



**Milton Keynes Council**  
**General Terms and Conditions of Contract for Services**

**(1) MILTON KEYNES COUNCIL**

**-and-**

**(2) DPS SUPPLIER**

**SUPPLIER AGREEMENT**

relating to the supply of Home Care Services awarded under DPS  
(CATEGORY ADULT SERVICES AND CHILDREN'S SERVICES)

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**THIS AGREEMENT** is made on the Commencement Day stated in the Service Agreement

**BETWEEN**

- (1) **MILTON KEYNES COUNCIL** of Civic Offices 1 Saxon Gate East Milton Keynes MK9 3EJ (the "Council"); and
- (2) **the DPS SUPPLIER**

**RECITALS:**

- (A) The Council placed a Contract Notice in the Official Journal of the European Union on 7<sup>th</sup> February 2020 to establish a Dynamic Purchasing System ("DPS") for the procurement of Home Care services.
- (B) In accordance with Regulation 34 of the Public Contracts Regulations 2015 ("Regulations"), the Council has used the restricted procedure to establish a DPS.
- (C) The Council has contracted with adam HTT Limited trading as *adam* (registered company 07716565 – the "Technology Provider") to provide a web-based software system namely SProc.Net, or such other technology as agreed between the Parties from time to time (the "Technology"), to procure Services via the DPS as set out in the Regulations, as amended from time to time, and for such Services to be transacted as further set out in this Supplier Agreement.
- (D) The Council admits to the DPS any Supplier that satisfies the Selection Criteria and has submitted a request to participate in the DPS which complies with the Specification and any additional documents produced by the Council.
- (E) For the avoidance of doubt, there is no obligation on the Council to award any contracts under the DPS during its Term
- (F) The Council sought proposals for the supply of the Services under the DPS.
- (G) The Council has selected the Supplier to provide the Services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Contract.

**IT IS AGREED:**

- 1. This Contract is comprised of the following documents together known as 'Contract Documents':
  - 1.1 These Articles of Agreement;
  - 1.2 The Contract Particulars;
  - 1.3 The Special Conditions ;
  - 1.4 The Conditions of Contract;
  - 1.5 The Schedules (excluding Schedule 3(the Tender));
  - 1.6 Any Appendices (where applicable); and
  - 1.7 Schedule 3(the Tender)
  - 1.8 The Self – Billing Agreement

1.9 The Operational Guide

2.0 The Application Guide

and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.

2. Terms and expressions used in this Contract shall have the meanings given in clause 1.1 of the Conditions of Contract.

3. In consideration for payment of the Contract Price, the Supplier undertakes to perform the Services with due skill, care and diligence throughout the Contract Period.

**EXECUTION AS A DEED:**

1.1 The Supplier acknowledges and accepts that they have fully read and understood the terms of the Contract (as defined within the Supplier Agreement).

1.2 By execution of this Signature Document, the Supplier agrees to enter into the Contract and all associated Contract Documents to provide the Services to the Council from time to time in accordance with the Contract.

1.3 This Signature Document forms part of the Contract and shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under the laws of England and Wales.

**IN WITNESS** whereof the Parties have executed and delivered the Contract as a deed on the date on the face of this execution document.

Executed by **Milton Keynes Council** by  
affixing its common seal in the presence of

-----  
(Authorised Officer)

Executed as a DEED by:

(Name of  
Company):..... of

Registered  
Office:.....

Acting by a Director and its Secretary or two Directors:

Signature.....  
(Director)

Print Name .....

Signature:.....  
(Director/Secretary)

Print Name.....

**OR**

By the Signature of a Director in the presence of a witness

Executed as a DEED by:

(Name of Company):.....

Registered Office:.....

Acting by a Director

Signature.....

(Director)

Print Name .....

In the presence of:

.....

Signature of witness

Name:

Address:

Occupation:

## **1 Scope of Supplier Agreement**

- 1.1 This Contract governs the relationship between the Council and the Supplier in respect of the provision of Services by the Supplier to the Council when procured and/or transacted through the DPS. The Supplier must agree to the terms of the Contract prior to acceptance into the DPS. For the avoidance of doubt, the Supplier's acceptance of the Contract shall not guarantee the Supplier's acceptance onto the DPS, which shall be subject to successful completion of the Accreditation and Enrolment.
  - 1.2 The Council may at its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the Supplier Entry Guide. The Supplier acknowledges that there is no obligation whatsoever on the Council to purchase any Services from the Supplier during the Term of the DPS. The Council shall be entitled at all times to decline to make an award for its requirement.
  - 1.3 The Council may update the Supplier Entry Guide at any time throughout the validity of the DPS and during the term of the Contract, provided that the Council provides all Suppliers with fair and open access to such changes with reasonable advance notice.
  - 1.4 The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Contract and may perform audit checks of any such or existing Accreditation or Enrolment information.
  - 1.5 The Supplier acknowledges that once agreed via the Technology, a Service Agreement is a legally binding agreement between the Suppliers and the Council and must be adhered to in accordance with the terms of the Contract.
-

### CONTRACT PARTICULARS

1	Commencement Date:	<b>As stated in the Service Agreement</b>	(clauses 1.1 and 2.1)
2	Contract Period:	<b>As stated in the Service Agreement</b>	(clause 1.1)
3	Contract Price:	<b>As stated in the Service Agreement</b>	(clause 1.1)
4	Contract Extension:	<b>As stated in the Service Agreement</b>	(clause 2.2)
5	Address for Service of Notices	<b>As stated in the Service Agreement</b>	(clause 5.3)
6	Key Personnel	clause 10 does not apply	
7	Safeguarding	clauses 12.2 -12.9 apply	
8	TUPE and Pensions	clause 13 applies.	(clause 13)
		Pensions Bond value: does not apply	
9	Licence to Occupy Council Premises	clause 15 does not apply	
10	Parent Company Guarantee	clause 17.1 and Schedule 8 applies (where the value of contract is £250k and above)	



11	Performance Bond	clause 18 and 0 do not apply	
12	Payment and VAT	<p><b>A. Payment Periods:</b></p> <p>monthly in arrears</p>	
13	Price Adjustment	clause 22 does not apply	
14	Audit	<p>Period for which records must be maintained after the end of the contract:</p> <p>12 years</p>	<p>(clause 20.7, 23.5, 33 and 34)</p>
15	Liability and Indemnity	<p>Subject to clause 45.4 the Supplier's liability under this Contract shall be limited to the sum of £ 1 million</p> <p>for each and every claim arising under or in connection with this Contract</p>	<p>(clause 45.4)</p>
16	Insurance	<p>Public Liability Insurance: £5,000,000 per claim</p> <p>Employer's Liability Insurance: £5,000,000 per claim</p>	<p>(clause 46.1)</p> <p>(clause 46.1)</p>
17	Additional Insurances	<p>Professional Indemnity Insurance is required</p> <p>Where professional indemnity insurance is required:</p> <p>Limit of indemnity is: £ 1 million per claim</p> <p>Period for which Professional Indemnity Insurance is required following expiry or termination:</p>	<p>(clause 46.5 and 46.6)</p>

12 years

18 Break clause clause 50 applies

The notice period is 6 months

19 Force Majeure clause 54 applies

The period referred to in clause 54.3 is 1 month

20 Disaster Recovery clause 55 does not apply

21 Commercially Sensitive Information Schedule 11 applies where any commercially sensitive information is notified by either party

## CONDITIONS OF CONTRACT

### 1. DEFINITIONS AND INTERPRETATION

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

- “Appendix”** means an appendix to this Contract.
- “Approval”** means the written consent of the Council.
- “Catastrophic Failure”** (a) a failure by the Supplier for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster.  
  
(b) any action by the Supplier, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Council has or may cause significant harm to the reputation of the Council.
- “Charges”** means the amount to be paid by the Council to the Supplier for the provision of the Services
- “Change”** means any change to this Contract arising from the Supplier’s obligations in clause 34.3
- “Change Control Note”** means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure.
- “Change Control Procedure”** means the procedure for changing this Contract as set out in Schedule 5.
- “Council”** means Milton Keynes Council, Civic Offices, 1 Saxon Gate East, Central Milton Keynes MK9 3EJ.
- “Commencement Date”** means the date stated in the Contract Particulars or if none is stated, the date of this Contract.
- “Commercially Sensitive Information”** means the information listed in Schedule 11 (Commercially Sensitive Information) comprised of information:  
  
(a) which is provided by the Supplier to the Council in confidence for the period set out in that Schedule; and/or  
  
(b) that constitutes a trade secret.
- “Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the GDPR. Confidential Information shall not include information which:  
  
(a) was public knowledge at the time of disclosure (otherwise than by breach of clause 28 (Confidential Information));  
  
(b) was in the possession of the receiving Party, without restriction

as to its disclosure, before receiving it from the disclosing Party;

- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**“Contract”** means this written agreement between the Council and the Supplier which is more particularly described in the Articles of Agreement.

**“Contracting Authority”** means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015.

**“Contract Particulars”** means the contract particulars contained in this Contract.

**“Contract Period”** means the period stated in the Contract Particulars and includes any extension to the Contract Period.

**“Supplier”** means the person, firm or company with whom the Council enters into the Contract.

**“Controller”,  
“Processor”,  
“Data Subject”,  
“Personal Data”,  
Personal Data  
Breach” and  
“Data Protection  
Officer”** shall have the same meaning as set out in the GDPR.

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract or in breach of any Data Protection Legislation, including any Personal Data Breach.

**“Data Protection Impact”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

**“Data Protection Legislation”** the General Data Protection Regulations 2016/679, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**“Data Subject Access Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

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

<b>“Disaster”</b>	means an event defined as a disaster in the Disaster Recovery Plan.
<b>“Disaster Recovery Plan”</b>	means a plan which sets out the procedures to be adopted by the Supplier in the event that the Services are disrupted by reason of a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event), the Disaster Recovery Plan at the date of this Contract being set out in Schedule 10.
<b>“DPA 2018”</b>	Data Protection Act 2018
<b>“Environmental Information Regulations”</b>	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>“Equipment”</b>	means the Supplier’s equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.
<b>“Exit Manager”</b>	has the meaning set out in paragraph 4 of 0;
<b>“Exit Obligations”</b>	means the obligations set out in paragraph 2 of 0;
<b>“Exit Period”</b>	means the period determined in accordance with paragraph 5 of 0;
<b>“FOIA”</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
<b>“Force Majeure”</b>	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:  <ul style="list-style-type: none"><li>(a) any industrial action occurring within the Supplier’s or any Sub-Contractor’s organisation; or</li><li>(b) the failure by any Sub-Contractor to perform its obligations under any sub-contract.</li></ul>
<b>“GDPR”</b>	means the General Data Protection Regulation 2016/679 and any subordinate legislation made under such Regulation from time to time as may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

<b>“Good Industry Practice”</b>	means 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.
<b>“Information”</b>	has the meaning given under section 84 of the FOIA.
<b>"Information Governance"</b>	means the way organisations process or handle information relating to the service and/or service users
<b>"Information Governance Toolkit Requirements"</b>	means the requirements set out in the Local Authority model of the NHS Information Governance Toolkit as published by the Department of Health and amended from time to time for: <ul style="list-style-type: none"><li>(a) Information Governance management,</li><li>(b) Confidentiality and data protection</li><li>(c) Information security</li></ul>
<b>"Intellectual Property Rights"</b>	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable 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.
<b>“Key Personnel”</b>	means those persons named in the Specification as being key personnel.
<b>“Law”</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply.
<b>“LED”</b>	means the Law Enforcement Directive (Directive (EU) 2016/680)
<b>“ Real Living Wage”</b>	means the figure set annually for areas outside London by the Centre for Research and Social Policy currently at Loughborough University or its successor or any other body which subsequently takes up responsibility for setting the figure.
<b>“Real Living Wage Criteria”</b>	means circumstances where an individual works at any of the Premises owned or managed by the Council for at least 2 hours per day over a period of 8 consecutive weeks

- “Losses”** shall mean all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the contractual clause in question or to its breach
- “Month”** means calendar month.
- “Party”** means a party to the Contract.
- “Premises”** means the location where the Services are to be supplied, as set out in the Specification.
- “Price Review Date”** has the meaning given in the Contract Particulars.
- “Processing and process”** has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, it shall include both manual and automated processing.
- “Procurement Legislation”** shall include the Public Contract Regulations 2015; the Concession Contracts Regulations 2016; Directive 2014/24/EU on public procurement; and Directive 2014/23/EU on the award of concession contracts.
- “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 Contract;
  - (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
    - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

<b>“Property”</b>	means the property, other than real property, issued or made available to the Supplier by the Council in connection with the Contract.
<b>“Protective Measures”</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
<b>“Public Sector Contracting Authorities”</b>	means public sector bodies that are subject to the Public Contracts Regulations 2015 and respective successor legislation.
<b>“Quality Standards”</b>	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or European equivalent 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 Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
<b>“Regulations”</b>	The Public Contracts Regulations 2015
<b>“Regulated Activity”</b>	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
<b>“Regulated Activity Provider”</b>	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
<b>“Regulatory Bodies”</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.
<b>“Relevant Convictions”</b>	means a conviction that is relevant to the nature of the Services or as listed by the Council.
<b>“Relevant Index”</b>	means the index specified in the Contract Particulars;
<b>“Relevant Transfer”</b>	means a relevant transfer for the purposes of TUPE.
<b>“Replacement Supplier”</b>	means any third party Supplier appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
<b>“Request for Information”</b>	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).
<b>“Schedule”</b>	means a schedule attached to, and forming part of, the Contract.



<b>“Services”</b>	means the whole of the service or any part of it, as described in the Specification, to be provided by the Supplier pursuant to this Contract, or such of it as may from time to time remain the subject of this Contract and includes any modification or variation made pursuant to the Contract.
<b>“Self-Billing Agreement”</b>	an agreement between the Supplier and the Council, whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Technology for the billing of the appropriate price and payment
<b>“Self Bill Invoice”</b>	the invoice produced via the Technology on the Supplier’s behalf, through which the Technology Provider shall process payment
<b>“Service Receipt”</b>	the agreed record within the Technology of the completed delivery of Services as quantified and agreed between the Parties
<b>“Service Agreement”</b>	the agreed record within the Technology of the completed delivery of Services as quantified and agreed between the Parties
<b>“Signature Document”</b>	the signed document between the Council and the Supplier which constitutes the Parties’ agreement to this Contract and the creation of the overall Contract
<b>“Supplier Entry Guide”</b>	the entry guide issued by the Council detailing the operation of the DPS
<b>“Supplier Party”</b>	means the Supplier's agents and contractors, including each Sub-Contractor.
<b>“Specification”</b>	means the description of the Services to be supplied under the Contract as set out in the Specification including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
<b>“Special Conditions”</b>	means the special conditions (if any) set out in 1.
<b>“Staff”</b>	means all and any persons employed or engaged by the Supplier in whatever capacity to perform its obligations under the Contract including the Supplier’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.
<b>“Staff Vetting Procedure”</b>	means the Council’s procedures for the vetting of personnel and as advised to the Supplier by the Council.
<b>“Sub-Contract”</b>	means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.
<b>“Sub-Contractor”</b>	means the contractors that enter into a Sub-Contract with the Supplier.
<b>“Sub-Processor”</b>	means any third party appointed to process Personal Data on behalf of the Supplier in relation to this Contract
<b>“Technology Provider”</b>	the owner and provider of the Technology, adam HTT Limited t/a <i>adam</i> (registered company #07718565), who shall also act as the Council’s payment service provider

<b>“Tender”</b>	means the document(s) submitted by the Supplier to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Services.
<b>“TFEU”:</b>	means the Treaty on the Functioning of the European Union.
<b>“the Treaties”</b>	means the Treaty on European Union and TFEU.
<b>“Variation”</b>	has the meaning given to it in clause 37 (Variation) of the Conditions of Contract.
<b>TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
<b>“VAT”</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
<b>“Working Day”</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **2. CONTRACT PERIOD AND EXTENSION**

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract, or by operation of law, or extended under clause 2.2.
- 2.2 Where stipulated in the Contract Particulars, the Council may, by giving written notice to the Supplier extend the Contract for such further period as is stated in the Contract Particulars. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 22 (Price Adjustment)) throughout any such extended period.

### **3. SUPPLIER'S STATUS**

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

### **4. COUNCIL'S OBLIGATIONS**

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

### **5. NOTICES**

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

### **6. MISTAKES IN INFORMATION**

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

### **7. CONFLICTS OF INTEREST**

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

## **8. THE SERVICES**

- 8.1 The Supplier shall supply the Services during the Contract Period with due skill, care and diligence and in accordance with:
- 8.1.1 the Quality Standards (if any stipulated in the Specification)
  - 8.1.2 Good Industry Practice;
  - 8.1.3 the Law; and
  - 8.1.4 the requirements of the Contract.
- 8.2 The Council may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.
- 8.3 If the Council informs the Supplier in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.

## **9. PROVISION AND REMOVAL OF EQUIPMENT**

- 9.1 The Supplier shall provide all the Equipment necessary for the supply of the Services.
- 9.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 9.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.
- 9.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Supplier shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- 9.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
  - 9.5.2 replace such item with a suitable substitute item of Equipment.
- 9.6 On completion of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier 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 Supplier or any Staff.

## **10. KEY PERSONNEL (NOT USED)**

- 10.1 This clause 10 (Key Personnel) shall apply if so stated in the Contract Particulars.
- 10.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

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

10.4 The Council shall not unreasonably withhold its agreement under clauses 10.2 or 10.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

## **11. SUPPLIER'S STAFF**

11.1 The Council may, by written notice to the Supplier, refuse to agree to, or withdraw permission to remain involved in the delivery of the Services to:

11.1.1 any member of the Staff; or

11.1.2 any person employed or engaged by any member of the Staff,

whose admission or continued involvement with the delivery of the Services would, in the reasonable opinion of the Council, be undesirable.

11.2 At the Council's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

11.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, policies and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

11.4 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

11.5 In addition to any requirements specified in the Staff Vetting Procedures, the Council requires the Supplier to carry out a Disclosure and Barring Service check in respect of any person to be employed or engaged in the provision of the Services. The Supplier shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Supplier to have a Relevant Conviction (whether as a result of or through a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

11.6 If the Supplier fails to comply with clause 11.2 within 21 days of the date of the request the Supplier shall be in Default of its obligations under the Contract.

11.7 The decision of the Council as to whether any person is to be excluded from being employed or engaged in delivering the Services and as to whether the Supplier has failed to comply with clause 11.2 shall be final and conclusive and the Supplier shall indemnify the Council in respect of all claims, costs, losses or expenses arising from a decision under clause 11.1.

11.8 The Supplier shall pay at least a Real Living Wage to all its employees who are employed in connection with the Contract and who meet the Living Wage Criteria.

11.9 The Supplier acknowledges that revised rates of the Real Living Wage are set annually in November and this may mean an increase to the Real Living Wage Rates

- 11.10 The Supplier shall keep up to date with any revised rates of the Real Living Wage and where the rates increase, the Supplier shall implement the same from the 1 April immediately following.

## **12. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 12.1 Clauses 12.2 to 12.9 shall apply where stipulated in the Contract Particulars. Notwithstanding clauses 12.1 – 12.9, Clause 12.10 shall apply to all Suppliers.
- 12.2 The Parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 12.3 The Supplier shall ensure that all individuals engaged in the provision of the Services are:
- 12.3.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
  - 12.3.2 the Supplier shall monitor the level and validity of the checks under this clause 12.3 for each member of staff.
- 12.4 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier 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.
- 12.5 The Supplier shall immediately provide the Council with any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 12 have been met.
- 12.6 The Supplier shall refer information about any person carrying out the Services to the Independent Safeguarding Authority where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.
- 12.7 The Supplier 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 service users.
- 12.8 Where the Services are provided to any adult, the Supplier shall comply at all times with the current Milton Keynes Safeguarding Adults Multi Agency Policy and Procedures (July 2016) and any amendments and additions to the document. Where the Services are provided to children, the Supplier shall comply at all times with Milton Keynes Safeguarding Children Procedures Manual and any amendments and additions.
- 12.9 Where the Services are provided to any persons aged 16 years and above, the Supplier shall comply with and shall ensure that all its Staff comply with the Mental Capacity Act 2005 and with the current Milton Keynes Mental Capacity Act – Deprivation of Liberty Safeguards (DoLS) Policy and Practice Guidance (April 2015) and any amendments and additions to the document.
- 12.10 To the extent that the Supplier is not a Regulated Activity Provider within the meaning of Safeguarding Vulnerable Groups Act 2006, the Supplier shall nevertheless ensure that, where delivery of the Services brings any of its Staff into contact with children and/or vulnerable adults, such Staff shall be appropriately checked and appropriately trained on issues of safe working practices and on issues of safeguarding children and vulnerable adults from harm.

### **13. TUPE AND PENSIONS**

The parties agree that the provisions of 0 shall apply to any Relevant Transfer of staff under or in connection with this Contract.

### **14. INSPECTION OF PREMISES**

Unless the Council otherwise directs, the Supplier is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

### **15. LICENCE TO OCCUPY COUNCIL PREMISES (NOT USED)**

15.1 This clause 15 applies where stipulated in the Contract Particulars.

15.2 Any land or Premises made available from time to time to the Supplier by the Council in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

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

15.4 Should the Supplier require modifications to the Premises, such modifications shall be subject to prior Approval. Ownership of such modifications shall rest with the Council.

15.5 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Supplier shall pay for the cost of making good any damage caused by the Supplier 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.

15.6 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

### **16. PROPERTY**

16.1 Where the Council issues Property free of charge to the Supplier such Property shall be and remain the property of the Council and the Supplier irrevocably licences the Council and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Council. The Supplier 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.

16.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Council otherwise within 5 Working Days of receipt.

- 16.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 16.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Council's reasonable security requirements as required from time to time.
- 16.5 The Supplier 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 Supplier shall inform the Council within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

**17. PARENT COMPANY GUARANTEE**

- 17.1 This clause 17 shall apply where stipulated in the Contract Particulars.
- 17.2 The Supplier shall procure the delivery of a parent company guarantee substantially in the form contained in 0, prior to the Commencement Date.

**18. PERFORMANCE BOND (NOT USED)**

- 18.1 This clause 18 shall apply where stipulated in the Contract Particulars.
- 18.2 The Supplier shall procure the delivery of a performance bond substantially in the form contained in 0, prior to the Commencement Date.

**19. CONTRACT PRICE**

- 19.1 In consideration of the Supplier's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with clause 20 (Payment and VAT).
- 19.2 Where applicable, the Council shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

**20. PAYMENT AND VAT**

- 20.1 The payments provisions in this clause and Schedule 4 shall apply to the Contract. The Council shall pay all sums due to the Supplier within 30 days of receipt of a valid invoice (Self-Bill invoice), submitted weekly in arrears.
- 20.2 The Supplier shall ensure that each Service Receipt contains all appropriate references and a detailed breakdown of the Services supplied which will be used to generate the Self-Bill invoice and that it is supported by any other documentation reasonably required by the Council to substantiate the Self-Bill invoice.
- 20.3 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 20.4 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 20.5 The Supplier 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 Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 20.5



shall be paid by the Supplier to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.

20.6 The Supplier shall not suspend the supply of the Services for failure to pay undisputed sums of money.

20.7 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Contract. Such records shall be retained for inspection by the Council during the Contract Period and following the end of the Contract for the period specified in the Contract Particulars.

## **21. RECOVERY OF SUMS DUE**

21.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Council.

21.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

21.3 The Supplier shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.

21.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **22. PRICE ADJUSTMENT (NOT USED)**

22.1 Unless otherwise indicated in the Contract Particulars, the Contract Price shall apply for the Contract Period without adjustment.

22.2 Where stipulated in the Contract Particulars, the Contract Price shall be adjusted on each Price Review Date by an amount equal to the annual percentage change which shall be the change in the latest published Relevant Index compared to the value of the Relevant Index as published twelve months before the relevant Price Review Date.

## **23. PREVENTION OF BRIBERY AND CORRUPTION**

23.1 The Supplier:

23.1.1 shall not, and shall procure that any Supplier Staff or Supplier Party shall not, in connection with this Contract commit a Prohibited Act;

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

23.2 The Supplier shall:

23.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant

government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

23.2.2 within 10 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 23 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

23.3 The Supplier shall have an anti-bribery policy and shall ensure that its anti-bribery policy is provided to the Council on request.

23.4 If any breach of clause 23.1 is suspected or known, the Supplier must notify the Council immediately.

23.5 If the Supplier notifies the Council that it suspects or knows that there may be a breach of clause 23.1, the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for the period specified in the Contract Particulars following the expiry or termination of this Contract.

23.6 The Council may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 23.1.

23.7 Any notice of termination under clause 23.6 must specify:

23.7.1 the nature of the Prohibited Act;

23.7.2 the identity of the party whom the Council believes has committed the Prohibited Act

23.8 Despite clause 57 (Dispute resolution), any dispute relating to:

23.8.1 the interpretation of clause 23; or

23.8.2 the amount or value of any gift, consideration or commission,

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

23.9 Any termination under clause 23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## **24. EQUALITIES**

24.1 The Supplier shall and shall ensure its Sub-Contractors and Staff at all times comply with the requirements of the Equality Act 2010 and all other related statutory and regulatory requirements and the Council's policies and procedures copies of which are available on request relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity, marriage and civil partnerships..

24.2 The Supplier shall fully indemnify the Council against all actions, claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this clause 24.

## **25. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Unless expressly stated in this Contract, a person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on

him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

## **26. HEALTH AND SAFETY**

- 26.1 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 26.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 26.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 26.4 The Supplier 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 Contract.
- 26.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

## **27. DATA PROTECTION**

### **Information Governance – General Responsibilities**

- 27.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 2 by the Council and may not be determined by the Supplier
- 27.2 The Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation
- 27.3 The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- 27.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 2 unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures.
- (c) ensure that:
  - (i) the Supplier Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 2);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Supplier's duties under this clause 27;
    - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-Processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
  - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
  - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data.

- (e) at the written direction of the Council, delete, destroy, or return Personal Data (and any copies of it) to the Council at any time during the Contract Period or on termination or expiry of the Contract unless the Supplier is required by Law to retain the Personal Data;
- (f) where the Supplier is destroying Personal Data pursuant to clause 27.4 (e) above, it shall do so in a secure manner and it shall provide certificated evidence of secure destruction to the required standards (HMG Information Security Standards)

27.5 Subject to clause 27.6 the Supplier shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event; Personal Data Breach or any breach of data protections obligations under this Contract or under the Data Protection Legislation.

27.6 The Supplier's obligation to notify of the Council under clause 27.5 shall include the provision of further information to the Council in phases, as details become available.

27.7 The Supplier shall provide the Council with full assistance in relation to either party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 27.5 (within the timescales reasonably required by the Council) including promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Council following any Data Loss Event;
- (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office.

27.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 27.

27.9 The Supplier shall allow and shall procure that all Sub-Processors allow for audits of their Data processing activity by the Council or the Council's designated auditor. The Supplier shall

comply with and shall procure that the Sub-Processors comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Supplier and the Sub-Processors are in full compliance with the obligations under this Contract.

- 27.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation to do so.
- 27.11 The Supplier shall nominate a data protection lead to be responsible for data protection and for providing the Council with regular reports on information security matters, including details of all incidents of Data Loss Event and breach of confidence. The Supplier shall ensure that the Council is at all times kept informed of the identity and contact details of the data protection lead.
- 27.12 The Supplier agrees to indemnify and keep the Council indemnified and to defend the Council at its own expense against all losses, costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Supplier or its Staff or Supplier Party to comply with any of their obligations under this Clause 27 and/or under the Data Protection Legislation and/or under any other provision of this Contract. The Council may recover as a debt from the Supplier any sums owed under this indemnity provision.

#### **Responsibilities when engaging Sub-Contractors as a Sub-processor**

- 27.13 In addition to the provisions of clause 35 (Transfer and Sub-Contracting) if the Supplier is to require any Sub-Contractor to be a Sub-processor, and before allowing the processing of Personal Data by such a Sub-Contractor, the Supplier must:
- (a) notify the Council in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Council;
  - (c) where Council consent is given, enter into a written Contract with the Sub-processor which give effect to the terms set out in this clause 27 such that they apply to the Sub-processor; and
  - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 27.14 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor
- 27.15 The Council may at any time on not less than thirty (30) days' notice to the Supplier revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract)
- 27.16 The Council may at any time on not less than thirty (30) days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 27.17 The Supplier shall comply with and shall ensure that any Sub-processor complies with all relevant obligations under the Data Protection Legislation.
- 27.18 The provision of this clause 27 shall apply during the Contract Period and indefinitely after its expiry.

#### **28. CONFIDENTIAL INFORMATION**

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

- 28.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 28.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 28.2 Clause 28.1 shall not apply to the extent that:
  - 28.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 29 (Freedom of Information);
  - 28.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 28.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 28.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 28.2.5 it is independently developed without access to the other Party's Confidential Information.
- 28.3 The Supplier may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 28.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- 28.5 At the written request of the Council, the Supplier shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 28.6 Nothing in this Contract shall prevent the Council from disclosing the Supplier's Confidential Information:
  - 28.6.1 to any government department, any Contracting Authority, any employee of the Council, consultant or any other person engaged by the Council in its ordinary course of business or in connection with the Contract;
  - 28.6.2 for the purpose of the examination and certification of the Council's accounts; or
  - 28.6.3 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 28.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 28.6 is made aware of the Council's obligations of confidentiality.
- 28.8 Nothing in this clause 28 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

**29. FREEDOM OF INFORMATION**

- 29.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 29.2 The Supplier shall and shall procure that any Sub-Contractors shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 29.2.1 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
  - 29.2.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 29.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 29.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 29.5 The Supplier acknowledges that (notwithstanding the provisions of clause 29) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:

- 29.5.1 without consulting the Supplier; or
- 29.5.2 following consultation with the Supplier and having taken their views into account;

provided always that where 29.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 29.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 29.7 The Supplier acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with this clause 29.

**30. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 30.1 The Supplier shall not make any press announcement or publicise the Contract, the Services or any aspects thereof in any way, except with the prior written consent of the Council.
- 30.2 The Supplier shall take reasonable steps to ensure that its servants, employees, agents, Sub-Contractors, suppliers, professional advisors and consultants comply with clause 30.1.



### **31. SECURITY**

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

### **32. INTELLECTUAL PROPERTY RIGHTS**

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

32.1.1 furnished to or made available to the Supplier by or on behalf of the Council shall remain the property of the Council; or

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

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

- 32.2 The Supplier hereby assigns to the Council, absolutely with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 32.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by or for the Supplier. The Supplier shall execute and shall where necessary procure the execution of all documentation necessary to execute this assignment.

- 32.3 The Supplier shall waive and/or procure a waiver of any moral rights subsisting in any copyright produced by the Contract or the performance of the Contract.

- 32.4 The Supplier shall to the extent possible procure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party supplying services to the Council.

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

32.5.1 items or materials based upon designs supplied by the Council; or

32.5.2 the use of data supplied by the Council which is not required to be verified by the Supplier under any provision of the Contract.

- 32.6 The Council shall notify the Supplier in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.

32.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:

32.7.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;

32.7.2 shall take due and proper account of the interests of the Council; and

32.7.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

32.8 The Council shall at the reasonable request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under the Contract and the Supplier shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 32.5.1 or 32.5.2.

32.9 The Council shall not unreasonably make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Supplier in connection with the performance of its obligations under the Contract.

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

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

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

and in the event that the Supplier is unable to comply with clauses 32.7.1 or 32.7.2 within 15 Working Days of receipt of the Supplier's notification the Council may terminate the Contract with immediate effect by notice in writing.

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

### **33. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT**

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

- 33.2 Any requirement for a Change shall be subject to the Change Control Procedure.
- 33.3 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's Authorised Representative quarterly in each Contract Year on:
- 33.3.1 the emergence of new and evolving relevant technologies which could improve the Services;
  - 33.3.2 new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;
  - 33.3.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
  - 33.3.4 changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.
- 33.4 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 33.3 shall be addressed by the parties using the Change Control Procedure.
- 33.5 Notwithstanding anything which is contained within the provisions of this clause 33 or elsewhere in the Contract, any Change proposed by the parties under the provisions of this clause 33 must be lawful including within the meaning of any applicable Procurement Legislation for the time being in force.

#### **34. AUDIT**

- 34.1 The Supplier shall keep and maintain for the period stipulated in the Contract Particulars, full and accurate records of the Contract including but not limited to the Services supplied under it, and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.

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

- 35.1 The Supplier shall not assign, sub-contract novate or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.

- 35.2 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

Where the Council has consented to a sub-contract(s), copies of each sub-contract shall, at the request of the Council, be sent by the Supplier to the Council as soon as reasonably practicable.

- 35.3 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

35.3.1 any Contracting Authority; or

35.3.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

35.3.3 private sector body which substantially performs the functions of the Council,

("the Transferee")

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

- 35.4 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.
- 35.5 The Council may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 35.6 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

## **36. WAIVER**

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

## **37. VARIATION**

- 37.1 Subject to the provisions of this clause 37, the Council may request a variation to the Specification including a change to the Specification. Such a change is hereinafter called a "Variation".
- 37.2 The Council may request a Variation by notifying the Supplier in writing of the "Variation" and giving the Supplier sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Supplier shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Supplier accepts the Variation it shall confirm the same in writing.
- 37.3 In the event that the Supplier is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Council may;
- 37.3.1 allow the Supplier to fulfil its obligations under the Contract without the variation to the Specification;
- 37.3.2 terminate the Contract with immediate effect.
- 37.4 The Supplier may propose variations to the Contract, provided that the Council shall be under no obligation whatsoever to accept any request for a variation. A variation proposed by the Supplier shall not give rise to any increase to the Contract Price, unless expressly agreed by the Council (in its absolute discretion) in writing.

**38. SEVERABILITY**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

**39. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

39.1 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 Supplier's obligations under the Contract, then the Council shall be entitled to investigate the complaint in accordance with the contract monitoring and management procedures contained in 0 (Contract Management).

39.2 In the event that the Council is of the reasonable opinion that there has been a fundamental breach of the Contract by the Supplier, then the Council may, without prejudice to its rights under clause 48 (Termination on Default), do any of the following:

39.2.1 without terminating the Contract, suspend the Supplier from performing the all or part of the Services and itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Council that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;

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

39.2.3 terminate, in accordance with clause 48 (Termination on Default), the whole of the Contract.

39.3 Without prejudice to its right under clause 21 (Recovery of Sums Due), the Council may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

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

39.5 In the event that:

39.5.1 the Supplier fails to comply with clause 39.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

39.5.2 the Supplier persistently fails to comply with clause 39.4 above,  
the Council may terminate the Contract with immediate effect by notice in writing.

#### **40. REMEDIES CUMULATIVE**

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

#### **41. CONTRACT MANAGEMENT**

The Supplier shall comply with the monitoring and contract management arrangements set out in the 0 (Contract Management) including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

#### **42. PERFORMANCE REVIEW**

42.1 The Supplier shall in good faith comply with the provisions of this clause 42.

42.2 Throughout the Contract Period the parties shall, acting reasonably, work together to ensure that the Contract and the Supplier's performance of the Services represents value for money and best value generally for the benefit of the Council.

42.3 The Supplier shall provide performance and management information including where required, any written reports in accordance with Schedule 12 (Contract Management) .

42.4 The information provided by the Supplier pursuant to this clause 42 shall contain, inter alia and to the extent reasonably possible, the following matters:

42.4.1 An analysis of the performance of the Service throughout the past contract year to the date of the report focusing on those areas which are considered successful, in comparison to the requirements of the Contract, and those areas which require improvement or which could be improved;

42.4.2 The reasons for the successes and/or weaknesses identified;

42.4.3 An action plan setting out the Supplier's suggested measures that might be taken by either party, to improve on the Services;

42.5 The Supplier and the Council shall discuss the contents of the performance and management information and the Council may, in its absolute discretion, accept or reject any of the recommendations contained in such information, implement any other measures which it might reasonably consider necessary to ensure value for money and/or where appropriate issue modifications or variations in accordance with the provisions of the Contract.

42.6 For the avoidance of doubt the presentation by the Supplier to the Council of the performance and management information shall be without prejudice to any monitoring, performance review or Default measures which may be carried out by the Council under the terms of the Contract

#### **43. ENTIRE AGREEMENT**

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

#### **44. COUNTERPARTS**

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

## **45. LIABILITY AND INDEMNITY**

- 45.1 Neither Party excludes or limits liability to the other Party for:
- 45.1.1 death or personal injury caused by its negligence; or
  - 45.1.2 Prohibited Act; or
  - 45.1.3 fraudulent misrepresentation; or
  - 45.1.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 45.2 Subject to clause 45.3 and 45.4 the Supplier shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:
- 45.2.1 the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract;
  - 45.2.2 the act, omission or default of the Supplier, any Sub-Contractor or any member of Staff including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such party; and
  - 45.2.3 any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 45.3 The Supplier 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 Contract.
- 45.4 Subject to clause 45.1, the Supplier's liability under this Contract shall be limited to the amount stated in Contract Particulars. The limitation of liability as contained in the contract particulars shall not extend to:
- 45.4.1 Any liability against which the Supplier is required to have insurance cover under clause 46 of the contract;
  - 45.4.2 Any liability of the Supplier to indemnify the Council under clause 32.5 for breach of third party Intellectual Property
  - 45.4.3 Any liability of the Supplier to indemnify the Council for breach of data protection provisions under clause 27.12 which liability shall be limited to £5million in aggregate in any Contract Year.

## **46. INSURANCE**

- 46.1 The Supplier shall throughout the Contract Period effect and maintain with a reputable insurance company the following policies of insurance:
- 46.1.1 public liability insurance;
  - 46.1.2 employer's liability insurance,
  - 46.1.3 professional indemnity insurance

with the levels of indemnity cover for each claim stipulated in the Contract Particulars.

- 46.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 46.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 46.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 46.5 Where stipulated in the Contract Particulars, the Supplier shall effect the additional insurances stipulated in the Contract Particulars.
- 46.6 Where professional indemnity insurance is required in accordance with the Contract Particulars the Supplier shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, Sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the amount stated in the Contract Particulars. Such insurance shall be maintained for a minimum of the period specified in the Contract Particulars following the expiration or earlier termination of the Contract.

#### **47. WARRANTIES AND REPRESENTATIONS**

The Supplier warrants and represents that:

- 47.1.1 all information submitted within the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Supplier's status or compliance to any of the Selection Criteria changes throughout the Term of the Contract, then the Supplier shall inform the Council immediately and the Supplier acknowledges that the Council reserves the right to, at its sole discretion, expel the Supplier from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Contract;
- 47.1.2 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 Contract and that the Contract is executed by a duly authorised representative of the Supplier;
- 47.1.3 in entering the Contract it has not committed any Prohibited Act;
- 47.1.4 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- 47.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;



- 47.1.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 47.1.7 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 Supplier 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 Supplier's assets or revenue;
- 47.1.8 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 Contract;
- 47.1.9 in the three 3 years prior to the date of the Contract:
  - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

#### **48. TERMINATION FOR DEFAULT**

- 48.1 The Council may terminate the Contract with immediate effect by the service of written notice on the Supplier in the following circumstances:
  - 48.1.1 if the Supplier has committed a Default under the Contract provided that if the Default is capable of remedy, the Council may only terminate the Contract under this clause 48.1 if the Supplier has failed to remedy such Default within [28 days] of receipt of notice from the Council (a **Remediation Notice**) to do so; or
  - 48.1.2 if the Supplier commits a Default which in the reasonable opinion of the Council is not capable of being remedied; or
  - 48.1.3 if the Supplier commits a Default which is a fundamental breach of Contract; or
  - 48.1.4 if a consistent failure has occurred; or
  - 48.1.5 if a Catastrophic Failure has occurred; or
  - 48.1.6 if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
  - 48.1.7 if this Contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Regulations; or
  - 48.1.8 if the Supplier has, at the time of this Contract's award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure.
- 48.2 The Council may terminate the Contract in accordance with the provisions of clause 23 (Prevention of Bribery and Corruption) and clause 54 (Force Majeure).
- 48.3 If this Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier shall indemnify the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

- 48.4 If the Council fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause 21 (Recovery of Sums Due).

**49. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

- 49.1 The Council may terminate the Contract with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:

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

- 49.2 The Council may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:

- 49.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
- 49.2.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
- 49.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 49.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- 49.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole

or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or

49.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or

49.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

49.3 The Supplier shall notify the Council immediately if the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). The Council may terminate the Contract by notice in writing with immediate effect within six months of being notified that a change of control has occurred; or

49.3.1 where no notification has been made, the date that the Council becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

## **50. BREAK CLAUSE**

50.1 Where stipulated in the Contract Particulars, the Council shall have the right to terminate the Contract at any time by giving written notice (of not less than the period specified in the Contract Particulars) to the Supplier

50.2 Where the Council exercises its right to terminate the Contract under clause 50.1, the Supplier shall only be entitled to payment for Services duly rendered up to the date of termination and the Council shall incur no liability to the Supplier in respect of any other losses whatsoever whether:

50.2.1 loss of future profits;

50.2.2 redundancy or Sub-Contractor breakage costs; or

50.2.3 any other costs whatsoever incurred by the Supplier as a consequence of such termination.

## **51. CONSEQUENCES OF EXPIRY OR TERMINATION**

51.1 Where the Council terminates the Contract under clause 49 (Termination on Default):

51.1.1 the Council may recover from the Supplier the cost reasonably incurred of making other arrangements for the delivery of replacement services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure.

51.1.2 no further payments shall be payable by the Council to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.

51.1.3 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier 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.

51.2 Save as otherwise expressly provided in the Contract:

- 51.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 51.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Supplier under clauses 20 (Payment and VAT), 21 (Recovery of Sums Due), 23 (Prevention of Bribery and Corruption), 27 (General Data Protection Regulations), 28 (Confidential Information), 29 (Freedom of Information), 32 (Intellectual Property Rights), 34 (Audit), 40 Remedies Cumulative), 45 (Liability and Indemnity), 46 (Insurance), 51 (Consequences of Expiry or Termination), 53 (Recovery upon Termination) and 56 (Governing Law and Jurisdiction).

## **52. DISRUPTION**

- 52.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 52.2 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 52.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 52.4 If the Supplier's proposals referred to in clause 52.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.
- 52.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Council, the Supplier may request a reasonable allowance of time and in addition, the Council will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **53. RECOVERY UPON TERMINATION**

- 53.1 On the termination of the Contract for any reason, the Supplier shall:
  - 53.1.1 immediately return to the Council all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - 53.1.2 Immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Supplier under clause 16. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - 53.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress.
  - 53.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Supplier to conduct due diligence.
- 53.2 If the Supplier fails to comply with clause 53.1.1 and 53.1.2, the Council may recover possession thereof and the Supplier grants a licence to the Council or its appointed agents to

enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

- 53.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 53.1.3 and 53.1.4 free of charge. Otherwise, the Council shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

#### **54. FORCE MAJEURE**

- 54.1 This clause 54 shall apply where stipulated in the Contract Particulars.
- 54.2 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for the period stipulated in the Contract Particulars, either Party may terminate the Contract with immediate effect by notice in writing.
- 54.3 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 54.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 54.2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

#### **55. DISASTER RECOVERY (NOT USED)**

- 55.1 This clause 55 shall apply where stipulated in the Contract Particulars.
- 55.2 The Supplier shall comply at all times with the relevant provisions of the Disaster Recovery Plan.
- 55.3 Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:
- 55.3.1 implement the Disaster Recovery Plan;
  - 55.3.2 continue to provide the affected Services to the Council in accordance with the Disaster Recovery Plan; and
  - 55.3.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- 55.4 To the extent that the Supplier complies fully with the provisions of this clause 55 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Contract on the part of the Supplier), the Service Levels (if any) to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in Schedule 6 but shall be the service levels set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

#### **56. GOVERNING LAW AND JURISDICTION**

Subject to the provisions of clause 56, the Council and the Supplier accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations

and other matters arising from or connected with it are to be governed and construed according to English Law.

## **57. DISPUTE RESOLUTION**

- 57.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the director of Adults' or Children's Services as appropriate (or equivalent) of each Party.
- 57.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 57.3 If the dispute cannot be resolved by the Parties pursuant to clause 57.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 57.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.
- 57.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 57.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 57.5.1 a neutral adviser or mediator (the "**Mediator**") shall be appointed by the Centre for Effective Dispute Resolution.
- 57.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 57.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 57.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 57.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 57.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

## **58. TRANSPARENCY**

The Council may disclose to other Public Sector Contracting Authorities any of the Suppliers information, tender documentation and supporting documentation (including any that the Supplier has indicated to be confidential and/or Commercially Sensitive Information) such as specific tender information which has been submitted by the Supplier as part of the tender process. The Supplier shall ensure that such information shall not be disclosed to any other party except to other Public Sector Contracting Authorities. The Supplier acknowledges and agrees that by virtue of taking part in the tender process they hereby consent to such

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disclosure by the Council as a part of the tender process and the Council shall have no liability to the Supplier under this clause or otherwise and the Supplier shall indemnify and keep indemnified the Council against any Losses in respect of the same.

## **SCHEDULE 1**

### **SPECIAL CONDITIONS**

#### **1.**

##### **General**

1.1 These special conditions of Contract are in addition to the general conditions of Contract for the Services. Where there is any inconsistency with the general conditions of contract the special conditions shall prevail.

#### **2. Regulatory Body Registration**

2.1 The Supplier shall ensure that it is registered to provide Personal Care by the Care Qualities Commission ('**CQC**') (or its successor body) before the Commencement Date of the Contract and shall maintain such registration throughout the Contract Period.

2.2 The Council will be entitled in its absolute discretion to terminate the Contract forthwith if the Supplier's registration is suspended or cancelled, or rated as "Inadequate" by the CQC at any time during the Contract Period.

#### **3. Transitional Arrangements and Co-operation.**

3.1 The Supplier shall cooperate with the Council in the implementation of any transitional arrangements agreed between the parties (and, where appropriate, with any previous provider of the Services) for transition of provision of the Services or any part of it to the Supplier. This shall include the transfer of any Service Users from a previous provider to the Supplier.

3.2 The Supplier shall, as necessary, fully cooperate with the Council and other suppliers appointed by the Council to provide the Services to ensure the best outcome for the Services and the Service Users.

#### **4. Unison Ethical Care Charter**

4.1 The Supplier shall in providing the Services comply generally with the provisions of the Unison Ethical Care Charter (attached as Appendix 4 of the tender pack).

4.2 The Supplier shall ensure that without limitation the terms upon which it engages its Staff involved in the provision of the Services reflect the provisions of the Unison Ethical Care Charter.

#### **5. Making Every Contact Count**

5.1 The Supplier must develop and maintain an organisational plan to ensure that Staff use every contact that they have with Service Users and the public as an opportunity to maintain or improve health and wellbeing of Service Users.

5.2 The Supplier shall have regard to the Making Every Contact Count guidance and tools issued by NHS England, Public Health England and Health Education England (See Appendix 6 of the tender pack)

#### **6. No Volume Guarantee**

6.1 The Council does not commit to or guarantee any volume of work or Services to be provided by the Supplier under the Contract.

6.2 The Council may buy similar or complementing services from other providers during the Contract Period and the Supplier shall co-operate with the Council and such other providers to the fullest extent possible.



## **7. Contract Price**

- 7.1 The Contract Price payable by the Council to the Supplier shall be the price submitted at tender during further competition.
- 7.2 The Contract Price specified in paragraph 7.1 above shall be inclusive of all costs chargeable by the Supplier for the Services.

## **8. Suspension of Services**

- 8.1 The Council shall have the full discretion to suspend the Supplier from providing the Services for any period as determined by the Council if there is poor performance by the Supplier or failure of the Supplier to comply with any provisions of the Contract.
- 8.2 The right of the Council to suspend the Services of the Supplier in accordance with paragraph 8.1 above is without prejudice to any other rights or remedies of the Council under the Contract, including the right of the Council to terminate the Contract.

## **9. Further Competition**

- 9.1 The Council will run further competition under the DPS to award work for any parts of the Services.
- 9.2 The Council will communicate the procedure to be followed for any further competition including the award criteria as part of the further competition.
- 9.3 Where the Council requires the Services to be provided urgently, the Council may give 24 hours for submission of tender pursuant to a further competition.

## **10. Compliance with Laws**

- 10.1 The Service Provider shall comply with all applicable laws in providing the Services.
- 10.2 Without limitation, the Service Provider shall ensure that all its Staff are aware of and comply with the provisions of the following including any amendments thereto:
- 10.2.1 The Care Act 2014;
  - 10.2.2 The Health and Social Care Act 2012;
  - 10.2.3 The Mental Health Act 1983;
  - 10.2.4 The Mental Capacity Act 2005;

## **11. Whistleblowing**

- 11.1 The Supplier shall have a whistleblowing policy which shall be approved by the Council.
- 11.2 The Supplier acknowledges and agrees that the Council is authorised as a person whom its Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and its Staff will be made aware of this provision. The Service Provider further declares that it shall not preclude a member of its Staff from making a protected disclosure in any form.

**SCHEDULE 1** (*see above – this page is blank*)

**SCHEDULE 2****PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

1. The Supplier shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule 2.

<b>Description</b>	<b>Details</b>
<b>Subject Matter of the Processing</b>	<i>Provision of Safe Homecare Services</i>
<b>Duration of the Processing</b>	<i>For the entirety of the individual's commissioned care package</i>
<b>Nature and Purposes of the Processing</b>	<i>The collection, recording, storage and disclosure to support the provision of home care in the community. Care may include but is not limited to provision of medication, personal care, nutrition, hydration and activities related to social, health and mental well-being of the individual Implement appropriate technical and organisational measures to ensure an appropriate level of security, including but not limited to encryption of data, secure transfer, confidentiality and availability of data. This may include encryption, pseudonymisation, resilience of system and back up of data.</i>
<b>Type of Personal Data</b>	<p><i>Biographical information or current living situation including dates of birth, national insurance number, phone numbers and email addresses.</i></p> <p><i>Looks, appearance and behaviour, including eye colour, weight and character traits;</i></p> <p><i>Workplace data and information about education including salary and tax information;</i></p> <p><i>Private and subjective data including religion, political opinion</i></p> <p><i>Health, sickness and genetics including medical history, genetics data and information about sick leave.</i></p>
<b>Categories of Data Subject</b>	<i>Service users, MKC staff</i>
<b>Plan for return and/or destruction of the data once the processing is complete UNLESS required under union or member state law to preserve that type of data.</b>	<i>Data should only be retained for the duration of the Contract or for a longer period if required by the law. At the end of the contract the data should be returned to the Council and any copies should be deleted or destroyed securely and the Supplier shall confirm this to the Council in writing. Where the Supplier is required by law to retain any data after the end</i>

	<p><i>of Contract, the Supplier shall notify the Council in writing with regard to (i) the relevant law, (ii) the length of retention that is applicable and (iii) which data is to be retained. The Supplier shall not retain any data for longer than is necessary.</i></p>
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**SCHEDULE 3**

**TENDER**

*This Schedule incorporates the tender submission by the Supplier*

## **SCHEDULE 4**

### **PRICING/PAYMENT SCHEDULE**

1. In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of the Contract, the Council shall pay the Charges to the Supplier in accordance with the Self-Billing Agreement.
- 2 The Supplier shall submit all Service Receipts within the Technology within a timely manner. The Council reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices as set out in the Self-Billing Agreement.
- 3 The Council shall only raise a Self-Bill Invoice on behalf of the Supplier once the appropriate Service Receipt has been created and agreed between the Parties within the Technology and becomes payable in accordance with the Self Billing Agreement.
- 4 The Council shall pay the Charges which have become payable in accordance with the Self-Billing Agreement within thirty (30) days of the appropriate undisputed Self-Bill Invoice having been raised.
- 5 For the avoidance of doubt, the Supplier acknowledges and accepts that the Charges due for the Services provided under the Contract shall be paid by the Council via the Technology Provider, acting as the Council's payment service provider. To this extent, the Supplier acknowledges and accepts the Technology Provider can only pay the Supplier once it has received cleared funds from the Council. Any disputes regarding payment or the amount payable must first be directed to the Council.

## **SCHEDULE 5**

### **CHANGE CONTROL**

#### **1. GENERAL PRINCIPLES**

- 1.1 Where the Council or the Supplier sees a need to change this Contract pursuant to the provisions of clause 33 (Change Control and Continuous Improvement), the Council may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this schedule 5.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this schedule 5, shall be undertaken entirely at the expense and liability of the Supplier

#### **2. PROCEDURE**

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

- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Council and the Supplier

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

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

2.6 A Change Control Note signed by the Council and by the Supplier shall constitute an amendment to this Contract.



## **SCHEDULE 6**

### **EXIT ARRANGEMENTS**

#### **1. General**

- (a) The Supplier acknowledges that it is of critical importance to the Council to ensure on termination or expiry of this Contract howsoever occurring an orderly transfer of the Services either back to the Council or to a Replacement Supplier and for this reason the Council relies significantly on the Supplier fulfilling its obligations under this Schedule.
- (b) If this Contract is terminated in whole or part or expires in accordance with its terms, the Supplier will, during the Exit Period, co-operate with the Council and where applicable any Replacement Supplier to ensure the orderly migration of, and transfer of responsibility for, the Services.

#### **2. Exit Obligations**

- (a) During the Exit Period the Supplier shall:
  - (i) provide all reasonable assistance and appropriate resources to the Council and any Replacement Supplier to facilitate the orderly transfer of the Services to the Council or the Replacement Supplier ;
  - (ii) continue to provide the Services in accordance with any relevant Service Levels in force at the date of termination or expiry on the terms set out in this Contract;
  - (iii) provide such information and assistance as detailed in paragraph 4;
  - (iv) provide such copies of the Council's data in its possession as are requested by the Council and at no additional charge to the Council;
  - (v) carry out such security tasks necessary to identify security and operator risks inherent in the transfer of the Services and inform the Council of such risks and possible preventative and curative measures necessary to deal with such risks;
  - (vi) immediately prior to the end of the Exit Period provide the Council with a detailed description and status report of all errors which have not been corrected, problems not resolved or agreed changes to the Services which have not been fully implemented at the termination of the Exit Period.
- (b) The Supplier shall carry out the Exit Obligations in such a manner so as to cause as little disruption as possible to the Council's business.

#### **3. Documentation and Due Diligence**

- (a) During the Exit Period, the Supplier will comply with any reasonable request by the Council for any information in relation to the Services to ensure the smooth transition of the Services. Following such a request the Supplier will within two (2) days of such request make the relevant information available to the Council for inspection or on the Council's authorisation to the Replacement Supplier and shall within two (2) days of such inspection provide copies of the relevant information to the Council and/or (if so requested by the Council) the Replacement Supplier.
- (b) The Supplier shall promptly and diligently answer any questions about the Services which may be asked by the Council or by any Replacement Supplier as necessary in

order (i) to explain the manner in which the Services have been provided; and (ii) to allow the Council or Replacement Supplier to conduct all such due diligence as is reasonably required to enable it to take over responsibility for the provision of the Services (or any part thereof).

- (c) The Council shall procure that any Replacement Supplier agrees to be bound by (i) an obligation of confidentiality in respect of any confidential information of the Supplier which is made available to it under this Schedule and (ii) an obligation to use any of the Supplier's confidential information solely for the purpose of evaluating and/or providing to the Council the services which will replace the Services.

#### **4. Exit Manager**

- (a) The Supplier will appoint a person as Exit Manager at the commencement of the Exit Period and will notify the Council as soon as possible of the name and contact details of such person. The Council shall have the right to require the replacement of the Exit Manager if it reasonably believes that such person is unsuitable for the position.
- (b) The Exit Manager will be the Council's primary point of contact in connection with the matters referred to in this Schedule. The Supplier shall ensure that the Exit Manager liaise with the Council in relation to all issues relevant to the termination (in whole or part) or expiry of this Contract and all matters connected with this Schedule.

#### **5. Exit Period**

- (a) The Exit Period shall be:
  - (i) a period of up to twelve (12) months prior to the end of the Contract;

provided that the Council may terminate the Exit Period at any time by giving ninety (90) days' notice in writing to the Supplier

**SCHEDULE 7**  
**TUPE AND PENSIONS**

**1. DEFINITIONS**

1.1. In this Schedule the following words and expressions shall have the meanings set out below -

<b>PHRASE</b>	<b>MEANING</b>
Appropriate Pension Protection	means in respect of Eligible Employees, the protection referred to in Annex A of the Cabinet Office Statement entitled 'Staff Transfers in the Public Sector Statement of Practice 2000' (as interpreted/updated by the HM Treasury Guidance Note dated June 2004) and the Best Value Authorities staff Transfers (Pensions) Direction 2007.
Directive	means the European Directive 2001/23/EC as amended;
Eligible Employees	means; <ul style="list-style-type: none"> <li>• Transferring Employees who are active members of or eligible to join the LGPS on the date of a Relevant Transfer; or</li> <li>• Transferring Original Employees who are active or eligible to join the LGPS or a broadly comparable scheme provided by their existing employer on the date of a Relevant Transfer; or</li> <li>• any other individuals nominated by the Supplier or Sub-Contractor (as applicable) for so long as they are employed in connection with the provision of the Services or part of it.</li> </ul>
First Contractor	means the person or entity with whom the Council initially contracted for the provision of services which were the equivalent of or similar to the Services;
Intervening Contract	means a contract with the Council for the provision of services which were the equivalent of or similar to the Services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Contractor;
Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time;
Relevant Employees	means the employees who are the subject of a Relevant Transfer including any Transferring Employee and Third Party Employees;
Relevant Transfer	means a relevant transfer for the purposes of the Regulations;
Replacement Supplier	means any subsequent contractor or supplier engaged by the Council in substitution or replacement of the Supplier to provide services in whole or in part that are identical to or substantially similar to the Services;
Third Party Employees	means employees of Third Party Employers whose contracts of employment transfer with effect from the Transfer Date to the Supplier by virtue of the application of the Regulations.

<b>PHRASE</b>	<b>MEANING</b>
Sub-Contractor	means the contractors that enter into a Sub-Contract with the Supplier;
Third Party Employer	means a Supplier engaged by the Council to provide the service or any part of it to the Council before the Commencement Date and whose employees will transfer to the Supplier on the Transfer Date.
Transfer Date	means any date when any of the Relevant Employees are transferred to the employment of the Supplier or a Sub-Contractor;
Transferring Employee	means an employee of the Council whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out this Contract between the Council and the Supplier, a contract of employment with someone other than the Council;
Transferring Original Employee	means employees who are former employees of the Council and who were active members (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer.
LGPS	means the relevant fund of the Local Government Pension Scheme.
LGPS Regulations	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as may be amended from time to time.

## **2. TUPE COMPLIANCE (GENERAL) EMPLOYEES AND EMPLOYMENT MATTERS**

### **2.1. Application of TUPE**

- 2.1.1. The Council and the Supplier agree subject to the provisions of any relevant legislation that where the identity of a provider (including the Council) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract then the change shall constitute a Relevant Transfer.
- 2.1.2. On the occasion of each Relevant Transfer the Contractor shall comply and shall ensure that each Sub-contractor shall comply with all of its obligations under the Regulations and the Directive in respect of the Relevant Employees. The first Relevant Transfer shall occur on the Commencement Date.

### **2.2. Emoluments and Outgoings**

- 2.2.1. The Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the Transfer Date and shall use reasonable endeavours to procure that any Third Party Employer of a Relevant Employee is responsible for the same in relation to the Third Party Employees.
- 2.2.2. The Supplier shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Transfer Date.

### 2.3. Pension Protection

2.3.1. The Supplier shall ensure, and shall procure in relation to any Sub-Contractor that all Eligible Employees are offered Appropriate Pension Provision with effect from the Transfer Date up to and including the Expiry Date or the date of termination or any later completion of the provision of the Services.

2.3.2. The provision of this paragraph 2.3 shall be directly enforceable by an affected employee against the Supplier.

#### 2.3.3. Admission to the LGPS

2.3.4. Where the Supplier wishes to offer the Eligible Employees membership to the LGPS, the Supplier shall procure that it shall prior to the Transfer Date enter into an admission agreement to have effect from and including the Transfer Date. The Supplier shall comply with the terms of such admission agreement and the all regulations governing the LGPS, including any requirement to provide such information as may be requested by the administering authority of the LGPS in respect of participation in the LGPS. The Supplier shall bear the costs of any actuarial assessment required in order to assess the employer's contribution rate (including any bond value) in respect of Eligible Employees.

2.3.5. The Supplier shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where Eligible Employees would have received such benefits had they been employed by the Council. The Supplier shall be responsible for meeting all costs associated with the award of such benefits.

#### 2.3.6. Broadly Comparable Scheme

2.3.7. Where the Supplier does not offer the Eligible Employees membership to or continued membership of the LGPS, the Supplier shall with effect from the Transfer Date;

- Offer the Eligible Employees membership of an occupational pension scheme that is certified by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS or such other broadly comparable scheme in which the Eligible Employees may have participated prior to the Relevant Transfer;
- Provide benefit credits for Eligible Employees who transfer their accrued benefits to the Supplier's broadly comparable scheme which in the view of the actuary will be equivalent in value to the rights that such employees had prior to the transfer.
- Procure that any subsequent bulk transfer from the Supplier's broadly comparable scheme will be calculated on the basis that is equal or no less favourable (as determined by the actuary to the LGPS) to the calculation of the transfer value to the broadly comparable scheme. If the transfer amount payable under the broadly comparable scheme is less (in the opinion of the actuary to the LGPS) than the transfer amount calculated on this basis, the Supplier will procure payment to the broadly comparable scheme of the larger amount in a manner determined by the Council in consultation with the Supplier.
- The Supplier shall award benefits (where permitted) to the Eligible Employees in circumstances where the Eligible Employees would have received such benefits prior to the transfer.
- The Supplier will comply with the guidance set out in the HM Treasury guidance note dated June 2004 in respect of the provision of the broadly comparable scheme.
- The Supplier shall produce evidence of compliance with this paragraph 2.3 to the Council and shall be responsible for the costs of obtaining the necessary certificate of comparability.

2.3.8. Where the employment of an Eligible Employee transfers to a Sub-contractor, the Supplier shall procure and shall ensure that the Sub-Contractor complies with the provisions of this paragraph 2.3 as if it were the Supplier in respect of the Eligible Employees transferring to it.

2.3.9. Without prejudice to any other rights of the Council, the Council shall have the right to set off against any payments due to the Contractor under this Contract or any other contract with the Council, an amount equal to any unpaid employer and employee contributions including pension contributions for which the Supplier or any of its Sub- Contractors is responsible under the Contract.

## 2.4. **Provision of Information**

The Council has provided the information set out in Schedule B5 relating to the Relevant Employees but does not warrant that the information is accurate and complete as at the date of this Contract, and undertakes to advise the Supplier on a monthly basis up to the Transfer Date of any changes in the information provided, but again will not warrant the accuracy or completeness of such changed information.

## 2.5. **Supplier to Inform Council of any Measures**

The Supplier shall within 10 (ten) days of receiving a request from the Council, furnish to the Council any information deemed by the Council necessary concerning any measures (within the meaning of the Regulations and the Directive) that the Supplier intends to take in relation to any Relevant Employee and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

## 2.6. **Indemnities**

2.6.1. The Council shall indemnify the Supplier from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses), which the Supplier shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, negligence, fault or omission of the Council in relation to any Employee prior to the Transfer Date and any such claim is not in connection with the Relevant Transfer.

2.6.2. The Supplier shall indemnify and keep indemnified the Council and/or any Replacement Supplier and in each case, their Suppliers from and against all direct losses suffered or incurred by it or them which arises from the failure by the Supplier to comply with the provisions of this schedule B10. The limitations set out in Section 14 of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the extent necessary to enable any Replacement Supplier to enforce this indemnity in its own right.

2.6.3. The Supplier shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim including a claim by any trade union or staff association or employee representative (whether or not recognised by the Supplier in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Supplier to comply with any legal obligation to such trade union staff associated or other employee representative whether under Regulation 10 of the Regulations, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

2.6.4. The Supplier shall indemnify the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Supplier or Sub-Contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Supplier or any Sub-Contractor or any proposed measures of the Supplier or any Sub-Contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

### **3. TUPE COMPLIANCE ON TERMINATION**

#### **3.1. Handover on Termination**

3.1.1. During the 12 months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or at any other time as directed by the Council, and within 15 (fifteen) days of being so requested by the Council, the Supplier shall fully and accurately disclose to the Council any and all information in relation to all personnel engaged in providing the Service including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Council may reasonably request, in particular but not necessarily restricted to any of the following:-

3.1.1.1. a list of employees employed by the Supplier in the provision of the Service ;

3.1.1.2. a list of agency workers, agents and independent contractors engaged by the Supplier in the provision of the Service and who may transfer pursuant to any Relevant Transfer;

3.1.1.3. the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of the personnel to which paragraphs 3.1.1.1 and 3.1.1.2 refer;

3.1.1.4. the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.

3.1.2. The Supplier shall warrant the accuracy and completeness of all the information provided to the Council pursuant to paragraph 3.1.1 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Service (or any part thereof).

3.1.3. During the 12 months preceding the expiry of the Contract or at any time where notice to terminate this Contract for whatever reason has been given, the Supplier shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Council may reasonably request.

3.1.4. During the 12 months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Supplier shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

3.1.4.1. vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Service;

3.1.4.2. increase or decrease the number of employees employed in connection with the Service; or

3.1.4.3. assign or redeploy any employee employed in connection with the Service to other duties unconnected with the Service.

#### **3.2. Indemnities**

The Supplier shall indemnify the Council and any new contractor appointed by the Council and keep the Council and any new contractor appointed by the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Council and any new contractor appointed by the Council shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Council or any new contractor appointed by the Council as a result of or in connection with the employment or termination of employment of any employee of the Supplier during any period prior to the date of expiry or termination of this Contract.

### 3.3. **Sub-Contractors**

In the event that the Supplier enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this paragraph 3 and shall procure that the Sub-Contractor complies with such terms. The Supplier shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.



**SCHEDULE 8**  
**PARENT COMPANY GUARANTEE**

*(Required where the value of the contract is at least £250k and the Supplier has a parent)*

**THIS DEED** is dated 2020

**PARTIES**

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Guarantor).
- (2) **MILTON KEYNES COUNCIL** of Civic Offices, 1 Saxon Gate East, Central Milton Keynes MK9 3EJ ("the Council").

**BACKGROUND**

- (A) By an agreement dated on or about the date of this guarantee (Agreement which term includes all amendments to variations of or supplements to it from time to time in force) the Council has agreed to engage [INSERT NAME] (Supplier) to provide Home Care services.
- (B) It is a condition of the Agreement that the Supplier procures the execution and delivery to the Council of a parent company guarantee substantially in the form of this guarantee.
- (C) The Guarantor has agreed to guarantee the due performance of the Agreement by the Supplier.
- (D) It is the intention of the parties that this document be executed as a deed.

**AGREED TERMS**

**3. INTERPRETATION**

- 3.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Agreement shall apply in this guarantee.
- 3.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.

**4. OBLIGATIONS OF THE GUARANTOR**

In consideration of the Council entering into the Agreement with the Supplier, the Guarantor:

- (a) as primary obligor guarantees to the Council the due and punctual performance by the Supplier of each and all of the obligations, representations, warranties, duties and undertakings of the Supplier under and pursuant to the Agreement when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of such Agreement;
- (b) agrees, in addition to its obligations set out in clause 4(a), to indemnify the Council on demand against all losses which may be awarded against the Contracting Authority or which the Council may otherwise incur arising out of, under or otherwise in connection with the Agreement whether arising under statute, contract or at common law including without limitation by reason of any breach by the Supplier of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the

Agreement save that, subject to the other provisions of this guarantee (including without limitation clause 4(c)), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Supplier under the Agreement; and

- (c) agrees to indemnify the Contracting Authority on demand against all losses whether arising under statute, contract or at common law which may be awarded against the Council or which the Contracting Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

## **5. LIABILITY**

The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- (a) any arrangement made between the Supplier and the Council; or
- (b) any alteration in the obligations undertaken by the Supplier whether by way of any addendum or variation referred to in clause 6 or otherwise; or
- (c) any waiver or forbearance by the Council whether as to payment, time, performance or otherwise; or
- (d) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person; or
- (e) any unenforceability, illegality or invalidity of any of the provisions of the Agreement or any of the Supplier's obligations under the Agreement, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
- (f) any legal limitation, disability, incapacity or other circumstances relating to the Supplier, or any other person; or
- (g) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Supplier or any other person.

## **6. ADDENDUM OR VARIATION**

The Guarantor by this guarantee authorises the Supplier and the Council to make any addendum or variation to the Agreement, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

## **7. GUARANTEE**

- 7.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Council shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Supplier, to make any claim against or any demand of the Supplier, to enforce any other security held by it in respect of the obligations of the Supplier under the Agreement or to exercise, levy or enforce any distress, diligence or other process of execution against the Supplier. In the event that the Council brings proceedings against the Supplier, the

Guarantor shall be bound by any findings of fact, interim or final decision award or judgement made by an adjudicator, arbitrator or court in such proceedings.

- 7.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Supplier, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Supplier under the Agreement have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Council may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

## **8. OUTSTANDING PAYMENTS**

- 8.1 Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Council or claim or prove in competition with the Council against the Supplier or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Council.
- 8.2 The Guarantor shall not hold any security from the Supplier in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Council.
- 8.3 Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 8.1 and clause 8.2) the Guarantor has any rights of subrogation against the Supplier or any rights to prove in a liquidation of the Supplier, the Guarantor agrees to exercise such rights in accordance with the directions of the Council.

## **9. CHANGE OF CONTROL**

The Guarantor shall procure that, during the term of this guarantee, there shall be no Change of Control of the Supplier.

## **10. PAYMENT AND EXPENSES**

- 10.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Council receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 10.3 The Guarantor shall reimburse the Council for all legal and other costs (including VAT) incurred by the Council in connection with the enforcement of this guarantee.

## **11. SETTLEMENT**

Any settlement or discharge between the Council and the Supplier and/or the Guarantor shall be conditional upon no settlement with security or payment to the Council by the Supplier or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced

by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Council's other rights hereunder) the Council shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Council has placed upon such settlement or security or the amount of any such payment.

## **12. WARRANTIES**

12.1 The Guarantor warrants and confirms to the Council :

- (a) that it is duly incorporated with limited liability and validly existing under the laws of England;
- (b) that it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
- (c) that it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
- (d) that it has been duly authorised to enter into this guarantee;
- (e) that it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
- (f) that this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- (g) that all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
- (h) that it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

12.2 The Guarantor warrants and undertakes to the Council that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.

12.3 The Guarantor warrants and confirms to the Council that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Council (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

## **13. ASSIGNMENT**

The Council shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

## **14. NOTICES**

14.1 Any notice to or demand on the Guarantor to be served under this guarantee may be delivered or sent by first-class recorded delivery post or telex or facsimile transmission to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Council in accordance with this clause 14.

14.2 Any such notice or demand shall be deemed to have been served:

- (a) if delivered, at the time of delivery; or
- (b) if posted, at 10.00 am on the second day after it was put into the post; or
- (c) if sent by telex or facsimile process, at the expiration of 2 hours after the time of despatch, if despatched before 3.00 pm on any day, and in any other case at 10.00 am on the next day.

14.3 In proving service of a notice or demand it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a pre-paid first-class recorded delivery letter or that the telex or facsimile message was properly addressed and despatched, as the case may be.

## **15. WAIVER**

15.1 No delay or omission of the Council in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Council provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

15.2 A waiver given or consent granted by the Council under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

15.3 A waiver by the Council shall not constitute a continuing waiver and shall not prevent the Council from subsequently enforcing any of the provisions of this guarantee.

## **16. SEVERABILITY**

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

## **17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 13.

## **18. GOVERNING LAW**

18.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.

18.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims).

## **19. ENTIRE AGREEMENT**

19.1 This guarantee contains the whole agreement between the parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the parties relating to the transactions.

19.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the

date of this guarantee. Each party waives all rights and remedies which, but for this clause 19.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

19.3 Nothing in clause 19.1 limits or excludes any liability for fraud.

This deed has been entered into on the date stated at the beginning of it.

THE COMMON SEAL OF )  
MILTON KEYNES COUNCIL )  
was affixed to this deed )  
in the presence of: )

Authorised Signatory

EXECUTED AND DELIVERED )  
as a deed by [THE GUARANTOR] )  
acting by the signatures of )

Director

Director/Secretary

## SCHEDULE 9

### PERFORMANCE BOND – (NOT USED)

**THIS DEED** is dated [DATE]

#### **PARTIES**

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Surety”);
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Supplier”);
- (3) MILTON KEYNES COUNCIL of Civic Offices, 1 Saxon Gate East. Central Milton Keynes MK9 3EJ (“Council”)

#### **BACKGROUND**

- (A) By the Contract the Supplier has agreed with the Council to perform the Services therein described upon and subject to the terms and conditions therein set out.
- (B) The Surety has agreed with the Council at the request of the Supplier to guarantee the performance of the obligations of the Supplier under the Contract upon the terms and conditions of this Performance Bond.

#### **AGREED TERMS**

##### **20. INTERPRETATION**

20.1 The definitions and rules of interpretation in this clause apply in this deed.

“Contract”: an agreement in writing dated [DATE] between the Council and the Supplier.

“Contract Period” has the meaning given in the Contract.

“Contract Sum”: the Contract Sum of the Contract.

“Business Day”: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

“Maximum Amount”: the sum of £[ ].

“Services”: the services referred to in the Contract, provided by or on behalf of the Supplier in accordance with the Contract.

20.2 Clause headings shall not affect the interpretation of this deed.

20.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

20.4 The annex forms part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the annex.

20.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

20.6 Words in the singular shall include the plural and vice versa.



- 20.7 A reference to one gender shall include a reference to the other genders.
- 20.8 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 20.9 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 20.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 20.11 Any obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 20.12 A reference to writing or written includes faxes but not e-mail.
- 20.13 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this deed) at any time.
- 20.14 References to clauses or the annex are to the clauses or the annex of this deed.
- 20.15 Where the words include(s), including or in particular are used in this deed, they are deemed to have the words "without limitation" following them.

## **21. PROMISE TO PAY UP TO MAXIMUM AMOUNT**

- 21.1 If the Supplier fails to pay any sum that becomes due from it to the Council under or in connection with the Contract (including any debt, damages, interest or costs), the Council may give notice to the Surety requiring the Surety to pay that sum, up to the Maximum Amount, to the Council. The Surety shall pay that sum to the Council within 10 Business Days of receipt of the Council's notice. The Council's notice may be in the form set out in the Annex.
- 21.2 The Council may give different notices to the Surety on different occasions, each requiring the Surety to pay the sum referred to in clause 21.1, but the Surety shall not be obliged to pay to the Council more than the Maximum Amount in total.

## **22. AMENDMENTS TO THE CONTRACT**

- 22.1 The Contract or the Services may be modified, amended or supplemented in any way without the consent of the Surety. No such modification, amendment or supplement shall affect, release or impair the liability of the Surety under this deed. The Surety's liability shall extend to all the liabilities of the Supplier under the Contract as modified, amended or supplemented.
- 22.2 The invalidity, avoidance or termination of the Contract shall not affect, release or impair the liability of the Surety under this deed.
- 22.3 No waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Supplier shall affect, release or impair the liability of the Surety under this deed. The terms of this deed shall apply to the terms of any such waiver, concession, allowance of time, compromise or forbearance as they apply to the Contract.

## **23. CONCLUSIVE LIABILITY AND EXTENT OF LIABILITY**

- 23.1 For the purposes of this deed, any money judgment or adjudicator's decision against the Supplier in favour of the Council under or in connection with the Contract shall be conclusive evidence of any liability of the Supplier to which that judgment or decision relates.
- 23.2 Subject to clause 24.1, the Surety may rely on any term of the Contract and may raise equivalent rights of defence in respect of any claim by the Council under this deed as it would have had if

the Surety had been named as a joint contractor with the Supplier under the Contract (excluding any set-off or counterclaim against the Council).

23.3 The inability of the Supplier to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or the entry of the Supplier into liquidation, administration, receivership, bankruptcy or any compromise or arrangement with some or all of its creditors (or any equivalent process in any other jurisdiction) shall not reduce, release or impair the liability of the Surety under this deed.

23.4 The Council shall not be obliged to pursue any means of recourse against the Supplier before being entitled to enforce this deed against the Surety.

23.5 The Council may compromise, release, waive or neglect any security as it sees fit, without impairing its rights under this deed.

## **24. EXPIRY**

24.1 Subject to clause 24.2, this deed shall expire at the end of the Contract Period.

24.2 If the Council has given any notice under clause 21.1 before the end of the Contract Period, clause 25.1 shall not affect that notice and the Council may continue its claim under that notice.

## **25. ASSIGNMENT**

25.1 The Council may assign or charge the benefit of this deed, without the consent of the Surety or of the Supplier or to any person to whom the Council assigns the benefit of the Contract.

25.2 The Council may notify the Surety and the Supplier of any assignment. If the Council fails to do this, the assignment shall still be valid.

25.3 The Supplier and the Surety shall not contend that any person to whom the benefit of this deed is assigned may not recover any sum (including any debt, damages, interest or costs) under this deed because that person is an assignee and not a named party to this deed.

## **26. NOTICES**

26.1 Any notice required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

(a) [COUNCIL]: [CONTACT] [ADDRESS]

(b) [SUPPLIER]: [CONTACT] [ADDRESS]

(c) [SURETY]: [CONTACT] [ADDRESS]

or as otherwise specified by the relevant party by notice in writing to each other party.

26.2 Any notice shall be deemed to have been duly received:

(a) if delivered personally, when left at the address and for the contact referred to in this clause; or

(b) if sent by pre-paid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

26.3 A notice required to be given under this deed shall not be validly given if sent by e-mail.

26.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action (including any adjudication, litigation or arbitration).

**27. THIRD PARTY RIGHTS**

A person who is not a party to this deed shall not have any rights under or in connection with it.

**28. GOVERNING LAW AND JURISDICTION**

28.1 This deed 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.

28.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

**29. TRANSPARENCY**

29.1 The Council may disclose to other Public Sector Contracting Authorities any of the Suppliers information, tender documentation and supporting documentation (including any that the Supplier has indicated to be confidential and/or Commercially Sensitive Information) such as specific tender information which has been submitted by the Supplier as part of the tender process. The Supplier shall ensure that such information shall not be disclosed to any other party except to other Public Sector Contracting Authorities. The Supplier acknowledges and agrees that by virtue of taking part in the tender process they hereby consent to such disclosure by the Council as a part of the tender process and the Council shall have no liability to the Supplier under this clause or otherwise and the Supplier shall indemnify and keep indemnified the Council against any Losses in respect of the same.”

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

THE COMMON SEAL OF )  
MILTON KEYNES COUNCIL )  
was affixed to this deed )  
in the presence of: )

Authorised Signatory

EXECUTED AND DELIVERED )  
as a deed by [THE SURETY] )  
acting by the signatures of )

Director

Director/Secretary

EXECUTED AND DELIVERED )  
as a deed by [THE SUPPLIER] )  
acting by the signatures of )

Director

Director/Secretary

Annex Form of notice

[Refer to in clause 2.1.]

From: [COUNCIL'S ADDRESS: SEE clause 8]

To: [SURETY'S ADDRESS: SEE clause 8]

CC: [SUPPLIER'S ADDRESS: SEE clause 8]

Sent by [hand OR first-class pre-paid post OR recorded delivery OR commercial courier].

Dear Sirs

Demand under a bond dated [DATE] (Bond) relating to the Contract

This letter is a notice under the Bond. Defined terms used in this letter have the same meanings as in the Bond.

[We are the assignee of the benefit of the Bond by a [deed of assignment OR an assignment agreement] dated [DATE] between [PARTY] and [PARTY].]

The Supplier has failed to properly pay a sum due to us under or in connection with the Contract. We require you to pay to us £ [SUM] OR [, the Maximum Amount] within 10 Business Days.

[We attach a copy of the [money judgment OR adjudicator's decision] against the Supplier in our favour as conclusive evidence of your liability to us under the Bond.]

OR

[The sum due to us from the Supplier is summarised in the attachment to this notice.]

Please make payment to [PAYMENT DETAILS].

Yours faithfully

[SIGNED]

For and on behalf of the Council

Enclosure.

**SCHEDULE 10**  
**DISASTER RECOVERY PLAN – (NOT USED)**

**SCHEDULE 11**

**COMMERCIALLY SENSITIVE INFORMATION**

*Any commercially sensitive information that is notified by the parties is incorporated into this schedule.*

## **SCHEDULE 12**

### **CONTRACT MANAGEMENT**

#### **1.0 Service Quality & Performance Monitoring**

1.1 The Supplier will comply with the Council's Contract Monitoring Framework and provide performance and management information in order to demonstrate the effectiveness of the Service and delivery against the Contract. This includes but not limited to:

- Monitoring Information Workbook
- Relationship Visits
- Quality and Compliance Assessment

#### **2.0 Service Performance**

2.1 Performance Indicators

2.1.1 The Supplier will submit performance information via the Quarterly monitoring information workbook in relation to:

- Service Capacity
- Staffing/Training
- Quality & Effectiveness
- Performance indicators

2.1.2 The Supplier will ensure that Quarterly monitoring information workbooks are submitted by the specified date.

2.1.3 When requested the Supplier must submit real time recording evidence

2.1.4 The Supplier will need to ascertain and accommodate any other outcome measurement that the Service User has used or is currently using and work with other professionals involved in the treatment and care of the Service User.

#### **3.0 Relationship Meetings**

3.1 During the lifetime of this contract Suppliers will be visited periodically to better relationships between the council and the Supplier.



- 3.2 The meetings will allow for both the Quality & Compliance team and the Supplier to highlight good practice and any issues concerning the Service.

#### **4.0 Quality and Compliance Visits**

- 4.1 The Council will conduct monitoring visits throughout the Contract Period to ensure contract compliance and service quality.
- 4.2 Nominated officers will carry out announced and unannounced visits at least annually to the Supplier's premises.
- 4.3 The Supplier will ensure that information requested is made available in relation to these visits.
- 4.4 The results from the quality visits will be communicated to the Supplier and an action plan put in place where necessary.
- 4.5 If result of quality visits are rated as poor or requires improvement, the MKC serious concerns policy will be followed.

#### **5.0 Service User Consultation**

- 5.1 The Supplier will carry out regular service user surveys to monitor service quality and service user satisfaction. The results of the survey will be used to improve service delivery.

#### **5.0 Care Quality Commission (CQC)**

- 5.1 The Supplier will notify The Council following each CQC inspection. Following each publication of CQC inspection rating, the Supplier's risk level will be re-evaluated and the latest CQC rating will impact on the Council's level of monitoring.

## **SERVICE SPECIFICATION**

### **Domiciliary Home Care Services for Adults (Dynamic Purchasing System)**

## 1. **Introduction**

- 1.1 This document sets out the service specification for the provision of a Home Care Service for adults who are ordinarily resident within the Borough of Milton Keynes.
- 1.2 Milton Keynes Council has adopted the UNISON's Ethical Care Charter (attached) and is committed to abide by its recommendations. The over-riding objective is to establish a minimum baseline for the safety, quality and dignity of care by ensuring employment conditions which a) do not routinely short-change Service Users and b) ensure the recruitment and retention of a more stable workforce through more sustainable pay, conditions and training levels.
- 1.3 The time allocated to visits will match the needs of the Service Users. In general, 15-minute visits will not be used as they undermine the dignity of the Service Users and are not recommended by the UNISON Ethical Care Charter.
- 1.4 This service is for those residents who have been assessed as eligible for support from adult social care.

- 1.6 This specification describes the key features of the service and the outcomes required and should be read in conjunction with the Terms and Conditions of the Contract.
- 1.7 The service will offer planned and emergency visits during the core hours of 6.30am and 10.30pm, 7 days a week including all bank holidays.
- 1.8 It is imperative that Service Users are at the heart of adult health and social care activities receiving services that are easy to access, of good quality and that maximise their ability to live independently and safely in their home and community.
- 1.9 In ensuring that the services provide seamless good quality Home Care provision the Council and Providers will be committed to working together in partnership through:
- Ensuring that Service Users and Carers are involved in the development, delivery and monitoring of the service provided and are able to contribute views in relation to how the delivery of the service is achieving individual outcomes
  - Developing close links with the GPs, local community, families, carers, and all health and social care professionals within the area
  - Having a shared vision about the community and individual outcomes which can be achieved through the provision of a good quality Home Care Service
  - Collaborating for the benefit of Service Users
  - Communicating honestly, openly, regularly and efficiently
  - Sharing relevant information, expertise and plans
  - Seeking to avoid conflict but where it arises ensuring that it is resolved quickly, efficiently and professionally at a local level with no detriment to the Service User
  - Monitoring quality and performance, quickly identifying and taking firm and timely remedial action where necessary
  - Striving for continuous improvement, reflecting new learning as it emerges and working together to ensure that available resources are maximised to achieve the best outcomes for individuals and the local community
  - Recognising that during the period of the contract there are likely to be changes in service requirements at a national and local level, which will need to be responded to in a professional, flexible, and responsive manner, ensuring outcomes are maintained and best use made of resources available.

## 2. **Service Aims**

- 2.1 The Provider is required to ensure that Service Users are supported to achieve the broad outcomes listed below and all personal outcomes agreed in the Care and Support Plan.
- 2.2 Home Care should be used to enable Service Users to live more independently with dignity; it should not be done to the Service User but with the Service User, adopting a re-ablement, strengths based approach at all times.

- 2.3 Receiving Home Care should not automatically be seen as being for life and Service Users will be subject to ongoing review to determine whether the care packages still meet their needs. It is expected that a number of care packages will reduce.

### 3. **Expected Outcomes**

3.1 Outcome-focused services are fundamentally person-centred in approach, recognising that each Service User is unique and will have different needs and requirements. The Council has identified a range of outcomes to be achieved in the delivery of the home care services, to support Service Users to take greater control of their lives and live as independently as possible, for as long as possible. Whilst not all are relevant to each care and support package, those relating to and identifying with the Service User's needs (and documented in their care and support plan), will be the basis on which the effectiveness of the service will be determined from.

3.2 The implementation of this specification must contribute to the following outcomes for Service Users and also those sought through the Department of Health Adult Social Care Outcomes Framework (ASCOF) and which CQC will be inspecting and registering Providers against:

#### 3.3 Improved Health and Wellbeing

3.3.1 The Service User maintains good physical and mental health for as long as possible, feels satisfied arrangements are in place to access treatment and are supported in managing their long term conditions through promotion of self-care, self-determination etc. Service Users will maintain well-being and feel in control of their lives. They will:

- Feel the service has assisted them to regain confidence
- Receive services that reflect their changing circumstances and where possible are encouraged to undertake physical activities appropriate to their health, circumstances and abilities
- Maintain good health by being supported to receive medication as prescribed
- Feel confident that Care Workers are aware of their special dietary and nutritional needs
- Have physical, mental and emotional needs identified (including sadness and depression) and supportive measures put in place i.e. befriending
- Be supported to monitor and maintain both nutritional and fluid intake to promote well-being.

#### 3.4 Enhancing Quality of Life

3.4.1 The Service User is centrally involved in the decision making process concerning the level of support they receive and is encouraged to carry out errands e.g. shopping and access leisure and social activities to maximise independent and mental well-being. They feel part of the community, are informed about and participate in local activities and initiatives. The Service User will:

- Maintain maximum independence in their own home and local community and be involved in day to day decisions about the care or level of support offered and taking greater control of their life
- Be enabled to perform useful and meaningful activities and lead a fulfilling life, with whatever assistance is required and is supported to access local social, cultural and leisure activities
- Have the opportunity and feel supported to follow their cultural and/or spiritual beliefs
- Have their sexual orientation respected
- Be satisfied with the support they receive to access training and employment (where this is an appropriate outcome for the Service User)
- Be supported to maintain social/community and family networks
- Receive ongoing information relating to the local community and be satisfied with the arrangements made to assist them in making or retaining contacts with the wider community and encouragement to participate in activities
- Be supported to maintain health and hygiene within their personal environment
- Experience support in accessing dentists, opticians, chiropodists and other healthcare services
- Develop life skills; be supported to reduce debts and manage money better
- Be encouraged to be involved in local decision making
- Be supported to continue to develop their decision making capacity in relation to their own care and support needs

### 3.5 Promoting Independence – delaying and reducing the need for care and support

3.5.1 The Service User will be supported to maintain their independence and manage as much as they can themselves, through self-care advice and techniques. Service Users will be supported to self-manage by utilising a strengths based approach. Where care and support arrangements have to be put in place, the least restrictive option is always the first considered and promoted. Avoidable admissions to hospital will be prevented as much as possible with Service Users being supported to access the right care at the right time through the Provider's liaison with health and social care partners. The Service User will:

- Be supported to better manage their long-term conditions and disabilities and experience improvements through this, wherever possible
- Be supported by the Provider working across the health and social care economy with colleagues in the NHS, public health, social care and within private and voluntary sector providers and community groups
- Be able to stay in their own homes, as independently as possible, for as long as possible
- Have a delayed and/or reduced need to access residential care
- Be supported to consider broader housing options
- Experience increased independence through the utilisation of equipment and Telecare/Telehealth solutions to meet needs previously met in a hands on way
- Be supported to consider safe risk taking and be able to identify and manage risks within their environment, making informed choices based on sufficient information
- Maintain their health and hygiene within their personal environment
- Take prescribed medication safely in accordance with the Provider's organisation's medication policy/protocol
- Understand the benefits of eating healthily

3.5.2 The Council will:

- Measure reducing numbers of care packages through improved levels of self-care

- See and measure reducing intensity of care packages, including delaying increases in care package hours for those able to self-care, or utilise equipment and assistive technologies

### 3.6 Ensuring a Positive Experience of Care and Support

3.6.1 The Service User will speak highly about the service received and can explain its benefits. Families, Carers and Advocates will be aware of the support delivered and any improvement in outcomes for the Service User. Families and Carers will feel involved and informed about their loved ones needs and the support delivered. The Service User will:

- Be supported to develop communication skills and have a strong voice in the support received
- Be enabled to control the service they receive, with minor changes enabled to meet day to day changing needs
- Experience a flexible service delivery model and be central to communications in this regard
- Experience consistency in the scheduling of service and times the Service User expects or requires
- Experience continuity of care, supported by a 'trusted team' of Care Workers, who they trust and respect, with early introductions made to reduce the fear of new people
- Take different opportunities and use a variety of methods to feedback to the Provider regarding care received and have confidence that appropriate policies and procedures are in place
- Be better informed regarding their care choices and better able to access information on Providers of care in their local area
- Experience consistency in the quality of provision
- Be assisted in writing/designing their care and support plan
- Have their individuality promoted and celebrated
- Be supported with any specific issues relating to equality and diversity

### 3.7 Personal Dignity

3.7.1 The Service User and their family do not experience anxieties about the services received and is satisfied that the Service User's personal dignity is maintained at all times. The Service User:

- Feels that their dignity, privacy and respect is maintained at all times
- Feels confident that the service assists in improving identified aspects of their day to day lives
- Feels confident that their dignity with regard to religious and cultural beliefs is respected
- Feels confident that Care Workers will assist in their personal care with discretion and in such a way that dignity is maintained with the Care Worker taking direction from the Service User, wherever possible
- Is satisfied that the changes they had hoped to achieve have been realised and the balance between support and assistance is appropriate to their circumstances
- Knows that information relating to them is kept confidential and only shared on a need to know basis

### 3.8 Exercising Choice and Control

3.8.1 The Service User is informed and enabled to influence the way in which care is provided in a flexible and appropriate way, with services responsive to needs and preferences of the Service User. They will:

- Feel confident that Care Workers support their choices regarding all aspects of daily living
- Feel confident that the Care Worker will arrive and leave within timescales that enable the completion of the required care and support and will inform the Service User if there is any change in time
- Feel listened to when complaining about or complimenting the service, or when suggesting improvements, including minor changes to accommodate day-to-day changing needs
- Take greater control of their lives and contribute positively to the care and support planning process having had issues of risk explained and having explained information regarding the alternatives available to them and their implications.

## 4. Service Provision

4.1 It is intended that the contract for services will operate like a framework agreement where the Council will call-off against the framework based on its requirements using an on-line Dynamic Purchasing System.

4.2 Following an Assessment and calculation of the indicative personal budget, the Service User will be supported by the Council's Adult Social Care Team to develop a Care and Support plan, which sets out what they wish to achieve and how this service will be delivered.

4.3 Providers will not be expected to visit and assess the Service User until advised by the Council.

4.4 Where a Service User opts for a Direct Payment they may contact the provider of their choice directly. This will be a private arrangement outside the terms of this contract.

4.5 Similarly for people who are financially assessed as being self-funding and wish to arrange their services independently, they may contact the provider of their choice directly. This will be a private arrangement outside the terms of this contract.

## 5. Description of Service

5.1 Home Care is the provision of person centred, personal care, enabling care and/or other services that are necessary to maintain a Service User's quality of life, enabling them to remain living in their own home and achieve their specified outcomes. Home Care is not about doing things for people in a way that increases dependency, but about supporting people to do things for themselves as far as they are able.

5.2 The Service will achieve a primary objective of enabling people in the Milton Keynes community to remain living at home for as long as possible and maintaining a good quality of life which meets the Service User's identified outcomes.



- 5.3 Home Care services will be available 365 (366 in leap years) days a year between the core hours of 6.30am and 10.30pm. Providers are required to offer flexibility of timing outside of these core hours to reflect a person centred approach to the provision of services. For example, where Service Users who do not require regular night time visits (not part of this specification) but needs support to go to bed later than 10.30 on a regular basis, the Council will work with the Provider to ensure continuity of care and that the needs of the Service User are met.
- 5.4 The Service Providers will have systems in place to respond to referrals for support packages to commence at weekends, with staff available to carry out risk assessments etc., to ensure prompt service provision.
- 5.5 The Service will be initially delivered in units of 20 minutes, with increments of 5 minutes of support. Flexibility around the units of time provided will be considered on the basis of evidence that varying these timings will enable individual and community outcomes to be better met. As in the UNISON's Ethical Care Charter, 15 minute calls will only be acceptable as part of a larger care package or if requested by the Service User and agreed by the Council. The Provider should note that it is the Council's intention to transition from prescribed timed intervention and support to a culture of outcome identification and flexible working to achieve these outcomes. As such the service will initially be commissioned using units of time and will move towards commissioning based on outcomes over the lifetime of the contract.
- 5.6 The Provider will give the Council a minimum of 14 days' notice, if, in exceptional circumstances, they are unable to continue to deliver a package of home care support. However, the notice period would be subject to agreement with the Commissioner's Nominated Officer in order to provide sufficient time to find alternative service provision.
- 5.7 The Service will be delivered in the Service Users' own homes, or the home of a relative, or in any other mutually agreed community setting.
- 5.8 The Service must be person centred, flexible and responsive ensuring that all Service Users are able to exercise choice and control over the services that they receive and are at all times treated with kindness, dignity and respect and regarded as equal partners in the delivery of their care.
- 5.9 Providers will be required to develop excellent working relationships with Adult Social Care Teams across Milton Keynes to ensure the provision of seamless good quality services.
- 5.10 As part of the initial visit/risk assessment, the Provider will agree with the Service User as to how and when the services are to be provided, in order to deliver the Care and Support Plan and outcomes. It is, however, accepted that some people who are severely incapacitated may not be capable of fully communicating their wishes. In such cases the Adult Social Care Team, in conjunction with any informal carer or advocate involved, will support the interpreting of choices and wishes.
- 5.11 The Service must ensure that Service Users are able to achieve and maintain their maximum levels of independence and self-care. As such the Provider will evidence a culture of enabling care to ensure that Care Workers do not foster Service User dependency.
- 5.12 With effect from the commencement of the Contract, Providers are required to fully operate all services from a CQC registered office within the Borough of Milton Keynes or within a 15 miles

radius of the main Council Office in Central Milton Keynes or a 30 minute drive during peak travel times, which is appropriately situated to deliver services to residents of Milton Keynes of a high quality and efficient manner.

- 5.13 Milton Keynes Council is committed to improving the quality of services received by Service Users and as such will be applying strict quality and compliance controls. Providers that fail to maintain adherence to the quality and compliance requirements will be issued with a default notice and will receive no further referrals until remedial actions have been taken to the satisfaction of the Council. Milton Keynes Council also reserves the right to remove packages of care and transfer them to an alternative provider in the event of poor performance.
- 5.14 Providers are required to have sufficient staff resource and the necessary infrastructure to respond to service referrals in accordance with the terms of the contract.
- 5.15 **Personal Care** tasks must be undertaken with great sensitivity; Provider staff must have an awareness of the importance of the preservation of the Service User's dignity and improving, where possible, their quality of life. By way of example, these tasks may include:
- Dressing/undressing
  - Assisting with transfers from or to bed/chair/toilet/commode/bath
  - Assistance with feeding, including peg feeding
  - Promotion of personal hygiene by encouraging regular washing and changing of clothes
  - Washing hair
  - Assisting with personal washing
  - Assisting with bathing/showering
  - Assisting with shaving
  - Assisting with cleaning teeth
  - Assisting with toileting
  - Assisting with washing feet
  - Assisting Service Users in preparation for trips or visits outside their own home
  - Monitoring the skin for any signs of pressure ulcers and reporting any concerns
  - Support with continence management
  - Support with changing and emptying catheter bags/stoma bags
  - Administration of medication in accordance with the Royal Pharmaceutical society of Great Britain Handling of Medicines in Social Care guidance for the administration of medicine and instructions of the medicine prescriber and the Milton Keynes Council and CCG Medication Protocol (<http://www.milton-keynes.gov.uk/social-care-and-health/adult-social-care/medication-protocol>).
  - Bed-making, including cleaning up any incontinence
  - Emptying and cleaning commodes
  - Laundry where appropriate
  - Dealing with household refuse/emptying waste bins
  - Cooking and meal preparation
  - Support with collecting prescriptions (where service is unavailable from the pharmacy)

This list is not exhaustive and is intended to be illustrative only.

- 5.16 **Double Handed Care:** some care packages require two Care Workers and this will be specified in the Support and Care Plan. It is essential that where two Care Workers are required to carry out the care that both Care Workers arrive at the Service User's home in time to work together. The first

Care Worker to arrive should not begin to care for the Service User until the second arrives, unless some of the care and support plan relates to a need a single Care Worker can meet.

5.17 Utilisation of moving and handling equipment to better manage transfers and care delivery should always be considered.

5.18 **Enabling tasks** involve assisting Service Users by supporting and encouraging them to participate in housework and living skills, to restore lost confidence, regain lost skills, gain new skills and achieve and maintain maximum independence and self-reliance. The Provider will be required to liaise with enablement professionals within the care management teams to ensure that the Service User's skills and independence can continue to be maximised. Enabling tasks may include:

- Supporting and guiding the Service User to maintain a healthy balanced diet through provision of advice in relation to fluids and nutrition, menu planning and preparation of meals
- Supporting and guiding the Service User with household budgeting
- Supporting and guiding the Service User in carrying out household functions in so far as they enable the Service User's outcomes to be achieved, for example, in relation to maintaining a clean and comfortable house and/or garden
- Escorting Service Users to attend specific appointments, i.e. hospital, dentist, optician (subject to suitable insurance if a motor vehicle is used)
- Providing information about opportunities, and escorting, where appropriate, for involvement in local community activities, encouraging the continuation of interests and social activities and/or developing the opportunity for involvement in new activities
- Encouraging and assisting in development or maintenance of a healthy lifestyle including the continuation of any exercise prescribed
- Encouraging the use of aids provided, following professional training
- Enabling and encouraging the Service User in the self-administration of medication

5.19 **Escorting and Social Activities:** Supporting and facilitating access to social, vocational and recreational activities as stipulated in the Care and Support plan, including but not limited to:

- Supporting to attend day services and any appointments where required within the care and support plan including transport arrangements
- Supporting Service Users to handle their own money, including accompanying to the shops, where required within the Care and Support plan
- Assisting to access local community based services such as laundry, gardening, shopping, home decoration, household odd jobs etc.
- Helping to make their way to places and to assist in road safety and learning routes
- Social interaction including accessing any appropriate scheme and help to participate

## 6. **Support Outside the Home**

6.1 Support may be required outside the home environment which may be for socialisation or to provide support with practical tasks such as collecting shopping, paying bills, attending appointments with

Health Workers etc. Details will be documented in the Care and Support plan and must be followed. The Provider must ensure:

- That any insurance policy covers staff performing duties related to the Service that are provided in the community outside the Service User's home
- Staff providing support outside the home must have the necessary skills and training required to respond to situations which may occur outside the home e.g. first aid skills
- Risk assessments must be in place as appropriate and followed
- Arrangements for transport must be clear and agreed before the Service commences, e.g. if using the staff member's car – insurance must be appropriate and fuel costs accounted for
- Arrangements for expenses must be clear e.g. clarity on who is responsible for paying for any admission fees, transport costs, meals etc.

## 7. **Dementia**

- 7.1 The Provider will take an asset, rather than deficits, approach to maintain the Service User's resilience, understand the Service User's cognitive abilities and difficulties, so that Care and Support Plan can build on strengths and promote independence and resilience.
- 7.2 The Provider will ensure that Care Workers are trained to identify and work with those Service Users living with Dementia. The Provider will also ensure that specialist advanced dementia training is provided to enable Care Workers to deliver services to those Service Users whose dementia is advancing but are still able to live independently with support.
- 7.3 Knowing a person's life story or biography is important, when working with Service Users, with dementia to help support problem solving, as a communication and engagement cue and to identify preferred coping strategies. As the dementia advances the Provider will need to work with the Adult Social Care Team to amend the care packages in terms of what support and time is needed.
- 7.4 Building relationships with Service Users is a key part of the work with those living with dementia therefore the Provider will ensure consistency of care workers, using a minimum of care workers to help foster trust between the Service User and Care Worker.
- 7.5 The Provider will have a good understanding of balancing rights and risks and how this links with delivering outcomes, including application of the Mental Capacity Act (2005).
- 7.6 The Provider will work in partnership with carers to support the Service User with dementia and the carer. Maintaining a carer's resilience and ability to carry on caring, where this is their wish, is crucial in taking a preventative approach and maintaining someone at home.
- 7.7 The Service will be flexible to accommodate the needs and abilities of Service User's with dementia which can change from day to day. It is important to be able to adjust service provision quickly and effectively.
- 7.8 The Provider will be able to deliver services at very short notice to provide additional support in a crisis, including out of hours. Night time and weekend cover will also be available.
- 7.9 If the Service User circumstances change between reviews, the Provider must inform the Adult Social Care Team as soon as possible.

## 8. **Challenging Behaviour**

- 8.1 In a situation where a Service User/Carer presents behaviour which may be challenging to a member of staff, a variation to the service may be deemed appropriate and a review may be necessary after consultation with the Adult Social Care Team.
- 8.2 The Provider shall have policies and procedures and training to support Care Workers in managing challenging behaviour.

## 9. End of Life

- 9.1 The Council continues to work in partnership with statutory and non-statutory organisations to take forward the implementation of the Ambitions for Palliative and End of Life Care: A national Framework for local action (2015-2020) this document is built into the Milton Keynes End of Life Care Strategy (2015-2020).
- 9.2 Providers must ensure that appropriate training is provided to enable staff to work with health and social care professionals in order to provide care to Service Users at the end of their lives and to provide emotional and practical support for informal carers.
- 9.3 Providers must ensure that Care Workers who are working with individuals who are dying understand the principles of high quality palliative care and have received training in the Care Workers role and responsibilities in user of current good practice during the last days of life. Staff must be able to recognise the dying phase.
- 9.4 Providers must work in partnership with health and social care professionals to ensure that the Service Users care package is designed around the individual needs of the Service User and their informal carers of all ages. This may include contributing to the discharge process, development of care plans, ensuring that the care arrangements are flexible enough to be responsive to changes in need and working with Services Users and informal carers to accommodate their involvement in care tasks if this is their wish.
- 9.5 All staff involved with the care of individuals who are dying must be clear about their roles and responsibilities in terms of the expressed wishes of the Service User in advanced care planning and the use of Do Not Attempt Cardio Pulmonary Resuscitation (DNAPR) principles and the law.
- 9.6 Providers will be responsible for ensuring that Care Workers who are working with Service Users at the end of life are provided with appropriate levels of supervision and support in recognition of the emotional strain associated with this type of service.

## 10. Service Delivery

- 10.1 The Provider will make the necessary policy and procedure documents available for checking at the Annual Quality Assurance Review carried out by the Council's Quality & Compliance Quality Team (or supply to the Council upon request). Please refer to Appendix A.
- 10.2 The office will be staffed fully with both management and administrative staff during usual office hours of 9am to 5pm, Monday to Friday and a duty officer will be available at all other times and in such circumstances an officer competent and authorised to make decisions will always be available, either located at the office or fully accessible.

- 10.3 The office and its staff will be accessible to Service Users via a range of media such as email, telephone and text phone.
- 10.4 The Service Provider will make available an emergency 'out of hours' telephone service which will be staffed between 6.30am and 10.30pm outside of normal office hours. This will be a dedicated telephone line for Service Users. The Provider must be able to offer a swift response in urgent cases, and will be adequately staffed to provide support with little or no notice.
- 10.5 Staff providing emergency support out of hours must have access to Service User information and records to ensure appropriate service provision and information sharing.
- 10.6 The Provider shall ensure that the Care Worker delivers the full allocated time on direct Service User contact. All staff time, other than direct Service User contact as specified within the Care and Support Plan will be met by the Provider. When scheduling Care Workers' rotas the Provider must allow for a period of travel between each Service User that is both reasonable and appropriate to allow the care worker to travel safely to the next call. The Provider is responsible for the payment of travelling time.
- 10.7 The Provider shall ensure that Care Workers are provided with appropriate items of Personal Protective Equipment (PPE) to promote good infection control standards and to comply with health and safety requirements of the tasks they will be expected to perform under this Contract. This may include but is not limited to the disposable gloves and aprons. In addition, any representative of the Provider who visits the Service User's home shall wear a form of photographic identification that shows their name and the name of their organisation.

## **11. Referral Pathway**

- 11.1 Referrals to the Provider will be made via the Council's Dynamic Purchasing System (DPS) for Domiciliary Home Care Services using the web-based procurement tool - SPProc.Net. Information detailed in the Support Plan which is of direct relevance to the service provision will be made available to the Service Provider. The timescale between the initial contact and the care package starting will not exceed one week, unless previously agreed otherwise.
- 11.2 If the Service User's support packages increase, decrease or stop and then restart again there will be no need to re-allocate, nor if they transfer to a personal budget, cash option (Direct Payment).
- 11.3 The Council will only accept financial responsibility for a Service User after a full social care assessment concludes that the Service User has home care needs, is financially assessed as eligible to receive financial support from the Council, and the Provider is able to meet the Service User's needs.

- 11.4 Details of all care to be provided will have been agreed and confirmed in writing by the Council before the start of the service.
- 11.5 The Provider must ensure that its Care Workers are given sufficient, appropriate and adequate information regarding the Service User's individual needs and of the way the service is to be delivered, before it commences the service provision and that staff are fully trained in the uses of assistive technology (Telecare/Telehealth) and can identify when it might be helpful.
- 11.6 The Provider must ensure Care Workers do not work in a Service User's home when the Service User is absent, unless, in exceptional circumstances, the Service User and the Council have provided written authorisation first.
- 11.7 The Provider must ensure Care Workers are aware that smoking, the consumption of alcohol or drugs, or suffering the effects of these are not allowed whilst working in the home of a Service User. The Provider must ensure this is adhered to all times.
- 11.8 The Provider must ensure that Care Workers are aware that they must not accept cigarettes, alcohol or drugs or any gifts/money from Service Users or offer or sell them to Service Users or their carer, family or friends. This would be considered as gross misconduct and could result in immediate dismissal of any Care Worker found to be in default. The Provider must immediately remove any Care Worker found to be in default from working on this contract and promptly follow appropriate HR processes, keeping the Council informed of the outcome and any significant events.
- 11.9 No Service User must be left without a due visit for any reason. The Service User must be notified by the Provider if there is to be an adjustment in the anticipated time of arrival. In all cases, the Provider must make alternative acceptable arrangements for the Service User, with their agreement.
- 11.10 All visits, times and service provision undertaken will be recorded in the Service User's daily record.
- 11.11 The Provider will be flexible and responsive to the needs of Service Users and should respect their wishes at all times.
- 11.12 The Provider will acknowledge the role played by informal carers (families, friends, and other people who help and support Service Users who use the Services) and shall work with them to provide flexible services that are responsive to the specific needs of Service Users.
- 11.13 The Provider will take account of the wishes of the Service Users and their carers in respect of gender, sexual, racial, religious and cultural background etc. and of any special requirements or communication skills required.

- 11.14 The Service User is entitled to refuse entry into their home to Care Workers. If entry is refused or a Care Worker rejected, the Provider is required to investigate the reason and, where possible, resolve the issue. If not resolved, the Adult Social Care Team must be informed of the situation as soon as possible but no later than one day.
- 11.15 The Provider must notify the Adult Social Care Team immediately (or the next working day if this is not possible) in the following circumstances:
- Safeguarding concerns arise in respect of the Service User
  - Regular and/or persistent refusal by the Service User to accept support to meet outcomes, mutually agreed in the care and support plan
  - Failure to provide the service to the Service User, missed, late, void or 'no response' calls
  - Deterioration in the Service User's health or well-being
  - Improvement in the Service User's circumstances and/or their support needs have decreased
  - Serious accidents or incidents involving the Service User or the Care Worker
  - Hospital admissions and/or death of the Service User
  - Other changes in the service resulting from a change in circumstances or emergency
  - Mental capacity issues – improvement or deterioration of the Service User's mental capacity in relation to specific decisions of the care and support plan
  - Mental capacity issues – improvement or deterioration of the Service User's mental capacity in relation to specific decisions of the support plan.
- 11.16 A communications book must be provided in each Service User's home, to keep an ongoing record of the care provided and any refusals of agreed support, any financial transactions and regular feedback from the Service User on the service. Providers must ensure that Care Workers have adequate English language and literacy skills to undertake this duty and record clear, legible, concise and relevant records.
- 11.17 Providers must ensure that all financial transactions are carried out in accordance with the specific requirements identified in the Service User's Care and Support Plan and Care Workers should be supported to fully understand policies and procedures in this regard.
- 11.18 Late calls are defined as a call 45 minutes or more from the time stated on the Care and Support Plan.
- 11.19 A missed call is defined as a call not made, or one that is more than two hours after the time stated on the Care and Support Plan.
- 11.20 The Provider must also notify the Adult Social Care Team if little or no progress is being made towards achieving the Service User's outcomes as specified in the Care and Support Plan.



- 11.21 Service Users and their carers must be enabled to comment on the service they receive at any time and take full part in any decisions made about them.

## **12. Transfers from Hospital**

- 12.1 Services may be required on hospital discharge. Notice varies considerably depending on need. Given the provisions of the Care Act 2014, we are expected to facilitate discharge on receipt of a Discharge Notice. The minimum notice period is one day.
- 12.2 When an existing Service User is admitted to hospital the Provider must keep the case open for at least two weeks unless it is clear that the Service User will not be discharged within this period.
- 12.3 Before closing that case and permanently reassigning Care Workers the Provider must make every effort to contact the hospital and confirm that the Service User is unlikely to be fit for discharge in the near future.
- 12.4 When a Service User is fit to return home within this two week period the hospital discharge team may seek the Service User's agreement to contact the Provider directly to restart the care package.
- 12.3 The Provider must clarify the care needs of the Service User with the hospital discharge team and may make reasonable adjustments to the care package as required.
- 12.4 If the Service User's needs have changed substantially, or they have been in hospital for longer than two weeks, the hospital discharge team will need to arrange a new reassessment of needs prior to transfer home. It will then be the Adult Social Care Team's responsibility to arrange a new care package, in consultation with the Service User.
- 12.5 Some Service Users will be discharged from hospital to either the recuperation or intermediate services (neither of these are part of this contract). Onward referrals from these services will be accepted by the Provider.

## **13 Workforce**

- 13.1 The Provider is expected to have a written recruitment and selection procedure which reflects equality and diversity policies. The recruitment and selection procedures must meet the CQC minimum standards; ensuring records are maintained to demonstrate best practice in this area. Providers must comply with Disclosure and Barring Service (DBS) and Criminal Record Bureau (CRB) requirements for staff. These checks should be carried out every three years as a minimum.
- 13.2 All roles within the Provider's organisation must have written job descriptions and person specifications and an equal opportunities policy for the recruitment, development and care of the workforce (including volunteers) must be in place.

- 13.3 All staff should meet formally on a one to one basis with their line manager to discuss their work at least on a monthly basis and written records of these supervisions must be kept to demonstrate the range, content and outcome of the discussion at each meeting.
- 13.4 Providers should be able to demonstrate how staff are supported and advised between supervisions and that additional meetings are facilitated where required.
- 13.5 With the consent of the Service User, at least one supervision a year should incorporate direct observation of the Care Worker providing care and support to the Service User with whom they regularly work to observe competencies.
- 13.6 Regular meetings must be held at least quarterly with peers and/or other team members to discuss and share issues and best practice, this must be recorded.
- 13.7 All staff must have an annual appraisal and this must include identification of training and development needs with their line manager. A copy of the appraisal will be placed on the personnel file for each member of staff.
- 13.8 The Provider must ensure that there is a clear link between staff appraisals, identified training and development needs and the training plan. Managers and supervisors must receive training in supervision skills, undertaking performance appraisals and planning for workforce development.
- 13.9 A record must be kept of any disciplinary incidents and details entered in the personal file of the Care Worker concerned, referrals to the Independent Safeguarding Authority must be made, if appropriate, and recorded on the Care Worker's file. The Council's Quality & Compliance Team must be kept informed of all safeguarding issues and staff disciplinary incidents.
- 13.10 The Provider must have a written policy for the management of violence towards staff and ensure that suitable training is provided to reduce the risk of violence towards staff. Adherence to the Health and Safety at Work Act 1974 will ensure staff safety.

## 14 **Workforce Development**

- 14.1 Providers will be registered with the Skills for Care National Minimum Dataset for Social Care (NMDS-SC) and the following criteria must be met:
- Providers will complete a NMDS-SC organisational record and must update all of its organisational data at least once in the financial year

- The Provider must fully complete individual NMDS-SC worker records for a minimum of 90% of its total workforce (this includes any staff who are not care-providing)
- Individual records for workers which are included in the 90% calculation must be both fully completed and updated at least once in the financial year
- The Provider must agree to share information via the facility within NMDS-SC with Milton Keynes Council, CCG, CQC and NHS Choices

14.2 Providers must show that they are complying with the relevant regulations covering staff competence and training. Providers must ensure the completion of the Care Certificate Induction Standards (or other standards as set out by the CQC) for all new Care Workers and other employees within 12 weeks of starting their employment. This induction must specifically include Mental Capacity Act (MCA), Safeguarding and Dementia training.

14.3 Providers must assess workforce training levels, the training already achieved and skills gap for individuals and the workforce as a group. Providers must have financially resourced plans in place to address workforce development requirements. The Provider must have a training plan, a training matrix and keep records of successfully completed training on an individual's and central file to continuously monitor and develop this.

14.4 Registered managers must complete the Manager Induction Standards and have, or undertake a recognised qualification for registered managers within the first year of employment. This must be completed within two years of employment. Managers should undertake periodic management training to update their knowledge, skills and competence to manage the Service.

14.5 Staff must be supported to ensure appropriate skills are maintained in order to ensure that the highest level of care and support is provided by qualified and competent staff. Providers will ensure:

- All staff are competent and trained to undertake the activities for which they are employed and responsible
- Care Workers receive specific advice and training about human rights in relation to Home Care services
- All staff have training on the prevention of abuse within three months of employment and this must be updated annually
- All staff members hold a relevant national occupational standard such as Level 2 Diploma in Health and Social Care. Those who do not already hold a relevant standard should be supported to achieve the above qualification as a minimum
- Young staff should be undertaking an approved training programme – it is advised that the Health and Social Care Apprenticeship framework is used.
- Specialist advice, training and information is provided to support workers working with specific individual groups and/or medical conditions to ensure they are professionally qualified to do so
- Staff have training in the requirements of MCA (Mental Capacity Act 2005) DOLS (Deprivation of Liberty Safeguards)
- All staff are aware of their Safeguarding responsibilities both for children and adults.
- All staff are aware of and familiar with the Provider's policies and procedures

- 15.1 The Provider will ensure that all staff are appropriately trained to meet the requirements of current legislation and all care workers must undergo an induction programme which meets the outcomes of the Skill for Care; Care Certificate.
- 15.2 The Provider shall maintain accurate and up to date training records for each member of staff which will be made available to the Council's Quality & Compliance Team upon request. The records will include evidence that at least the following topics have been covered by the workforce during the first twelve weeks of employment:
- Induction training
  - The basic principles and values of care in the home particularly Service User's independence and dignity
  - Health and Safety including fire safety
  - Basic first aid
  - Medication administration
  - Moving and handling
  - Use of equipment
  - Infection prevention and control
  - Food hygiene
  - Environmental risks for older people and people with disabilities
  - Infection control procedures
  - Recognising health needs and seeking help through the Primary Health Care Team
  - The process of ageing
  - Understanding dementia
  - Communication skills appropriate to Service User need
  - Basic record keeping and the maintenance of home-based care records
  - Common disabilities and diseases
  - Awareness and understanding of the risks of abuse of vulnerable adults
  - The Provider's Adult Protection Policy
  - Awareness and understanding of sensory impairment
  - Anti-discriminatory care practice including Culturally Competent Care
  - The care of Service Users who are confused or mentally ill
  - Dealing with challenging behaviour
  - Promoting and maintaining continence
  - The care of Service Users who are terminally ill, including people with symptomatic HIV
  - Working in partnership with District Nurses, other carers and agencies
- 15.3 The Provider will establish individual learning and development plans and an overall workforce plan which reflects the needs of their Service User groups and is reviewed annually. Additional training needs or refresher courses should be identified based upon these plans for each member of staff on at least an annual basis.
- 15.4 The Provider will work towards the continued professional development of all staff and is expected to assist Care Workers to undertake a Qualification and Credit Framework (QCF) Diploma Level 2 in Health and Social Care within their first year of employment (or as soon as the Care Worker's residential status enables funding to be sought) unless the individual has already completed an equivalent qualification.
- 15.5 Training requirements may also include any Service User specific training that is relevant to the assessed need of the Service User and within the boundaries of a care worker's competencies. All instances of training shall be recorded by the Provider and made available on request to the Council.

## 16 Risk Management

- 16.1 The Provider must ensure that Service Users are supported to manage their own risk where possible and kept safe within a framework of recorded risk assessment compiled with the Service User and/or their representative.
- 16.2 The Provider must have a policy and procedure for the management of risk; these are evidenced in systems and practices.
- 16.3 The Provider must record and implement practical control measures to minimise risk.
- 16.4 The risk assessment must be reviewed at least annually or earlier if required to ensure that the Service Users changing needs are adequately addressed.
- 16.5 Risk assessors must be competent and receive specific training e.g. risk assessment, safeguarding, mental capacity assessment, other relevant training.
- 16.6 Where changes in risk are identified, these must be communicated to the Service User and/or their representative and the Adult Social Care Team. The solution agreed must be the least invasive and offer the Service User maximum independence and control.
- 16.7 Service Users must be offered the opportunity to accept and assume a certain degree of risk and this procedure must be clearly recorded and, where necessary, agreed appropriately by the Adult Social Work Team.
- 16.8 The risk assessment and acceptable risk and/or actions to mitigate risk agreed with the Service User and/or representative must be recorded, and a copy left in the Service User's home. A copy should also be sent to the Adult Social Care Team.
- 16.9 The Provider should undertake an evaluation of any general risks to the health and safety of the Service User and their staff, and ensure that Care Workers are aware of risk and ways to minimise them.
- 16.10 Where Service Users are unable to take responsibility for the management of their own finances, the Provider must ensure this is recorded on the risk assessment and action taken to minimise any risks.
- 16.11 For Service Users who have been assessed as lacking capacity, best interest decisions will be made in line with the Council policies and procedures.
- 16.12 The Provider must notify the Adult Social Care Team as soon as it is practical to do so, and within 24 hours, if any of the following occur:
- Any circumstances where the Service User has consistently refused provision of the service or medical attention
  - Any emergency situation e.g. fire, flood affecting the service
  - Legacy or bequest to the Provider and/or staff
  - An investigation related to Safeguarding of Vulnerable Adults

## **17. Moving and Handling**

17.1 The Provider will undertake the two types of risk assessment required for moving and handling.

- Generic assessments to consider the overall needs of the setting, looking at the type and frequency of moving and handling tasks
  - Overall equipment needs
  - Staffing
  - The environment
- Individual assessments which consider the specific moving and handling needs of Service Users and form part of the care planning process.

17.2 The most common causes of injury and ill health to carers arise from moving and handling, and dealing with behaviour that challenges. Any significant risks to both the care worker and Service User must be adequately assessed

17.3 So far as is reasonably practicable, safe working procedures and appropriate equipment should be provided and Care Workers should be suitably competent/appropriately trained to carry out the tasks safely.

## **18. Service Users**

18.1 The Provider must ensure it obtains a copy of the Care and Support Plan to proceed with its own assessment. Where possible, the Care Worker identified should attend any initial assessment or meeting with the Service User to assist in beginning to develop a good relationship.

18.2 Providers will need to be familiar with the roles and expected functions being undertaken by any other agencies contributing to the care of the Service User, where this has relevance to the service to be provided.

18.3 Clear information that is in line with National Minimum Standards, including the Provider's name, address and telephone number (in and out of hours), and the name(s) of the Care Worker(s), must be provided to the Service User by the Provider from the outset and also outline the agreed services to be delivered and how that can be changed. Where this is not possible, due to urgent support

required with little or no notice, information packs must be provided within a maximum of 48 hours of the service commencing.

- 18.4 All information must be made available to the Service User in a way that is accessible to them and in the manner of their choosing. Service Users will be informed of their right to make a complaint directly to the Council or to CQC or such other regulatory body as may be appointed by the Government and contact information for such organisation(s) will be provided in the Service User's home. If the Service User is unable to understand the Complaints Procedure their carer, next of kin or representative (where applicable) will be advised of it.
- 18.5 The information pack supplied by the Provider will include but not be limited to:
- A copy of the current Care and Support Plan, and a section for record keeping allowing other agencies access to any relevant information to support the Service User. The section for record keeping will include a communication record where information regarding visits, observations and any financial transactions must be documented
  - Medication records and procedure for administering
  - Moving and handling risk assessment (if applicable)
  - A generic Health and Safety at Work risk assessment
  - An explanation of the complaints procedure and the process through which complaints can be escalated to the Council
  - Information on how to access support or help outside usual working hours
  - Comments/Complaints/Compliments Procedure
- 18.6 The Service Provider must ensure it is able to adequately and properly provide care based on the assessment and the identified outcomes in accordance with the Care and Support Plan. There should be no substantial changes on a daily basis. Care Workers must provide the amount of time for each visit as required, with any changes and reasons why recorded and reported.
- 18.7 The Provider must give each Service User an up-to-date plan of their care which recognises the abilities of the Service User and encourages them to share in and supervise their care provision. The plan should be fully developed and discussed with them and reviewed at least annually or when necessary.
- 18.8 In an emergency where the Service Provider is unable to deliver the service, the Provider or their representative must contact the Service User and the Council by some means at least 24 hours before the specified due time.
- 18.9 The Service Provider must consult and involve the Service User before any change to the Care Worker and any and all issues relating to care. Where any significant change in a particular Service User's circumstances necessitates a variation in the services for the Service User, the Service Provider will contact the Adult Social Care Team.

- 18.10 A formal review of the Service User's Care and Support Plan will be conducted by the Adult Social Care Team. The first review will be held within 28 days following the commencement of the service for the particular Service User. Thereafter, a review of the Service User's Care and Support plan will be held as often as the Adult Social Care Team, the Provider and the Service User feels is necessary, but at least annually.
- 18.11 The review will involve as a minimum the Service User, and the Adult Social Care Team. The Provider will only be present if the Service User wishes them to be but they must contribute to, and provide information for, the review. Any other individuals who are able to actively contribute and whose input the Service User has requested may also be present.
- 18.12 The review will address the extent, to which the initial outcomes are being met, determine whether or not eligibility criteria continues to be met and whether the Service User still requires the service or if the level of service needs to change.
- 18.13 A review may also be convened by the Adult Social Care Team, at the request of the Service User or named contact.
- 18.14 The Provider shall retain all records, written and electronic, which are concerned with any aspect of this Contract for a period of six years after the financial year (April – March) in which they were created. The Provider shall, when the end of the retention period for the documents has been reached, undertake to dispose of them by a secure method, either using an appropriately assessed provider of secure data destruction services or by its own in-house services. This requirement shall apply to both written and electronic records.

## **19. Safeguarding**

- 19.1 Safeguarding is protecting an adult's right to live in safety, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult's wellbeing is promoted.
- 19.2 In order to ensure that the service user is free from abuse and appropriate action is taken where it is suspected, the Provider will:
- Ensure a safeguarding alert is completed to notify the local authority if adult abuse is witnessed or reported
  - Respond to alerts
  - Attend Safeguarding meetings
  - Make representation in court as and when necessary
  - Ensure there is a Safeguarding Adults policy available that complies with the Milton Keynes Safeguarding Adults Multi Agency Policy and Procedures (<http://www.milton->



[keynes.gov.uk/social-care-and-health/adult-social-care/safeguarding-adults-policies-and-procedures](http://keynes.gov.uk/social-care-and-health/adult-social-care/safeguarding-adults-policies-and-procedures)) and Milton Keynes Safeguarding Adults Multi Agency Practice Guide (July 2016)

- Ensure staff are familiar with Milton Keynes Multi Agency Safeguarding Policy and Procedures and Practice Guide and with the Providers' own policy and procedures on Safeguarding adults.
- Work in partnership with officers of the local authority, to make enquiries in fulfilling its duties under section 42 of The Care Act 2014; adult protection assessments and enquiries and comply with any recommendations where practicable in action plans
- Ensure staff training is provided in safeguarding and is refreshed annually
- Ensure staff attend relevant safeguarding adult training appropriate to their position
- Take positive action to combat discrimination. Individual's needs arising from specific ethnic, religious, cultural, gender, sexuality, disability or age requirements must be identified in their care and support plans. The Provider must ensure that staff are able to meet these needs.

19.3 The Provider's Safeguarding policies and procedures must make clear that staff must not:

- Use credit or debit cards belonging to the Service User, or have knowledge of the Service User's PIN number
- Accept gifts or cash
- Use loyalty cards except those belonging to the person
- Undertake personal activities during time allocated to provide care and support to the Service User
- Make personal use of the Service User's property (e.g. telephone)
- Involve the Service user in gambling syndicates (e.g. national lottery)
- Borrow from or lend money to the Service User
- Sell or dispose of goods belonging to the Service User and their family
- Sell goods or services to the Service User and/or buy goods or services from the Service User
- Incur a liability for looking after any valuables on behalf of the Service User
- Allow any unauthorised Service User (including children) or pets to accompany them when visiting the Service User without their permission and the Case Manager's approval
- Make or receive telephone calls that are personal or are regarding other individuals. The time allocated to the Service User must be used to care and support the Service User. The Provider must have policies and procedures in place for staff concerning the investigation of allegations of financial irregularities and the involvement of Police, Social Care, Health and Wellbeing and other professional bodies.

19.4 The Provider shall encourage and enable staff to raise bona fide concern about the care and service provided to Service Users without fear of disciplinary action or reprisal, in line with the Provider's Whistle Blowing Policy.

19.5 The Provider is responsible for ensuring that the provision of care is Satisfactory and any concerns relating to poor practice by staff are addressed. Where concerns are not addressed the Provider must report these concerns to the relevant registration authority and the Council to determine an appropriate course of action.

## 20 Electronic Monitoring and Electronic Rostering

- 20.1 All successful Providers will be required to operate their own electronic rostering and monitoring systems for the provision of care to all Health and Social Care Service Users. Providers will be responsible for all costs associated with the procurement, implementation and operation of these systems.
- 20.2 All visits must be recorded electronically and in real time. The system must be able to generate alerts and should be monitored throughout the service delivery, in real time, to ensure any issues are highlighted early for immediate attention.
- 20.3 The system shall comply with the requirements of the Data Protection Act 1998 and other laws governing the use and storage of electronic information. It must also provide an audit trail for time sheet entries, when the entries were created and who created them.
- 20.4 The Council's system is being updated to accommodate electronic monitoring and so the Provider must ensure that their system is flexible and easily upgraded or modified to cope with future demands.
- 20.5 The level of integration required with each Provider will be proportionate to the volume of work undertaken on behalf of the Commissioners. This will be evaluated on a case by case basis to ensure this solution is cost effective.
- 20.6 Where a Service User refuses the use of their telephone for electronic verification of attendance, the Provider will report the problem to the Council's Adult Social Care Team which will endeavour to resolve the issue with the Service User. Should the problem persist the Provider will consider alternative methods of recording visits.

## **21 The Requirements of the Regulator**

- 21.1 It is a requirement that all Providers will be registered with the Care Quality Commission (or any successor). Providers must maintain registration throughout the duration of the contract as required by legislation. The regulations required for registration, their associated standards and the monitoring of the achievement of those regulations and standards are not, therefore, duplicated in this specification. It is expected that the regulations will be met through registration activity. The Provider will be registered to deliver 'Personal Care' services with the national regulator, currently the Care Quality Commission (CQC). It is the Provider's responsibility to maintain up-to-date knowledge of the current regulators codes and to keep to the correct registration.
- 21.2 Providers will inform the Council when a regulatory inspection has taken place and will share the result of the inspection, positive or negative. The Provider will notify the Council of any Regulator Warning Notices placed on the Service/Provider regarding the Provider and/or its associated activities. The Provider will also inform Council of any advice/comments received from the regulator. The regulator can place fines or formal warnings on a Provider to suspend or cancel

agency's registration. The Council will be informed of any such activity and a failure to do so will mean that Milton Keynes Council will seek to recoup costs and damages incurred from the Provider and may terminate the contract without notice.

21.3 The Provider must keep the Council informed of Registered Manager vacancies and any fines this attracts from the regulator. The Provider must inform the Council when new Registered Managers are appointed.

## **22 Quality Assurance & Performance**

22.1 The main objectives of the quality monitoring and performance management process are:

- Supporting Providers to develop and provide flexible personalised services that focus on the achievement of Service User outcomes.
- Developing the use of objective data from monitoring visits, Service User reviews, and any Notifications of Concern to ensure the things Service Users regard as important, for example, continuity of care worker and reliability of arrival times are being delivered.
- Developing providers through shared training and support events and through the monitoring process to ensure the Essential Standards of Quality and Safety are being maintained, making clear the distinctive roles and responsibilities of the Provider, the Adult Social Care Team and the Quality & Compliance Team in relation to monitoring, reviewing and developing services.
- Identifying and addressing poor performance positively and fairly, but robustly, and where appropriate terminating the Contract in whole or part or suspending Providers from taking on new work whilst they focus on addressing any performance issues identified

22.2 The approach:

- Services will be monitored in the spirit of partnership to ensure best practice is spread across the sector and the continuous improvement of services is supported
- Where information requests are made which overlap with data requested annually by CQC or Skills for Care, then the request will be formatted in a consistent way to avoid unnecessary duplication
- Performance and quality measures may be amended or further developed over the course of the contract in light of experience
- The Provider must have a robust quality assurance system in place to audit and monitor its own performance, taking into account a range of feedback including, reviews, compliments or complaints, Service User and other stakeholder feedback. The Provider must be able to demonstrate that it strives to continually improve performance and service quality.

22.3 Quality monitoring and performance management aims:

- To ensure Service Users receive services that meet the requirements of the Service Specification.

- To support Providers in the monitoring, review and development of their services.
- Where the quality of service does not meet the requirements of the Service Specification, the Quality & Compliance Team will seek to address this positively, fairly and robustly with Providers
- To contribute to the Council's reporting requirements and market intelligence.

#### 22.4 Roles and responsibilities.

- The Adult Social Care Team: monitoring the achievement of Service User outcomes and leading on safeguarding vulnerable adult's investigations.
- Quality and Compliance Team: monitoring the quality and performance of the provider against their contractual obligations.
- Providers: quality monitoring/assurance and service development of their service to ensure compliance with the Service Specification.
- Care Quality Commission: inspection and regulation ensuring compliance with national standards and regulations.

#### 22.5 Quality & Performance Monitoring.

- During the lifetime of this contract Providers will be expected to meet with the Quality & Compliance Team on a six-monthly basis.
- The meetings will allow for both the Quality & Compliance Team and Providers to highlight good practice and any issues concerning the service.
- The Quality & Compliance Team will also undertake an annual visit to the Provider's premises. Visits may be more frequent if there are concerns with the service.
- Assessments carried out by the Quality & Compliance Team will include (but not be limited to) the following:
  - Consulting with Service Users and/or their representatives
  - Reviewing written procedures and records for both Service Users and staff
  - Obtaining feedback from the Adult Social Care Team on whether or not the service is meeting the Service User's assessed needs and delivering outcomes in the best possible way.

## **SERVICE SPECIFICATION**

### **Domiciliary Home Care Services for Children & Young People (Dynamic Purchasing System)**

## 1. **Introduction**

- 1.1 This document sets out the service specification for the provision of a generic (Domiciliary) Home Care Service for children and young people with learning difficulties and/or disabilities and their parents/carers who are ordinarily resident within the Borough of Milton Keynes.
- 1.2 The service is for children and young people with profound and significant learning and/or physical disabilities or life-threatening illnesses who have been assessed as a child in need, as set out in the Children Act 1989, the Carers and Disabled Children Act 2000 and the Children and Families Act 2014. It will provide children and young people and their parents/carers with support that is personalised to meet their individual needs and range from providing personal care in the home to support in accessing community and leisure opportunities.
- 1.3 Children and young people and their parents/carers are at the heart of the assessment and will require services that are easy to access, of good quality and that maximises their ability to live independently and safely in their home and community.

- 1.4 Milton Keynes Council has adopted the UNISON Ethical Care Charter and is committed to abide by its recommendations. UNISON's evidence, along with that of other bodies such as the UKHA (United Kingdom Homecare Association), shows that working conditions are intrinsically bound up with the quality of care.
- 1.5 The over-riding objective is to establish a minimum baseline for the safety, quality and dignity of care by ensuring employment conditions which:
- do not routinely short-change clients; and
  - ensures the recruitment and retention of a more stable workforce through more sustainable pay, conditions and training levels.
- 1.6 The service will offer planned and emergency visits during the core hours of 6:30am and 10:30pm, 7 days a week including all bank holidays.
- 1.7 The time allocated to individual visits will match the needs of the clients. In a few instances the visits required will be relatively short (up to half an hour) and in others, relatively long (between two and four hours). The majority of visits, however, will be between one and two hours in duration.
- 1.8 This specification describes the key features of the service and the outcomes required and should be read in conjunction with the Terms and Conditions of the contract.
- 1.9 In ensuring that the Service provides seamless good quality (Domiciliary) Home Care provision, Milton Keynes Council and Providers will be committed to working together in partnership through:
- Ensuring that children and young people and their parents/carers are involved in the development, delivery and monitoring of the service provided and are able to contribute views in relation to how the delivery of the service is achieving individual and community outcomes
  - Developing close links with the local community, families, carers, and all health and social care professionals within the area
  - Having a shared vision about the community and individual outcomes which can be achieved through the provision of a good quality (Domiciliary) Home Care service
  - Collaborating for the benefit of children and young people and their parents/carers
  - Communicating honestly, openly, regularly and efficiently
  - Sharing relevant information, expertise and plans
  - Seeking to avoid conflict but where it arises ensuring that it is resolved quickly, efficiently and professionally at a local level with no detriment to the child or young person or their parents/carers
  - Monitoring performance, quickly identifying when performance is not satisfactory and taking firm and timely remedial action
  - Striving for continuous improvement, reflecting new learning as it emerges and working together to ensure that available resources are maximised to achieve the best outcomes for individuals and the local community
  - Recognising that during the period of the contract there are likely to be changes in service requirements at a national and local level, which will need to be responded to in a professional, flexible, and responsive manner, ensuring outcomes are maintained and best use made of resources available.

## 2. **Service Aims**

- 2.1 The Provider is required to ensure that children and young people and their parents/carers are supported to achieve the broad outcomes listed below and all outcomes agreed in the Children in Need Plan.
- 2.2 The (Domiciliary) Home Care Service should be used to enable children and young people and their parents/carers to have positive experiences and to encourage independence.
- 2.3 Receiving (Domiciliary) Home Care services should not automatically be seen as being long term and care packages will be subject to ongoing review.

### 3. **Expected Outcomes**

- 3.1 Outcome based commissioning and contracting aims to shift the emphasis from the services a provider will offer to the outcomes they will achieve for individual children and young people and their parents/carers.
- 3.2 Providers will be expected to:
- ensure that all children and young people achieve the identified outcomes;
  - measure the outcomes using the identified and/or other measurement tools;
  - be proactive in monitoring their own performance against the outcomes; and
  - demonstrate to the council how the service provided has achieved the outcomes.

The services provided should take into account the individual and unique nature of each child and young person and should be planned in conjunction with disabled children and young people and their families and in accordance with their assessed needs

- 3.3 An outcome can be described as the impact a service has on the Service User (child or young person and their parents/carers). Outcome-focused services are fundamentally person-centred in approach, recognising that each Service User is unique and will have different needs and requirements. Milton Keynes Council has identified a range of outcomes to be achieved in the delivery of the (Domiciliary) Home Care services. Whilst not all are relevant to every care and support package, those relating to and identifying with the Service User's needs (and documented in their Children in Need plan), will be the basis on which the effectiveness of the service will be determined.
- 3.4 The focus will be to support parents and carers to continue in their caring role. The Service will provide them with a short break from their caring responsibilities whilst supporting the child to develop skills and have experiences that will support their development.
- 3.5 Outcome 1 - Healthy

Children and young people with learning difficulties and/or disabilities:

- are comfortable and not in pain
- have support with their feelings
- have access to appropriate equipment
- have opportunities to be active
- have support to make healthy choices
- have opportunities to learn and develop personal care skills.



### 3.6 Outcome 2 - Safe

Children and young people with learning difficulties and/or disabilities:

- know who to talk to if they (or others) are hurt, abused, scared or worried, and feel confident in doing so
- know their views are taken into account
- know their concerns are listened to and dealt with
- can identify staff easily
- have support with managing their behaviour
- have support to manage risk/with managed risks
- are involved in post-accident/incident reviews (restorative practice)
- have opportunities to develop personal safety awareness and skills.

### 3.7 Outcome 3 - Enjoy and achieve

Children and young people with learning difficulties and/or disabilities:

- experience a range of fun, enjoyable and age appropriate activities
- have opportunities to socialise
- know their views are taken into account in activity/session planning
- have a choice in the activities they access/take part in
- have opportunities to learn and develop social, independence and life skills
- have a positive sense of identity have support to communicate their needs, wishes and preferences
- are supported to experience appropriate challenging play and leisure opportunities
- experience meaningful achievements/development of new skills develop/maintain self-esteem and a sense of identity
- have opportunities to participate in community activities.

### 3.8 Outcome 4 - Make a positive contribution

Children and young people with learning difficulties and/or disabilities:

- have the tools they need to communicate their views and preferences
- are supported to be involved in planning and delivery of the service
- have opportunities for decision and choice making
- are treated as individuals.

### 3.9 Outcome 5 - Achieve economic wellbeing

Children and young people with learning difficulties and/or disabilities:

- are not discriminated against because of their family circumstances
- are supported to reach their full potential
- have access to discounts if their families are on a low income

- have equal access to services have access to specialist equipment.

#### 4. **Service Provision**

- 4.1 It is intended that the contract for services will operate like a framework agreement where the Council will call-off against the framework based on its requirements using an on-line Dynamic Purchasing System.
- 4.2 Following an assessment carried out by the Council's Children with Disabilities Team, a Child in Need (CIN) Plan will be agreed with the family. This will identify the number of hours and the outcomes required from the care package. For many these outcomes will be quite broad to allow flexibility for families to ensure they receive the support in a way that best suits them.
- 4.3 Providers will not be expected to visit and assess the Service User until advised by the Council.
- 4.4 Where a Service User opts for a Direct Payment they may contact the provider of their choice directly. This will be a private arrangement outside the terms of this contract.

#### 5 **Description of Service**

- 5.1 The (Domiciliary) Home Care service is required to provide the person centred, personal care, necessary to maintain a child's or young person's quality of life, enabling them to remain living with their family and achieve their specified outcomes. The (Domiciliary) Home Care service is not about doing things for people in a way that increases dependency, but about helping people to do things for themselves as far as they are able.
- 5.2 The Service will achieve a primary objective of enabling people in the Milton Keynes community to remain living at home and maintaining a good quality of life which meets the Service User's identified outcomes.
- 5.3 Services will be required to support parent/carers in the care of their child whilst at the same time encourage the child to develop skills that enable them to access their community and to be as independent as possible. Much of the care and support required will therefore be community/activity based.
- 5.4 Where support with personal care is required the physical care needs will be provided in accordance with the Milton Keynes Protocol for Managing Children with Complex Care Needs in the Community. ([https://www.milton-keynes.gov.uk/assets/attach/13821/Managing\\_Healthcare\\_Needs - June 11%5B1%5D.pdf](https://www.milton-keynes.gov.uk/assets/attach/13821/Managing_Healthcare_Needs_-_June_11%5B1%5D.pdf))
- 5.5 The (Domiciliary) Home Care Services will be available three hundred and sixty-five days a year (three hundred and sixty-six in leap years) days a year between the core hours of 6:30am and 10:30pm. Providers are required to offer flexibility of timing outside of these core hours to reflect a person centred approach to the provision of services.
- 5.6 The Service Providers will have systems in place to respond to referrals for support packages to commence at weekends, with staff available to carry out risk assessments etc., to ensure prompt service provision.

- 5.7 The Provider should note that it is the Council's intention to transition from prescribed timed intervention and support to a culture of outcome identification and flexible working to achieve these outcomes. As such the service will initially be commissioned using units of time and will move towards commissioning based on outcomes.
- 5.8 The Provider will give the Council a minimum of 14 days' notice, if, in exceptional circumstances, they are unable to continue to deliver a package of (Domiciliary) Home Care support. However, the notice period would be subject to agreement with the Council in order to provide sufficient time to find alternative service provision.
- 5.9 The Service will be delivered in the family's own home and in many cases likely to be more community based.
- 5.10 The Service must be person centred, flexible and responsive ensuring that children and young people and their parents/carers are able to exercise choice and control over the services that they receive and are at all times treated with kindness, dignity and respect and regarded as equal partners in the delivery of their care.
- 5.11 The services provided should take into account the individual and unique nature of each child and young person and should be planned in conjunction with disabled children and young people and their families and in accordance with their assessed needs.
- 5.12 These services could include, but are not limited to, one or more of the following:
- access to leisure and community activities
  - life skills
  - transition support
  - social and communication
  - attending appointments and meetings
  - low level health care tasks not requiring a nursing qualification
  - personal and intimate care.

Personal support services are required to take place both inside and outside of the family home.

- 5.13 Providers will be required to develop excellent working relationships with the Milton Keynes Council Children with Disabilities Team to ensure the provision of seamless good quality services.
- 5.14 As part of the initial visit/risk assessment, the Provider will agree the Support Plan with the family as to how and when the services are to be provided, in order to meet the child's and parent/carers outcomes.
- 5.15 The Service must ensure that a culture of dependency is not fostered. The ambition for all children and young people is that they achieve as high a level of independence as possible. The building blocks for independence in adulthood are started in childhood.
- 5.16 With effect from the commencement of the Contract, any care agencies that provide the services are required to fully operate all services from a CQC registered office within the Borough of Milton

Keynes or within a 30 miles radius of the main Council Office in Central Milton Keynes or within one hour's drive during peak travel times, and is appropriately situated to deliver services to residents of Milton Keynes of a high quality and efficient manner.

- 5.17 Milton Keynes Council is committed to improving the quality of services received by Service Users and as such will be applying strict quality and compliance controls. Providers that fail to maintain adherence to the quality and compliance requirements will be issued with a default notice and will receive no further referrals until remedial actions have been taken to the satisfaction of the Council. Milton Keynes Council also reserves the right to remove packages of care and transfer them to an alternative provider in the event of poor performance.
- 5.18 Providers are required to have sufficient staff resource and the necessary infrastructure to respond to service referrals in accordance with the terms of the contract.

## **6 Challenging Behaviour**

- 6.1 The Provider shall have the appropriate policies and procedures and training in place to support Care Workers in managing challenging behaviour in children and young people who have learning disabilities/ASD.
- 6.2 The provider will have effective risk management processes delivered by confident and well trained staff to ensure a service does not become restrictive. There will be a strong commitment to joint working with parents, social workers, schools and other relevant agencies to positively manage behaviours.

## **7 Service Delivery**

- 7.1 The Provider will make the necessary policy and procedure documents available for checking at the Annual Quality Assurance Review carried out by the Council's Quality & Compliance Quality Team (or supply to the Council upon request). Please refer to Appendix A.
- 7.2 The office will be staffed fully with both management and administrative staff during usual office hours of 9am to 5pm, Monday to Friday and a duty officer will be available at all other times and in such circumstances an officer competent and authorised to make decisions will always be available, either located at the office or fully accessible.
- 7.3 The office and its staff will be accessible to Service Users via a range of media such as email, telephone and text.
- 7.4 The Service Provider will make available an emergency 'out of hours' telephone service which will be staffed between 6:30am and 10:30pm. This will be a dedicated telephone line for Service Users.

The Provider must be able to offer a swift response in urgent cases, and will be adequately staffed to provide support with little or no notice.

- 7.5 Staff providing emergency support 'out of hours' must have access to Service User information and records to ensure appropriate service provision and information sharing.

## **8 Referral Pathway**

- 8.1 Referrals to the Provider will be made via the Council's Dynamic Purchasing System (DPS) for Domiciliary Home Care Services using the web-based procurement tool - SPProc.Net. Information detailed in the Child in Need Plan which is of direct relevance to the service provision will be made available to the Service Provider. The timescale between the initial contact and the care package starting will not exceed one week, unless previously agreed otherwise.

- 8.2 Details of all care to be provided will have been agreed and confirmed before the start of the service.

- 8.4 The Provider must ensure that its Care Workers are given sufficient, appropriate and adequate information regarding the child or young person and their family's needs and of the way the service is to be delivered, before it commences the service provision.

- 8.5 The Provider must ensure Care Workers do not work in a child's home when the parent is absent, unless, in exceptional circumstances, the parent and the Council have agreed this.

- 8.6 The Provider must ensure Care Workers are aware that smoking, the consumption of alcohol or drugs, or suffering the effects of these are not allowed whilst working with the child. The Provider must ensure this is adhered to all times.

- 8.7 The Provider must ensure that Care Workers are aware that they must not accept cigarettes, alcohol or drugs or any gifts/money from families or offer or sell them to families or friends. The Provider must immediately dismiss any Care Worker found to be in default.

- 8.8 No family must be left without a due visit for any reason. The family must be notified by the Provider if there is to be an adjustment in the anticipated time of arrival. In all cases, the Provider must make alternative acceptable arrangements for the family, with their agreement.

- 8.9 All visits, times and service provision undertaken will be recorded in the Service User's daily record.

- 8.10 The Provider will be flexible and responsive to the needs of the child or young person and their parents/carers and should respect their wishes at all times.
- 8.11 The Provider will take account of the wishes of the Service Users and their carers in respect of gender, sexual, racial, religious and cultural background etc. and of any special requirements or communication skills required.
- 8.12 The family is entitled to refuse entry into their home to Care Workers. If entry is refused or a Care Worker rejected, the Provider is required to investigate the reason and, where possible, resolve the issue. If not resolved, the Children with Disabilities Team must be informed of the situation as soon as possible but no later than one day.
- 8.13 The Provider must notify the Children with Disabilities Team immediately (or the next working day if this is not possible) if:
- The child or young person or parent/carer is admitted to hospital
  - The child or young person or parent/carer has a serious accident or injury
  - There is concern for the health and safety or welfare of the child or young person or parent/carer or any other member of the household
  - Safeguarding concerns in respect of the child or young person
  - Regular and/or persistent refusal by the family to accept support to meet outcomes, mutually agreed in the plan
  - Failure to provide the service to the family, missed, late, void or 'no response' calls
  - There is concern for the health and safety of the Care Worker
  - A member of the family contracts a notifiable infectious disease
  - The child or young person or parent/carer dies
  - The Provider becomes aware of increasing needs or needs which are not being met within the current support plan
  - The child or young person or parent/carer support needs have decreased
- 8.14 The Provider will maintain a record of the care provided and any refusals of agreed support and regular feedback from the Service User on the service. Providers must ensure that Care Workers have adequate English language and literacy skills to undertake this duty and record clear, legible, concise and relevant records.
- 8.15 Late calls are defined as a call 45 minutes or more from the time stated on the Support Plan.
- 8.16 A missed call is defined as a call not made, or one that is more than two hours after the time stated on the Support Plan.
- 8.17 The Provider must contribute to the review of the Child in Need Plan by either attending or providing a brief report, on request.

8.18 Service Users and their carers must be enabled to comment on the service they receive at any time and take full part in any decisions made about them.

## 9 **Workforce**

9.1 The Provider is expected to have a written recruitment and selection procedure which reflects equality and diversity policies. The recruitment and selection procedures must meet the CQC minimum standards; ensuring records are maintained to demonstrate best practice in this area. Providers must comply with Disclosure and Barring Service (DBS) requirements for staff.

9.2 All roles within the Provider's organisation must have written job descriptions and person specifications and an equal opportunities policy for the recruitment, development and care of the workforce (including volunteers) must be in place.

9.3 All staff should meet formally on a one to one basis with their line manager to discuss their work on a regular basis and written records of these supervisions must be kept to demonstrate the range, content and outcome of the discussion at each meeting.

9.4 Providers should be able to demonstrate how staff are supported and advised between supervisions and that additional meetings are facilitated where required.

9.5 With the consent of the Service User, at least one supervision a year should incorporate direct observation of the Care Worker providing care and support to the Service User with whom they regularly work to observe competencies.

9.6 Regular meetings must be held at least quarterly with peers and/or other team members to discuss and share issues and best practice, this must be recorded.

9.7 All staff must have an annual appraisal and this must include identification of training and development needs with their line manager. A copy of the appraisal will be placed on the personnel file for each member of staff.

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

9.9 A record must be kept of any disciplinary incidents and details entered in the personal file of the Care Worker concerned, referrals to the Independent Safeguarding Authority must be made, if appropriate, and recorded on the Care Worker's file.

9.10 The Provider must have a written policy for the management of violence towards staff and ensure that suitable training is provided to reduce the risk of violence towards staff. Adherence to the Health and Safety at Work Act 1974 will ensure staff safety whilst at work.

## 10 Workforce Development

10.1 Providers must show that they are complying with the relevant regulations covering staff competence and training. Providers must ensure the completion of the Common Induction Standards (or other standards as set out by the CQC) for all new Care Workers and other employees within 12 weeks of starting their employment.

10.2 Providers must assess workforce training levels, the training already achieved and skills gap for individuals and the workforce as a group. Providers must have financially resourced plans in place to address workforce development requirements. The Provider must have a training plan, a training matrix and keep records of successfully completed training on an individual's and central file to continuously monitor and develop this.

10.3 Staff must be supported to ensure appropriate skills are maintained in order to ensure that the highest level of care and support is provided by qualified and competent staff. Providers will ensure:

- All staff are competent and trained to undertake the activities for which they are employed and responsible
- Care Workers receive specific advice and training about human rights in relation to (Domiciliary) Home Care services
- All staff have training on the prevention of abuse with three months of employment and this must be updated annually
- All staff members hold a relevant national occupational standard such as Level 2 Diploma in Health and Social Care. Those who do not already hold a relevant standard should be supported to achieve the above qualification as a minimum
- Young members of staff (16-18 year olds) are supported in their work. Young staff should be undertaking an approved training programme – it is advised that the Health and Social Care Apprenticeship framework is used
- Specialist advice, training and information is provided to support workers working with specific individual groups and/or medical conditions to ensure they are professionally qualified to do so
- All staff are aware of their Safeguarding responsibilities both for children and adults.
- All staff are aware of and familiar with the Provider's policies and procedures

## 11. Risk Management

11.1 The Provider must have a policy and procedure for the management of risk; these are evidenced in systems and practices.

11.2 The Provider must record and implement practical control measures to minimise risk.



- 11.3 The risk assessment must be reviewed at least annually or earlier if required to ensure that the Service Users changing needs are adequately addressed.
- 11.4 Risk assessors must be competent and receive specific training e.g. risk assessment, safeguarding, mental capacity assessment, other relevant training.
- 11.5 Where changes in risk are identified, these must be communicated to the family and the Children with Disabilities Team. The solution agreed must be the least invasive and offers the Service User maximum independence and control.
- 11.6 The risk assessment and acceptable risk and/or actions to mitigate risk agreed with the family must be recorded.
- 11.7 The Provider should undertake an evaluation of any general risks to the health and safety of the family and their staff, and ensure that Care Workers are aware of risk and ways to minimise them.
- 11.8 The Provider must notify the Children with Disabilities Team as soon as it is practical to do so, and within 24 hours, if any of the following occur:
- Any circumstances where the Service User has consistently refused provision of the service or medical attention
  - Any emergency situation e.g. fire, flood affecting the service
  - Legacy or bequest to the Provider and/or staff
  - An investigation related to Safeguarding of Children and/or Vulnerable Adults

## **12. Service Users**

- 12.1 The Provider must ensure it obtains a copy of the relevant parts of the Child in Need Plan to proceed with its own assessment. Where possible, the Care Worker or Provider Manager identified should attend any initial meeting with the family and social worker to assist in beginning to develop a good relationship.
- 12.2 Providers will need to be familiar with the roles and expected functions being undertaken by any other agencies contributing to the care of the child or young person, where this has relevance to the service to be provided.
- 12.3 Clear information including details of the Provider's name, address and telephone number (in and out of hours), and the name of the Care Worker(s) must be provided to the Service User by the Provider from the outset and also outline service to be provided and how that can be changed. Where this is not possible, due to urgent support required with little or no notice, information packs must be provided within a maximum of 48 hours of the service commencing.
- 12.4 All information must be made available to the Service User in a way that is accessible to them and their families and in the manner of their choosing. Service Users will be informed of their right to

make a complaint directly to the Council or to CQC or such other regulatory body as may be appointed by the Government and contact information for such organisation(s) will be provided in the Service User's home. If the Service User is unable to understand the Complaints Procedure their carer, next of kin or representative (where applicable) will be advised of it.

12.5 The information pack supplied by the Provider will include but not be limited to:

- A copy of the current Support Plan, and a section for record keeping allowing other agencies access to any relevant information to support the Service User. The section for record keeping will include a communication record where information regarding visits, observations and any financial transactions must be documented
- Medication records and procedure for administering
- Moving and handling risk assessment (if applicable)
- A generic Health and Safety at Work risk assessment
- An explanation of the complaints procedure and the process through which complaints can be escalated to the Council
- Information on how to access support or help outside usual working hours
- Comments/Complaints/Compliments Procedure

12.6 The Service Provider must ensure it is able to adequately and properly provide care based on the assessment and the identified outcomes in accordance with the Plan. There should be no substantial changes on a daily basis. Care Workers must provide the amount of time for each visit as specified with any changes and reasons recorded and reported.

12.7 The Provider must give each Service User an up-to-date plan of their care which recognises the abilities of the Service User and encourages them to share in and supervise their care provision. The plan should be fully developed and discussed with them and reviewed annually or when necessary.

12.8 In an emergency where the Service Provider is unable to deliver the service, the Provider or their representative must contact the parents and the Children & Disabilities Team at least 24 hours before the specified due time.

12.9 The Service Provider must consult and involve the family before any change to the Care Worker and any and all issues relating to care. Where any significant change in a particular family's circumstances necessitates a variation in the domiciliary care services for that family, the Service Provider will contact the Children with Disabilities Team.

12.10 A formal review of the service being provided as part of the Child in Need Plan will be conducted by Milton Keynes Council. The first review may be held between six and twelve weeks following the commencement of the service. Thereafter, a review of the Child in Need Plan will be held at the latest every six months.

- 12.11 The review will involve as a minimum the parents, the child or young person (if appropriate), and the Children with Disabilities Team. The Provider will only be present if the Service User wishes them to be but they must contribute to, and provide information for, the review. Any other individuals who are able to actively contribute and whose input the Service User has requested may also be present.
- 12.12 A review may also be convened by the Children with Disabilities Team, at the request of the Service User or named contact.

### **13. Rostering and monitoring**

- 13.1 All successful Providers will be required to operate efficient roosting and monitoring systems for the provision of care to all Service Users.
- 13.2 Where electronic systems are in use, providers will be responsible for all costs associated with its procurement, implementation and operation.
- 13.4 All visits commissioned by the council must be recorded electronically and in real time. The system must be able to generate alerts and should be monitored throughout the service delivery, in real time, to ensure any issues are highlighted early for immediate attention.
- 13.5 The system adopted needs to be able to generate electronic timesheets and invoices and it must also be able to produce tailored reports to identify that the service requirements are being met.
- 13.6 The system shall comply with the requirements of the Data Protection Act 1998 and other laws governing the use and storage of electronic information. It must also provide an audit trail for time sheet entries, when the entries were created and who created them.
- 13.7 The Council will require real time access to the system data and be responsible for operational procedures with regard to data collection and warehousing for further analysis and reporting. In addition, the Council will use information from the visits to reconcile electronic invoices from care providers, support operational delivery of care and support the general commissioning and contracting of domiciliary care delivery.

### **14. The Requirements of the Regulator**

- 14.1 It is a requirement that (where applicable) providers will be registered with the Care Quality Commission (or any successor). Providers must maintain registration throughout the duration of the contract as required by legislation. The regulations required for registration, their associated standards and the monitoring of the achievement of those regulations and standards are not, therefore, duplicated in this specification. It is expected that the regulations will be met through registration activity. The Provider will be registered to deliver 'Personal Care' services with the national regulator, currently the Care Quality Commission (CQC). It is the Provider's responsibility to maintain up-to-date knowledge of the current regulators codes and to keep to the correct registration.
- 14.2 Providers will inform Milton Keynes Council when a regulatory inspection has taken place and will share the result of the inspection, positive or negative. The Provider will notify the Council's Quality & Compliance Team of any Regulator Warning Notices placed on the Service/Provider regarding the Provider and/or its associated activities. The Provider will also inform the Council's Quality & Compliance Team of any advice/comments received from the regulator. The regulator can place fines or formal warnings on a Provider to suspend or cancel agency's registration. Milton Keynes Council will be informed of any such activity by the Provider and a failure to do so will mean that Milton Keynes Council will seek to recoup costs and damages incurred from the Provider and may terminate the contract without notice.
- 14.3 The Provider must keep Milton Keynes Council informed of Registered Manager vacancies and any fines this attracts from the regulator. The Provider must inform Milton Keynes Council when new Registered Managers are appointed.

## **15. Milton Keynes Council's Quality Assurance Requirements**

- 15.1 The main objectives of the quality monitoring and performance management process are:
- Supporting Providers to develop and provide flexible personalised services that focus on the achievement of Service User outcomes.
  - Developing the use of objective data from monitoring visits, Service User reviews, and any Notifications of Concern to ensure the things Service Users regard as important, for example, continuity of care worker and reliability of arrival times are being delivered.
  - Developing providers through shared training and support events and through the monitoring process to ensure the Essential Standards of Quality and Safety are being maintained.
  - Provide Service Users and the wider public with up to date, simple and robust quality monitoring information, to inform their choice of Framework Provider
  - Making clear the distinctive roles and responsibilities of the Provider and the Council's Quality & Compliance Team and the Children with Disabilities Team in relation to the monitoring, review and development of Services
  - Identifying and addressing poor performance positively and fairly, but robustly, and where appropriate terminating the Contract in whole or part or suspending Providers from taking on new work whilst they focus on addressing performance issues identified by the Quality & Compliance Team.
- 15.2 The approach:

- The Contract will be monitored in the spirit of partnership to ensure best practice is spread across the sector and the continuous improvement of services is supported
- Where information requests are made which overlap with data requested annually by CQC, then the request will be formatted in a consistent way to avoid unnecessary duplication
- Performance and quality measures may be amended or further developed over the course of the contract in light of experience
- The Provider must have a robust quality assurance system in place to audit and monitor its own performance, taking into account a range of feedback including, reviews, compliments or complaints, Service User and other stakeholder feedback. The Provider must be able to demonstrate that it strives to continually improve performance and service quality.

#### 15.3 Quality monitoring and performance management aims:

- To ensure Service Users receive (Domiciliary) Home Care Services which meet the requirements of the Child in Need Plan
- To support Providers in monitoring, reviewing and developing their services
- Where the quality of service does not meet the requirements of the Service Specification, the Quality & Compliance Team will seek to address this positively, fairly and robustly with Providers
- To contribute to Council reporting requirements and market intelligence.

#### 15.4 Roles and responsibilities:

- Children with Disabilities Team: monitoring the achievement of Service User Outcomes and leading on safeguarding investigations
- Quality and Compliance Team: monitoring the quality and performance of the provider against the Service Specification and their contractual obligations.
- Providers: quality monitoring/assurance and service development of their service, ensuring compliance with the Service Specification and contractual obligations
- Care Quality Commission: inspection and regulation ensuring compliance with national standards and regulations.

#### 15.5 Quality & Performance Monitoring.

- During the lifetime of this contract Providers will be expected to meet with the Quality & Compliance Team on a six-monthly basis.
- The meetings will allow for both the Quality & Compliance Team and Providers to highlight good practice and any issues concerning the service.
- The Quality & Compliance Team will also undertake an annual visit to the Provider's premises. Visits may be more frequent if there are concerns with the service.
- Assessments carried out by the Quality & Compliance Team will include (but not be limited to) the following:
  - Consulting with Service Users and/or their representatives
  - Reviewing written procedures and records for both Service Users and staff
  - Feedback obtained from the Children with Disabilities Team on whether or not the service is meeting the Service User's assessed needs and delivering outcomes in the best possible way.

## 16. Safeguarding

16.1 The service provider must comply at all times with:

- The Milton Keynes Safeguarding Children Board web-based Inter Agency Policy and Procedures April 2016 and subsequent revisions, developed in line with 'Working Together to Safeguard Children'. <http://www.mkscb.org/policy-procedures/>
- The Milton Keynes Council Safeguarding Children and Adults Corporate Policy Statement 2011 (revised 2015) and subsequent revisions. [http://www.milton-keynes.gov.uk/assets/attach/39493/Safeguarding\\_corporate\\_policy\\_statement\\_final.pdf](http://www.milton-keynes.gov.uk/assets/attach/39493/Safeguarding_corporate_policy_statement_final.pdf)

16.2 All staff and volunteers must be trained to follow the Safeguarding of Vulnerable Children reporting procedures and training should be updated at least annually.

16.3 The Authorised Officer must be notified immediately of all instances of suspected abuse pertaining to the contract.

16.4 The Provider shall obtain and maintain Disclosure and Barring Service checks in respect of each member of staff or volunteer working with children and young people.

## **APPENDIX A**

### **Policy and Procedures**

- Record keeping and access to files
- Holding Service User keys
- Records of the management of money or property belonging to the Service User
- Dealing with accidents/incidents
- Handling difficult/violent behaviour
- Procedures in the event of an emergency
- Disciplinary procedure (staff)
- Induction and training programmes
- Health and Safety
- Risk Management
- Personal relationships
- Moving and handling
- Action in the event of the death of a Service User
- Equality and Diversity (relating to both Service User and staff)
- Use of staff vehicles for transporting Service Users
- Whistle blowing
- Infection control
- Fire safety
- Food safety
- Nutrition
- Principles of Care/Code of Conduct/Professional Boundaries
- Conflict of interest
- Personal safety and Out of Hours working
- Protocols and procedures for entering and leaving Service User's homes
- Confidentiality of information/Data Protection/Use of social networking sites
- Adult Safeguarding and the Prevention of Abuse
- Children Safeguarding and the Prevention of Abuse
- Business Continuity Management
- Lone worker policy
- End of life care
- Staff Recruitment, supervision and appraisal
- Medication/Administration of medication

This is not an exhaustive list and is a sample of the procedures that will be required to operate the Service.

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