key Personnel as a consequence of this clause 14, the cost of effecting such replacement shall be borne by the Provider.

**15. OTHER PERSONNEL USED TO PROVIDE THE SERVICES**

- 15.1 At all times, the Provider shall ensure that:
- (a) each of the Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - (b) there is an adequate number of Provider's Personnel to provide the Services properly;
  - (c) only those people who are authorised by the Provider (having regard to any authorisation procedure agreed in writing between the parties, in the event that such exists) are involved in providing the Services; and
- all of the Provider's Personnel comply with all of the Authority's and/or the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's or Authority's Premises.
- 15.2 The Authority may refuse to grant access to, and remove, any of the Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 15.3 The Provider shall replace any of the Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider's Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 15.4 The Provider shall maintain up-to-date personnel records on the Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Provider's Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 15.5 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 15.6 The Provider shall immediately notify the Authority and the Authority in the event of any significant staffing changes including, but not limited to, an unexpected increase in staff turnover or the increased use of agency staff to deliver commissioned hours.

## **16. SAFEGUARDING SERVICE USERS**

- 16.1 The Provider shall ensure that all individuals engaged in the provision of the Services are:
- (a) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
  - (b) the Provider shall monitor the level and validity of the checks under this clause 15.1 for each member of staff.
- 16.2 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 would be 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.
- 16.3 The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 16 have been met.
- 16.4 The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.
- 16.5 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to perform the Services or who may otherwise present a risk to service users.

## **17. TUPE**

- 17.1 The parties agree that the provisions of schedule 13 shall apply to any Relevant Transfer of staff under this agreement.

## **CONTRACT MANAGEMENT**

## **18. REPORTING AND MEETINGS**

- 18.1 The Provider shall provide the Management Reports in the form and at the intervals set out in Service Specification Schedule 1-7.
- 18.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in the Service Specification and the Provider shall, at each meeting, present its previously circulated Management Reports and, if appropriate, financial reports in the format set out in that Schedule.

## **19. MONITORING**

- 19.1 The Authority shall monitor the performance of the Services by the Provider in accordance with Schedule 1-7.
- 19.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 19.1 at no additional charge to the Authority.

## **20. CHANGE CONTROL**

- 20.1 Any requirement for a Change, including the need for any Additional Services shall be subject to the Change Control Procedure or other procedure as agreed between the Parties.

## **21. DISPUTE RESOLUTION**

- 21.1 Either party may call an extraordinary meeting of the parties by service of not less than 7 days' written notice (or such other period as may be agreed in writing) and each party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Authority (if any) shall attend all extraordinary meetings called in accordance with this clause.
- 21.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the Provider's Managing Director or the Authority's nominated representative (or other senior officers of the parties as may be appropriate and agreed from time to time) who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the officers referred to in this clause 20.2 fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.
- 21.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 21.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 21.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 21.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

## 22. SUB-CONTRACTING AND ASSIGNMENT

- 22.1 The Provider shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the Authority, neither may the Provider sub-contract the whole or any part of its obligations under this agreement except with the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.
- 22.2 In the event that the Provider enters into any Sub-Contract in connection with this agreement it shall:
- (c) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - (d) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
  - (e) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 22.3 Subject to clause 21.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the agreement or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any other body established by the Authority or under statute in order substantially to perform any of the functions that had previously been performed by the Authority ; or
  - (c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the agreement.
- 22.5 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 21.3, affect the validity of the agreement. In such circumstances, the agreement shall bind and inure to the benefit of any successor body to the Authority.
- 22.6 If the rights and obligations under the agreement are assigned, novated or otherwise disposed of pursuant to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):
- (a) the rights of termination of the Authority in clause 30 (Termination For Breach) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the agreement or any part thereof with the prior consent in writing of the Provider.
- 22.7 The Authority may disclose to any Transferee any confidential information of the Provider which relates to the performance of the Provider's obligations under the agreement. In such circumstances the Authority shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Provider's obligations under the agreement and for no other purpose and

shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such confidential information.

- 22.8 Each party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the agreement .

## LIABILITY

### 23. INDEMNITIES

- 23.1 Subject to Clause 23.5, the Provider shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

- (a) the Provider's breach or negligent performance or non-performance of this agreement;
- (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Provider or Provider Personnel;
- (c) the enforcement of this agreement.

- 23.2 Subject to Clause 23.5, the Provider shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:

- (a) any claim made against the Authority by a third party for death, personal injury or damage to property arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Provider, its employees, agents or subcontractors.

- 23.3 Liability under the indemnity at clause 23.2 is conditional on the Authority discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Authority which may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Authority shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the Provider specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Provider (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Authority may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Provider but without obtaining the Provider's consent) if the Authority reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
- (c) give the Provider and its professional advisers access at reasonable times (on reasonable

prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Authority so as to enable the Provider and its professional advisers to examine them and to take copies (at the Provider's expense) for the purpose of assessing the Claim; and

- (d) subject to the Provider providing security to the Authority to the Authority's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Provider may reasonably request to avoid, dispute, compromise or defend the Claim.

- 23.4 If a payment due from the Provider under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Authority shall be entitled to receive from the Provider such amounts as shall ensure that the net receipt, after tax, to the Authority in respect of the payment is the same as it would have been were the payment not subject to tax.
- 23.5 The indemnities provided under Clause 23.1 and 23.2 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Representatives.
- 23.6 Nothing in this clause shall restrict or limit the Authority's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this clause.

## **24. LIMITATION OF LIABILITY**

- 24.1 Subject to clauses 24.2 and 24.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, savings (whether anticipated or otherwise), goodwill or business opportunities whether direct or indirect.
- 24.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 24.3 Subject to clause 24.5, the Authority's total aggregate liability:
  - (a) in respect of the indemnities given by the Authority in 0 is unlimited; and
  - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event 100% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
- 24.4 Subject to clause 24.5, the Provider's total aggregate liability:
  - (a) in respect of the indemnities given by the Provider in clauses 22.2, 26.5, 29.5 and 0 is unlimited;

- (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed the greater of £1million or 150% of the aggregate Charges paid (or due to be paid) under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

24.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) Fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of Data Protection Legislation;
- (d) breach of any obligation as to title implied by statute; or
- (e) any other act or omission, liability for which may not be limited under any Applicable Law.

## 25. INSURANCE

25.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance covering the following:-

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in relation to any one claim arising out of each and every event without limit on the number of claims in any one year or other period and such insurance shall expressly by its terms confer its benefits on the Authority. Such insurance policy shall not limit or exclude any claims relating to sexual abuse, exploitation, molestation or emergency first aid;
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 (TEN MILLION POUNDS);
- (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in relation to any one claim or series of claims without limit on the number of claims in any one year and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (d) appropriate compulsory motor insurance; where the Services involves the transportation of Service Users,

(the "**Required Insurances**") in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

25.2 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

25.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

- 25.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.
- 25.5 The Provider shall hold and maintain the professional indemnity insurance for a minimum of six years following the expiration or earlier termination of the agreement.

## **INFORMATION**

### **26. FREEDOM OF INFORMATION**

- 26.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to comply with these information disclosure requirements.
- 26.2 The Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 26.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
  - (b) is to be disclosed in response to a Request for Information.
- 26.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 26.5 The Provider acknowledges that the Authority may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice (issued under section 45 of the FOIA, July 2018), be obliged under the FOIA or the EIRs to disclose Information:
- (a) without consulting with the Provider; or
  - (b) following consultation with the Provider and having taken its views into account,
- provided always that where clause (b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- 26.6 The Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 26.7 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 26.5.

## 27. DATA PROTECTION

- 27.1 **Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the Data Discloser) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 27.2 Effect of non-compliance with UK Data Protection Legislation. Each party shall comply with all the obligations imposed on a controller under the UK Data Protection Legislation under this Agreement, and any material breach of the UK Data Protection Legislation in relation to this Agreement by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.
- 27.3 Particular obligations relating to data sharing. Each party shall:
- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
  - (b) give full information to any data subject whose personal data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
  - (c) process the Shared Personal Data only for the Agreed Purposes;
  - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
  - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
  - (g) not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
  - (h) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
  - (i) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in

place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

27.4 **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the UK Data Protection Legislation in relation to this Agreement. In particular, each party shall:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject access request. Data subjects have a right of access and a right of correction in respect of their personal data which the Provider holds about them, in accordance with Data Protection Law and the Provider shall be the contact point for data subjects wishing to exercise their rights in respect of personal data held about them in connection with the delivery of the Services;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever reasonable ;
- (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the UK Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party within a reasonable period on becoming aware of any breach of the UK Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information in relation to this Agreement to demonstrate its compliance with this clause and allow for audits by the other party or the other party's designated auditor; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the UK Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the UK Data Protection Legislation.

27.5 **Indemnity.** Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the UK Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of

such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

## **28. CONFIDENTIALITY**

- 28.1 Subject to clause 28.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 28.2 Clause 28.1 shall not apply to any disclosure of information:
- (a) required by any Applicable Law, provided that clause 26.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
  - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
  - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 28.1;
  - (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
  - (e) to enable a determination to be made under clause 21;
  - (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - (g) by the Authority to any other department, office or agency of the Government; and
  - (h) by the Authority relating to this agreement and in respect of which the Provider has given its prior written consent to disclosure.
- 28.3 On or before the Termination Date the Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

## **29. AUDIT**

- 29.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Providers (including Sub-Contractors) of the Services at the level of detail agreed in Clause 11 (Charges and Payment);
  - (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;

- (c) to review the Provider's compliance with the DPA, the FOIA, in accordance with clause 27 (Data Protection) and clause 26 (Freedom of Information) and any other legislation applicable to the Services;
  - (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Provider in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Authority's accounts;
  - (g) to carry out an examination pursuant to sections 7ZA of the National Audit Act 1983 (as amended) of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 29.2 Except where an audit is imposed on the Authority by a Regulatory Body, the Authority may not conduct an audit under this clause 29 more than twice in any calendar year.
- 29.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 29.4 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Provider's Personnel.
- 29.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 29.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 29.7 If an audit identifies that:
- (a) the Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
  - (b) the Authority has overpaid any Charges, the Provider shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and

- (c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Provider in relation to invoicing within 20 days.

### 30. INTELLECTUAL PROPERTY

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

- (a) furnished to or made available to the Provider by or on behalf of the Authority shall remain the property of the Authority; and
- (b) prepared by or for the Provider on behalf of the Authority for use, or intended use, in relation to the performance by the Provider of its obligations under the agreement shall belong to the Authority;

and the Provider shall not, and shall ensure that the Provider's Personnel shall not, (except when necessary for the performance of the agreement) without prior written approval of the Authority, use or disclose any Intellectual Property in the IP Materials.

30.2 The Provider hereby assigns to the Authority, with full title guarantee, all Intellectual Property which may subsist in the IP Materials prepared in accordance with clause 30.1 (b). The Provider shall execute all documentation necessary to execute this assignment.

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

30.4 The Provider shall ensure that the third party owner of any Intellectual Property that are or which may be used to perform the agreement grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to other Contracting Authorities, the replacement Provider or to any other third party supplying services to the Authority.

30.5 The Provider shall not infringe any Intellectual Property of any third party in supplying the Services and shall, during and after the agreement, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Authority ; or
- (b) the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of the agreement.

- 30.6 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property in materials supplied or licensed by the Provider.
- 30.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property in materials supplied or licensed by the Provider, provided always that it:
- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the Authority; and
  - (c) shall not settle or compromise any claim without the prior written approval of the Authority (not to be unreasonably withheld or delayed).
- 30.8 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or by a third party for infringement or alleged infringement of any third party Intellectual Property in connection with the performance of the Provider's obligations under the agreement and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 30.5(a) or (b).
- 30.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property by the Authority or the Provider in connection with the performance of its obligations under the agreement.
- 30.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property is made in connection with the agreement or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
  - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

and in the event that the Provider is unable to comply with clauses 30.7(a) or (b) within 20 Working Days of receipt of the Provider's notification the Authority may terminate the agreement with immediate effect by notice in writing.

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

## **TERMINATION**

### **31. TERMINATION ON NOTICE OR BREACH**

- 31.1 Either party may voluntarily terminate this agreement by giving the other party not less than 6 months' written notice at any time after the Commencement Date.
- 31.2 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:
- (a) if the Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 31.12 if the Provider has failed to remedy such breach within 14 days (or such other longer period if stipulated by the Authority in writing) of receipt of notice from the Authority (a Remediation Notice) to do so;
  - (b) if a Consistent Failure has occurred;
  - (c) if a Catastrophic Failure has occurred;
  - (d) if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
  - (e) if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
  - (f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Provider to which the Authority reasonably objects.
- 31.3 The Authority may terminate this agreement in accordance with the provisions of this clause 31 and clauses 32-34.
- 31.4 If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

### **32. TERMINATION OF SERVICES**

#### **TERMINATION: Service Contract Data Form - Break Time Block Booked Sessions**

- 32.1 The Authority may terminate the provision of the Services in relation to any particular Service Contract Data Form/Short Breaks Form on 28 calendar days' notice to the Service Provider (such termination

being without prejudice to the rest of the Service Provider's continuing obligations under the Agreement).

- 32.2 Where a Service Contract Data Form/Short Breaks Form specifies the provision of the Services in relation to Break Time Block Booked Sessions shall cease on the date specified in the Service Contract Data Form/Short Breaks Form, the Authority shall be liable to pay the relevant Charges outstanding in relation thereto for Services provided up to the last day of actual Service delivery.
- 32.3 The Authority will monitor attendance of Service Users at the Block Booked Sessions through the contract monitoring as per Schedule 1-7 Specification. Where the Authority has determined that due low attendance number it's now requires to terminate the Service Contract Data Form/Short Breaks Form, the Authority will provide 28 calendar days' notice to the Service provider (such termination being without prejudice to the rest of the Service Provider's continuing obligations under the Agreement).
- 32.4 For the avoidance of doubt, termination of any Services under this Clause 31 shall be without prejudice to the rest of the Service Provider's continuing obligations under the Agreement.

#### **TERMINATION: Individual Service Users Short Break Service**

- 32.5 The Authority may terminate the provision of the Services in relation to any particular Service User on seven (7) calendar days' notice to the Service Provider (such termination being without prejudice to the rest of the Service Provider's continuing obligations under the Agreement).
- 32.6 Where a Short Break Form and/or Child's Plan specifies the provision of the Services in relation to a particular Service User shall cease on the date specified in the Service User's Short Break Form and/or Child's Plan, the Authority shall be liable to pay the relevant Charges outstanding in relation thereto for Services provided up to the last day of actual Service delivery.
- 32.7 Where a Service User is admitted to hospital or in any other circumstances where there is a change in the Services required, the Service Provider shall notify the Authority as soon as possible and in any event no later than the Authority's next working day after any such change. Where a Service User dies, the Service Provider must provide notification to the Authority.
- 32.8 Where the Authority is advised that a Service is no longer required because of a dispute between the Service User and the Service Provider (not otherwise covered in the Service Agreement) the Service Provider will continue to make the Services available for such period as the Authority may require up to a maximum of twenty eight (28) Working Days following receipt of such notification and shall work with the Authority as closely as possible to ensure that an alternative Service Provider can be appointed as quickly as possible.
- 32.9 On termination of the provision of Services to any particular Service User the Service Provider shall take all reasonable steps (including the provision of such assistance and information as is necessary) to ensure that on termination there is a smooth and seamless transfer of the relevant Services to any

Successor Service Provider or (at the request of the Authority) there is an orderly cessation of the relevant Services. The information to be provided by the Service Provider to the Authority is pursuant to this clause should include but not be limited to the following:

- (a) a schedule of delivery;
- (b) key safe details;
- (c) reason for ending the individual placements; and
- (d) all records relating to the individual Service User.

32.10 For the avoidance of doubt, termination of any Services under this Clause 31 shall be without prejudice to the rest of the Service Provider's continuing obligations under the Agreement.

### **33. TERMINATION ON MANDATORY GROUNDS**

33.1 The Authority is required by virtue of Regulation 73 of the Public Contracts Regulations 2015 to ensure that all contracts which it awards contain provisions enabling the Authority to terminate those contracts under certain circumstances. Thus the Authority will terminate the whole of this agreement with immediate effect by the service of a written notice on the Provider in the following circumstances:

- (a) where the agreement has been subject to a substantial modification which will include any change in the agreement irrespective of the monetary value and which meets one or more of the following conditions:
  - i) materially alters the character of the agreement; or
  - ii) would have allowed other potential Providers to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted; or
  - iii) attracted additional Providers in the procurement procedure; or
  - iv) the modification changes the economic balance of the agreement in favour of the Provider in a manner which was not provided for in the original agreement; or
  - v) the modification extends the scope of the agreement considerably; or
  - vi) a new Provider replaces the Provider other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the agreement or following a universal or partial succession into the position of the Provider following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial modifications and where the purpose of the modification is not aimed at circumventing procurement law.

33.2 where post-award of the agreement it is discovered that the Provider should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of

the Public Contracts Regulations 2015. These exclusion grounds are where the Provider has been convicted of any of the offences that are detailed in Regulation 57.

- 33.3 where the Court of Justice of the European Union has declared the agreement was awarded in 'serious infringement' of the Authority's obligations under EU law and Directive 2014/24/EU in infringement proceedings brought by the European Commission against the Member State concerned under Article 258 TFEU.

#### **34. FORCE MAJEURE**

- 34.1 Subject to the remaining provisions of this clause 34, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 34.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
  - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 34.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 34.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 34.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 34.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 34.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

### 35. PREVENTION OF BRIBERY

35.1 The Provider:

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

35.2 The Provider shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within 14 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 35 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

35.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.

35.4 If any breach of clause 35.1 is suspected or known, the Provider must notify the Authority immediately.

35.5 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 35.1, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this Agreement.

35.6 The Authority may terminate this Agreement by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 35.1. In determining whether to exercise the right of termination under this clause 35.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Authority; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.

35.7 Any notice of termination under clause 35.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

35.8 Notwithstanding the provisions of clause 21 (Dispute resolution), any dispute relating to:

- (a) the interpretation of clause 35; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

35.9 Any termination under clause 35.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

### **36. CONSEQUENCES OF TERMINATION**

36.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Provider.

36.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Provider's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.

36.3 The provisions of clause 6.2 (provision of records), clause 22 (Indemnities), clause 25 (Insurance), clause 26 (Freedom of Information), clause 27 (Data Protection), clause 29 (Audit), clause 31 (Termination for Breach) and this clause 35 (Consequences of termination) shall survive termination or expiry of this agreement.

### **GENERAL PROVISIONS**

#### **37. NON-SOLICITATION**

37.1 Neither party shall (except with the prior written consent of the other) during the Term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

#### **38. WAIVER**

38.1 No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Provider in respect of the Services or any omission on the part of the Authority to communicate such

prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

**39. CULMINATION OF REMEDIES**

39.1 Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

**40. SEVERABILITY**

40.1 If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

**41. PARTNERSHIP OR AGENCY**

41.1 At all times during for the duration of the Agreement the Provider shall be an independent contractor and nothing in the agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and accordingly neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the agreement.

**42. THIRD PARTY RIGHTS**

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

**43. PUBLICITY**

43.1 The Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders, without the prior written consent of the Authority.

43.2 The Provider shall take reasonable steps to ensure that their servants, employees, agents, Sub-Contractors, Providers, professional advisors and consultants comply with clause 43.1.

**44. NOTICES**

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

- 44.2 Any notice or other communication which is to be given by either party to the other shall be given by letter (sent by hand, first or second class post, recorded delivery or special delivery), or electronic mail (confirmed by letter). Such letters shall be addressed to the other party in the manner referred to in clause 44.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted (save with the exception of post delivered by second class, in which case service shall be deemed to have occurred on the third Working Day after posting), or 4 hours, in the case of electronic mail or sooner where the other party acknowledges receipt of such letters, or item of electronic mail.
- 44.3 For the purposes of clause 44.2, the address of each party shall be those set out in the Service Contract Data Form.
- 44.4 Either party on the giving of a minimum of 10 Working Days' notice may change its address for service by serving a notice in accordance with this clause.

#### **45. ENTIRE AGREEMENT**

- 45.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement and understanding between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

#### **46. DISCRIMINATION**

- 46.1 The Provider shall not unlawfully discriminate either directly or indirectly within the meaning and scope of any Law. Furthermore the Provider will ensure that it provides equality of treatment for anyone who shares a protected characteristic (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise in the provision of the Services and in the employment of the Provider's Personnel) including but not limited to the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 46.2 The Provider shall take all reasonable steps to secure the observance of clause 46.1 by all Provider Personnel.

**47. NOT USED**

**48. GOVERNING LAW AND JURISDICTION**

48.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

This Agreement has been entered into on the Commencement Date.

## **Schedule 1 - 7 Service Specification**

As available at [Reopening of the Provider list for Break Time, Home Care and Short Breaks Services for children and young people with disabilities - Lancashire County Council](#)

**Schedule 1 – Core Specification**

**Schedule 1.1 - Lot Specification for Break Time (1A & 1B)**

**Schedule 1.2 - Lot Specification for Daytime (2A & 2B)**

**Schedule 1.3 - Lot Specification for Night Time (3)**

**Schedule 1.4 - Lot Spec Intensive Positive Behaviour (4)**

**Schedule 2 – Service outcomes/performance monitoring**

**Schedule 3 - Evaluation form(s)**

**Schedule 4 - Break Time Claim Form**

**Schedule 5 – Short Breaks Referral Form**

**Schedule 6 – Not Used**

**Schedule 7 – Service Contract Data Form**

## **Schedule 8- Service Levels / Key Performance Indicators**

### **Part 1. Service Levels**

See Schedule 2

### **PART 2. CONSISTENT FAILURE**

In this agreement, **consistent failure** shall mean: the Authority serving 4 Default Notices in a rolling 12 Month period.

## **Schedule 9 Provider's Application**

Provider's offer in relation to the Provider List for Break Time, Day Time And Night Time Short Breaks Services For Children And Young People With Disabilities as contained within your Application (your "Offer") as dated in the Award Letter.

## Schedule 10 SUPPLIER INCENTIVE SCHEME

[TO ONLY BE EFFECTIVE IF THE PROVIDER HAS INDICATED IN THE ITP THAT THEY WISH TO BE A MEMBER OF THIS SCHEME]

### 1. DEFINITIONS

In this Schedule the following words and expressions have the following meanings unless the context otherwise requires:

**“Debt”** the gross amount (including, without limitation, all fees, charges, expenses and other sums invoiced, including any applicable VAT and other taxes), that is invoiced to the Authority by the Provider, or otherwise due to the Provider under the terms of this agreement.

**“Rebate”** shall have the definition given to it in clause 3.1.1 of this Schedule 6.

### 2. TERM

This Schedule 6 shall be in force for a minimum period of two (2) years from the Commencement Date and will continue thereafter unless and until:

terminated by either party giving not less than six (6) months' written notice to that effect to the other party, such termination to be effective no earlier than the date that is two (2) years from the Commencement Date; or

This agreement as a whole is terminated or expires in accordance with its terms.

### 3. PARTICIPATION IN SUPPLIER INCENTIVE SCHEME

3.1 The parties agree that the terms in this Schedule 6 take precedence over those terms of the agreement which relate to payments (and the timing of payments) as follows:

3.1.1 the Provider acknowledges and agrees that in consideration of the Authority paying a Debt owed to the Provider under or in connection the agreement prior to the date by which such payment would otherwise be required to be made under the terms of the agreement, the Authority shall be entitled to deduct and retain from that Debt, for its own benefit, such percentage of that Debt (the **“Rebate”**) that is calculated in accordance with clause 7.5 of this Schedule 6.

3.2 For the avoidance of doubt, nothing in this agreement shall:

3.2.1 affect the date by which payment of a Debt is required to be made by the Authority; or  
3.2.2 require the Authority to make early payment to the Provider in respect of any Debt.

3.3 The terms of this Schedule shall continue to apply to all Debts that remain unpaid up to and including the date of expiry or termination of the agreement (including where the agreement has terminated or expired). The terms of this agreement shall survive termination in respect of such Debts until payment has been effected.

#### **4. INCORRECT APPLICATION OF REBATES**

In the event the Provider, acting reasonably, considers that the Authority has incorrectly applied a Rebate it shall raise a query in respect of that Rebate with the Authority's accounts payable team (whose details will be provided to the Provider by the Authority, as updated from time to time) within seven (7) days of the relevant payment being received by the Provider.

If the Provider does not raise a genuine query under clause 4.1 within seven (7) days of the relevant Rebate being applied, the Authority shall be deemed to have applied the Rebate correctly in that instance and shall be entitled to retain that Rebate.

The parties shall use reasonable endeavours to resolve any query raised in accordance with clause 4.1 in a timely manner, including making relevant personnel available for the purpose.

#### **5. E-INVOICING**

The Authority may make proposals to implement e-invoicing with the Provider and the Provider agrees to consider such proposals in good faith and not refuse reasonable amendments to this Schedule to reflect such proposals.

#### **6. SET OFF**

The Authority may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under the agreement.

#### **7. REBATES WHICH THE CUSTOMER MAY DEDUCT AND RETAIN**

For any undisputed Debt received by way of an invoice, the Calculation Trigger Date shall be the date the relevant invoice is received by the Authority, such date being the date recorded in the Authority's accounts payable system as the registration date. For any other Debt the Calculation Trigger Date shall be the last day of the month in respect of the relevant Service received. For any disputed Debt, the Calculation Trigger Date shall be the date on which the dispute has been resolved to the mutual satisfaction of the parties.

The **Payment Date** shall be the date on which the Authority executes its payment run in respect of the relevant Debt.

#### **Calculation of the Rebate**

The Rebate is calculated by establishing the number of days that have elapsed between the Calculation Trigger Date and the Payment Date and comparing the number of days elapsed within the first column of the table below to determine the Rebate to be applied to the invoiced amounts. The Rebate percentage (%) is calculated to 14 decimal places and it is this value that is applied in all calculations. However, for simplicity, the Rebate % displayed in the table below has been rounded to 2 decimal places.

Rebates applied to invoices are calculated at an invoice line item level. Rebates are applied in the manner described at clause 7.3, against the value of each line item. The result of this calculation is rounded to the nearest pence. Once the Rebates for all line items have been calculated, they are aggregated to provide the total Rebate value to be deducted from the Supplier's invoice on early payment of the invoice.

The Authority shall issue a debit note indicating the value of the Rebate that has been applied.

Number of days elapsed between the Calculation Trigger Date and the Payment Date	% of the amount owed that may be deducted and retained by the Customer as the Rebate
0	[•]%
1	[•]%
2	[•]%
3	[•]%
4	[•]%
5	[•]%
6	[•]%
7	[•]%
8	[•]%
9	[•]%
10	[•]%
11	[•]%
12	[•]%
13	[•]%
14	[•]%
15	[•]%
16	[•]%
17	[•]%
18	[•]%
19	[•]%
20	[•]%
21	[•]%
22	[•]%
23	[•]%
24	[•]%
25	[•]%
26	[•]%
27	[•]%
28	[•]%
29	[•]%
30	[•]%

## **Schedule 11 Change control**

### **1. GENERAL PRINCIPLES**

- 1.1 Where the Authority or the Provider sees a need to change this agreement, the Authority may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 11.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this 01, shall be undertaken entirely at the expense and liability of the Provider.

### **2. PROCEDURE**

- 2.1 Discussion between the Authority and the Provider concerning a Change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this agreement by the Authority; or
  - (c) a recommendation to change this agreement by the Provider.
- 2.2 Where a written request for an amendment is received from the Authority, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
  - (a) the title of the Change;
  - (b) the originator and date of the request or recommendation for the Change;
  - (c) the reason for the Change;
  - (d) full details of the Change, including any specifications;

- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Provider.

2.5 For each Change Control Note submitted by the Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Provider; or
  - (iii) notify the Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Provider shall constitute an amendment to this agreement.

## Schedule 12 Exit Management Principles

The Exit Management Plan shall include (without limitation) the following:

1. a list, by reference to each part of the Services, of the Provider's Personnel, resources and Key Personnel (if any) used to provide such Services;
2. a detailed programme for the transfer process for use in conjunction with the Authority or (as the case may be) a Successor Provider in the event that the Services (or their equivalent or any part thereof) are to be transferred to the Authority or (as the case may be) a Successor Provider including details of:
  - 2.1 the means to be used to ensure an orderly and prompt transfer of responsibility for providing the relevant Services to the Successor Provider while maintaining continuing provision of the Services throughout the transfer process;
  - 2.2 the process for handing responsibility for any work in progress and/or ongoing liabilities to the Successor Provider;
  - 2.3 the management structure to be employed during transfer; and
  - 2.4 arrangements for the transfer of any rights and/or obligations under the agreement with the Provider to a Successor Provider including for the avoidance of doubt the Authority;
  - 2.5 plans for communication with the Provider (and the Provider's Personnel) and the Authority's staff and suppliers and Service Users, to avoid any detrimental impact on the Authority's operations as a result of termination of the Agreement;
  - 2.6 rules and procedures which will be adopted by the Provider to ensure that it does not make inappropriate use of, or gain an unfair advantage as a result of, any information gained by the Provider during any process for the tender of the Services (or their equivalent or any part thereof); and
  - 2.7 Plans for provision of contingent support and meeting with the Authority or a Successor Provider for a reasonable period after transfer for the purposes of providing services replacing the Services.
3. Business Continuity Plan
  - 3.1 The Provider shall comply with the provisions relating to Business Continuity, in particular those provisions contained at paragraph 4.4 of the Specification.

3.2 Upon exit, should the Provider fail to provide to the Authority all material information and data relating to the delivery of the Services to the Service User, the Authority will have the right to immediately access the Provider's premises to obtain the information required and the Provider will be obligated to assist in all material ways in order for the Authority to obtain the information required in an efficient manner.

## Schedule 13 TUPE

### 1. DEFINITIONS

The definitions in this paragraph apply in this Schedule 13:

**Effective Date:** the date(s) on which the Services (or any part of the Services) transfer from the Authority or any Third Party Employer to the Provider or Sub-contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-contractor.

**Employee Liability Information:** the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

(a) the identity and age of the employee; and

(b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and

(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and

(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor; and

(e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

**Employment Liabilities:** all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**Redundancy Costs:** statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Provider to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

**Redundant Transferring Employees:** Transferring Employees whom the Provider has dismissed following a lawful redundancy within 12 months of the Effective Date.

**Relevant Employees:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Provider by virtue of the application of TUPE.

**Provider's Final Staff List:** the list of all the Provider's and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Provider's Provisional Staff List:** the list prepared and updated by the Provider of all the Provider's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Provider or Sub-contractor to the Authority or any Replacement Provider.

**Staffing Information:** in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Third Party Employee:** employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Provider or Sub-contractor by virtue of the application of TUPE.

**Third Party Employer:** a Provider engaged by the Authority to provide [some of the] Services to the Authority and whose employees will transfer to the Provider on the Effective Date.

**Transferring Employees:** employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the Provider by virtue of the application of TUPE.

## **2. TRANSFER OF EMPLOYEES TO THE PROVIDER**

2.1 The Authority and the Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Provider or Sub-contractor. The Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The Relevant Transfer shall occur on the Effective Date.

2.2 The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date. The Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Provider, as required by TUPE. The Authority shall warrant that such information is complete and accurate as it is aware or should reasonably have been aware as at the date it is disclosed.

2.3 Subject to paragraph 2.4, the Authority shall indemnify and keep indemnified the Provider against any losses, except indirect losses incurred by the Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee.

This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Provider or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

2.4 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against Employment Liabilities arising from or as a consequence of:

- (a) any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;
- (b) any of the employees informing the Authority and any Third Party Employer they object to being employed by the Provider or Sub-Contractor; and
- (c) any change in identity of the Transferring Employees' and Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Commencement Date.

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

2.6 The Provider shall immediately on request by the Authority and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Transferring Employees and the employees of any Third Party Employer including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact, and shall indemnify the Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

### 3. EMPLOYMENT EXIT PROVISIONS

3.1 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2 The Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract or otherwise on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Provider shall notify the Authority of any material changes to this information as and when they occur.

3.3 At least 14 days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees.

3.4 The Authority shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.

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

3.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

3.8 The Provider shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Provider against all Employment Liabilities relating to:

- (a) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services; or
- (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.10 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.11 Despite paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

## **Schedule 14 Commercially sensitive information**

See Schedule 9.

### **Schedule 15– Disturbed Sleep Payments (as applicable)**

1. The Service Provider may claim payment for a Disturbed Sleep in increments of 15 minutes after the first 30 minutes of disturbed sleep. Claims for Disturbed Sleep payments shall per night (such period being further particularised in the Request for Services form) per Premises.
2. The payment for a Disturbed Sleep shall amount to the difference between the Authority's Sleep In Standard Rate, and the Service Providers Charge for Lot 3 daytime hours and waking night time, as particularised in the Short Breaks Form.
3. Claims for payment for Disturbed Sleep shall be payable irrespective of alternative payment mechanisms established by the Service Contract in respect of the Charges.
4. To claim payment for a Disturbed Sleep the Provider must initially submit a request, in respect of the Service User concerned, via Email to the Social Worker (or such other system as the Authority may specify) to set up the Disturbed Sleep payment levels upon the first occurrence of a Disturbed Sleep.
5. Claims for payment against the Disturbed Sleep payment levels for a particular Service User must be claimed during each Payment Period.
6. In submitting a claim for payment for Disturbed Sleep the Provider shall be deemed to have complied with clause 11.6 of this Service Contract and have made an accurate record of the Sleep Disturbance(s) which will be made available to the Authority upon request.
7. Payment of claims for Disturbed Sleep shall be made in accordance with the provisions of clause 11.6 of this Service Contract

## **CALL OFF PROCEDURE – Lot 1a Break Time**

For avoidance of doubt in this Call Off procedure "Services" shall mean all services to be performed as described within the Service Contract Service Specification Schedules 1-7 as applicable.

"Service User" shall mean the Child or young person, their family, or a recognised advocate or guardian of the Service User.

### **1. Stage 1 – *Gaining a place on the Provider List***

- 1.1. Applicants will apply using this procurement process to gain a place on the Provider List. Applicants will follow this application process and provide information of services they offer and an indicative price (Charges) for those services. Following an assessment of quality and price, as details in this ITP and Appendix 5 Application Evaluation Criteria successful Applicants will be awarded a place on the Provider List.

### **2. Stage 2 - *Parent/Carer Annual Break Time Registration***

- 2.1. Parents and carers are required to submit to the Authority an Annual Break Time Registration and if they meet the eligibility criteria they will be allocated up to 78 hours per child for the year to allow parents/carers to have a break from their caring responsibilities. During this registration process the Authority will gather the child's interests and requirements to inform the call off process briefly described below.

### **3. Stage 3 – *Request for Services (Call Off)***

- 3.1. Services for Lot 1a Break Time ordinarily will be commissioned via the Annual Block Booking process describe in paragraph 7, however could be arrange in any one of the five call off process described in this document paragraphs 7-12.
- 3.2. It is intended that the Authority will be using the information from the parent/carers Annual Break Time Registration to inform the volume and types of Break Time Services to block book for the year (April – March). However, the Authority reserves the right to request Services at any time.
- 3.3. Service Providers under this Agreement will be kept informed of known advanced programmes of Call-Off where these have been identified.
- 3.4. The Authority expects Service Providers under this Agreement to be mindful of their overall workload and, if there is a possibility of over-commitment or resource shortages, to provide immediate notice of the same to the Authority's Key Personnel.
- 3.5. Services shall be awarded in compliance with the principles of equal treatment and transparency. This Call-Off procedure necessarily provides flexibility in the way the Authority will formulate and award Break Time Service with the intention of providing the best possible care and support to Service Users.

### **4. Stage 4 – *Parent /Carers booking a place for their Child or Young Person***

- 4.1. Once the Request for Services has been completed the successful Service Provider's details will be provided to the parents/carers. Eligible children and young people with support from their parent/carer can then choose to book their 78 hours with up to 2 of

the selected Break Time Service Providers for the year ahead. The Authority will review the right to split hours across two Service Providers, and as such this would be subject to change after year one.

## **ALLOCATION OF WORK**

5. Services for Lot 1a Break Time ordinarily will be commissioned via the Annual Block Booking process describe in paragraph 7, however the Authority could arrange Services in any one of the five call off process described in this document paragraphs 7-12

6. Services awarded will be based upon the Specification, Service Contract and Service Contract Data form. Using the Call-Off Procedure, the Authority will refine specific requirements within the Service Contract Data form (Schedule 7 of the Service Contract) in terms of:

6.1. The **scope**, where the terms of the Call-Off:

6.1.1. Will establish what Services are to be included in the Service Contract and what Services are to be excluded from the proposed Service Contract as identified in the Service Contract Data form;

6.1.2. May establish specific dates for Service delivery such as dates, times, term time, non-term time and bank holidays;

6.1.3. May establish Service Contracts with defined provision to flexibly increase or decrease service volumes beyond the changing needs of Service User(s) based on criteria communicated at the point of call-off, taking the form of a percentage of value, number of Service Users, number of hours, number of sessions number of days, geography or other defined measures;

6.1.4. Will establish a Service Contract Commencement Date as occurring at a point within 12 months of the call off procedure concluding;

6.1.5. Will establish a Service Contract with any length of Initial Term and any number of extension provisions provided at all times that the length of time the Service Contract does not, including any extensions, exceed 7 years;

6.1.6. May establish a Service Contract with extension provisions dependent upon the Providers' performance against requirements with regard to service outcomes and/or;

6.1.7. Will establish the Service Contracts principal termination event in circumstances where this is not expiration of the Service Contract term. Alternate principal termination events may include:

- i. circumstances where Service User(s) no longer require the Services;
- ii. circumstances where the specified Service is no longer fit for purpose; or,

- iii. circumstances where the Authority, Service User or Provider may give notice.

**6.2. The contracting model**, where the terms of the Call-Off:

- 6.2.1. Will establish the basis upon which the Charges would be paid for specific services. This will be the rate established at Provider List award but may establish the basis for Charges as;
- iv. Session rates;
  - v. hourly rates;
  - vi. Charges to be paid based upon actual service volumes delivered;
  - vii. performance related;
  - viii. being set by the Authority;
  - ix. arising out of further competition between Service Providers with the option to use ceiling and/or floor rates, and/or,
  - x. Any combination of these options.

**6.3. Any specific requirements**, where the terms of the Call-Off:

- 6.3.1. May identify the Services to be provided with or without a description of the specific Service User(s) and their needs;
- 6.3.2. May identify the location or geographical area where the Services are to be provided by the successful Service Provider(s); and/or,
- 6.3.3. May identify additional selection criteria including relevance of CQC/Ofsted registration information, equipment, specialist experience, training or qualifications, in the context of commissioning services for Service Users with complex behaviours or other requirements such as criteria relating to the culture and identity of the Service User.
- 6.3.4. Any other aspect of the proposed Service Contract notified at the point of Call-Off.
- 6.3.5. May establish the call-off contract with any combination of the above elements.

**7. Request for Services - Annual Block Booking**

- 7.1. For every Service awarded by Request for Services, the Authority shall contact in writing via Email or any subsequent system the Service Providers capable of performing the Service.
- 7.2. For the avoidance of doubt, a Service Provider may be deemed not capable of performing the contract and therefore not invited to participate where the Service Provider is subject to sanctions in respect of any failings in regard to the service performance of any Service delivered by the Service Provider under this Agreement.

- 7.3. It is intended that the Authority will be requesting Services for the forthcoming year from Service Providers on an annual basis and volume will be based on the demand of the Service following the Parent/Carer Annual Registration Process.
- 7.4. The proposed Service(s) requested via the Service Contract Data Form will substantially be in the form advertised at the outset of the Provider List, though the Request for Services documents will include a Service Contract Data document which will provide clarity in respect of:
- i. The scope
  - ii. The contracting model
  - iii. Any specific requirements
  - iv. Any other aspect of the Service Contract as appropriate
- 7.5. The Authority will send the Service Contract Data form as a Request for Service via Email or any other appropriate systems. Service Providers will have the opportunity to make themselves available to meet the requirements and provide their commitment to deliver the required sessions.
- 7.6. The Service Provider must respond to all requests submitted by the Authority via Email or any subsequent systems or, in the alternate, the method specified by the Authority from time to time. If the Service Provider cannot meet the requirements of the request they must respond to the Authority via Email (or subsequent systems) detailing the reasons why.
- 7.7. The Authority will consider all responses which meet the requirements as stated in the Service Contract Data Form. The Authority will use the price (or Charges) submitted through the Request for Service to calculate a price score and add this to Quality Score received at Application stage to provide a total Call Off Quality/Price Score. The Authority will rank the Service Providers in order of the highest Call Off Quality/Price Score. Break Time Services will be awarded to the highest-ranking Service Provider and then the next highest-ranking Service Provider and so on until all required Break Time sessions are filled.
- 7.8. Following award, the Contract Service Data form will for issued to the successful Service Provider(s) for signature.
- 7.9. In the event of no Service Provider in the Lot making themselves available for selection, then the Service may be offered to Service Providers in other suitable Lots by sending the Service Contract Data form to Service Providers in other suitable Lots before being commissioned outside the scope of the Provider List Agreement.

## **8. Request for Services - Ad Hoc Sessions**

- 8.1. In addition to the Annual Block Booking of Services described above at 7, the Authority reserves the right to request Services from Service Providers at any time to ensure Service Users needs are met.
- 8.2. The Authority will follow the process as described above 7.4-7.9.

## 9. Service User choice

9.1. For the avoidance of doubt Service User Choice includes a decision taken by, or a combination of, the Service User, their family, or a recognised advocate, guardian or social worker or similar SEND professional of the Service User.

9.2. Where a Service User or group of Service Users has indicated a choice of Provider to supply all or an element of the Services, and the Authority is satisfied that the proposed Service Contract;

9.2.1. Will be held by a Service Provider that will meet the needs of the Service User(s);

9.2.2. Delivers Services which in the absolute discretion of the Authority are proportionate to the needs of the Service User(s); and,

9.2.3. Identifies and refines the contract Scope and the Contracting Model within the Service Contract Data Form as described by this Call-Off Procedure;

9.2.4. a Service may be agreed.

9.3. The Authority may only rely upon Service User Choice as a method to award the required Service in the event that agreement can be reached between the Authority and Service Provider in respect of the Scope and the Contracting Model as set out in the Service Contract Data form.

9.4. The Charges for any Services established through Service User Choice will be the price established at Provider List award with the addition of any annually agreed uplifts or in exceptional circumstances, mutually agreed by the Authority and Service Provider on the basis of an open book costing exercise.

## 10. Direct Award may be utilised:

10.1. If any service specific factors or operational reasons apply including:

10.1.1. Where, at the sole determination of the Authority, it would be significantly detrimental to the health or well-being of one or more Service Users to have a change in Service Provider, a direct award may be made to their existing Service Provider for the Services. It is anticipated that generally, a Service User may exercise their rights to personal choice of Service Provider but in the event that they do not, the Authority reserves the right to directly appoint a Service Provider, acting reasonably at all times.

10.1.2. A Service Provider's previous knowledge of the Service User(s);

10.1.3. A Service Provider's specialism means it can be evidenced there is only one Service Provider that is capable of meeting the Service User's requirements;

10.1.4. Location of Service Provider's service means it can be evidenced there is only one Service Provider that is capable of meeting the Service User's requirements;

10.1.5. A Service Provider is identified as part of legal proceedings;

10.1.6. Where a Request for Service process or Mini Competition has taken place and the successful bidder has withdrawn from the Service Contract, or the successful Service Provider fails to commence the Service Contract, the Authority reserves the right to directly award the Services to the next placed Service Provider.

10.1.7. Where no response, or no suitable response, has been submitted in response to a Request for Services or Mini Competition, provided that the initial conditions of the Service Contract are not substantially altered; and/or,

10.1.8. Insofar as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the Authority, there is insufficient time to undertake a Request for Service process or Mini Competition.

10.2. The Charges for any Service Contract established through Direct Award will be the price established at Provider List award with the addition of any annually agreed uplifts or in exceptional circumstances, mutually agreed by the Authority and Service Provider on the basis of an open book costing exercise.

## 11. Mini Competition

11.1. For the following Services and any other circumstance in which the Authority decides appropriate, a Mini Competition may be utilised:-

- i. Complex care services
- ii. Planned service provider failure or closure
- iii. Specific location of care services
- iv. Parental group preference

11.2. For every Service to be awarded, the Authority shall consult all Service Providers capable of performing the Services in this Lot.

11.3. The Authority shall fix a time limit which is sufficiently long to allow tenders for each specific Service to be submitted by Service Providers, taking into account factors such as the complexity of the Services and the time needed to send in offers;

11.4. Offers shall be submitted via Email or any subsequent systems.

11.5. The Authority shall award each Service(s) to the Service Provider that has submitted the highest scoring tender on the basis of the award criteria set out below.

11.6. The exact weightings of the evaluation criteria will depend on the complexity and nature of the Services and the more precisely formulated requirements of the Services established by the Mini Competition documents.

- i. The quality weighting will range from 0-60% and will be made up of:

<b>Quality Criteria</b>	<b>Weighting</b>
Service Delivery/Migration/	Weighted at/between 0 and 30%
Workforce Requirements	Weighted at/between 0 and 30%
Quality, Outcomes and Safeguarding	Weighted at/between 0 and 30%
Total Weighting:	Not more than 60%

- ii. And the price weighting will range from 0 - 40% (to give a total score out of 100%). Service Providers will be permitted to submit a price higher, lower or the same as the rate established at Provider List award with the addition of any annually agreed uplifts on the basis of an open book costing exercise.
- iii. The Authority shall have the discretion to conduct competitions on the basis of price evaluation only.

11.7. In the event of no Service Provider in the Lot making themselves available for selection by the Authority as part of the Mini Competition then the Services will be offered to Service Providers in other suitable Lots before being commissioned outside the scope of the Provider List Agreement.

12. **Establish a Sub-List of Approved Service Providers.** A Mini Competition as described at paragraph 11, or the application of refined selection criteria as described at 6.3.3 may be used to establish a Sub-List of Service Providers, arranged by the Authority to undertake special projects.

12.1. A Sub-List may be open or closed to new entrants.

12.2. Any process used to establish a Sub-List may stipulate the minimum, maximum or actual number of Service Providers to be appointed.

12.3. Mini Competitions held among invited Sub-List members or Service User Choice may be used to award Service Contracts.

12.4. A Sub-List may be established for a period of up to seven years but must not exceed the current end date of the Provider List Agreement.

12.5. The creation of any Sub-List is to be undertaken in accordance with the principles of equal treatment and transparency. Furthermore, Authority will on each occasion record the basis on which it has made its decision to create a Sub-List.

## **CALL OFF PROCEDURE - Lot 1b, Lot 2a and Lot 2b, Lot 3 and Lot 4**

1. For avoidance of doubt in this Call Off procedure "Services" shall mean all service to be performed as described within Service Contract Schedules 1-7 as applicable. "Service User" shall mean the child or young person, their family, or a recognised advocate or guardian.
2. At the earliest opportunity, existing service arrangements along with any new Service requirements to be considered for this Provider List Agreement will be scheduled for Call-Off under the terms of this Provider List.
3. The Authority expects Service Providers under this Agreement to be mindful of their overall workload and, if there is a possibility of over-commitment or resource shortages, to provide immediate notice of the same to the Authority's Key Personnel.
4. Services for Service Users (child or young person receiving or using the Service) that have not chosen to take a direct payment, whose assessed hours are commissioned by the Authority with care and support provided in line with the Service User's eligible needs and outcomes and will be subject to one of the three Call Off Procedure set out below:

## **ALLOCATION OF WORK**

### **5. Request for Services**

#### **5.1. Request for Services–Business Transition Lot 2a, Lot 2b, and Lot 3.**

- 5.1.1. In the event that an existing Service User is receiving a service subject to Business Transition from a Service Provider that has been successful in being appointed to the Provider List Agreement in the corresponding Lot:
  - a) Individual Service Users and/or their Parent/Carer/Advocate will be offered the choice to maintain their existing Service Provider where their existing Service Provider can meet their needs when considering their Child's Plan.
  - b) In the event that the Service User and/or their Parent/Carer/Advocate chooses to receive Services from their existing Service Provider, their Service will be commissioned with their existing Service Provider under the terms of the Provider List Agreement.
  - c) In the event that the Service User and/or their Parent/Carer/Advocate does not wish to receive Services from their existing Service Provider, the Service User shall be considered as being subject to Clause 5.1.2 of this Call Off Procedure.
- 5.1.2. In the event that an existing Service User is receiving a Service subject to Business Transition from a service provider that has **not** been successful in being appointed to the Provider List Agreement or is not appointed to the corresponding Lot in which the Service User service belongs, or if Clause 5.1.1(c) applies:
  - b) Individual Service Users and/or their Parent/Carer/Advocate will be offered the opportunity to make a choice of Service Provider from the Service

Providers within the relevant Lot of the Provider List Agreement or ask the Authority to choose a Service Provider on their behalf.

5.1.3. In the event that the Service User and/or their Parent/Carer/Advocate chooses to make a choice of Service Provider, their Care Service shall be considered as being subject to Clause 7 of this Call Off Procedure.

5.1.4. In the event that the Service User and/or their Parent/Carer/Advocate asks the Authority to choose a Service Provider on their behalf:

- i. Any number of required Service Requests shall be arranged into suitable groupings by the Authority.
- ii. The Authority will send a Short Break Form (see Schedule 5 of the Service Contract) (or any subsequent form) via Email or any subsequent systems. Service Providers will have the opportunity to make themselves available to meet the needs of the Service User. *Please note that this form and system used to send the form may change throughout the Provider List agreement.*
- iii. Alternatively, the Authority may also send Short Break form from time to time from outside of an email request or any subsequent system including but not limited to requests from the Authority's social work staff.
- iv. The Service Provider must respond to all requests submitted by the Authority via Email (or any subsequent systems) or, in the alternate, the method specified by the Authority from time to time. If the Service Provider cannot accept the Service as described in the Short Break form they must respond to the Authority via Email (or any subsequent systems) detailing the reasons why.
- v. The Authority will consider all responses and the Service will be awarded to the Service Provider who are able to meet the requirements as specified in the Short Break Form (or any subsequent form), if more than one Service Provider expresses a desire and is able to deliver the required Service, the Service Provider who scored the highest Call Off Quality/Price score will be awarded the Service.
- vi. Following the award decision, the relevant Child's Plan will be shared and the successful Service Provider(s) will be required to sign the Short Break Form.
- vii. In the event of no Service Provider in the Lot making themselves available for selection, then the Service may be offered to Service

Providers in other suitable Lots before being commissioned outside the scope of the Provider List Agreement.

## **5.2. Request for Services after Provider List Agreement Commencement Date – Lot 1b, Lot 2a, Lot 2b, Lot 3 and Lot 4**

5.2.1. In the event that a Service User's Service is commissioned after the Provider List Agreement Start Date, or if Clause 5.1.2(b) applies:

- a) The Authority will send a Short Break Form (or subsequent form) via Email or any subsequent systems. Service Providers will have the opportunity to make themselves available to meet the needs of the Service User(s). *Please note that this form and system used to send the form may change throughout the Provider List agreement.*
- b) Alternatively, the Authority may also send Short Break Form from time to time from outside of an email request or any subsequent system including but not limited to requests from the Authority's social work staff.
- c) The Service Provider must respond to all requests submitted by the Authority via Email or any subsequent systems or, in the alternate, the method specified by the Authority from time to time. If the Service Provider cannot accept a Service as described on the Short Break Form they must respond to the Authority via Email (or subsequent systems) detailing the reasons why.
- d) The Authority will share all acceptances which meet the requirements as set out in the Short Break Form with the Service User(s) and/or their Parent/Carer/Advocate who has the right to choose their Service Provider.
- e) In the event that the Service User asks the Authority or any other organisation acting on behalf of the Authority to choose a Service Provider on their behalf then the Service Provider will be chosen using the following methodology:
  - i. The Authority will consider all responses and the Service will be awarded to the Service Provider who are able to meet the requirements as specified in the Short Break Form, if more than one Service Provider expresses a desire and is able to deliver the required Service, the Service Provider who scored the highest Call Off Quality/Price score during the Application evaluation will be awarded the Service.

- ii. Following the award decision, the Service Users Plan (Child' Plan) will be shared and the successful Service Provider(s) will be required to sign the Short Break Form.
- f) In the event of no Service Provider in the Lot making themselves available for selection, then the Service may be offered to Service Providers in other suitable Lots before being commissioned outside the scope of the Provider List Agreement.

## 6. Mini Competition

6.1. For the following Services and any other circumstance in which the Authority decides appropriate, a mini-competition may be utilised:-

- i. Complex care services
- ii. Planned service provider failure or closure
- iii. Specific location of care service
- iv. Parental group preference

6.2. For every Service to be awarded, the Authority shall consult all Service Providers capable of performing the Services in that Lot(s).

6.3. The Authority shall fix a time limit which is sufficiently long to allow tenders for each specific Service to be submitted by Service Providers, taking into account factors such as the complexity of the Services and the time needed to send in offers;

6.4. Offers shall be submitted via Email or any subsequent systems.

6.5. The Authority shall award each Service(s) to the Service Provider that has submitted the highest scoring tender on the basis of the award criteria set out below.

6.6. The exact weightings of the evaluation criteria will depend on the complexity and nature of the Services and the more precisely formulated requirements of the Services established by the mini-competition documents.

6.7. The quality weighting will range from 0-60% and will be made up of:

<b>Quality Criteria</b>	<b>Weighting</b>
Service Delivery/Migration/	Weighted at/between 0 and 30%
Workforce Requirements	Weighted at/between 0 and 30%
Quality, Outcomes and Safeguarding	Weighted at/between 0 and 30%
Total Weighting:	Not more than 60%

- 6.8. And the price weighting will range from 0 - 40% (to give a total score out of 100%). Service Providers will be permitted to submit a price higher, lower or the same as the rate established at Provider List award with the addition of any annually agreed uplifts on the basis of an open book costing exercise.
- 6.9. The Authority shall have the discretion to conduct competitions of the basis of price evaluation only.
- 6.10. In the event of no suitable Service Provider in the Lot making themselves available for selection by the Authority as part of the mini-competition then the Services will be offered to Service Providers in other suitable Lots before being commissioned outside the scope of the Provider List Agreement.

## **7. Service User Choice**

- 7.1. For the avoidance of doubt Service User Choice includes a decision taken by, or a combination of, the Service User, their family, or a recognised advocate, guardian or social worker or similar SEND professional of the Service User.
- 7.2. Where a Service User or group of Service Users has indicated a choice of Provider to deliver all or an element of the Services, and the Authority is satisfied that the proposed Service Contract;
- 12.5.1.1. Will be held by a Service Provider that will meet the needs of the Service User(s);
  - 12.5.1.2. Delivers Services which in the absolute discretion of the Authority are proportionate to the needs of the Service User(s); and,
  - 12.5.1.3. Identifies and refines the contract scope and the contracting model within the Short Break Form, Child's Plan as described by this Call-Off Procedure;
  - 12.5.1.4. a Service may be agreed.
- 7.3. The Authority may only rely upon Service User Choice as a method to award the required Service in the event that agreement can be reached between the Authority and Service Provider in respect of the scope and the contracting model as set out in the Short Break Form, Child's Plan.
- 7.4. The Charges for any Services established through Service User choice will be the Price established at Provider List award with the addition of any annually agreed uplifts or in exceptional circumstances, mutually agreed by the Authority and Service Provider on the basis of an open book costing exercise.

## **8. Direct Award may be utilised:**

- 8.1. If any Service specific factors or operational reasons apply including:

- 12.5.1.5. Where, at the sole determination of the Authority, it would be significantly detrimental to the health or well-being of one or more Service Users to have a change in Service Provider, a direct award may be made to their existing Service Provider for the Services. It is anticipated that generally, a Service User may exercise their rights to personal choice of Service Provider but in the event that they do not, the Authority reserves the right to directly appoint a Service Provider, acting reasonably at all times.
- 12.5.1.6. A Service Provider's previous knowledge of the Service User(s);
- 12.5.1.7. A Service Provider's specialism means it can be evidenced there is only one Service Provider that is capable of meeting the Service User's requirements;
- 12.5.1.8. Location of Service Provider's service means it can be evidenced there is only one Service Provider that is capable of meeting the Service User's requirements;
- 12.5.1.9. A Service Provider is identified as part of legal proceedings;
- 12.5.1.10. Where a Request for Services process or Mini Competition has taken place and the successful Service Provider has withdrawn from the Service, or the successful Service Provider fails to commence the Service, the Authority reserves the right to directly award the Service to the next placed Service Provider.
- 12.5.1.11. Where no response, or no suitable response, has been submitted in response to the Request for Service process or Mini Competition, provided that the initial conditions of the Service Contract are not substantially altered; and/or,
- 12.5.1.12. Insofar as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the Authority, there is insufficient time to undertake a Request for Services process or Mini Competition.

8.2. The Charges for any Service established through Direct Award will be the Price established at Provider List award with the addition of any annually agreed uplifts or in exceptional circumstances, mutually agreed by the Authority and Provider on the basis of an open book costing exercise.

9. **Sub-List of Approved Service Providers.** A Mini Competition as described at Clause 6 may be used to establish a Sub-List of Approved Service Providers, arranged by the Authority to undertake special projects.

9.1. A Sub-List may be open or closed to new entrants.

9.2. Any process used to establish a Sub-List may stipulate the minimum, maximum or actual number of Service Providers to be appointed.

9.3. Mini-Competitions held among invited Sub-List members or Service User Choice may be used to award Service Contracts.

9.4. A Sub-List may be established for a period of up to four years.

9.5. The creation of any Sub-List is to be undertaken in accordance with the principles of equal treatment and transparency. Furthermore, Authority will on each occasion record the basis on which it has made its decision to narrow down the field in order to create a Sub-List.

Schedule 3- Service Specification

*See Schedule 1-7 of the Service Contract*

# Service Contract Data – Break Time Block Booked Sessions

## PART ONE – AUTHORITY AND PROVIDER

### 1 Parties

The Authority is:

Lancashire County Council whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ; (the "Authority")

The Service Provider is:

[name of Service Provider] incorporated and registered in England and Wales with company number [company number] whose registered office is at [address] trading as [trading name]

### 2 Scope

The subject of this Service is:

**Break Time Block Booked Session:**

[include a definitive description as per examples below:  
groups of specified number of Service Users, including any needs are to be considered and accommodated, circumstances where specialist services for complex behaviors or needs is the requirement;

type of activity

a specified number of session, hours, times, days, term time, non term time;

geography in which the Services are required to be delivered;

Or combination thereof]

Service delivery is:

As per X.x of the Specification.  
[with the exception of the following requirements:

- X.x.x Xxxxxx
- X.x.x Xxxxxx
- X.x.x Xxxxxx]

The Commencement Date is:

[a date occurring in the next 12 months]

The Initial Term is:

[months or years up to a maximum of seven years]

The Authority may extend this agreement beyond the Initial Term by a further period or periods up to a maximum of:

*[number of months / years]* in addition to the Initial Term.

During the course of the Service Contract Data Form the service volumes may be varied by agreement of the parties.

Service volumes may increase by: *[always consider foreseeable changes linked additional service users, sessions, days, times, then express this as a specific increase in numbers of service users, hours or percentage change in contract value. Provide modest change (<20%) as a default position]*

Service volumes may decrease by: *[always consider foreseeable changes linked additional service users, sessions days, times, then express this as a specific decrease in numbers of service users, hours or percentage change in contract value. Provide modest change (<20%) as a default position]*

The trigger(s) for permitted changes to service volumes shall be: *[change of number of service users, change in service users need ]*

The termination provisions are: *[as per the Clause 31 of the Service Contract]*

### 3 Contracting Model

The Charges will be: *[based upon sessions booked as per the scope of this Service Contract Data Form]*

The basis for the Charges is: *[(i) session rates,  
(ii) performance related,  
(vii) being set by the Authority,  
(viii) arising out of further competition between Providers with the option to use ceiling and/or floor rates, and/or,  
(ix) Any combination of these options.  
How many session and total amount for term]*

Service Providers Charge *[Service Provider will state their Charge/price per session for the requested sessions]*

**4 Notices**

Authority email address for communications:

Authority postal address for communications:

Provider email address for communications:

Provider postal address for communications:

**5 Key Personnel**

The Authority's initial Key Personnel is:

The Provider's Key Personnel is:

**6 Special Conditions**

Special Conditions are:

• **Service Contract Data Variations**

ISSUE	DETAIL OF VARIATION	DATE AGREED
1	Initial variation	

*To be completed by the successful Service Provider*

(a) I confirm receipt of this Service Contract Data form. I confirm I will deliver the Services as described above and in the Child's Plan and understand that the details contained within this document will form part of the Service Contract.

(b) I understand that, as described above, Services are subject to change and variation will be detailed in the Service Contract Data variation table above.

Signed:

Dated:

Print  
Name:

Position:

Schedule 5- Short Breaks Referral Form Template

Service Contract Schedule 5

Short Break Referral Form													
Person ID				Postcode									
Date of birth				Gender									
Client group													
Service description New request for services (indicate service area)				Service Area (Lot)									
				Break Time Plus									
				Day Time (Community Short Breaks)									
				Night Time (Overnight)									
				Intensive Positive Behaviour Support (IPBS)									
Start date	End date/ ongoing	Time from	Time to	Care Type	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	What is required from the visit	
Example:		07:00	08:00	1 to 1		x	x	x	x	x		e.g. medication, personal care, get ready for school and breakfast	
Example:		15:00	18:00	2 to 1							x	Going out and enjoying leisure activities	
Details of request based on Personalised Care and Support Planning, e.g. assistance with day to day living, access to meaningful activities, support with personal care				P requires support in a morning to get ready for school have medication and eat breakfast, mum can assist as second carer.									
				On a Saturday P would like to access leisure and recreational activities suitable to needs- has own mobility ca. In the community needs 2:1 due to behaviour									
Outcomes for Child, Young person or family - What is important? Developing choice making skills, making new and developing friendships, being more independent and making their own				Make new friends, be able to enjoy an activity with a friend from school at the weekend.									
				Significant risk to P, staff, when out in the community. P needs 2:1 at all times due to PCA, will try to eat things from the floor (admissions to hospital to remove objects that have been swallowed).									
IMPORTANT INFORMATION Risk(s), e.g. does the child or young person harm themselves/others/demonstrate behaviour that challenges Physical environmental risk, eg pets that may cause a threat, substance misuse, smokers, limited space, etc. Other risks													
Who to contact with queries relating to the request - allocated worker				Name:				Phone/Email:					

To be completed following award of Services:

<b>1 Parties</b>	
The Authority is:	<i>Name &amp; Address of Contracting Body, (the "Authority")</i>
The Service Provider is:	<i>Name of Service Provider incorporated and registered in England and Wales with company number (company number) whose registered office is at (address) trading as (trading name)</i>
<b>2 Charges</b>	
The Charges will be	
The basis for the Charges is:	<i>Hourly Rate Pro-rata basis in line with the agreed hourly rate (ie submitted) within the Service Provider's application included at Schedule 10 of the Service Contract.</i>
<b>3 Notices</b>	
Authority email address for communications:	
Authority postal address for communications:	

Provider email address for communications:	
Provider postal address for communications:	
<b>4 Key Personnel</b>	
The Authority's initial Key Personnel is:	
The Provider's Key Personnel is:	
<b>5 Special Conditions</b>	
Special Conditions are:	

**Short Break Referral Form Variations**

ISSUE	DETAIL OF VARIATION	DATE AGREED
1	Initial variation	

*To be completed by the successful Service Provider*

I confirm receipt of this Short Break form. I confirm I will deliver the Services as described above and within the Child's Plan, and understand that the details contained within this document will form part of the Service Contract.

I understand that, as described above, Services are subject to change and variation will be detailed in the Short Break variation table above.

Signed:		Dated:	
Print Name:		Position:	