

**TERMS AND CONDITIONS FOR THE PROVISION OF STANDARD
HOME CARE SERVICES – JANUARY 2024 EDITION**

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Parties

The Parties to this Agreement are detailed on the Order Form.

BACKGROUND

- (A) On the basis of the Service Provider's Tender, the Council selected the Service Provider to provide Standard Home Care services to the Council and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this Agreement.
- (B) It is the Parties' intention that the Council has no obligation to place orders with the Service Provider under this Agreement or at all.

1. Definitions

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

Agreement: the written agreement between the Council and the Service Provider consisting of the Service Request Form, Order Form and these clauses (except that, for the purposes of clause 55.3 only, reference to "Agreement" shall not include the Order Form) as varied from time to time.

Approval: the prior written approval of the Council.

Auditor: the National Audit Office or an auditor appointed by the Council as the context requires.

Authorised Representative: the persons respectively designated as such by the Council and the Service Provider in Schedule 6.

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.

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

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

CQC: means the Care Quality Commission and its successor.

Customer: the person to whom the Service is provided under the terms of this Agreement.

Data Protection Legislation: the Data Protection Act 2018 (**DPA**) and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018, and the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default: any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

Dispute Resolution Procedure: the dispute resolution procedure in clause 54.

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

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

Equipment: the Service Provider's equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under the Agreement.

Fee: the fee (exclusive of any applicable VAT), payable to the Service Provider by the Council under the Agreement, as set out in the Order Form, for the full and proper performance by the Service Provider of its obligations under the Agreement. Also known as **Fees**.

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

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

- a) any industrial action occurring within the Service Provider's or any Sub-Contractor's organisation; or

b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trademarks, 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 customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Key Personnel: any individual identified in Schedule 6.

Law: any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply.

Management Information: the management information specified in the Specification.

Month: calendar month.

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

Order: the order placed by the Council to the Service Provider which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards.

Order Form: the document used to place an Order, together with the Service Request Form, which contains the detailed service requirements of each Customer and the Service Providers Response to the Service Request Form.

Outgoing Provider: the provider of services, substantially similar to the Services, immediately prior to the Service Commencement Date.

Parent Company: any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service

Provider. The term **Holding Company**: shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: the Service Provider or the Council and Parties shall mean both the Service Provider and the Council.

Personal Data: shall have the same meaning as set out in the Data Protection Act 2018.

Premises: the location where the Services are to be supplied, as set out in the Order Form. Also known as the Customer Address.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council 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 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council.

Property: the property, other than real property, issued or made available to the Service Provider by the Council in connection with the Agreement.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Specification) and any other quality standards set out in the Order Form.

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

Regulated Activity Provider: shall have the same meaning as set out in section 6 of 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 Council.

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

Replacement Service Provider: any third party service provider appointed by the Council to supply any services that are substantially the same as or similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement.

Request for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Safeguarding Adults Policy: the Council's policy for safeguarding vulnerable adults as set out in Schedule 7.

Safeguarding Children Policy: the Council's policy for safeguarding children adults as set out in Schedule 7.

Service Commencement Date: the service commencement date set out in the Order Form.

Services: the Standard Home Care services to be supplied as specified in the Order Form and more generally detailed in the Specification.

Service Request Form: mean the form which set out the detailed service requirements of the Customer (anonymised) who the Agreement shall relate.

Specification: the service specification attached at Schedule 1.

Staff: all persons employed by the Service Provider to perform its obligations under the Agreement together with the Service Provider's agents, Service Providers and Sub-Contractors used in the performance of its obligations under the Agreement.

Staff Vetting Procedures: the Council's procedures and departmental policies for the vetting of personnel for:

- a) eligibility to work in the UK
- b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure [including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989
- c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

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

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Term: the period from the Service Commencement Date on the Order Form to:

- a) the date of expiry set out in clause 3;
- b) such earlier date of termination or partial termination of the Agreement in accordance with the Law or the provisions of the Agreement.

Variation: has the meaning given to it in clause 41.

VAT: value added tax in accordance with the provisions of the Value Added Tax Act 1994.

Working Day: any day other than a Saturday or Sunday or public holiday in England and Wales.

2. Interpretation

The interpretation and construction of the Agreement shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) 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;
- (e) unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 December 2020 from time to time.
- (f) 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;
- (g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement;
- (i) the Schedules form part of the Agreement and shall have effect as if set out in full in the body of the Agreement and any reference to the Agreement shall include the Schedules;

- (j) references in the Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Agreement so numbered; and
- (k) references in the Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Agreement so numbered.

3. Term

The Agreement shall take effect on the Service Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Agreement.

4. Service Provider's status

At all times during the Term the Service Provider shall be an independent service provider 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 except as expressly permitted by the terms of the Agreement.

5. Council's obligations

Except as otherwise expressly provided, the obligations of the Council under the Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation on, or in any other way fetter or constrain, the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Council to the Service Provider.

6. Mistakes in Information

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

Supply of services

7. Services

- 7.1 The Service Provider shall supply the Services during the Term in accordance with the Council's requirements as set out in the Agreement in consideration for the payment of the Fee. The

Council may inspect and examine the manner in which the Service Provider supplies the Services at the Premises during normal business hours on reasonable notice.

- 7.2 The Service Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Agreement.
- 7.3 The Service Provider shall:
- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - (b) to the extent that the standard of Services has not been specified in the Agreement, agree the relevant standard of the Services with the Council before the supply of the Services; and
 - (c) at all times perform its obligations under the Agreement in accordance with the Law and Good Industry Practice.
- 7.4 The Service Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 7.5 Subject to the Council providing Approval in accordance with clause 10, timely supply of the Services shall be of the essence of the Agreement, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- 7.6 The Service Provider shall allocate Staff for the full contracted period to deliver the Services in accordance with the requirements set out in the Order Form.
- 7.7 In the event that the Service Provider provides any additional services to the Customer, at the Customers request, which the Council have not requested in the Order Form, they shall obtain the prior written agreement of these Services from the Council and an amended Order Form, in accordance with the Variation Procedure before carrying those additional services out, if they fail to do so the Council shall not be liable for the cost of those additional services and the Service Provider shall seek recovery of any costs from the Customer directly.

8. Service Pre-Requisites

- 8.1 The Service Provider shall be responsible for obtaining all licences, authorisations, CQC ratings, consents or permits required in relation to the performance of this Agreement, the details of which may be set out in the Specification.

9. TUPE

- 9.1 The parties agree that the provisions of Schedule 4 shall apply to any Relevant Transfer of staff under this Agreement.
- 9.2 As a result of this Agreement coming into effect, the identity of the provider of services substantially similar to the Services may change and this change in service provider may constitute a Relevant Transfer resulting in the contracts of employment of individuals transferring to the Service Provider. All TUPE obligations relating to and resulting from any such Relevant Transfer shall be the sole responsibility of the Outgoing Provider and the Service Provider. In particular where the Outgoing Provider is required under TUPE to provide the Service Provider with Employee Liability Information (as that term is defined in Schedule 4) in relation to any such individuals; the Council does not warrant the accuracy of this information.
- 9.3 The Council shall have no liability for any losses arising as a result of any breaches of TUPE or any other law or for the accuracy or timeliness of any Employee Liability Information disclosed by the Outgoing Provider to the Service Provider, whether that Employee Liability Information is disclosed directly to the Service Provider by the Outgoing Provider or via the Council.

10. Provision and removal of Equipment

- 10.1 Unless otherwise stated in the Order Form, the Service Provider shall provide all the Equipment necessary for the supply of the Services.
- 10.2 All Equipment shall be used at the Service Provider's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Service Provider shall provide for the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment used will remain the property of the Service Provider.
- 10.3 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 10.4 Any vehicle used by the Service Provider in connection with the provision of the Services (however incidental) shall comply with all requirements of the Law relating to passenger carrying vehicles including licensing, insurance, testing, operation, construction, use, fitness, equipment, safety and maintenance.
- 10.5 The Service Provider shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- (a) remove or cease provision of any Equipment that in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Agreement; and

(b) replace such item with a suitable substitute item of Equipment.

- 10.6 On completion of the Services, the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or any Staff.

Staffing

11. Key Personnel

- 11.1 The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall, and shall procure that any Sub-Contractor shall, obtain the prior Approval of the Council before removing or replacing any Key Personnel during the Term, and, where possible, at least one Months' written notice must be provided by the Service Provider of its intention to replace Key Personnel.
- 11.2 The Council shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Service Provider or Sub-Contractor, but the Council may interview the candidates for Key Personnel positions before they are appointed.
- 11.3 The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council. The Service Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 11.4 The Council may also require the Service Provider to remove any Key Personnel that the Council considers in any respect unsatisfactory. The Council shall not be liable for the cost of replacing any Key Personnel.

12. Service Provider's Staff

- 12.1 The Council may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:
- (a) any member of the Staff; or
 - (b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

- 12.2 At the Council's written request, the Service Provider shall provide a list of the names of all persons who may require admission in connection with the Agreement to the Premises,

specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Council may reasonably request.

- 12.3 If the Service Provider fails to comply with clause 12.2 within 30 days of the date of the request then the Council may exclude Service Provider Staff from entry to the Premises. Exercise of the Council's rights under this clause shall not excuse the Service Provider from any attributable failure to perform the Services.
- 12.4 The Service Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Service Provider from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 12.5 The Service Provider shall be responsible for ensuring that where Service Provider Staff use motor vehicles in the delivery of the Services (including incidentally, such as travelling between Customers) that the Service Provider Staff hold and maintain an appropriate and valid UK driver's licence and shall maintain a record of such licences and the registration details of any vehicles used in the provision of the Services.

13. Arrangements with customers

- 13.1 The Service Provider will allocate staff for the full contracted time at the Customer's home and ensure that this is spent with the Customer in accordance with the Order Form.
- 13.2 If the Service Provider provides, as a personal arrangement, an additional service for payment at the request of the Customer, the Service Provider should notify the Council in writing in advance of the service starting. Service Providers must not promote any additional services for gain or encourage Customers to purchase additional services on a private basis.

14. Non-solicitation

- 14.1 For the duration of the Agreement and for a period of 12 Months thereafter neither the Council nor the Service Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

Premises

15. Premises

- 15.1 The Service Provider shall limit access to the Premises to such Staff as is necessary to enable it to perform its obligations under the Agreement and the Service Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Premises as the Council may reasonably request.

- 15.2 Without prejudice to clause 12.4, the Service Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Premises notified to it by the Council, and the Service Provider shall pay for the cost of making good any damage caused by the Service Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

16. Security of Premises

- 16.1 The Service Provider shall be responsible for maintaining the security of the Customers Premises, Property and all assets and information used in performance of the Services in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements notified by the Council or the customer while on the customers Premises and shall ensure that all Staff comply with such requirements.
- 16.2 On request, the Council shall:
- (a) provide the Service Provider copies of its written security procedures; and
 - (b) afford the Service Provider an opportunity to inspect its physical security arrangements.

17. Property

- 17.1 Where the Council issues Property to the Service Provider, such Property shall be and remain the property of the Council and the Service Provider irrevocably licences the Council and its agents to enter upon any premises of the Service Provider during normal business hours on reasonable notice to recover any such Property. The Service Provider shall not in any circumstances have a lien or any other interest on the Property and at all times the Service Provider shall possess the Property as fiduciary agent and bailee of the Council. The Service Provider shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.
- 17.2 The Property shall be deemed to be in good condition when received by or on behalf of the Service Provider unless the Service Provider notifies the Council otherwise within five Working Days of receipt.
- 17.3 The Service Provider shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Agreement and for no other purpose without prior Approval.
- 17.4 The Service Provider shall ensure the security of all the Property while in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.

- 17.5 The Service Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Service Provider shall inform the Council within [two] Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

18. Environmental requirements

The Service Provider shall, when working on the Premises, perform its obligations under the Agreement in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment (see also CCS Guidance on Social and Environmental Aspects, Annex B (Suggested Contract Clauses For Social And Environmental Issues)).

19. Health and safety

- 19.1 The Service Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement, including, but not limited to, the result of any risk assessments which are required to take place. The Council shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Service Provider in the performance of its obligations under the Agreement.
- 19.2 While on the Premises, the Service Provider shall comply with any health and safety requirements and shall adopt safe methods and systems of work in order to protect its own Staff, Customers, Council personnel and members of the public.
- 19.3 The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 19.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Agreement.
- 19.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974), keep it up to date as required by law and is made available to the Council on request. In addition, the Service Provider shall ensure that its Staff are trained in its content.

- 19.6 The Council may, from time to time, require the Service Provider to provide evidence of its compliance with the relevant Health and Safety legislation, regulation and codes of practice separately from any other audit which the Council may reasonably request

20. Safeguarding Children and Vulnerable Adults

- 20.1 The parties acknowledge that the Service Provider is carrying out a Regulated Activity with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 20.2 The Service Provider shall ensure that all individuals or Staff 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, as appropriate; and
 - (b) the Service Provider shall monitor the level and validity of the checks under this clause 20.2 for each member of Staff.
- 20.3 The Service 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 Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 20.4 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 20 have been met.
- 20.5 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Customers/children/vulnerable adults.
- 20.6 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Customers.
- 20.7 The Service Provider will comply with the Safeguarding Adults Policy and the Safeguarding Children Policy and will ensure all Staff are aware of their duty to comply with such policies.
- 20.8 The Service Provider shall co-operate and provide all necessary assistance to the Council in relation to any safeguarding issues that arise in relation to or in connection with this Agreement or any contract or the Services.

- 20.9 The Service Provider acknowledges and understands the Council's duties under section 26 and 29 of the Counter Terrorism and Security Act 2015 and shall co-operate and provide all necessary assistance to the Council to enable it to comply with such duties. For the avoidance of doubt no provision of this agreement (including but not limited to clauses 29 (Data Protection) and 28 (Confidentiality)) shall prevent the Service Provider from sharing all relevant information pertinent to the prevention of terrorism and/or radicalisation of vulnerable people with the Council
- 20.10 The parties recognise the importance of information sharing in the context of keeping vulnerable adults and children safe. For the avoidance of doubt no provision of this agreement (including but not limited to clauses 29 (Data Protection) and 28 (Confidentiality)) shall prevent the Service Provider from sharing all relevant information pertinent to the safety of any vulnerable adult or child with the Council and the Service Provider shall ensure that all Service Provider Personnel are aware of the primary importance of information sharing in order to prevent harm and ensure the safety of any vulnerable adult or child.

21. Registration and Care Quality Commission

- 21.1 The Service Provider shall comply with all the provisions of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2009 and the Care Quality Commission (Registration) Regulations 2009 with regard to registration with the CQC and any successor regulatory organisation ("Registration"), throughout the Term.
- 21.2 The Service Provider shall ensure that it complies with all necessary Registration requirements as more particularly set out in the Specification and in the event that they fail to do so the Council shall reserve the right to terminate this Agreement with immediate effect in accordance with the provision of clause 50.

Payment and Fee

22. Fee

- 22.1 In consideration of the Service Provider's performance of its obligations under the Agreement, the Council shall pay the Fee in accordance with clause 23 and Schedule 8.
- 22.2 The Council shall, in addition to the Fee and following evidence of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Agreement.

23. Payment and VAT

- 23.1 The Service Provider shall ensure that each invoice is submitted in accordance with Schedule 5 (Payment Arrangements) and contains all appropriate references and a detailed breakdown of

the Services supplied and that it is supported by any other documents reasonably required by the Council to substantiate the invoice.

- 23.2 The Council shall accept and process for payment any electronic invoice submitted for payment by the Service Provider where the invoice is undisputed and it must also comply with the standard on electronic invoicing.
- 23.3 For the purposes of clause 23.2, "electronic invoice" means an invoice which has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. An electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 23.4 The Council shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
- 23.5 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract a provisions having the same effect as 23.4 of this Agreement. For the purpose of this clause, Sub-Contract" means a contract between two or more Service Providers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.
- 23.6 The Service Provider shall add VAT to the Fee at the prevailing rate as applicable.
- 23.7 The Service Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Agreement. Any amounts due under this clause 23.7 shall be paid by the Service Provider to the Council not less than five Working Days before the date on which the tax or other liability is payable by the Council.
- 23.8 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Agreement under clause 50 for failure to pay undisputed sums of money.
- 23.9 All invoices must be submitted promptly and in any event within 90 days of the Month in which the Services have been rendered; in the event that the Service Provider fails to submit an invoice within 90 days of the Month in which the Services are rendered the Council shall be entitled to not make payment in respect of any invoice subsequently submitted in respect of such Services.

24. Recovery of sums due

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

Statutory obligations and regulations

25. Conflicts of interest

- 25.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Council under the provisions of the Agreement.
- 25.2 The Service Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in clause 25.1 above arises or is reasonably foreseeable.
- 25.3 The Council reserves the right to terminate the Agreement immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Council under the provisions of the Agreement. The actions of the Council under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

26. Prevention of Bribery

26.1 The Service Provider:

- (a) shall not, and shall procure that any Service Provider Party and all Service Provider Staff 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 Council, 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 Council before execution of this Agreement.

26.2 The Service Provider shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
- (b) within 20 Working Days of the Service Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 26 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

26.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Service Provider Staff or any Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

26.4 If any breach of clause 26.1 above is suspected or known, the Service Provider must notify the Council immediately.

26.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 26.1, the Service Provider must respond promptly to the Council's enquiries, cooperate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for six years following the expiry or termination of this Agreement.

26.6 The Council may terminate this Agreement by written notice with immediate effect if the Service Provider or Service Provider Staff (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 26.1 above. In determining whether to exercise the right of termination under this clause 26.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee,

Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority or with the actual knowledge of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or,
- (b) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had such knowledge;

26.7 Any notice of termination under clause 26.6 above must specify:

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

26.8 Despite clause 54 (Dispute Resolution), any dispute relating to:

- (a) the interpretation of this clause 26; or
- (b) the amount or value of any gift, consideration or commission,
- (c) shall be determined by the Council and its decision shall be final and conclusive.

26.9 Any termination under clause 26.6 above will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

27. Discrimination

27.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

27.2 The Service Provider shall take all reasonable steps to secure the observance of clause 27 by all servants, employees or agents of the Service Provider and all Service Providers and Sub-contractors employed in the execution of the Agreement.

Information

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 30.1 (Freedom of Information) shall apply to any disclosures required under the FOIA or the Environmental 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) that is reasonably required by the Council;
- (d) 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;
- (e) by the Council of any document to which it is a party and which the parties to this Agreement have agreed contains no Confidential Information;
- (f) to enable a determination to be made under clause 54;
- (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Council relating to this Agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

28.3 On or before the termination or expiry of the Agreement, the Service Provider shall ensure that all documents and computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authorities' employees, taxpayers or service users, are delivered up to the Council or securely destroyed.

29. Data Protection

29.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 29 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 29, Applicable Laws means (for so long as and to the extent that they apply to the Service Provider) the law of the European Union, the law of any member state of the European Union and/or UK law; and any other law that applies in the UK.

29.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the parties are likely to be in the position of being primarily Controllers of data, whether that being the same or different personal data, secondarily also as Processors of one another data.

- 29.3 Without prejudice to the generality of clause 29.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this Agreement.
- 29.4 Either Party may, at any time on not less than 30 days' notice, revise this clause 29 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

30. Freedom of Information

- 30.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 30.2 The Service Provider shall and shall procure that its Sub-Contractors shall, at no additional costs to the Council:
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council 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 Environmental Information Regulations
- 30.3 The Council shall be responsible for determining at its absolute discretion whether any Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 30.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 30.5 The Service Provider acknowledges that the Council 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), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Service Provider; or
- (b) following consultation with the Service Provider and having taken its views into account,

provided always that where clause 30.5 above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

- 30.6 The Service 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 Council to inspect such records as requested from time to time.
- 30.7 The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 30.5 above.

31. Intellectual Property Rights

- 31.1 The Service Provider shall retain ownership of all Intellectual Property created by the Service Provider or any Staff or Sub-Contractor of the Service Provider:
 - (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services.
- 31.2 The Service Provider hereby grants, or shall procure the direct grant, to the Council of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Council to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Council provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement Service Provider or other third party invited by the Council to participate in a tendering process for the award of a contract to deliver replacement services).
- 31.3 The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

32. Records and audit access

- 32.1 The Service Provider shall keep and maintain until six years after the end of the Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Agreement including the Services provided under it, the Agreements entered into with the Council and the amounts paid by the Council.
- 32.2 The Service Provider shall keep the records and accounts referred to in clause 32.1 above in accordance with good accountancy practice.
- 32.3 The Service Provider shall on request afford the Council, the Council's representatives and/or the Auditor such access to such records and accounts as may be required by the Council from time to time.
- 32.4 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Term and for a period of six years after the expiry of the Term to the Council and the Auditor.
- 32.5 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services, except insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Council.
- 32.6 Subject to the Council's rights of confidentiality, the Service Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Council within the scope of the audit;
 - (b) reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 32.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 32, unless the audit reveals a material breach by the Service Provider in which case the Service Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.
- 32.8 The Council may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Fees (and proposed or actual variations to them in accordance with this agreement);
 - (b) to review the integrity, confidentiality and security of any data relating to the Council or any Customers;

- (c) to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 29 (Data Protection) and clause 30.1 (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 Service Provider in connection with the provision of the Services to ensure that records and accounts are kept in accordance with good accountancy practice and that they are able to maintain the level of Services requires across all Contracts and potential future Contracts.;
- (f) to carry out the audit and certification of the Council's accounts;
- (g) to carry out an examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
- (h) to verify the accuracy and completeness of the management reports delivered or required by this agreement.

32.9 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 32 more than once in any calendar year, save for as required as part of the reporting and monitoring requirements, where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this agreement.

32.10 The Council will retain the right to audit the information supplied relating to the Charge for the Services and the Service Provider will provide reasonable access to premises to authorised Council officers to examine any aspect of the operations and finances of the Service(s) secured by the Council.

32.11 The Council shall use its reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Service Provider or delay the provision of the Services, save that the Service Provider, accepts and acknowledges, that the Council has limited or no control over the conduct of Audits carried out by the Council's Auditor or regulated body.

32.12 Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Auditor, the Council 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 Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- (c) access to the Service Provider's Staff.

32.13 The Council shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

32.14 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 Service Provider in which case the Service Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

32.15 If an audit identifies that:

- (a) the Service 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 Service Provider's failure relates to a failure to provide any information to the Council about the Fees, proposed Fees or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Council has overpaid any Fees, the Service Provider shall pay to the Council the amount overpaid within 20 calendar days. The Council may deduct the relevant amount from the Fees if the Service Provider fails to make this payment; and
- (c) the Council has underpaid any Fees, the Council shall pay to the Service Provider the amount of the under-payment within 20 calendar days

33. Replacement of corrupted data

If, through any Default of the Service Provider, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

Control of the Agreement

34. Provision of information and meetings

34.1 The Service Provider shall submit Management Information to the Council throughout the Term As required in the Specification.

34.2 The Authorised Representatives and Key Personnel shall meet in accordance with the details set out in the Specification and the Service Provider shall, at each meeting, present its previously circulated Management Information.

35. Monitoring of Agreement performance

The Service Provider shall comply with the monitoring arrangements set out in the Order Form, or Specification including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Agreement.

36. Complaint Process

- 36.1 The Service Provider will operate a complaints procedure acceptable to the Council and at the Council's request provide the Council with a copy. The Service Provider will promote the procedure appropriately to all Customers, ensuring it is accessible to all. The procedure will allow for advocacy on behalf of Customers and will provide for independent participants in any appeals stage.
- 36.2 The Service Provider will record the volume and nature of complaints received, how complaints were investigated and outcomes of investigations, to be produced to the Council on request.
- 36.3 The Service Provider shall also ensure that Customers are made aware that they can use the Council's complaints procedures and are provided with details of how they can access this procedure. The Service Provider will also co-operate with any investigation under the Council's complaints procedure.

37. Remedies in the event of inadequate performance

- 37.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Agreement, then the Council shall take reasonable steps to investigate the complaint. The Council may, in its sole discretion, uphold the complaint, and may, acting reasonably:
 - (a) Subject to clause 37.4, withhold a sum; or
 - (b) deduct a sum,
 - in each case equal to a maximum of ten per-cent (10%) of the Agreement Fee payable in respect of the Month in which the complaint arose.
- 37.2 The parties agree that a deduction made pursuant to clause 37.1(b) represents a genuine pre-estimate of the loss likely to be suffered by the Council.
- 37.3 Where the Council withholds a sum pursuant to clause 37.1(a) then that sum shall be paid to the Service Provider when, in the reasonable opinion of the Council, the matters complained of have been rectified and there has been no repeat of those matters for three Months'.

37.4 If the Council is of the reasonable opinion that there has been a material breach of the Agreement by the Service Provider, then the Council may, without prejudice to its rights under clause 50, do any of the following:

- (a) without terminating the Agreement, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Council that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Agreement;
- (b) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Fee shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (d) charge the Service Provider for and the Service Provider shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

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

37.6 If the Service Provider:

- (a) fails to comply with clause 37.5 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
- (b) persistently fails to comply with clause 37.5 above;

the Council may terminate the Agreement with immediate effect by giving the Service Provider notice in writing.

37.7 In the event of termination in accordance with this clause 36 the notice period may not be amended or otherwise changed in accordance with clause 51. For the avoidance of doubt clause 51 shall not apply in the event of inadequate performance.

38. 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.

39. Transfer and sub-contracting

- 39.1 The Service Provider shall not assign, novate, sub-contract or in any other way dispose of the Agreement or any part of it without prior written Approval. Sub-contracting any part of the Agreement shall not relieve the Service Provider of any of its obligations or duties under the Agreement.
- 39.2 Provided that the Council has given prior written Approval, the Service Provider shall be entitled to novate the Agreement where:
- (a) there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement (in accordance with Regulation 72 (1) (d) (ii) Public Contracts Regulations 2015).
- 39.3 The Service Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 39.4 Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Council, be sent by the Service Provider to the Council as soon as reasonably practicable.
- 39.5 The Council may assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Council; or
 - (c) any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Agreement.

40. Waiver

- 40.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 40.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

41. Variation

- 41.1 Subject to the provisions of this clause 41, the Council may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 41.2 The Council may request a Variation by completing and sending the Variation form attached at Schedule 2 (**the Variation Form**) or by sending such other form detailing the Variation to the Service Provider as the Council may decide, giving sufficient information for the Service Provider to assess the extent of the Variation and any additional cost that may be incurred. The Service Provider respond to a request for a Variation (and where the Service Provider agrees to the Variation shall sign and return any such form) within the dates set out on such form, or if no date is set out on the form, within 5 Working Days. If the Service Provider does not notify the Council within the timescales set out above that it does not accept the Variation, then the Variation shall be treated as agreed by the parties.
- 41.3 If the Service Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Fee, the Council may:
- (a) agree that the Parties continue to perform their obligations under the Agreement without the Variation; or
 - (b) terminate the Agreement with immediate effect, except where the Service Provider has already delivered part or all of the Order in accordance with the Order Form or where the Service Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 41.4 If the Parties agree the Variation and any variation in the Fee, the Service Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Agreement.

42. The Contracts (Rights of Third Parties) Act 1999

- 42.1 Except as expressly provided elsewhere 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.
- 42.2 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

43. Severance

- 43.1 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.
- 43.2 If 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.

Liabilities

44. Liability, indemnity and insurance

- 44.1 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - (d) any claim under clause 23.7;
 - (e) any claim under clause 46; or
 - (f) any claim under the indemnity in clause 31.3.
- 44.2 Subject to clause 44.3 and clause 44.4, the Service Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Agreement or the presence of the Service Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Agreement.
- 44.3 Subject always to clause 44.1 and clause 44.4, the liability of either Party for 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 aggregate Fees paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.

- 44.4 Subject to clause 44.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); or
 - (f) any indirect or consequential loss or damage.
- 44.5 The Council may, among other things, recover as a direct loss:
- (a) any additional operational and/or administrative expenses arising from the Service Provider's Default;
 - (b) any wasted expenditure or Fees rendered unnecessary and/or incurred by the Council arising from the Service Provider's Default; and
 - (c) the additional cost of any replacement services for the remainder of the Term following termination of the Agreement as a result of a Default by the Service Provider.
- 44.6 Nothing in the Agreement shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Council, or the Council's employees, servants or agents.

45. Insurances

- 45.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
 - (c) business car insurance or other appropriate motor vehicle policy to cover the use of motor vehicles by the Staff in providing the Services with a limit in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service 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 Service Provider.

- 45.2 The Service Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 45.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 45.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Agreement.
- 45.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Agreement.

46. Taxation, National Insurance and employment liability

The Parties acknowledge and agree that the Agreement constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Term or arising from termination or expiry of the Agreement.

47. Warranties and representations

The Service Provider warrants and represents that:

- (a) it has full capacity and authority and all Necessary Consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Agreement;
- (b) the Agreement is executed by a duly Authorised Representative of the Service Provider;
- (c) in entering the Agreement, it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the Tender and for the Services are true, accurate and not misleading except

as may have been specifically disclosed in writing to the Council before execution of the Agreement and it will advise the Council of any fact, matter or circumstance of which it may become aware during the Term which would render any such information, statement or representation to be false or misleading;

- (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 its assets which will or might affect 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 an 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 Service 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 Service Provider's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Agreement;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

Default, disruption and termination

48. Termination on insolvency and change of control

48.1 Without affecting any other right or remedy available to it, the Council may terminate this Agreement with immediate effect by giving [written] notice to the Service Provider if:

- (a) the Service 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];
- (b) the Service 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 Service Provider with one or more other companies or the solvent reconstruction of the Service Provider];
- (c) 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 Service Provider (being a company) other than for

the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;

- (d) 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 Service Provider (being a company, partnership or limited liability partnership);
- (e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (g) [the Service Provider (being an individual) is the subject of a bankruptcy petition or order;]
- (h) a creditor or encumbrancer of the Service 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 Service Provider's assets and such attachment or process is not discharged within 14 calendar days;
- (i) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 48.1(a) to clause 48.1(h) (inclusive); or
- (j) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

48.2 The Service Provider shall notify the Council immediately if the Service Provider undergoes a Change of Control. The Council may terminate the Agreement by notice in writing with immediate effect within six Months of:

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

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

49. Business Continuity and Disruption

49.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Agreement it does not disrupt the operations of the Council, its employees or any other Service Provider employed by the Council.

- 49.2 The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own Staff or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.
- 49.3 In the event of industrial action by the Staff, the Service Provider shall seek the Council's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Agreement.
- 49.4 If the Service Provider's proposals referred to in clause 49.3 above are considered insufficient or unacceptable by the Council acting reasonably then the Council may:
- (a) require the Service Provider to provide alternative proposals; or
 - (b) undertake the services itself and recover from the Service Provider the additional costs incurred in the process.
- 49.5 Subject to clause 49.6 below, nothing in this clause shall release the Service Provider from the proper performance of its obligations under the Agreement.
- 49.6 If the Service Provider is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.
- 49.7 The Service Provider will have plans in place to ensure continuity of supply, service and support under this Agreement. This shall include, but not be limited to, the areas of supply, delivery, maintenance and support, account management and other support services provided as part of the scope for this Agreement.
- 49.8 Such contingency plans shall include those referred to in the Charity Commission Guidance CC19 Charities' Reserves (March 2008), or other relevant industry and regulatory guidance issued from time to time, relating to financial contingencies that might arise due to the provision of this Service and any attached risks the Service Provider identifies
- 49.9 In the event that the Service Provider is hindered in performing its obligations under this Agreement by:
- (a) the infection or suspected infection of any person by the Covid-19 virus; and/or
 - (b) the actions of the UK Government or other relevant governmental or regulatory bodies in the UK or abroad in relation to the Covid-19 virus; and/or

- (c) compliance by any person with advice from the UK Government, the National Health Service or other health or regulatory bodies in relation to the Covid-19 virus; and/or
- (d) events such as the foregoing but in respect of any other virus or pathogen, other infection, epidemic or pandemic in respect of which the World Health Organisation issues an alert to its Global Outbreak Alert and Response Network.

49.10 The Service Provider shall deliver a business continuity before such event or as necessary on the request of the Council as to how they intend to continue to perform and mitigate any or any similar events as set out in this clause. The business continuity shall be agreed by the parties in such reasonable time but acknowledging the urgency of the situation and the need to continue to provide the Services as an essential requirement.

49.11 The Service Provider shall use such reasonable skill, care and diligence as is reasonably practicable to perform its obligations in those circumstances with the staff and resources remaining available to it.

50. Termination on Default

50.1 The Council may terminate the Agreement by giving written notice to the Service Provider with immediate effect if the Service Provider commits a material breach and (if such breach is remediable) the Service Provider has not remedied the material breach to the satisfaction of the Council within 20 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied, or if the material breach is not, in the reasonable opinion of the Council, capable of remedy.

50.2 For the purposes of clause 50.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:

- (a) a substantial portion of this Agreement; or

50.3 any of the obligations set out in clauses Health & Safety obligations (clause 16), Safeguarding of Vulnerable Adults (clause 17), Quality Assurance (clauses 30 and 31), Insurance (clause 40), Discrimination (clause 23), Misuse of drugs (Section 3.6 of the Specification), Abuse (Section 3.6 of the Specification), Conviction under the Care Act, unqualified or untrained staff (clause 20 and CQC non-compliance) during the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

50.4 The Council may terminate the Agreement by giving written notice to the Service Provider with immediate effect if:

- (a) the Service Provider repeatedly breaches any of the terms, including, but not limited to, Health & Safety obligations (clause 19), Safeguarding of Vulnerable Adults (clause 20),

Quality Assurance (clauses 34 and 35), Insurance (clause 45), Discrimination (clause 27), Misuse of drugs (Section 3.6 of the Specification), Abuse (Section 3.6 of the Specification), Conviction under the Care Act, unqualified or untrained staff (clause 21 and CQC non-compliance) terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

- (b) any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
- (c) any warranty given by the Service Provider in clause 47 of this Agreement is found to be untrue or misleading;
- (d) the Service Provider fails to maintain registration with the CQC or its successor (if applicable) during the period of the Agreement, to deliver personal care in the City of Derby;
- (e) the Service Provider fails to adhere to any the CQC or its successor's (if applicable) quality standards and ratings systems;
- (f) the Service Provider fails to maintain a CQC rating of 'Requires Improvement', 'Good' or 'Outstanding' for Personal Care for the duration of the Agreement;
- (g) the Service Provider or Service Provider Staff provides false or misleading information to the Council or to Customers or their representatives, (including prospective Customers or representatives);
- (h) the safety or welfare of Customers is in the opinion of the Council at serious risk due to the acts or omissions of the Service Provider or Service Provider Staff;

50.5 If the Council fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Days of the date of such written notice, the Service Provider may terminate the Agreement in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause 24.

51. Termination for convenience

- 51.1 The Council may terminate this Agreement at any time by giving 30 days' written notice ("Minimum Notice Period") to the Service Provider, following which the Agreement will expire and all payment relation to the Agreement shall cease.
- 51.2 The Minimum Notice Period may be decreased to no less than 14 days' written notice ("Expedited Minimum Notice Period") for the Council in the circumstances set out in Schedule 3 (Notice Periods).

- 51.3 The Expedited Minimum Notice Period may be reduced to seven (7) or less days' written notice ("Extraordinary Minimum Notice Period") in the following circumstances:
- (a) due to failure, in the reasonable opinion of the Council, by the Service Provider to meet the needs of the Customer; or
 - (b) services were provided by the Service Provider in error, due to insufficient notice being provided to affirm that no Services were required.
- 51.4 The Minimum Notice Period, Expedited Minimum Notice Period and the Extraordinary Minimum Notice Periods shall not apply for the following circumstances:
- (a) On the death of a Customer;
 - (b) Customer being admitted to hospital or respite care for a period of two or more weeks;
 - (c) Where the parties agree in writing shorter notice period, including, but not limited to, where circumstances at a Customer home prove difficult and it would not be in the best interest of either party to continue;
 - (d) Where there are serious safeguarding concerns or serious of serious safeguarding concerns;
 - (e) The needs of the Customer changes and the Service Provider is unable to provide the Services;
- 51.5 The Service Provider may terminate the Agreement by giving no less than 30 days' written notice on a single Agreement or in the event of multiple Agreement, the Service Providers Minimum Notice Period shall then be determined in accordance with Schedule 3 (Notice Periods).

52. Consequences of termination or expiry

- 52.1 Where the Council terminates the Agreement under clause 50 and then makes other arrangements for the supply of Services, the Council may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 50, no further payments shall be payable by the Council to the Service Provider until the Council has established the final cost of making those other arrangements.
- 52.2 Where the Council terminates the Agreement for the following reasons:
- (a) death of the Customer;
 - (b) the Customer is unable to return to usual place of residence following discharge from hospital;
 - (c) default in accordance with clause 50 (Termination on Default);

- (d) circumstances set out in clause 48 (Termination for insolvency or change control);
- (e) in accordance with clause 51 (Termination for convenience);
- (f) termination at the request of the Customer, where no breach has occurred and the Minimum Notice Period is provided or shall continue without delivery;

52.3 the following will apply to any payments to be made under the Agreement:

- (a) all and any payment will cease on the date of notification to the Service Provider of the death of the Customer;
- (b) all and any payment will cease on the date agreed by the Council and Service Provider in writing;
- (c) all and any payment will cease on the date of termination;

52.4 Except as otherwise expressly provided in the Agreement:

- (a) termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Agreement before termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Agreement shall not affect the continuing rights, remedies or obligations of the Council or the Service Provider under clause 23, clause 24, clause 25, clause 28, clause 29, clause 26.4(d), clause 31, clause 32, clause 38, clause 44, clause 45, clause 46, clause 51.5, clause 52, clause 53, and clause 59.

53. Recovery on termination

53.1 On the termination of the Agreement for any reason, the Service Provider shall:

- (a) immediately return to the Council all Confidential Information, Personal Data and Council's Intellectual Property in its possession or in the possession or under the control of any permitted Service Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Service Provider under clause 10. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to any Replacement Service Provider and/or the completion of any work in progress. This co-operation, during the setting up operations period of the Replacement Service Provider, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements; and

- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Service Provider to conduct due diligence.

53.2 If the Service Provider fails to comply with clause 53.1(a) and clause 53.1(b), the Council may recover possession thereof and the Service Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted Service Providers or Sub-Contractors where any such items may be held.

53.3 Where the end of the Term arises due to the Service Provider's Default, the Service Provider shall provide all assistance under clause 53.1(c) and clause 53.1(d) free of charge. Otherwise, the Council shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.

54. Dispute resolution

54.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representative of the Council and Authorised Representative of the Service Provider shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representative of the Council and Authorised Representative of the Service Provider are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Commissioning and Market Management of the Council and a Director of the Service Provider who shall attempt in good faith to resolve it; and
- (c) if the Head of Commissioning and Market Management of the Council and the Director of the Service Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

54.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 59 which clause shall apply at all times.

55. Force majeure

55.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control and/or was reasonably foreseeable and deemed a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 90 days', the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

56. Entire agreement

56.1 This Agreement constitutes the entire agreement, together with the Order Form and other associated documents referred therein, between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

56.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement, provided that nothing in this clause 56 shall operate to exclude any liability for fraud.

56.3 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Agreement and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

- (a) Order Form including the Service Request Form except the Service Provider's Response to the Service Request Form
- (b) the clauses and schedules of the Agreement;
- (c) any other document referred to in the clauses of the Order Form; and
- (d) the Service Provider's Response to the Service Request Form.

57. Counterparts

57.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

58. Notices

- 58.1 Except as otherwise expressly provided within the 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 sending the communication.
- 58.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand or by pre-paid first-class post or other next Working Day delivery service). Such notices shall be addressed to the other Party in the manner referred to in clause 58.3. Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am] on the second Working Day after posting;
- 58.3 For the purposes of clause 58.2 the address of each Party shall be:
- (a) for the Council: the address set out in the Order Form.
 - (b) for the Service Provider: the address set out in the Order Form.
- 58.4 Either Party may change its address for service by serving a notice in accordance with this clause.

59. Governing law and jurisdiction

- 59.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 59.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

STANDARD HOME CARE SPECIFICATION (TD1526)

1. INTRODUCTION, CONTEXT AND SCOPE

In line with good practice and national directives, Local Authorities aim to reduce the demand for institutional care by increasing options for community support by commissioning or providing services which promote and support independence.

Derby City Council is therefore tendering for CQC registered Standard Home Care Services for Adults, 18 years and over who are resident in Derby and meet the eligibility criteria for Derby City Council.

This specification below sets out the requirements for the support that Customers will require from the Standard Home Care Service and should be read in conjunction with all other associated documents.

Demand for Standard Home Care is growing. In 2018-19 there were on average 1300 Customers with an annual spend by the Council of around £15.2m. Currently approximately 95% of the service is provided by seven providers across four geographical areas. More details of the supply and demand trends in Home Care is provided within the Market Position Statement for Home Care in Section 3 of the Invitation to Tender Document.

Definition: The Care Quality Commission (CQC) definitions of Home Care and Support are as follows:

“These services provide personal care for people living in their own homes. The needs of people using the services may vary greatly, but packages of care are designed to meet individual circumstances. The person is visited at various times of the day or, in some cases, care is provided over a full 24-hour period. Where care is provided intermittently throughout the day the person may live independently of any continuous support or care between visits.”

CQC data indicates that in 2018 there were 53 registered homecare agencies/providers based within Derby area, with other providers based in the surrounding area also delivering a service in the City.

Customers of Home Care Services will be:

- Be residents of Derby City
- Be over the age of 18 years
- Have eligible care or support needs as defined by the Council
- Require Home Care as defined above

Customers may have multiple and varying levels of support needs. Service Providers will need to develop personalised Support Plans that identify clear and quantifiable ways that they will support Customers to achieve their individual outcomes and remain independent in their own home.

Customers that will require this Service will have a wide range of needs that may include one or a combination of the following broad headings (please note this list is not exhaustive):

- Physical disability or frailty,
- Learning disability
- Mental Health
- Sensory Disabilities and/or Communication needs
- Dementia or other cognitive difficulties,

Service Providers will be required to demonstrate competence to deliver the Service to Customers on an individual basis based on their assessed needs and preferences, including demonstration of skills and experience required. Service Providers will be encouraged to develop their Service provision across a range of different Customer groups to support market development and to ensure that Customers with complex and multiple needs have their needs comprehensively met.

The Service will enable the Customer to live independently within their accommodation. An enablement / recovery approach lies at the heart of Service delivery, and performance in this respect will need to be quantifiable and measurable.

Service Providers will need to adapt their service to the individual Customer's support network and their accommodation setting. This may include, for example, working alongside an accommodation provider and/or with a Supported Living Provider within in an Extra Care Scheme or other accommodation setting. In these settings the Home Care Service Provider will be required to work in partnership with these other providers to deliver a seamless care and support service for the Customer.

The Market Position Statement for Home Care will provide further details of the supply and demand issues and financial status of the market in Derby.

2. CORE

2.1 OVERARCHING PRINCIPLES OF SERVICE DELIVERY

The successful Service Provider will ensure the following principles are integrated into the delivery of this service:

- understanding of Customer demographics, different and diverse cultures, different physical and mental needs;
- embrace the principles of a person centred and enablement approach;
- protection of the Customer from harm;
- a robust sustainable approach, ensuring all required resources (financial, personnel, data etc) are available for continued service delivery;
- compliance with required standards as detailed in the specification and as required by law.

2.2 CORE REQUIREMENTS

When delivering the support described in this specification, Service Providers will need to ensure that services support the principles of Your Life Your Choice:

- a) Self-determination – each person should be in control of their own life and, if they need help with decisions, those decisions are kept as close as possible to them.
- b) Direction – each person should have their own path and sense of purpose to help give their life meaning and significance.
- c) Money – each person should have enough money to live an independent life and are not unduly dependent upon others.
- d) Home – each person should have a home that is their own, living with people that they really want to live with.
- e) Support – each person should get support that helps them to live their own life and which is under their control.
- f) Community life – each person should be able to fully participate in and contribute to family and community life.
- g) Rights – each person should have their legal and civil rights respected and be able to take action if they are not.
- h) Responsibilities – each person should exercise responsibility in their own lives and be able to make a contribution to their community.

To deliver these principles Service Providers will demonstrate that they can:

- Deliver Customer outcomes: the quality of the Service will be measured by the improvement in the outcomes for individual Customer. Individual Customer outcomes will be identified by each Customer within their 'My Self-Assessment' and if appropriate this will include views of their family carers or representatives. These outcomes will be specified by the council when requesting a service and monitored as part of ongoing service management. The Service Provider will agree with each Customer how and when they will be supported to achieve their outcomes and specify this in the Service Provider's Support Plan.
- Provide personalised support: services must be planned and delivered in a way that is asset based and enabling to maximise self-care and independence. Support Plans and service delivery will evidence that support solutions build on and develop a Customer's strengths, abilities and support within their support network. This will require services to adapt to the Customer's changing needs and circumstances including support to access appropriate equipment and other support services.
- Support individual choice and control: Support Plans, risk assessments and the delivery of the service will need to show that the views of Customers, and if appropriate the views of carers within their support network. This may involve supporting individuals to take risks in their lives and Service Providers will need to ensure Support Plans and risk assessments reflect how they will support Customers to manage these risks are taken into account.

The Service will also support the Council's commitment to the Derbyshire Transforming Care Partnership. The shared aim of this Partnership is to prevent the admission of vulnerable adults with Learning

Disabilities or Autism into inpatient provision wherever possible and to ensure that anyone inappropriately placed in such beds is enabled to live an independent life in a community setting.

2.3 CARE AND SUPPORT REQUIREMENTS

The care and support described below is to be undertaken with and for Customers, this may be accomplished by assisting, encouraging and/or training the Customer to develop or maintain their own skills in any of the areas covered below.

Personal care may involve:

- a) Direct assistance with or regular encouragement to perform tasks
- b) Training in self-care skills
- c) Assisting the Customer to get up or go to bed
- d) Washing, bathing, hair care, denture and mouth care, hand and fingernail care, foot care (but not any aspect of foot care which may require a state registered chiropodist);
- e) Management of urine bags etc.
- f) Assisting the Customer with:
 - i. dressing and undressing;
 - ii. toileting, including necessary cleaning and safe disposal of waste/continence pads;
 - iii. electric shaving, make-up, dental and oral care, including dentures
 - iv. hair care

Other care may include assistance with:

- a) Eating and drinking, including associated kitchen cleaning and hygiene;
- b) Food or drink preparation
- c) Dealing with correspondence;
- d) Prompts to take medication or safe administration of medication which has been prescribed to the Customer in accordance with agreed protocols
- e) Night settling – preparing the Customer for the night, making the home safe and secure before leaving
- f) Support access to activities including employment, education and voluntary work
- g) Health action plan support
- h) Support planning meals, shopping, healthy eating and budgeting
- i) Assistance in budgeting and debt avoidance management
- j) Support in claiming benefits including, signposting to, and accessing advice services and as directed by Customer support to complete benefit forms/applications
- k) Support topping up pre-paid keys for gas or electricity meters
- l) Supporting and facilitating the Customer's access to social, vocational and recreational activities as stipulated in the care/support plan.
- m) Helping Customers to make their way to places and to assist in road safety and learning routes
- n) Attending day care, hospital appointments, accessing social activities etc.
- o) Shopping and handling their own money, including accompanying the Customer to the shops;

If specified in the Care Plan, or to meet Health and Safety minimum standards, assisting the Customer in cleaning the home, which may include tasks such as: vacuuming, sweeping, washing up, polishing, cleaning floors and windows, bathrooms, kitchens, toilets etc. and general tidying, using appropriate domestic equipment and appliances as available to:

- a) Make beds and change linen
- b) Light fires, boilers etc.
- c) Dispose of household and personal rubbish
- d) Clean areas used or fouled by pets to meet Health and Safety minimum requirements
- e) Assist with the consequences of household emergencies including liaison with local contractors
- f) Laundry services (except where an incontinence laundry service is provided).

The list above is not exhaustive, and Customers may wish to include tasks not on this list, either regularly or on an 'as and when' basis. The Service Provider will need to consider whether these tasks support meeting the Customer's outcomes and whether they are appropriate to the Care Plan, the My Self-Assessment outcomes or whether they need to confirm arrangements with the Council

Service Providers are expected to encourage Customers to make clear their own needs, not simply to choose from a list of tasks available.

Where possible, an enabling approach should be taken to support the Customer to self-care by undertaking as much of a task as they are able to. This enabling approach is further defined in the Customer's "My Self-Assessment" and (<https://www.derby.gov.uk/health-and-social-care/your-life-your-choice/support-from-adult-social-care/needs-assessment-by-social-services/>).

Positive risk taking should be encouraged where the benefits of the activity to the Customer are carefully weighed against the risk taken. Prior to engaging in a new activity, a risk assessment will be undertaken if necessary, in conjunction with the Customer and/or their circle of support in order to ensure that risk taking is managed in a planned, safe and sensitive way.

The Agreement does not demand that the successful Service Providers have an office within the city but any Service Provider offices and Staff should be accessible (in the broad terms of disability, language, culture and contactable by phone and email and other appropriate methods) to all Customers and their families.

2.4 ASSESSMENT AND SUPPORT PLANNING

The needs of each Customer will be identified through statutory social care assessment completed by the Council in conjunction with the Customer and their family and carers. This document is called 'My Self-Assessment'. Risk assessments will also be produced where appropriate.

All personal support plans must identify how their outcomes will be met and set out the outcomes to be achieved.

When individual Service Requests, during a Contract Opportunity, are shared with Service Providers they will include: My Self-Assessment; Council Support Plan and risk assessments if appropriate.

The individual Service Request Form will contain Customer details and will include anonymised information detailing what care is required and may include information such as:

- hours of support needed and when
- specific tasks to be delivered
- individual outcomes and needs to be met
- preferences around delivery

Service Providers will be expected to work with the Council and Customers to decide how the Customer's desired outcomes will be met.

Service Providers who have been selected to provide the Service (awarded an Agreement) will be required to develop Support Plans.

2.5 SUPPORT PLANS

For any Agreement awarded the Service Provider will be required to complete an individual support plan, which is fully developed and discussed with the Customer, their Carer, and any other professional as appropriate. This will be in line with agreed outcomes and how these are to be achieved.

These Support Plans will be reviewed as necessary but not less than annually.

Customer outcomes will be delivered using person centred approaches, designed around the Customer's wishes and lifestyle, promoting the Customer's awareness of their entitlement to their rights, inclusion, choice, and independence within society.

Support plans ensure that for each Customer that their disability, gender, sexual orientation, cultural and religious needs are taken into account in any support arrangement. The care and support plan will refer to means of empowering, facilitating choice, regaining or acquiring skills and/or maintaining existing skills. It will clearly define the service to be provided, showing how the service will be delivered to meet assessed need, promote independence and support Customer to live a fulfilled life, making the most of their capacity and potential. This will include but is not limited to:

- how the Customer wishes to be addressed
- outcomes to be achieved and what the Customer will be able to do as a result of the service provided
- any specialist equipment needed
- what actions will be taken, by when and by whom, to ensure the outcomes are achieved
- the date when the support plan will be reviewed by the Service Provider with the Customer
- how health and/or social needs will be met
- how any personal care will be provided, and by whom
- how cultural and spiritual needs will be met
- how social and community engagement needs will be facilitated
- how any special communication needs will be met
- arrangements for taking medication
- how any special dietary needs/preferences will be met
- the next of kin and emergency contact numbers

- a risk assessment
- the Customer named key worker
- who should be involved in care reviews
- key contact details e.g. district nurse etc.
- advance directives, where appropriate
- support available from the Customer's circle of support, as set out in their My Self-Assessment
- how they will be supported to be part of their community

2.6 INPUTS, OUTPUTS AND OUTCOMES

Outputs of this Service include quantifiable delivery of Support delivered to Customers as part of this Service in line with tasks outlined in Section 2 and Support Plans.

Service Providers will not change the amount of Support to be delivered to the Customer without the prior agreement of the Council unless:

- pre-approved tolerances and permissions have been explicitly agreed
- the Customer informs the Service Provider that the hours are not required.

Service Providers will record and report on care and support hours that have been used and any hours that have not been used with details of why they have not been provided.

The Council will set the parameters and methods of providing these reports.

Outcomes to be met as part of this Service will be defined by individual Customer's needs. Service Providers will be required to evidence how outcomes are being met as part of the Quality Assurance requirements of the Service.

2.7 SERVICES AVAILABILITY

Customers

The Service will be available as required by individual Customers but may be 7 days a week, 24 hours a day – i.e. including waking nights and sleep-ins from 22.00 to 07.00.

Service Commission by the Council

Service Providers will also need to be contactable out of office hours where emergency services and urgent hospital discharges are required. Service Providers are therefore required to provide emergency out of hour's contacts to the Council for duty staff within the service providers organisation with decision making abilities with regards to providing new or increased services in emergencies.

The Service Provider will be contacted by the Council through the Council's Commissioning Team when a placement is required, usually during office hours. This will be on a case by case basis but occasionally in groups of Customers where this is appropriate to meet individual outcomes.

When individual Customer Requests are identified through a Service Request, Service Providers will need to be able to confirm that they can meet the specific needs of the Customer, how they will meet these needs and when they can start delivering the Service.

3. MINIMUM STANDARDS, WORKING METHODS AND CODES OF PRACTICES

3.1 CORPORATE AND SERVICE POLICIES

Service Providers should take account of best practice and national policy directives relevant to this service areas – this may include NICE guidelines, codes of practice of relevant regulatory bodies and specific requirements made upon the delivery of service in respect of professional or quality assurance schemes they may be signatories to.

The websites below provide references to strategic documents that guide the development and coordination of services for Customers supported by the Service Provider, including:

For all Customers

Your Life Your Choice

<https://www.derby.gov.uk/media/derbycityCouncil/contentassets/documents/adultsocialcare/ylyc/DerbyCityCouncil-yourlifeyourchoiceSocialCare-brochureMARCH16.pdf>

Personal Budgets

<https://www.derby.gov.uk/health-and-social-care/your-life-your-choice/support-from-adult-social-care/social-services-direct-payments/>

Putting People First

https://webarchive.nationalarchives.gov.uk/20130104175839/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_081118 (2007)

For Customers with Learning Disabilities and Autism

- *'National Plan Building the Right Support'* <https://www.england.nhs.uk/learning-disabilities/natplan/>
- *'The National Service Model'* <https://www.england.nhs.uk/wp-content/uploads/2015/10/ld-serv-model-oct15.pdf>
- *'Transforming Care Plan'* <http://www.northderbyshireccg.nhs.uk/transforming-care-plan>

For Customers with Dementia (new strategy will be available Autumn 2019)

- <https://www.derby.gov.uk/health-and-social-care/your-life-your-choice/independent-at-home/support-for-people-with-dementia/>

The Service Provider must also ensure they comply with the Data Protection Act 2018 at all times during the Term and ensure that any data is only processed and used for the purposes required under a Contract.

3.2 LEGISLATION

Local Authorities are required to provide services in compliance with legislative frameworks, national policy and guidance and as such we expect all of our Service Providers to comply with these and seek to address any future relevant legislative and policy changes that may arise. Current legislation and relevant policy and guidance affecting this Service include, but are not limited to:

- The Care Act 2014
- The Mental Health Act 1983 (amended 2007)
- Health and Social Care Act 2008: code of practice on the prevention and control of infections (July 2015)
- The Children and Families Act 2014.
- Human Rights Act (1998)
- Data Protection Act 2018
- The Mental Capacity Act Code of Practice (2007)
- The Mental Health Act Code of Practice (2015)
- The Deprivation of Liberty Safeguards (DoLS) Code of Practice (2008)
- Equalities Act (2010)
- Health & Safety At Work Act 1974
- Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations (1995) (RIDDOR)
- The Autism Act 2009

The Service Provider will be responsible for engaging and participating in the Council's programme of communication, liaison and consultation to ensure they are aware of, and can demonstrate awareness of new developments in best practice, in legislation, service and policy updates.

The Service Provider will be required to be aware of and follow appropriate guidance provided by nationally recognised agencies, including:

- LEDR and the Confidential Inquiry into the Premature Deaths of Adults with Learning Disabilities
- Building the Right Support
- Revised DHSC National Autism Guidance 2019
- STOMP / STAMP
- NHS Long Term Plan and subsequent Guidance 2019
- National Framework for NHS Continuing Care and NHS Funded Care
- NICE Guidelines relevant to the Customer group supported.

3.3 REGULATION / CQC REGISTRATION AND CQC RATING

As personal care will form part of the care packages, it is a requirement that all Service Providers of the Standard Home Care Service are registered with the Care Quality Commission (or any successor statutory regulation organisation) and will maintain the registration and have a CQC rating of either 'requires improvement', 'good' or 'outstanding' assigned to them throughout the duration of the Agreement. If the CQC rating is 'requires improvement' the Service Provider will be expected to share their action plan with the Council to review.

The Service Provider will be required to be registered with the CQC to be able to deliver personal care in Derby City.

The Council expects that all Service Providers will adhere to any future Care Regulator quality standards and rating systems.

If the Service Provider rating falls below the required CQC rating during the Term, then they will be required to:

- Inform the Council within two working days
- Provide an action plan that is satisfactory to the Council that will address all the concerns raised by the CQC within a timescale agreed with the Council.

The Service Provider is also to inform the Council within two working days of any change in their registration status with the CQC.

Where the Council has concerns about quality of service delivery, the ability of the Service Provider to continue to provide the Service and/or Customer safety, whatever the CQC rating, the Council may terminate the Agreement.

CQC Rating 'pending'

Where a Service Provider is waiting for a rating for the delivery of personal care from the CQC, they are to immediately inform the Council once the rating is received.

If the rating is 'Inadequate' or 'Requires Improvement', then the Service Provider will be required to provide an action plan that is satisfactory to the Council that will address all the concerns raised by the CQC within a timescale agreed with the Council.

The Council will be able to terminate the Agreement if the Council does not consider that the action plan addresses all the concerns raised by the CQC and/or the Service Provider fails to meet the deadline for the plan as set by the Council.

3.4 THE CARE ACT

Under the 2014 Care Act the Council has a new duty to support to all Customers, whether they fund them or not. Should any Service Provider need to permanently cease a service, or have to cease for a period due to unseen circumstances, they will be required to work closely with the Council in identifying Customers and their families, so the Council can help source alternative provision on a temporary or long term basis depending on if the nature of the closure.

The Service Provider should also take note of the notice periods in Schedule 3 of the Agreement.

3.5 THE MENTAL CAPACITY ACT

Customer should have choice and control over their own health and care services; it is they who should make decisions about every aspect of their life. There is a need to 'shift the balance of power' away from services which are 'doing to' rather than 'working with' people, to a recognition that individuals, their families and carers are experts in their own lives and are able to make informed decisions about the support they receive.

Any decisions about care and support should be in line with the Mental Capacity Act. People should be supported to make their own decisions and, for those who lack capacity, any decision must be made in their best interests involving them as much as possible and the views of those who know them well, who make up their 'Circle of Support'. (<https://www.derby.gov.uk/health-and-social-care/your-life-your-choice/support-from-adult-social-care/needs-assessment-by-social-services/>)

3.6 WORKING IN CUSTOMER'S HOMES

Staff of the Service Provider are invited into Customer's and carer's homes by Customers and carers themselves. Their status is as an employee of an agency; support workers will recognise this and act

accordingly respecting the rules of the house and the wishes of the Customer. The Service Provider will ensure that:

- a) Support Staff will not smoke in a Customer's home or on their property or whilst providing care to a Customer in the community.
- b) Support Staff must be free from the effects of mind-altering substances or alcohol during working hours. Substances include both illegal drugs and legal medication if the medication affects their ability to carry out their duties in a safe and sufficient manner.
- c) Staff must not drink alcohol while they are on duty.
- d) Staff must not take any other person, including children, to the Customer's home.
- e) Staff must not take any pets or other animals to the Customer's home.
- f) Staff must not use a personal mobile phone during home visits or when providing direct care.
- g) Staff must clearly:
 - i. Identify who is entering the Customer home, or contacting the Customer and the organisation they work for
 - ii. Keep a record in the Customer's home of who has visited the Customer and when
 - iii. The contact details of key worker, and supervisor responsible for their care package
- h) Customer should be informed of the names of workers who will be delivering their support, where possible, in advance
- i) Staff should carry, and show to Customer and others as appropriate, an official photo identification with their photo, name and Service Provider name on.

3.7 BEHAVIOURS THAT CHALLENGE

Customers with complex needs, supported under this Agreement may have, at times, behaviours that are considered to be "challenging", and Service Providers will be required to demonstrate how they can minimise the impact of behaviour issues by developing positive work with individuals. Derby City Council has a commitment to the implementation of a positive behaviour support model including full organisational and manager accreditation, and staff training in line with the National Service Model and the Derbyshire Transforming Care Plan standards is essential and will be monitored for the duration of the Agreement. See also

- *'The National Service Model'* <https://www.england.nhs.uk/wp-content/uploads/2015/10/ld-serv-model-oct15.pdf>
- *Transforming Care Plan* <http://www.northderbyshireccg.nhs.uk/transforming-care-plan>
- *'Guidance on best practice on Challenging Behaviour'* Learning Disabilities and Challenging Behaviour <https://www.nice.org.uk/guidance/ng93>

3.8 SAFEGUARDING

Both the Council and the Service Provider must follow laid-down national and local safeguarding procedures as part of the process of managing and preventing serious concerns. These safeguarding procedures relate both to adults and any children that may visit the Service as part of the wider involvement of the community.

The Service Provider will be fully compliant with the protocols for Safeguarding Adults and Safeguarding Children set out by the Council on our website;

<http://www.derby.gov.uk/health-and-social-care/safeguarding-adults-at-risk/safeguarding-vulnerable-adults>

<https://www.derbysab.org.uk/>

<https://www.derby.gov.uk/health-and-social-care/safeguarding-children/>

<https://www.ddscp.org.uk/>

The Service Provider will have an officer who will act as the lead safeguarding officer who will be responsible for reporting to the Council all concerns raised in connection with the protection of vulnerable adults at Stage One of the Safeguarding Adult Protection Policy and Procedures and inform the Council in writing who that person is. The Service Provider will notify the Council of any changes to this member of staff.

The Service Provider will ensure all its Staff are aware that they are individually responsible for compliance with the Safeguarding Adult Protection Policy and that they know all the internal and external processes for reporting all concerns in connection with the protection of vulnerable adults and children where appropriate.

Staff should be told in writing that they can report concerns through the nominated member of staff, or if they would prefer to, through the Council as set out in the Council's Safeguarding Adult Protection Policy and Procedures.

Staff training needs in relation to safeguarding will be continually evaluated with all staff receiving appropriate training. The Service Provider will be able to access the Council's training relating to appropriate Safeguarding courses.

The Service Provider is expected to have a clear statement outlining the service's responsibilities towards Customers available for all Staff.

The Service Provider will demonstrate senior management commitment to the importance of safeguarding and promoting the Customer' welfare.

3.9 EQUALITY AND DIVERSITY

The Council is committed to advancing equality of opportunity and providing fair access and treatment in employment and when delivering services. We will work to deliver our commitments by tackling inequality arising out of age; disability; gender re-assignment; marital status and civil partnership; pregnancy and maternity; race; religion and belief including non-belief; sex or gender; sexual orientation; and other forms of disadvantage such as rural deprivation and isolation. Our policy applies to every Councillor, manager and employee of the Council and any other person or organisation employed by the Council to work or to deliver services on its behalf, including those employed through contractual, commissioning or grant-aided arrangements.

It is the responsibility of the Service Provider to actively meet the requirements of the Equality Act 2010 and Derby City Council responsibilities under the Public Sector Equality Duty (the Duty) by paying due regard to:

- eliminating discrimination, harassment, and victimisation and any other conduct that is prohibited by the Equality Act 2010
- advance equality of opportunity
- foster good relations between people who share a relevant protected characteristic and those who don't

Having due regard means the Service Provider needs to:

- remove or minimise disadvantages suffered by people due to their protected characteristics:
- take steps to meet the needs of people with certain protected characteristics where these are different to the needs of other people
- encourage people with certain characteristics to participate in public life or in other activities where the participation is disproportionately low

The Council also expects the Service Provider to:

- capture effective data collection on employees and people and analyse these statistics

- produce equality impact assessments on policies, procedures and services that may have an impact on people or the service as a whole
- provide one or more equality objectives at least every four years

The Duty and this specification requires the Service Provider take into account disabled people's impairments, when making decisions about policies and services, as the law recognises that disabled people's needs may be different from the needs of non-disabled people. This might mean making reasonable adjustments or treating disabled people better than non-disabled people to meet their needs or providing positive discrimination to enable disadvantaged group's access to the Service.

All Staff employed by the Service Provider will recognise and respect the religious, cultural and social backgrounds of Users in accordance with legislation and local and national good practice.

The Service Provider will ensure that it has access to appropriate translation services/resources to enable equity of access and understanding.

The Service Provider will recognise and make provision for cultural and religious needs such as prayer time and specific food preparation (e.g. Halal) if appropriate.

3.10 DIGNITY

Derby City Council is passionate about promoting Dignity in Care to all citizens of Derby. Dignity in Care is a national campaign led by the National Dignity Council promoting dignity and respect to vulnerable people who receive care and support services.

Further information can be found at:

<https://www.derby.gov.uk/health-and-social-care/your-life-your-choice/support-from-adult-social-care/dignity-in-care/>

<https://www.derbysab.org.uk/dsab-subgroups/Customer-inclusion/dignity-award/>

The Service Provider is not required to apply for the Dignity in Care Award but the Service Provider will ensure that Customers are treated with respect at all times and will ensure their personal sense of significance is enhanced. To achieve this, Service Providers should undertake activities to ensure:

- a) the Customer feels confident that the service will assist in the improvement of identified aspects of their day to day lives;
- b) the Customer is confident that their dignity with regard to religious and cultural beliefs is respected
- c) care Staff will assist the Customer's personal care with discretion and in such a way that dignity is maintained and that wherever possible care Staff take direction from the Customer.
- d) the Service Provider shall have a written policy on how it will safeguard the Customer's right to privacy and confidentiality. The Service Provider shall ensure that their Staff are made aware of this policy during induction and on-going training.
- e) each Customer should be assisted in such a way so that any distress or discomfort is avoided or minimised, paying due regard to his/her health, safety and dignity and encouraging the development of personal skills and the exercise of choice and control.
- f) as well as specific personal care tasks, the Service Provider should make it a clear and acceptable aspect of the work of their Staff that part of the personal care task is for staff to spend time talking to, relating with, and understanding the lives of Customers.
- g) the Service Provider should carry out in regular audits regarding the maintenance of dignity for their Customer.

3.11 CONFIDENTIALITY

INFORMATION SHARING AND DATA PROTECTION

People have a general right to independence, choice and self-determination including control over information about themselves. In the context of adult safeguarding these rights can be overridden in certain circumstances.

Emergency or life-threatening situations may warrant the sharing of relevant information with the relevant emergency services without informed consent. The Service Provider and any associated organisations will sign up to Information Sharing Agreements/Data Processing Agreements as appropriate.

The law does not prevent the sharing of sensitive, personal information within organisations. If the information is confidential, but there is a safeguarding concern, sharing it may be justified.

The Service Provider and its staff shall comply with Data Protection Act 2018, any future 'any applicable UK data protection legislation' and article 8 of the Human Rights Act (the right to privacy) and any subsequent legislation that is applicable during the course of the Agreement.

As a minimum this means:

- Customers are informed of how their personal data will be processed;

- Staff will not share information about Customer outside of the workplace;
- records will be accurate and kept up to date;
- Customer will have a right to access to information held about them;
- personal tasks will be carried out in complete privacy;
- personal data will be kept secure at all times;
- any disclosure of personal information must be done securely;
- Personal data will not be collected that is not required for the provision of the Service.

The Service Provider shall have a Data Protection policy that governs conduct of Staff and Volunteers to ensure personal data is kept secure.

The Service Provider will ensure that the Staff who provide this service are aware of their responsibilities under the Data Protection Act 2018. The Service Provider will ensure that new Staff receive training on this as part of their induction and receive refresher training on their responsibilities under the Data Protection Act 2018 and any future 'applicable UK data protection legislation, at least every two years.

The Service Provider will ensure signed confidentiality agreements are in place for all members of Staff working on the contract.

The Service Provider will ensure appropriate security procedures are followed to protect the personally identifiable information belonging to Customer when making referrals or communicating on their behalf.

Any contracts that include international data flows will be subject to additional due diligence and governance arrangements.

3.12 LOCATION OF PERSONAL DATA STORAGE/BACK-UP

The Service Provider is to ensure that any personal data processed under this Agreement shall not be processed outside of the UK. If requested, the Council may consider alternatives to this as long as significant security requirements are met, which may mean a change of terms and conditions the Service Provider has with any third-party storage solution provider. The Council is under no obligation to consider a request to store this personal data outside of the UK. Any additional costs the Service Provider incurs to meet these requirements shall be entirely met by the Service Provider.

The Service Provider is required to understand where the personal data is 'stored' especially if using 'cloud services'.

The Service Provider will engage and respond to any request from the Council concerning the location of stored personal data, with proof if requested, at no extra cost to the Council.

RECORD KEEPING

The Service Provider shall ensure proper records are maintained and made available to the Council, including but not limited to:

- person centred care and support plans;
- risk assessments and capacity assessments;
- preparing reports for and attending Customer reviews;
- Staff rosters;
- details of all Staff employed and Staff changes;
- staff records including training and induction;
- records of all accidents/incidents involving Staff/Customers with follow up risk assessments and records of actions taken.

3.13 FOOD LEGISLATION

The Service Provider is to comply with all current and future legislation regarding Food Safety and Hygiene where it applies in the performance of this Service. Further details can be found on www.food.gov.uk

Service Providers who prepare, handle or serve food as part of their service are required to register with Derby's Environmental Health Service. Further details on registration can be found at:

<https://www.derby.gov.uk/environmental-health-licensing-trading-standards/environmental-health/food-hygiene-and-food-safety/food-advice-for-businesses/register-a-food-business/>

3.14 INSURANCE

The Service Provider will have the following insurances in place during the performance of the contract:

- Employer's liability insurance - £5 million in respect of any one occurrence or series of occurrences arising out of any one event; in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims
- Public Liability Insurance - £10m for each and every event

Other insurances, and their levels, will need to be considered by the Service Provider in line with regulatory standards and guidance according to the type of Service provided.

3.15 IMPROPER CONDUCT

The Service Provider shall ensure that neither it or its Staff shall not take any actions that result in the detriment of a Customer's welfare or to the delivery of the Service, either by positive action or by omission. Such action shall include but is not limited to:

- (a) Abuse
- (b) fraud and theft from Customers
- (c) sexual misconduct or sexual exploitation
- (d) improper inducements, including inducements offered to employees of the Council
- (e) conspiracy with officer or officers of the Council or any Staff to defraud or disadvantage Customers
- (f) financial malpractice
- (g) business continuity failure.

4. QUALITY AND PERFORMANCE

4.1 QUALITY AND PERFORMANCE STANDARDS (see Appendix 2)

Service Provider will need to demonstrate evidence of delivery to support Customer's outcomes in the following areas:

- enhancing quality of life and increasing independence for people with care and support needs through an enabling approach
- delaying and reducing the need for care and support
- ensuring people have a positive experience of care and support, including having choice and control about how it is delivered
- safeguarding adults whose circumstances make them vulnerable and protecting them from unavoidable harm
- understanding the impact of disability, mental ill-health and impairment and supporting self-management where appropriate
- enhancing the health and wellbeing of people being supported
- enhancing or maintaining dignity

4.1.1 Quality assurance procedures that the Service Provider must comply with include the following:

- the Council will seek evidence through monitoring the service, that the delivery of services is focussed on flexible care and support and the outcomes from the My Self-Assessment in lines with this Specification.

- Service Providers will be required to permit access to any employees of Council, or agents working on their behalf, and to facilitate access to records in accordance with the quality assurance and contract monitoring requirements of this contract
- Service Providers will be required to undertake a self-assessment audit return on at least an annual basis
- Service Providers are required to undertake completion of relevant capacity trackers as required. These may be statutory requirements and may be issued from partner organisations such as CQC or NHS.
- thematic monitoring/audit visits carried out by Derby City Council in relation to the standards stipulated
- monitoring and compliance meetings
- financial reporting- including the requirement of the Service Provider to report on any financial difficulties which may result in the non-delivery of the Service in full or in part
- Duty of Candour – including the requirement of the Service Provider to report on any other difficulties or risks inherent in the delivery of this service which may result in the non-delivery of the service in full or in part
- reviews of care or support packages including feedback from key stakeholders including the Customer and social care worker
- Derby and Derbyshire Safeguarding Adults Policy and procedures
- medication reporting where appropriate
- Service Providers must be responsive to Customer’s daily changing circumstances and complete accurate recording
- Service Providers must meet the outcomes of assessments/care plans.
- Service Providers must maintain any registration, have a CQC rating and compliance with CQC standards
- Service Providers must remain compliant with other statutory requirements, such as Fire Safety and Environmental Health
- attendance at Service Provider Forums
- compliance with Derby City Council’s requirements for future electronic monitoring reporting

4.1.2 Assessment Process

This will include:

- The Council will require Service Providers to complete an annual self-assessment audit incorporating confirmation of continued compliance with relevant regulatory bodies and legal requirements relevant to the Service
- feedback from Customers, carers and family members as well as professionals from the Council or partner agencies
- evidence of Customer Outcomes based on review of My Self-Assessment document (or subsequent statutory social care assessment) and/ or Support plans
- quality assurance visits, reviews, response to safeguarding and complaints, timely incident reports and action plans
- thematic monitoring/audit visits carried out by any designated officer of the Council in relation to the standards stipulated

4.1.3 Staffing Requirements

Service providers must ensure that:

- Staff comply with minimum training requirements to ensure a safe delivery of service to meet the individual outcome focussed care plan. This includes additional training and experience required to meet needs of individual Customers as set out in each Individual Service Request.
- Staff training complies with the recommended standards of training as specified by Skills for Care
- a CQC registered manager must be in place
- the Council are provided with the named contact for manager(s)/ team leader(s) responsible for contracts with the overseeing support provided to Council
- safe recruitment processes have been followed, which includes an Enhanced DBS check, written references checked and saved on file, Right to Work Checks undertaken, ensuring a full induction and training programme in place to enable employees to deliver services to the standards required in this specification and evidence of completion prior working unsupervised
- contingency planning and business continuity arrangements are in place to maintain support for Customer outcomes.

4.2 PERFORMANCE TARGETS

For all Customers:

- evidence that appropriate support plans, assessments, positive behaviour and risk management plans are in place that support the delivery of the Customer's outcomes as defined by the Council and the Customer
- evidence that requested hours are delivered as agreed with Customer and Council
- evidence that Customers are supported by Staff that they are familiar with and who have the appropriate training and experience to deliver their support
- performance related to CQC where appropriate
- evidence of successful joint working with local statutory and non-statutory Service Providers where this adds value and supports Customer outcomes
- evidence that the Health and Well-being of people being supported in a pro-active way enabling way
- evidence of complaints and their resolutions
- evidence of continued knowledge gathering and information sharing with Customers regarding issues and relevant opportunities in their local area

The Service Provider will attend contract management meetings with the Council on at least an annual basis or more regularly as determined by the volume, complexity, risk rating, or other service factors as determined by the Council.

The Council will conduct inspections on at least an annual basis or more regularly as determined by the volume, complexity, risk rating, or other service factors as determined by the council. The Council may conduct these inspections through any designated officer and these inspections may be conducted jointly with other statutory bodies as per the needs and interests of the Customers concerned.

4.3 PROBLEM SOLVING, COMPLAINTS, FEEDBACK

The Service Provider will work collaboratively with the Council, and other partners and Service Providers where relevant, to ensure that any difficulties in Service delivery are resolved as soon as is practicable to support Customer.

The Service Provider will have a complaints policy that is accessible and promoted to Customers, including provision for feedback to be provided to Customers and other relevant stakeholders (including in Plain English and Easy Read where required). This policy will ensure that complaints and feedback generate lessons learnt and continuous Service improvement.

The Service Provider shall also ensure that Customers are made aware that they can use the Council's Complaints Procedures and are provided with details of how they can access these procedures. The Service Provider will also co-operate with any investigation under the Council's complaints procedure.

If the Service Provider fails to deliver part or all of this service specification, the Service Provider will inform the Council at the earliest opportunity of any difficulties arising. The Council will work with the Service Provider to identify Service improvements to be made; the Service Provider must demonstrate evidence of Service improvement within agreed timescales.

The Council will enact Derby's Multi-agency Provider Failure policy and protocols where presenting risks dictate and the Service Provider is expected to engage fully with this policy and related requirements.

Failure to deliver the Service in line with the Service Specification and Agreement terms and conditions may result in a breach notice being put in place and further Contract Opportunities being suspended until Service improvements are made up to the required standard. The Council reserves the right to terminate an Agreement in the event of serious breaches impacting on Customer or public safety.

4.4 REVIEW OF PROCEDURES / CHANGE

If the Council is required to change the Service being delivered due to changes in legislation, consultation with Service Providers will take place to develop an agreed variation to services

All proposed changes will be implemented by the process outlined in the terms and conditions supporting this Service Specification and any specific Agreement terms and conditions.

4.5 REPORTING / CONTRACT MONITORING

Service Providers will be required to supply information to the Council that demonstrates their compliance with Service requirements in a format provided by the Council. The information requested will demonstrate that the Service Provider has the appropriate management and other systems in place to enable them to deliver the service requested. The information required will include:

- Successful completion of contract management requirements as defined within 4.1 Quality and Performance Standards.
- The Service Provider's impact on supporting Customer's to meet their outcomes on an individual basis, assessed through Section 4.1 Quality and Performance Standards and Social Work assessment and reviews
- Responsiveness to any required Service improvements as determined by the contract management/ Quality assurance mechanisms

5. STAFF

5.1 STAFF RECRUITMENT AND STAFF COMPETENCIES

The Service Provider will have a robust recruitment process to ensure the supply of sufficient and suitably experienced and qualified (where appropriate) staff to effectively deliver the Service as described in this Service Specification.

The Service Provider will have appropriate Staff retention processes, appropriate to the market it operates in, to ensure the supply of sufficient and suitably experienced and qualified (where appropriate) staff to effectively deliver the Service as described in this Service Specification.

The Service Provider will ensure their Staff are competent, appropriately trained, supervised and supported on an on-going basis to maintain the overall quality of the Service for all users of the Service.

The Service Provider will ensure their staff are competent, appropriately trained, supervised and supported on an on-going basis to maintain the overall quality of the Service. Staff are also required to have the right values and human qualities that will best deliver the outcomes within this Specification.

The Service Provider will ensure that all staff working on an Agreement will have undergone the necessary clearance checks, including Enhanced Disclosure and Barring Service (DBS) checks and

Protection of Vulnerable Adults (POVA) checks and meet the necessary requirements before appointed, when required. They will also undergo any other relevant checks required under future legislation. Documentary evidence of this may be requested by the Council.

The Service Provider will ensure that all Staff have a right to work in the UK and have a robust recruitment process to ensure all pre-employment checks are made as appropriate for requirements of delivering this Service, including any new requirements due to the UK leaving the EU

The Service Provider will ensure that it takes into account the range of communication skills and abilities of the Customer population when recruiting and training staff, to ensure that no Customer is excluded from accessing the service.

The Service Provider warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Service Provider at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

The Service Provider must obtain two written satisfactory references for all Staff prior to any involvement in the delivery of the Services. Where the applicant has no previous employment, two satisfactory independent character references must be obtained validated and checked.

The Service Provider will make the references available to the Council for purposes of inspection and audit. If a prospective member of Staff is to be engaged purpose of delivering the Services is currently or has previously been by employed by the Council at any time, the Service Provider must seek a reference from the Council, regardless of whether or not the Council are the preceding employers and in addition to other references sought.

The Service Provider will notify the Council immediately if any member of Staff who, subsequent to commencing their position as a member of Staff, receives a conviction or whose previous convictions become known to the Service Provider.

The Service Provider shall:

- have a procedure approved by the Council for dealing with allegations or suspicions of abuse;
- ensure that all Staff are trained at induction in the proactive prevention of abuse, in the identification of relevant incidents, in following the reporting procedures and training should be updated at least annually;

- maintain a proactive approach to prevent Abuse;
- adhere to rigorous recruitment practices to deter those who actively seek vulnerable people to exploit or abuse.
- address issues around bullying and have in place an anti-bullying policy which should be linked to their safeguarding procedures as appropriate. It is expected that Staff and Customers will be made aware of this policy and that relevant training will be given to Staff.

5.2 TRAINING AND WELFARE

The Council is a key partner of Joined up Care Derbyshire (JUCD) also known as Derbyshire's Sustainability and Transformation Partnership (STP), bringing together Health and Social Care organisations across Derbyshire to provide the best care and services for people so that people can live well and stay well.

The key priorities are:

1. To attract and recruit Staff
2. To retain Staff and help develop and progress their careers
3. To support and supervise all Staff and develop trainees and apprenticeships

For further details click the link www.joinedupcarederbyshire.co.uk for further information and ways to get involved.

As part of this Service, Service Providers must create an account and provide their workforce data to the Skills for Care Adult Social Care – Workforce Data Set (ASC-WDS) formerly known as the National Minimum Data Set for Social Care. Access to the ASC-WDS will enable the Service Provider to access opportunities for funding for development from Skills for Care. The Council's Workforce Learning and Development Section will provide support to set up an account if needed.

Service Providers must ensure that all Staff, including any agency, students, or voluntary staff, have access to and complete:

- training on all areas required by legislation, local policies, the Council and Care Quality Commission that is applicable to the Service
- person specific training requirements required to deliver the personalised support for Customers as specified in their My Self-Assessment, Support Plans and Contracts.

The Service Provider will ensure that all Staff will receive appropriate; regular, paid training and development, and refresher training to carry out all aspects of their role In relation to some areas to meet legal requirements, for example, Assisting and Moving, First Aid, this training must be competency based. The Service Provider will:

- a) ensure that Staff have the necessary training, skills, competencies, personal qualities and value base to enable them to relate well to Customers.
- b) conduct regular reviews of staffing capacity and capability to ensure they have sufficient number of suitably trained and experienced staff to deliver the service.
- c) ensure all managers of the Service are appropriately experienced and qualified in order to effectively run the service. It is expected that the manager responsible for overall day to day management of the service will hold a Level 5 qualification in care or another recognised equivalent qualification and an appropriate management qualification, e.g. Level 5 in Management or Certificate in Management or equivalent.
- d) ensure provision of a structured induction process for all new Staff, including completion of Skills for Care's, Care Certificate that is linked to National Standards, is completed by all new Staff, and a basic training programme for Staff or volunteers appropriate to the needs of the Customer group, before working unsupervised with Customer.
- e) carry out a training needs analysis for each new member of staff and this will be incorporated into the staff training and development plan.
- f) ensure that Staff are only working with Customers for whom they have been trained to provide care and support for.
- g) review the training needs of each Staff member at least annually to identify when refresher and training updates are required which will be incorporated in the staff development and training programme.

The Council's own Adult Workforce Learning and Development training courses are available to the Service Providers' staff, as a partner agency working with the Council and can be found at <http://www.derby.gov.uk/health-and-social-care/your-life-your-choice/support-from-adult-social-care/training-courses/>

This webpage also indicates that such courses are open to all Social Care staff whether they are employed within the Council or within the Private, Voluntary and Independent Sectors (PVI) with some of courses offered free of charge.

The Service Provider will report on their practices around Staff supervision, development, training and appraisal as part of the contract monitoring process.

The Service Provider will ensure that Staff have received and understand how to apply the training set out in the list below, where appropriate to the delivery of the Service based on Customer's needs.

Mandatory training requirements and how often they must be updated:

- Managing Medication - Competency based updated every two years
- Communication Skills – verbal and non-verbal
- Assisting and Moving Competency based training to be updated every two years (minimum standard = one day practically based moving and handling training course to include the use of standard/contract items provided through the Council's equipment contract unless otherwise specified)
- Understanding Challenging Behaviour Competency based updated annually

- Equalities and Diversity awareness (including cultural and religious awareness)
- First Aid Competency based update every 3 years
- Food Hygiene (minimum standard level 2 or equivalent for food handlers, updated every 3 years)
- Health & Safety to meet current legislation
- Safeguarding Adults (update every 2 years)
- Safeguarding Children (update every 2 years)
- Providing Personal Care
- Risk Assessment and Management
- Mental Capacity Act (update every 2 years)
- Understanding long-term conditions
- Infection Prevention and Control
- Delirium in Dementia and Understanding Dementia
- Data Protection + Record Keeping (update every 2 years)
- Falls Prevention and Management
- Basic Life support

This list should not be seen as an exhaustive list, the Service Provider or the Council may identify additional training and development that supports the delivery of the Service to particular Customer groups, e.g.

- Duty of Care
- Communication for Customers with Sensory Impairments, as appropriate, BSL, Braille, Moon etc.
- Promoting independence
- End of Life care and Advance Care Planning
- Risk Assessment and Management
- Person centred planning (a requirement for all staff carrying out assessments)
- Choice and control
- Fluids and Nutrition
- Common co-occurring medical conditions
- Tissue viability
- Continence Management
- Mental Health Awareness
- Catheter Care
- Infection prevention and control
- Legislative contexts
- Positive behaviour support and management
- Conflict Management/ resolution training
- Physical intervention and restraint reduction
- Advocacy
- Power of Attorney and Court of Protection
- Deprivation of Liberty
- Training around requirements of appropriate legislation, e.g. Care Act, Autism Act etc. that is appropriate for the Customers who are supported by the Service

The Service Provider will supply, on request:

- a copy of their current induction, training programme, and ongoing continuing professional development programme, including short courses and access to qualification programmes
- a copy of their current Staff training record that shows: what training all their staff have received, the dates they received this training, when this training needs to be renewed and detail of what the training comprised, e.g. was it classroom training, or on line, how long the training was, who provided the training and what the outcomes for the training are.

The Service Provider will additionally be required to have the following systems in place:

- a system for induction and equal opportunities training for all Staff.
- a health and safety policy and training plan inclusive of all areas deemed necessary to work safely within different settings.
- risk management policy and procedures.
- the Service Provider will ensure that all operational Staff have received adequate training in Safeguarding and fully understand and comply with the Derby City Adults and Children's Safeguarding policy and procedures as appropriate to the age of Customers (Derby City Adults Safeguarding Board and Children's safeguarding board provide training, which is free of charge).
- the Service Provider will ensure that all operational Staff have access professional supervision on at least a monthly basis to ensure quality and consistency of Service.
- each member of Staff will have a personal and professional development plan/portfolio that is assessed, implemented and evaluated on an annual basis. Documentary evidence of this may be requested by the Council.
- the Service Provider will allow Staff to have the opportunity to attend appropriate further training.
- the Service Provider will consider what support, supervision; training and progression opportunities are proportionate to volunteers and experts by experience within the service and demonstrate evidence of their organisational policy with regards to this.

The Service Provider will report on their practices around Staff training and appraisal as part of the contract monitoring process.

The Service Provider will work towards having support in place for their Staff in accordance to the ethical care standards for domiciliary care which are outlined in the ADASS document as accessed by this link [On-line-Catalogue220142.pdf \(unison.org.uk\)](#)

5.3 INTERFACE WITH OTHER SUPPLIERS / SERVICE PROVIDERS

Service Providers are expected to work in partnership with and alongside of a wide range of statutory and non-statutory partners in order to meet the needs of Customers. Service Providers are expected to build and develop relationships with partners based on the needs of their Customers. This will include:

- NHS Health Services,
- Police and other statutory agencies
- family members, informal carers, staff with other organisations and Service Providers that support the Customer's outcomes

Service Providers may also be required to work with and alongside accommodation providers and / or housing support providers in Extra Care and Supported Living settings. Where issues relating to accommodation may impact on a Customer's wellbeing, care or support needs – for example issues relating to security of the property, safety, privacy, discussions around adaptations required or access considerations.

In this respect, Service Providers must alert the Council and any partner organisations of any change in circumstances that may affect the provision of Service for Customers at the earliest opportunity

Where there is a requirement to share personal data and information, Information Sharing Agreements are to be developed where applicable. See 3.11 CONFIDENTIALITY - Data Protection above.

SUB-CONTRACTORS

No sub-contractors will provide any element of this Service unless agreed in writing by the Council prior to the sub-contractor starting work. All sub-contractors will be required to meet the minimum requirements of the specification and Suitability Questionnaire.

The Service Provider will notify the Council of any sub-contractor currently delivering any part of this Service on its behalf detailing individually the name of the subcontractor organisation, the percentage of service being delivered and its cost.

The Service Provider shall furnish a statement of how its staffing structure will be made up in relation to employees; agents or consultants; and volunteer staff if requested by the Council.

6. RISKS / BUSINESS CONTINUITY / EXIT STRATEGY

6.1 BUSINESS CONTINUITY AND RISK MANAGEMENT

The Service Provider will have a service continuity plan. The service continuity plan shall refer to all elements required to perform the Service Specification and as a minimum cover the following:

- The plan shall have clearly identified points as to when the service continuity plan needs to be invoked.
- An obligation upon the Service Provider to liaise with the Council with respect to issues concerning service continuity, disaster recovery, insolvency and support Council initiatives to monitor and manage risks to service continuity,
- The Service Provider has contract and personal data backed-up on separate secure server and have disaster recovery availability.
- The Service Provider has all data is protected by appropriate firewalls and antivirus products that are updated as per the software supplier's recommendations.
- The Service Provider has mechanisms to identify any financial problems, that may affect service delivery, at the earliest possible stage. The Service Provider shall have a process in place that

alerts the Council to this scenario. The Service Provider will have scenario planned this so that it has pre-planned mitigation strategies for financial issues such as reduced cash flow, decrease in profits or turnover, debt management, negative net asset position and reduction in liquidity ratio.

- The Service Provider has plans in place to ensure Staff cover is provided in the event of sickness, annual leave, strikes, absence, staff leaving and any other events that could lead to a staff shortage such as epidemic/pandemic/viral illnesses, restrictions on travel etc.
- The Service Provider has plans to relocate staff where the accommodation they work in is not fit for purpose or Staff are unable to travel to the accommodation they work.
- The Service Provider has plans for supply issues in its supply chain and ensure it has continual and alternative means of accessing the equipment and services it requires such as key services, PPE and medication to meet the Service requirements.
- The Service Provider has a multi-channel communication strategy to ensure all stakeholders are made aware of and kept up to date on any issues that may affect them, with an emphasis on an early warning alert to the Council in the situation where the provision of the Service could be compromised or at any time where the service continuity plan is enacted in relation to the supply of this Service.
- The Service Provider has named Staff with designated roles and responsibilities for carrying out assigned tasks and actions in the service continuity plan.
- The Service Provider has implemented a training plan to ensure all Staff are aware of the service continuity plan and understand their roles and responsibilities in different scenarios.
- The Service Provider has scenario planning for known issues and identified risks.
- The Service Provider has clearly identified points as to when Service returns to 'normal', whilst understanding what may need to be completed to 'catch-up' in terms of Service delivery.
- The Service Provider has a review process after any implementation of the service continuity plan to understand what was successful and what needs further development.
- The plan demonstrates an understanding that at all times the priority shall be the care, support and safety of the Customers identified as receiving a Service from the Service Provider

The Service Provider shall upon the Council's request provide the service continuity plan and any other risk management strategies documents relating to the performance of this Service, at an agreed interval.

The Service Provider shall review the service continuity plan on an annual basis during the term of the contract, to ensure it is addressing all known issues and risks.

The Service Provider accepts that the Council has to meet its obligations under the Civil Contingencies Act 2004. Under this agreement the Service Provider agrees to assist the Council in meeting its obligation under this legislation.

6.2 RISK MANAGEMENT AND CAPACITY – CUSTOMERS

The Service Provider shall ensure that full and comprehensive risk assessments take place where required or needed and that a system is in place to review all such assessments in a planned way. The Service Provider's Staff shall be trained in order to recognise situations where a risk assessment or a capacity assessment is required or may need to be reviewed. Significant changes in an individual's circumstances shall be reported to the Council (and the Social Worker) involved by the Service Provider to ensure that safe support arrangements are reviewed and maintained.

The Service Provider shall work with professionals and experts as required including giving full consideration of risk assessment information provided by the Council for Customer.

6.3 EXIT STRATEGY

Towards the end of the Agreement, the Service Provider will assist in any handover of services, as appropriate, and in a reasonable, positive and timely manner that offers maximum support and positive outcomes for people using the service at no extra cost to the Council.

Service Providers are expected to engage with the Council's Provider Failure Policy and Procedures as and when these are relevant and appropriate.

Failure to deliver this Service in full or in part presents a risk that Customer eligible Support needs are not met resulting in risks to the Customer, their social networks, the Service Provider's Staff, and potentially the public.

The Service Provider will work alongside alternative Service Providers and support transfer arrangements to future Service Providers where it is in the Customer's best interests. The Service Provider will ensure that any transfer arrangements are conducted in a manner which is Customer-focussed and are supported by appropriate information sharing or other agreements/ protocols.

7. OTHERS

7.1 SOCIAL VALUE, COMMUNITY BENEFITS AND LOCAL ECONOMY

Social value expectations are embedded within this Service Specification and will be implicit in Contracts as the key measurement of success will be good Customer outcomes. The Service Provider will be expected to consider how best to maximise social value for individual Customer through mechanisms which may include:

- supporting Customer to access community and universal support at an early stage in line with their individual needs (for example Local Area Coordinators, voluntary, community and faith sector networks, employment and educational support, debt advice; advocacy, leisure opportunities, other mainstream activities and social networks) to promote independence and reduce demand for more costly statutory interventions
- considering how peer support and Customer engagement can be developed as part of the service where applicable and appropriate.
- considering seeking external funding as appropriate to further the aims and objectives of the service.
- considering ways that the local economic benefits including the development of employment opportunities, apprenticeships, volunteers and upskilling Customers through wider learning and development opportunities for the community
- considering how you can generate value to the local supply chain.

- considering how you can promote fairness and equality.
- considering how you can improve health, wellbeing and support for staff and volunteers.
- considering how you can minimise the environmental impact to the local community when delivering these services.
- considering how you can improve the capacity and sustainability in the voluntary and community sector.
- considering other ways that the service can offer additional social value in the delivery of the service.
- recording and reporting on social value gained regularly to the Council through contract management.

7.2 USE OF INFORMATION TECHNOLOGY

The Service Provider will have access to appropriate IT software in order to deliver the requirements of the service. This will include modern technology such as use of Microsoft Office (or equivalent, as long as it is compatible with Microsoft Office), email, ability to send and receive electronic communications securely.

Where staff / volunteers operate outside the office environment the Service Provider will ensure Staff have appropriate technology to ensure their safety.

The Council is planning to develop its use of electronic monitoring and/or accounts systems to support the effective management of services. Service Providers will be required to work with the Council to develop and implement deliver methods of electronic monitoring and / or accounts systems that are compatible with the Council's systems and requirements.

Service Provider are expected to engage with the Council's electronic systems as a requirement of this Service. This will include, as a minimum, the requirement for Providers to update the Council's Provider Portal to enable good communication about any changes to Staff or circumstances that may affect the Service. The Portal will also facilitate timely and accurate invoice payments to be made.

Service Providers will need to respond to Contract Opportunities via email.

7.3 RETENDERING AND HANDOVER

Towards the end of the Agreement or when a new Agreement is let with another organisation the Service Provider will assist as appropriate and in a reasonable, positive and timely manner that offers maximum support and positive outcomes for Customers using the Service.

Where, TUPE is likely to apply on the termination or expiration of the Agreement, the information to be provided by the Service Provider on request from the Council, to the Council, shall include, as applicable, accurate information relating to the Staff/Employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):

- The number of Staff/Employees who would be transferred,

- In respect of each of those Staff/Employees, their dates of birth, sex, salary, pensions, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those Staff/Employees individually and any outstanding claims arising from their employment; and
- The general terms and conditions applicable to those Staff/Employees, including provisions, probationary periods, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity, paternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements and any other collective agreements, facility time arrangements and additional employment benefits.

If another replacement Service Provider is successful winning the Agreements or replaces the Service Provider in the future, the Service Provider will provide the new Service Provider with the details of Customers to ensure a smooth transfer of the Service. The Service Provider shall ensure that when collecting the personal data of Customers for' they inform the data subjects that the transfer of information may happen.

7.4 FEES, INVOICING AND PAYMENTS

The Service Provider will provide the Services for the Fees set by the Council, as detailed below:

Description	Current Fees* 2022/23	Agreed Fees* 2023/24
Weekday hourly Fee rate (7am-8pm)	£16.92	£18.02
Weekday 15-minute Fee rate (7am-8pm)	£5.48	£5.84
Evening/Weekend hourly Fee rate	£18.76	£19.98
Evening/Weekend 15-minute Fee rate	£8.16	£8.69

**Note - Fees stated are as at the financial year indicated and will be subject to the annual fee review as agreed by the Council's Cabinet for any subsequent financial years.*

Lengths of calls that are over 15 minutes will be paid at a pro-rata amount of the relevant hourly rate. If calls overlap times for two different rates, they will be allocated the rate that applies at the start of the call.

Annual Fee Review

The Service Provider will engage with the Council's annual Fee review process and procedures. Service Providers will be required to submit a response to the Council's Standard Home Care Rate consultation process between October and December following the timescales and process set by the Council. The

information provided will be used to inform the annual Fee schedule for Standard Home Care that will be implemented in April of the subsequent financial year.

Any Fee requests relating to changes in a Customer's perceived enhanced care and support needs must be discussed separately via a review of needs with the Customer's social worker.

The invoicing and payment arrangements will be set out in Agreement.

7.5 THE TRANSFER OF UNDERTAKINGS REGULATIONS 2006 (TUPE)

The procurement process for this requirement does not itself raise TUPE implications and it is unlikely that the awards of Agreements for new service requirements will be affected by TUPE.

Where existing Agreements are re-tendered this may give rise to a possible presumption that the European Acquired Rights Directive 77/187 and/or the Transfer of Undertakings (Protection of Employment) 2006 regulations may apply in the event of any existing Agreement being awarded to a new Service Provider.

Each Agreement will need to be judged on its own merits as to whether TUPE applies and any possible transfer will be a Service Provider to Service Provider transfer.

However, for any possible TUPE transfer, the Council will not provide any warranty about the accuracy of information or the actual legal position and therefore the Council makes no representations about the applications of TUPE for any Agreement award. Service Providers will be advised to make their own enquiries by seeking independent professional legal advice on the consequences for them if they are the successful Service Provider and the TUPE regulations do apply to any Agreement award.

7.6 IR35 (INTERMEDIARIES LEGISLATION) AMENDMENT FOR OFF-PAYROLL WORKING IN THE PUBLIC SECTOR

The law now requires public sector bodies to decide the employment status of persons they engage to provide Services, or predominantly Services, through an intermediary such as a personal service company or agency. The Council will decide the employment status prior to engagement using HM Revenue and Customs employment status tool, which can be found here –

<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

If the Council decides the engagement is 'employment' Tax and Employees National Insurance will be deducted from the Service Providers invoice under PAYE.

Schedule 2 Variation Form

Variation Form

Agreement terms and conditions for services

[NAME OF LOT]

.....

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[NAME OF CONTRACTING AUTHORITY] (**the Council**)

and

[NAME OF SERVICE PROVIDER] (**the Service Provider**)

1. The Order is varied as follows:
 - a. [LIST DETAILS OF THE VARIATION INCLUDING ANY IMPACT ON THE FEE].
2. Words and expressions in this Variation shall have the meanings given to them in the Agreement.
3. The Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Council

Signature.....

Date.....

Name in capitals.....

Address.....

.....

Authorised to sign for and on behalf of the Service Provider

Signature.....

Date.....

Name in capitals.....

Address.....

.....

Schedule 3 Notice Periods

Reduction in Notice Periods

The Council may reduce the Notice Period set out in clause 51 for the following reasons, this list is not intended to be exhaustive and during the Term the Council may amend these from time to time by notice in writing to the Service Provider:

- (a) the mental and/or physical condition of the Customer deteriorates, or the needs of the Customer change, to the extent that the Order can no longer provide the appropriate care to meet that Customer's needs;
- (b) the Customer is in breach of the Agreement to an extent that the Agreement is terminated;
- (c) the Service Provider is unable to provide the care required under the Care Standards Act 2000 and associated regulations and standards;
- (d) the needs of the Customer change such that the service is no longer required; or
- (e) the Service Provider is not able to meet the needs of the Customer due to objections raised by the Customer about the service delivered;

Notice Period for a Service Provider who has multiple Agreements

In the event that the Service Provider has multiple Agreements with the Council to provide the Services to different Customers, the Minimum Notice Period for each of those agreements set out in clause 51.5 shall be amended to be the following Minimum Notice Period, dependant on the number of Agreements on which notice is served;

- a) Agreements with a cumulative total of 1 – 2 Customers, the Minimum Notice Period is no less than 30 calendar days;
- b) Agreements with a cumulative total of 3 to 5 Customers, the Minimum Notice Period is no less than 90 calendar days;
- c) Agreements with a cumulative total of greater than 6 Customers, the Minimum Notice Period is no less than 180 calendar days; or
- d) As agreed between the Council and Service Provider in writing

the extended period is to enable the Council and the Service Provider to together ensure the safe and timely transition of the Customers.

Schedule 4 Employment Exit Provisions

1. INTERPRETATION

The definitions and rules of interpretation in this paragraph apply in this Schedule:

Data Protection Legislation: the Data Protection Act 2018 (DPA) and thereafter (i) unless and until the General Data Protection Regulations ((EU) 2016/679)(GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018, and the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

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;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where 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;
- (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 Service Provider arising out of the employee's employment with the transferor;
- (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 without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or

investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

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

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

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

Replacement Service Provider: any third party supplier of Replacement Services appointed by the Council from time to time.

Service Provider's Final Staff List: the list of all the Service 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.

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all the Service 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 Service Provider or Sub-Contractor to the Council or any Replacement Service Provider.

Staffing Information: in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Council 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.

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

2. EMPLOYMENT EXIT PROVISIONS

- 2.1 This Agreement 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 Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

- 2.2 The Service Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Service Provider shall notify the Council of any material changes to this information as and when they occur.
- 2.3 At least 14 days prior to the Service Transfer Date, the Service Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.
- 2.4 The Council shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 2.5 The Service Provider warrants to the Council that the Service Provider's Provisional Staff List, the Service 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 Service Provider's Final Staff List.
- 2.6 The Service 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.
- 2.7 The Council regards compliance with this paragraph 1 as fundamental to the Agreement. In particular, failure to comply with paragraph 2.2 and paragraph 2.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Fees until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 2.7 shall not exceed an amount equivalent to the Fees that would be payable in the three month period following the Service Provider's failure to comply with paragraph 2.2 or paragraph 2.3, as the case may be.
- 2.8 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 Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Service Provider shall and shall procure that any Sub-contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

- 2.9 In the six months prior to termination of this Agreement, the Service Provider shall not and shall procure that any Sub-contractor shall not materially increase or decrease the total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.
- 2.10 The Service Provider shall indemnify and keep indemnified in full the Council against all Employment Liabilities relating to:
- (f) any person who is or has been employed or engaged by the Service Provider or any Sub-contractor in connection with the provision of any of the Services; or
 - (g) any trade union or staff association or employee representative,
- arising from or connected with any failure by the Service 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.
- 2.11 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.
- 2.12 The parties agree that the Agreements (Rights of Third Parties) Act 1999 shall apply from paragraph 2.2 to paragraph 2.11, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Council in its own right under section 1(1) of the Agreements (Rights of Third Parties) Act 1999.
- 2.13 Despite paragraph 2.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Schedule 5 Payment Arrangements

The Service Provider will submit contact details of their Finance Department to ensure information is shared regarding the payment and invoice process (This process is subject to change from time to time)

1. Provider Portal

- 1.1 Service Providers will be supplied with access to a Provider Portal (Portal). The Portal will enable the Service Provider to return signed Order Forms, submit confirmation of service delivery on an agreed basis determined by the Council, submit system generated invoices and access remittances.
- 1.2 The Service Provider will use the Portal to raise disputes and request changes, ie 'contract requirement' changes for the Customer. The Service Provider will be issued with instructions about how to use the Portal and will have access to support from the CCCST (The Community Care Charging and Support Team – CCCST) in the Council.
- 1.3 Where the Service Provider is unable to access and use the Provider Portal (and support has been exhausted by the CCCST/Council), individual invoices must be prepared by the Service Provider and submitted to the Council for payment within one week of the end of each payment period, as specified by the CCCST/Council.

2. Confirmation of Service Delivery

- 2.1 On an agreed basis to be determined by the Council, the Service Provider must review and confirm the schedule of support provided to each customer through their monitoring systems and the Order Form. The collated information must reflect the actual scheduled service delivered if this has been varied. The Service Provider will inform the Council about any changes when reviewing the scheduled care delivered against the Order Form using the Provider Portal. For Service Providers not using the Portal, information will be relayed via egress. The information will be used to calculate the payments due.
- 2.2 The Service Provider will be asked to review and confirm the schedule of support provided to each customer on an agreed basis determined by the Council. Failure to comply will result in payment delays. The Service Provider will use the Portal to submit their confirmation.
- 2.3 Where the Service Provider has sought permission not to use the Portal, the Service Provider will be asked to electronically confirm the accuracy of each schedule of support service via egress within the agreed timescale.
- 2.4 A week is deemed as Monday to Sunday.

3. Fees

- 3.1 In consideration of delivery of the Service to the standards required the Council agrees to pay the Service Provider the Fee, as indicated on the Order Form for the Customer.
- 3.2 The Fee shall be as set out in the Order Form for each individual Customer.
- 3.3 No additional costs will be considered by the Council outside of the Fee set out on the Order Form
- 3.4 The Fee incorporate an amount to eliminate any enhancement for Bank Holiday periods.

4. Payment Periods

- 4.1 The Service Provider will be notified of the 4 weekly fixed payment periods (“Payment Period”) over a period of 12 months. The Council via the Community Care Charging and Support Team (“CCCST”) will forward this information in March of each Year.
- 4.2 Payment Periods will reflect a specified 4 weekly period as indicated on the annual notification schedule.

5. Invoices (submitted via the Provider Portal)

- 5.1 The Service Provider will receive a payment schedule determining the Portal generated invoice. The invoice will be generated for a scheduled four weekly period. The invoice will calculate payments for all outstanding amounts due to be paid from the Council.
- 5.2 The invoice will be automatically generated unless the Service Provider has failed to review and confirm each schedule of support on an agreed basis determined by the Council. The Council will provide full instructions about how to confirm the accuracy of each schedule of support.
- 5.3 Amendments and corrections within the invoice calculation for individual Order Forms will be removed from the system generated invoice and placed in disputes. The Council will work with the Service Provider to resolve all disputes and arrange to pay within the next scheduled BACS run. BACS payment runs occur weekly.
- 5.4 Where the Council considers the system generated invoice to be incorrect in respect of the Order Form value, the Council will seek verification from the Service Provider.
- 5.5 The Service Provider must retain all timesheets for a period of at least 3 years and must keep evidence that the Service has been provided to the Customer where the Council has made payment to the Service Provider. This evidence must be produced to the Council if requested.

6. Invoices (Manual Electronic)

- 6.1 Where the Service Provider is not using the Portal as per 2.3, the Service Provider will invoice the Council separately for each Order Form. The invoices in respect of each Customer must give details of the weekly service provided, as per the Order Form. The value will be adjusted where the volume of work provided has been more or less than the level indicated on the Order Form to reflect the hours worked.
- 6.2 Amendments and corrections within the invoice for individual Order Forms will be removed from the invoice and placed in disputes. The Council will work with the Service Provider to resolve all disputes and arrange to pay within the next scheduled BACS run. BACS payment runs occur weekly.
- 6.3 Invoices must be submitted electronically using egress (secure email) to the following email address: homecarecharging@derby.gov.uk if not using the Portal as per 2.3.
- 6.4 The Council will provide an invoice template for each Service Provider to use

7. Invoices – General

- 7.1 Invoices must show the Customer's name and address together with the Payment Period details and weekly Order Form value.
- 7.2 Invoices must clearly set out an individual or 1:1 support or sessional support (or any other support) received in addition to any proportion of shared support delivered.
- 7.3 All invoices which show a variation from the level indicated on the Order Form should indicate the reason(s) for the variation(s). The variation to the Service should match the designated fixed payment period.
- 7.4 The Service Provider will be paid the full invoice amount within 30 days of receipt by the Council where the Council accepts the invoice as a correct amount based on data held by the Council.
- 7.5 Where the Council considers the invoice to be incorrect in respect of the Order Form value, the Council will seek verification from the Service Provider.
- 7.6 In the event of overpayment by the Council a refund shall be made by the Service Provider within 28 days of notification of the overpayment.
- 7.7 The Service Provider must retain all timesheets for a period of at least 3 years and must keep evidence that the Service has been provided to the Customer where the Council has made payment to the Service Provider. This evidence must be produced to the Council if requested.

8. Fee Review

- 8.1 The Service Provider will engage with the Council's annual Fee review process and procedures. Service Providers will be required to submit a response to the Council's Standard Home Care Rate consultation process between October and December following the timescales and process set by

the Council. The information provided will be used to inform the annual Fee schedule for Standard Home Care that will be implemented in April of the subsequent financial year.

- 8.2 Any Fee requests relating to changes in a Customer's perceived enhanced care and support needs must be discussed separately via a review of needs with the Customer's social worker.

Schedule 6 Contract Management

1. Authorised representatives

1.1 The Council's initial Authorised Representative: Council Market manager - Adults

1.2 The Service Provider's initial Authorised Representative: [INSERT DETAILS]

2. Key personnel

CQC Registered Manager for the Service Provider

Schedule 7 Safeguarding Policies

Children's

<http://www.derbyscb.org.uk/staff-and-volunteers/policies-and-procedures/>

<https://www.ddscp.org.uk/>

Adults

<http://www.derbysab.org.uk/>

<http://www.derby.gov.uk/health-and-social-care/safeguarding-adults-at-risk/safeguarding-vulnerable-adults>

Schedule 8 Fee Structure

The Service Provider will provide the Services for the Fees set by the Council, as detailed below:

Description	Current Fees* 2022/23	Agreed Fees* 2023/24
Weekday hourly Fee rate (7am-8pm)	£16.92	£18.02
Weekday 15-minute Fee rate (7am-8pm)	£5.48	£5.84
Evening/Weekend hourly Fee rate	£18.76	£19.98
Evening/Weekend 15-minute Fee rate	£8.16	£8.69

**Note - Fees stated are as at the financial year indicated and will be subject to the annual fee review as agreed by the Council's Cabinet for any subsequent financial years.*

Lengths of calls that are over 15 minutes will be paid at a pro-rata amount of the relevant hourly rate. If calls overlap times for two different rates, they will be allocated the rate that applies at the start of the call.

Annual Fee Review

The Service Provider will engage with the Council's annual Fee review process and procedures. Service Providers will be required to submit a response to the Council's Standard Home Care Rate consultation process between October and December following the timescales and process set by the Council. The information provided will be used to inform the annual Fee schedule for Standard Home Care that will be implemented in April of the subsequent financial year.

Any Fee requests relating to changes in a Customer's perceived enhanced care and support needs must be discussed separately via a review of needs with the Customer's social worker.

The invoicing and payment arrangements will be as per Schedule 5 and the Order Form.