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**DERBY CITY COUNCIL**  
**PROVISION OF DAY OPPORTUNITIES SERVICES**  
**TERMS AND CONDITIONS**

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**DOCUMENT CHANGELOG**

Version	Changes	Changes Made By	Date
1.0	Initial Terms and Conditions for Services.	Simon Brown (Legal)	05 June 2025

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## Parties

- (1) DERBY CITY COUNCIL of the Council House, Corporation Street, Derby DE1 2FS (**Council**)
- (2) The party named as Supplier on the Service Request Form (**Supplier**)

## BACKGROUND

- (A) The Council wishes to engage the Supplier to provide day opportunities services.
- (B) Accordingly, the parties have agreed to enter into a contract for the provision of the Services (as defined below) on the terms and conditions of this agreement.

## Agreed terms

### 1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this agreement.

#### 1.1 Definitions

**Abuse:** a single or repeated act, or lack of appropriate action, occurring within a relationship where there is an expectation of trust which causes or is likely to cause harm or distress to a Customer including but not limited to physical, emotional, verbal, financial, sexual or racial abuse, neglect of, or cruelty towards, Customers or abuse through misapplication of drugs.

**Achieved KPIs:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in [Schedule 3](#)).

**Authorised Representatives:** the persons respectively designated as such by the Council and the Supplier, the first such persons being identified in the Service Request Form.

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

**Business Continuity Plan:** the Suppliers' plan referred to in clause 12.1 (Business Continuity) relating to continuity of the Services, as agreed with the Council and as may be amended from time to time.

**Catastrophic Failure:**

- a) a failure by the Supplier for whatever reason to implement the Business Continuity 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 agreement or otherwise, which in the reasonable opinion of the Council's Authorised Representative has or may cause significant harm to the reputation of the Council;

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

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control Procedure:** the procedure for changing this agreement, as set out in 0.

**Change in Law:** any change in any Law which impacts on the performance of the Services and which comes into force after the Commencement Date.

**Charges:** the charges which shall become due and payable by the Council to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in the Service Request Form.

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

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) any Commercially Sensitive Information.

**Connected Person:** has the meaning given in paragraph 45, Part 3, Schedule 6 of Procurement Act 2023.

**Consistent Failure:** shall have the meaning set out in Part 2 of Schedule 3.

**Contracts Finder:** the UK government's publishing portal for public sector procurement opportunities.

**Contract Year:** any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

**Controller:** as defined in the Data Protection Legislation.

**CQC:** the Care Quality Commission or any other organisation/body which takes over its functions.

**Customer Need Level:** the levels of need of the Customers receiving the Services, as set out in Schedule 5.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued

by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**Data Subject:** as defined in the Data Protection Legislation.

**Debarment List:** the list of suppliers referred to in section 62 of the Procurement Act 2023.

**Dispute Resolution Procedure:** the procedure set out in clause 22.

**Domestic law:** the law of the United Kingdom or part of the United Kingdom.

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

**FOIA:** the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any circumstance not within a party's reasonable control including:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;
- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade disputes, strikes, industrial action or lockouts (other than by the staff of the party seeking to rely on the Force Majeure of those of its subcontractors)

**Health and Safety Policy:** the health and safety policy of the Council being one of the Mandatory Policies.

**General Change in Law:** a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

**Information:** has, for the purposes of clause 26, the meaning given under section 84 of FOIA.

**Initial Term:** the duration of the agreement starting at 00.01 am on the Commencement Date and ending at 11.59 pm on the day before the second anniversary of the Commencement Date.

**Insolvency Event:** where:

- a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;



- b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- c) the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership);
- e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);
- f) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- g) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- h) a creditor or encumbrancer of the Supplier 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 other party's assets and such attachment or process is not discharged within 14 days;
- i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and [neighbouring and] related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**KPIs:** the key performance indicators for all and each part of the Services as specified in **Schedule 3**.

**Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

**Mandatory Policies:** the Council's policies and codes listed in **Schedule 1**, as amended by notification to the Supplier from time to time.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.

**Personal Data:** as defined in the Data Protection Legislation.

**Premises:** the location where the Services are to be supplied, as set out in the Service Request Form or as agreed between the parties from time to time.

**Processor:** as defined in the Data Protection Legislation.

**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 as an inducement or reward for any improper performance of a relevant function of activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Council;
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

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

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Relevant Requirements:** all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

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

**Remediation Notice:** a written notice given by the Council to the Supplier pursuant to clause 31 to initiate the Remediation Plan Process.

**Remediation Plan:** the plan agreed in accordance with clause 31 for the resolution of a Supplier's default in complying with its obligations under this agreement.

**Remediation Plan Process:** the process for resolving certain of the Supplier's defaults as set out in clause 31.

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

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

**Representatives:** means, in relation to party, its employees, officers, contractors, subcontractors, representatives and advisors.

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

**Safeguarding Adults Policy:** the Council's policy for safeguarding vulnerable adults as set out in Schedule 9.

**Safeguarding Children Policy:** the Council's policy for safeguarding children adults as set out in Schedule 9.

**Services:** the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in [Schedule 1](#).

**Service Failure:** a shortfall or failure by the Supplier to deliver any part of the Services in accordance with any Target KPI.

**Service Request Form:** means the form setting out the details of the Services which together with these terms and conditions forms this agreement an example of which is enclosed at Schedule 2.

**Supplier:** the party named as Supplier on the Service Request Form.

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

**Sub-Contract:** any contract or agreement (or proposed contract or agreement) 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.

**Sub-Contractor:** a person with whom the Supplier enters into a Sub-Contract[, and any third party with whom that third party enters into a subcontract or its servants or agents].

**Target KPI:** the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in [Schedule 3](#).

**Term:** the period of the Initial Term as may be varied by:

- a) any extension pursuant to clause [3.2](#); or
- b) the earlier termination of this agreement in accordance with its terms.

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

**Termination Notice:** any notice to terminate this agreement which is given by either party in accordance with clause [33](#) or clause [34](#).

**Termination Payment Default:** is defined at clause 13.17

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

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

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

**Working Hours:** the period from 9.00am to 5.00pm on any Working Day.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 A reference to **writing** or **written** excludes fax but not e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14 If there is any conflict or ambiguity between any of the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
  - (a) the clauses of the agreement;
  - (b) **Schedule 1** to this agreement;
  - (c) the remaining schedules to this agreement.

Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the

Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Council in writing.

## **Commencement and duration**

### **2. Contract Formation**

- 2.1 This agreement shall become binding and these terms and conditions shall be deemed to have been accepted by the Supplier upon the earlier of:
- (a) the signing and returning of the Service Request Form by the Supplier; or
  - (b) on commencement of the delivery of the Services.

### **3. Commencement and duration**

- 3.1 This agreement commences on the Commencement Date and continues for the Term.
- 3.2 The Council may, by giving the Supplier not less than two months' written notice prior to expiry of the Term, request the extension of this agreement in respect of the whole (or part) of the Services and on the same terms mutatis mutandis, for a period or periods of up to twelve months from the day following expiry of the Term, provided that the maximum length of the Term shall not exceed three years.

### **4. Due diligence and Supplier's warranty**

- 4.1 The Supplier acknowledges and confirms that:
- (a) the Council has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;
  - (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 4.1(a);
  - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement; and
  - (d) it has entered into this agreement in reliance on its own due diligence.
- 4.2 No representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Supplier:
- (a) warrants and represents that all information and statements made by the Supplier prior to entering into this agreement are true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement;

- (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs;
- (c) shall promptly notify the Council in writing if, during the Term:
  - (i) the Supplier, the Supplier's Connected Persons or any Sub-Contractor is placed on the Debarment List;
  - (ii) a mandatory exclusion ground or discretionary exclusion ground applies to the Supplier, the Supplier's Connected Persons or any Sub-Contractor; and
- (d) shall promptly notify the Council in writing within 21 days of any changes to the Supplier's Connected Persons together with information regarding the identity of the new Connected Persons.

4.4 The Supplier shall not be entitled to recover any additional costs or charges from the Council arising as a result of, nor be relieved from any of its obligations under this agreement on the ground of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 4.3(b), save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier may recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

## **The services**

### **5. Supply of services**

- 5.1 The Supplier shall provide the Services to the Council with effect from the Commencement Date for the duration of the Term in accordance with the provisions of this agreement, including without limitation Schedule 1 and Schedule 3.
- 5.2 In providing the Services, the Supplier shall at all times:
  - (a) without prejudice to clause 10, provide the Services with reasonable care and skill and in accordance with Best Industry Practice;
  - (b) comply with the Quality and Performance Standards set out at Schedule 4;
  - (c) ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
  - (d) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Council);
  - (e) immediately notify the Council if it reasonably believes that the Customer Need Level set for the Customer is not correct;
  - (f) allocate sufficient resources to provide the Services in accordance with the terms of this agreement;

- (g) ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Services shall, if required by the Council, attend such meetings at the premises of the Council or elsewhere as may be reasonably required by the Council; and
- (h) provide such reasonable co-operation and information in relation to the Services to such of the Council's other suppliers as the Council may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Council.

## **6. Service Pause**

- 6.1 The Council may at any time request that the provision of the Services is temporarily paused.
- 6.2 Where an individual temporary pause of the Services has continued for more than two weeks, either Party may terminate this agreement in accordance with the provisions of clause 33.5.
- 6.3 Where the total amount time in which this agreement has been paused exceeds eight weeks aggregate in any rolling twelve-month period, either Party may terminate this agreement in accordance with the provisions of clause 33.5.
- 6.4 Where the Services have been paused, the Charges payable in respect of those Services for the period that the Individual Agreement was paused shall be reduced by fifty percent (50%).

## **7. Registration**

- 7.1 The Supplier shall maintain registration with the CQC, where applicable.
- 7.2 The Supplier shall immediately inform the Council in writing of any change to its registration details or status with the CQC, or any other Regulatory Body or any failure by the Supplier to attain or maintain required standards required by this agreement.
- 7.3 The Supplier shall comply with and ensure continued compliance with all the provisions of relevant Regulatory Bodies (including the CQC) which may be applicable to the Services from time to time during the course that the Services are being provided to the Council.
- 7.4 If the Supplier is convicted of an offence under the Care Standards Act 2000, the Health and Social Care Act 2008 or any regulations made thereunder, this will amount to a material default and the Council may terminate this Individual Agreement and the provisions of clause 46 will apply.

## **8. Arrangements with Customers**

- 8.1 If the Supplier provides, as a personal arrangement, an additional service for payment at the request of the Customer, the Supplier shall notify the Council in writing in advance of any such additional service starting.

8.2 The Supplier must not promote any additional services for gain or encourage Customers to purchase additional services on a private basis and any breach of this clause 8.2 shall be grounds for immediate termination of this agreement.

8.3 The cost of any additional service referred to at clause 8.1 shall not be payable by the Council and shall be a personal arrangement between the Customer and the Supplier outside the scope of this agreement.

## **9. Premises**

9.1 The Supplier shall keep and maintain the Premises in good order and condition.

9.2 In the event that the Supplier intends to utilise the Premises for any other purpose other than the supply of the Services, the Supplier shall give reasonable notice to the Council of such alternative use in order that the Council may assess the impact on the Services of such alternate use of the Premises

9.3 The Supplier shall not utilise the Premises for any alternate use other than the Services if in the opinion of the Council such alternate use affects the provision of the Services

9.4 The Service Provider shall ensure the security of the Property while in its possession, either on the Premises or elsewhere during the supply of the Services.

## **10. KPIs**

10.1 Where any Service is stated in **Schedule 3** to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.

10.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within **Schedule 3**.

10.3 The Supplier shall provide monthly reports summarising the Achieved KPIs as provided for in clause **19**.

## **11. Compliance and change in laws**

11.1 In performing its obligations under this agreement, the Supplier shall at all times comply with:

- (a) all applicable Law;
- (b) the Mandatory Policies.

The Supplier shall maintain such records as are necessary pursuant to the Laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Council (or its authorised representative).



- 11.2 Without limiting the generality of the obligation under clause 11.1, the Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety
- 11.3 Without limiting the general obligation set out in clause 11.1, the Supplier shall (and shall procure that the Supplier Personnel shall):
- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) the Council's equality and diversity policy as provided to the Supplier from time to time;
    - (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law;
  - (b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation.
- 11.4 The Supplier shall monitor and shall keep the Council informed in writing of any changes in the Law which may impact the Services and shall provide the Council with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Supplier shall only implement such changes in accordance with the Change Control Procedure.
- 11.5 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.

## **12. Business Continuity**

- 12.1 The Supplier must, unless otherwise agreed by the Council in writing, maintain a Business Continuity Plan and must notify the Council as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation.
- 12.2 The Business Continuity Plan shall deal with all elements required to perform the Services and must include the following:
- (a) clearly identified points as to when the Business Continuity Plan must be invoked;
  - (b) an obligation upon the Supplier to:
    - (i) liaise with the Council with respect to issues concerning Service continuity, disaster recovery, insolvency; and
    - (ii) support Council initiatives to monitor and manage risks to service continuity;

- (c) contract and Personal Data backed-up on separate secure server and have disaster recovery availability;
- (d) all data is protected by appropriate firewalls and antivirus products that are kept updated as per the software supplier's recommendations;
- (e) mechanisms to identify any financial problems, that may affect Service delivery, at the earliest possible stage. The Supplier shall have a process in place that alerts the Council to this scenario. The Supplier will have scenario planned this so that it has pre-planned mitigation strategies for financial issues such as reduced cash flow, decrease in profits or turnover, debt management, negative net asset position and reduction in liquidity ratio.
- (f) plans to ensure staff cover is provided in the event of sickness, annual leave, strikes, absence, staff leaving and any other events that could lead to a staff shortage such as epidemic/pandemic/viral illnesses, restrictions on travel etc.
- (g) plans to relocate staff where the accommodation they work in is not fit for purpose or staff are unable to travel to the accommodation they work;
- (h) plans for supply issues in its supply chain and ensure it has continual and alternative means of accessing the equipment and services it requires such as key services, PPE and medication to meet the Service requirements;
- (i) a multi-channel communication strategy to ensure all stakeholders are made aware of and kept up to date on any issues that may affect them, with an emphasis an early warning alert to the Council in the situation where the provision of the Services could be compromised or at any time where the Business Continuity Plan is enacted in relation to the supply of this Service;
- (j) named Supplier Personnel with designated roles and responsibilities for carrying out assigned task and actions in the Business Continuity Plan;
- (k) implementation of a training plan to ensure all Supplier Personnel are aware of the Business Continuity Plan and understand their roles and responsibilities in different scenarios;
- (l) scenario planning for known issues and identified risks;
- (m) clearly identified points as to when Service returns to 'normal', whilst understanding what may need to be completed to 'catch-up' in terms of Service delivery;
- (n) a review process after any implementation of the Business Continuity Plan to understand what was successful and what needs further development; and
- (o) an understanding that at all times the priority shall be the care, support and safety of the Customers identified as receiving a Service from the Supplier.

12.3 The Supplier shall ensure that it is able to implement the Business Continuity Plan at any time in accordance with its terms.

12.4 The Supplier shall upon the Council's request provide details (including copies of any relevant documents) of the Business Continuity Plan to the Council

- 12.5 The Supplier shall review and test the Business Continuity Plan on a regular basis (and, in any event no less than once every 12 months period from the Commencement Date). The Council shall be entitled to participate in such tests as it may reasonably require.
- 12.6 Following each test, the Supplier shall send to the Council a written report summarising the results of the test and shall promptly implement at the Supplier's expense any actions or remedial measures which the Council reasonably considers to be necessary as a result of those tests.
- 12.7 The Supplier accepts that the Council must meet its obligations under the Civil Contingencies Act 2004. Under this agreement the Supplier agrees to assist the Council in meeting its obligation under this legislation.

### **13. Charges, invoicing and payment**

- 13.1 The Council shall pay the Charges to the Supplier in accordance with this clause 13.
- 13.2 Charges shall be as set out in the Service Request Form and where there is to be any change to this amount (whether as a result of a variation in accordance with clause 21 or otherwise in accordance with the terms of this agreement) any revised Charges shall be based on the Customer Need Levels rates set out at Schedule 5, as may be adjusted by the Council from time to time in accordance with clause 13.4.
- 13.3 Subject to clause 13.5, the Charges:
- (a) shall remain fixed during the Term; and
  - (b) are the entire price payable by the Council to the Supplier in respect of the Services and include, without limitation, any royalties, consents, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.
- 13.4 Except as otherwise provided in this agreement, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this agreement.
- 13.5 The following provisions shall apply in respect of any review of the amount of the Charges:
- 13.5.1 The Council may, at its sole and absolute discretion, chose to increase the Charges annually, and it shall notify the Supplier of any such increase.
  - 13.5.2 Where the Council chooses to exercise its discretion to increase the Charges pursuant to clause 13.5.1, the increase in the Charges shall take effect from the first Monday in April of the subsequent financial year from the date of the decision.
  - 13.5.3 The Supplier shall have no power to request any increase in the Charges or to make any representations in respect of any increase in the Charges and nothing in this clause 13.5 shall create any obligation on the part of the Council in increase the Charges at any time or to take any matters into account when exercising its discretion under clause 13.5.1.

- 13.6 The Supplier shall invoice the Council for payment of the Charges every four weeks in arrears. All invoices shall be directed to the Council's Homecare Charging Team. Invoices must be submitted electronically using egress (secure email) to the following email address: [homecarecharging@derby.gov.uk](mailto:homecarecharging@derby.gov.uk) and shall contain such information as the Council may inform the Supplier from time to time, including (but not limited to):
- (a) the Customer's name and address;
  - (b) Payment Period details;
  - (c) weekly Service Request Form value;
  - (d) details of individual or 1:1 support received; and
  - (e) proportion of shared support delivered.
- 13.7 The Council shall accept for processing any electronic invoice submitted by the Supplier that complies with the standard on electronic invoicing provided that it is valid and undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes approved and issued by the British Standards Institution from time to time.
- 13.8 Where the Supplier submits an invoice to the Council in accordance with clause 13.6, the Council will consider and verify that invoice in a timely fashion.
- 13.9 The Council shall pay the Supplier any Charges due under any invoice submitted to it by the Supplier within 30 days of verifying that the invoice is valid and undisputed.
- 13.10 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 13.8 and clause 13.9 of this agreement; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include in any subcontract which it awards provisions having the same effect as clause 13.8 to clause 13.10 of this agreement.
- 13.11 Where any party disputes any sum to be paid by it then the party who raised the invoice may raise an invoice for the sum not in dispute and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 22. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the parties.
- 13.12 Subject to clause 13.11, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with clause 14. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 33.6 for failure to pay undisputed charges.
- 13.13 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council 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 this agreement.

- 13.14 In the event of overpayment by the Council a refund shall be made by the Supplier within 28 days of notification of the overpayment.
- 13.15 The Supplier shall maintain complete and accurate records of, and supporting documentation (including all timesheets) for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for 6 years from the end of the Contract Year to which the records relate.
- 13.16 The Council may at any time, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 13.17 In the event that at any time undisputed Charges of £20,000.00 have been overdue for payment for a period of 60 days or more, the Council will have committed a Termination Payment Default.

#### **14. Interest**

- 14.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:
- (a) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
  - (b) Period. From when the overdue sum became due, until it is paid.

#### **Staff**

#### **15. Supplier Personnel**

- 15.1 At all times, the Supplier shall ensure that:
- (a) each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - (b) there is an adequate number of Supplier Personnel to provide the Services properly;
  - (c) arrangements are in place to ensure continuity of support worker(s) as far as is reasonably practical, these arrangements must include planned mechanisms to provide cover for employees' holidays, sickness, staff turnover or any other absences.;
  - (d) all Supplier Personnel employed in the provision of the Services are at all times properly trained, instructed and, where appropriate, supervised;
  - (e) it has and shall maintain adequate disciplinary procedures for the Supplier Personnel employed by it in the provision of the Service;

- (f) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (g) all of the Supplier Personnel comply with the Mandatory Policies.

15.2 The Council may, by written notice to the Supplier, refuse to allow:

- (a) any member of the Supplier Personnel; or
- (b) any person employed or engaged by any member of the Supplier Personnel,

to provide the Services who, in the reasonable opinion of the Council, are not suitable for the provision of the Services. The Supplier shall replace any such Supplier Personnel and procure the replacement of any such person employed or engaged by any member of the Supplier Personnel. The Supplier shall ensure such persons are replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

15.3 The Supplier shall remove any member of Supplier Personnel from any further contact with Customers immediately on request from the Council.

15.4 At the Council's written request, the Supplier shall provide a list of the names of all persons who may be involved in providing the Services, specifying the capacities in which they are concerned with this agreement and giving such other particulars as the Council may reasonably request.

15.5 The Supplier shall ensure that all Supplier Personnel have adequate supervision and support to provide the Services. The Supplier shall have and maintain a clear and appropriate policy on the supervision of all Supplier Personnel and be able to provide evidence that effective supervision takes place. The Supplier's supervisory arrangements and ratio of supervisory staff to subordinate Supplier Personnel must be fully effective and operational at all times.

15.6 The Supplier shall ensure that the Supplier Personnel carry out their duties and behave in an orderly, courteous and honest manner.

15.7 No Supplier Personnel shall solicit or accept any gratuity or legacy in connection with his/her employment relating to this Service from any Customer.

15.8 All Supplier Personnel shall be properly and presentably dressed and wearing work wear appropriate to the task to be performed, including protective clothing where appropriate.

15.9 All Supplier Personnel shall carry an identity card at all times when providing the Services and will ensure that such identity card is visible to Customers and Council staff at all times.

15.10 The Supplier shall replace any of the Supplier Personnel whom the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

15.11 The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Supplier Personnel.

15.12 Supplier Personnel records will include:

- (a) Full name;
- (b) Address;
- (c) Date of birth;
- (d) Gender;
- (e) Start date with the Supplier;
- (f) Finish date with the Supplier;
- (g) Brief details of qualifications, experience and training;
- (h) Enhanced Disclosure and Barring Service declaration before appointment;
- (i) Declaration of any criminal convictions, excluding minor motoring offences;
- (j) References (obtaining written references for all Supplier Personnel from at least two sources (one being the last or most recent employer);
- (k) Ethnicity;
- (l) completed health declaration/Medical questionnaire;
- (m) Verification of identity;
- (n) proof of permission to work in the UK (if applicable);
- (o) Copy of driving licence (if appropriate);
- (p) Copy of car insurance (if appropriate);
- (q) Copies of education/training certificates received prior to appointment;
- (r) Supervision;
- (s) Appraisal;
- (t) Sickness;
- (u) Long term absence;
- (v) Training records.

15.13 The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

## **16. Taxation, National Insurance and employment liability**

16.1 The Parties acknowledge and agree that this agreement constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims,

proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have assumed or been imposed with the liability or responsibility for the Supplier Personnel (or any of them) as an employer of the Supplier Personnel and/or any liability or responsibility to HM Revenue or Customs as an employer of the Supplier Personnel whether during the Term or arising from termination or expiry of this agreement.

## **17. Safeguarding children and vulnerable adults**

- 17.1 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 agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 17.2 The Supplier shall:
- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
  - (b) monitor the level and validity of the checks under this clause 17.2 for each member of staff;
  - (c) 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.
- 17.3 The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the 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.
- 17.4 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 17 have been met.
- 17.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children or vulnerable adults.
- 17.6 The Supplier shall at all times comply with the Safeguarding Adults Policy and the Safeguarding Children Policy. Failure to comply with either of these policies or any other breach of this clause 17 shall be a material breach of this agreement.

## **18. TUPE**

The parties agree that the provisions of Schedule 8 shall apply to any Relevant Transfer of staff under this agreement.

## **Contract management**



## **19. Review and monitoring**

- 19.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this agreement. The first Authorised Representatives are listed in [Schedule 6](#). The Authorised Representatives will co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services (including by signing Change Control Notes).
- 19.2 Each party shall use reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Term, but may, following reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.
- 19.3 The Authorised Representatives shall meet at six-monthly intervals to monitor and review the performance of this agreement, including the achievement of the Target KPIs. Such meetings shall be minuted by the Council's Authorised Representative and copies of those minutes shall be circulated to and approved by both parties.
- 19.4 Without prejudice to any other reports required under this agreement, in advance of each meeting to be held in accordance with [clause 19.3](#):
- (a) the Supplier shall provide the Council with a monthly written report detailing its performance against each of the KPIs and identifying any issues regarding the performance of the agreement for discussion at the meeting; and
  - (b) the Council shall notify the Supplier of any concerns it has regarding the performance of the agreement for discussion at the meeting.
- 19.5 At the meeting, the parties shall agree a plan to address any problems identified in the performance of the agreement. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in [clause 31](#) shall apply. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
- 19.6 The Council may increase the extent to which it monitors the performance of the Services if the Supplier fails to meet the Target KPIs or fails to fulfil its other obligations under this agreement. The Council shall give the Supplier prior notification of its intention to increase the level of its monitoring. The Supplier shall bear its own costs in complying with such enhanced monitoring as is conducted by the Council pursuant to this [clause 19.6](#).
- 19.7 The Supplier shall submit any other management reports to the Council in the form and at the interval required by the Council, as notified to the Supplier in writing from time to time.

## **20. Change control and continuous improvement**

- 20.1 Any requirement for a Change, other than a Change dealt with at [clause 21](#), shall be subject to the Change Control Procedure.

- 20.2 The Supplier shall throughout the Term seek ways to derive efficiencies with respect to delivery of the Services and use all reasonable endeavours to ensure that the Council receives the benefit of any such efficiencies.
- 20.3 Where the Supplier identifies a potential efficiency:
- (a) it shall promptly inform the Council and shall advise the Council whether, in the Supplier's professional opinion, the implementation of any change necessary to enable the Council to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price); and
  - (b) if the Council concludes that the implementation of the necessary change is desirable, the Supplier shall implement the change.
- 20.4 Where the achievement of the benefit by the Council would necessitate the making of a Change Control Note, the Change Control Procedure shall apply but the Supplier shall not be entitled to object to the proposed change. Any benefits arising from any such change as is referred to in this clause 20 (including any consequent reductions in the Charges) shall accrue solely to the Council.

## **21. Variations to Customer Services**

- 21.1 Subject to the provisions of this clause 21, the Council may request a variation to the Services ordered provided that such variation does not amount to a material change to this agreement or is not in contravention of any Law. Such a change is hereinafter called a "**Variation**".
- 21.2 For the purposes of this clause 21, the Parties agree that where a proposed Variation would mean that a Customer moves from one Customer Need Level to another, this would not amount to a material change and would be covered by the process set out in this clause 21.
- 21.3 The Council may request a Variation by completing and sending the Variation form attached at Schedule 7 (the **Variation Form**) to the Supplier, giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of this agreement.
- 21.4 If the Supplier is unable to provide the Variation to the Services the Council may:
- (a) agree that the Parties continue to perform their obligations under this agreement without the Variation; or
  - (b) terminate this agreement with immediate effect
- 21.5 If the Parties agree the Variation, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Agreement.

## **22. Dispute resolution**

- 22.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Council's Lead Commissioner and the Supplier's Director who shall attempt in good faith to resolve it;
  - (c) if the Council's Lead Commissioner and the Supplier's Director are for any reason unable to resolve the Dispute within 30 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 10 Working Days of referral of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR;
  - (d) Unless otherwise agreed between the parties, the mediation will start not later than 30 Working Days after the date of the ADR notice.
- 22.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.
- 22.3 If for any reason the Dispute is not resolved within 30 Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 50.

## **23. Sub-Contracting**

- 23.1 Notwithstanding clause 44, the Supplier can only enter into subcontracting arrangements with the written consent of the Council, in accordance with this clause 23. The Council shall have complete discretion as to whether or not to approve any subcontracting arrangements.
- 23.2 To help the Council reach a decision on a proposed Sub-Contract, the Council may request (and the Supplier shall provide) a copy of the proposed Sub-Contract, together with any other information that the Council may reasonably require about the proposed Sub-Contractor and the impact of the proposed Sub-Contract on this agreement., including (but not limited to) the following:
- (a) name of the Sub-Contractor organisation
  - (b) the percentage of Service being delivered by the proposed Sub-Contractor; and
  - (c) its cost

- 23.3 For the avoidance of doubt, the Council shall not consent to any proposed Sub-Contract if the Sub-Contractor (or any Connected Person of the Sub-Contractor) is on the Debarment List.
- 23.4 If the Council agrees that the Supplier may subcontract its obligations, the Supplier shall implement an appropriate system of due diligence, audit and training designed to ensure the Sub-Contractor's compliance with the Mandatory Policies.
- 23.5 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and procure that the Sub-Contractor complies with such terms; and
  - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
- 23.6 The Council may require the Supplier to terminate a Sub-Contract where the acts or omission of the relevant Sub-Contractor have given rise to the Council's right of termination of this agreement pursuant to clause 33.1 or if there is a change of control of a Sub-Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010) or the Sub-Contractor suffers an Insolvency Event.

## **Liability**

### **24. Indemnities**

- 24.1 Subject to clause 24.2, the Supplier shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:
- (a) the Supplier's breach or negligent performance or non-performance of this agreement;
  - (b) any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;
  - (c) the enforcement of this agreement.
- 24.2 The indemnity under clause 24.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this agreement by the Council.

## **25. Insurance**

25.1 The Supplier shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of at least £5 million in relation to any one claim or series of claims;
- (b) employer's liability insurance in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £2 million in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

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

25.2 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 Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

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

25.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

25.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following expiry or earlier termination of the agreement.

## **Information**

### **26. Freedom of information**

26.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Council all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that

the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and

- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Council.

26.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.

26.3 Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that the Council considers is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

26.4 The Council shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion. The Supplier shall assist and co-operate with the Council to enable the Council to publish this agreement.

## **27. Data processing**

27.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 27 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

27.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. Schedule 10 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

27.3 Without prejudice to the generality of clause 27.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

27.4 Without prejudice to the generality of clause 27.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Council which are set out in Schedule 10, unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier

shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Council;

- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the UK 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;
  - (ii) the Data Subject has enforceable rights and effective 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; and
  - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) notify the Council immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (f) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Council without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;

- (h) at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 27 and allow for audits by the Council or the Council's designated auditor pursuant to clause 29 and immediately inform the Council if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

27.5 Where the Supplier wishes to appoint a subprocessor to process any Personal Data relating to this agreement, such subprocessor shall constitute a Sub-Contractor and the Supplier shall:

- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Council;
- (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 27.

27.6 If so required by the Council, the parties shall revise this clause 27 by entering into an information sharing agreement in the form required by the Council, which .

## 28. Confidentiality

28.1 The provisions of this clause do not apply to any Confidential information:

- (a) is or becomes available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) the parties agree in writing is not confidential or may be disclosed;
- (e) which is disclosed by the Council on a confidential basis to any central government or regulatory body.

28.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or
- (b) disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this clause 28.

28.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:



- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 28.2.

28.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law (including under the FOIA or EIRs), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

28.5 The provisions of this clause 28 shall survive for a period of 6 years from the Termination Date.

## **29. Audit**

29.1 During the Term and for a period of 6 years after the Termination Date, the Supplier shall allow the Council (acting by itself or through its Representatives) to access any of the Supplier's premises, systems, Supplier Personnel and relevant records as may reasonably be required to:

- (a) fulfil any legally enforceable request by any regulatory body;
- (b) verify the accuracy of Charges or identify suspected fraud;
- (c) review the integrity, confidentiality and security of any data relating to the Council or any service users;
- (d) review the Supplier's compliance with the Data Protection Legislation and the FOIA, in accordance with clause 27 (Data Protection) and clause 26 (Freedom of Information), and any other legislation applicable to the Services; or
- (e) verify that the Services are being provided and all obligations of the Supplier are being performed in accordance with this agreement.

29.2 Except where an audit is imposed on the Council by a regulatory body or where the Council has reasonable grounds for believing that the Supplier has not complied with its obligations under this agreement, the Council may not conduct an audit under this clause 29 more than twice in any calendar year.

29.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

29.4 Subject to the Council's obligations of confidentiality, the Supplier shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- (c) access to the Supplier Personnel.

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

29.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure by the Supplier to perform its obligations under this agreement in any material manner in which case the Supplier shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

29.7 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this agreement, the provisions of clause 31 shall apply;
- (b) the Council has overpaid any Charges, the Supplier shall pay to the Council the amount overpaid within [20] days from the date of receipt of an invoice or notice to do so. The Council may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Supplier the amount of the underpayment within 30 days from the date of receipt of an invoice for such amount.

### **30. Intellectual property**

30.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Supplier or Supplier Personnel:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

30.2 The Supplier shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

### **31. Remediation Plan Process**

31.1 Subject to clause 31.3, if the Supplier is in default in complying with any of its obligations under this agreement and the default is capable of remedy, the Council may not terminate

this agreement without first operating the Remediation Plan Process. If the Supplier commits such a default, the Council shall give a Remediation Notice to the Supplier which shall specify the default in outline and the actions the Supplier needs to take to remedy the default.

- 31.2 The Council may also operate the Remediation Plan Process where the Supplier achieves a Quality Rating other than Gold as per Schedule 4, or where otherwise appropriate in accordance with the Council's Quality Assurance protocol (found here: <https://www.derby.gov.uk/health-and-social-care/your-life-your-choice/adults-commissioning/quality-assurance/>)
- 31.3 The Council shall be under no obligation to initiate the Remediation Plan Process if it issues a notice to terminate in the circumstances set out in Clause 33.1(a), 33.1(e), 33.1(f), 33.1(g), 33.1(h), 33.1(i), 33.1(j), 33.1(k) and Clause 33.4 (or a notice of an intention to terminate under Clause 33.3).
- 31.4 Within 15 Working Days of receipt of a Remediation Notice, the Supplier shall:
- (a) submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
  - (b) inform the Council that it does not intend to submit a Remediation Plan, in which event the Council shall be entitled to serve a Termination Notice.
- 31.5 The Council shall either approve the draft Remediation Plan within 15 Working Days of its receipt pursuant to Clause 31.4(a), or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to the Council within 10 Working Days of its receipt of the Council's comments. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.
- 31.6 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.
- 31.7 If, despite the measures taken under clause 31.5, a Remediation Plan cannot be agreed within 20 Working Days then the Council may elect to end the Remediation Plan Process and serve a Termination Notice.
- 31.8 If a Remediation Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required completion date, the Council may:
- (a) terminate this agreement by serving a Termination Notice;
  - (b) give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
  - (c) refer the matter for resolution under the Dispute Resolution Procedure.
- 31.9 If, despite the measures taken under clause 31.8, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Council may elect to end the Remediation

Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.

- 31.10 If there is a repetition of substantially the same default by the Supplier as had previously been addressed in a Remediation Plan within a period of 12 months following the conclusion of such previous Remediation Plan the Council may serve a Termination Notice.

## **Termination**

### **32. Persistent Breach**

- 32.1 If a particular breach has occurred more than six times in any six month period then the Council may serve a notice on the Supplier:
- (a) specifying that it is a formal warning notice;
  - (b) giving reasonable details of the breach;
  - (c) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this agreement; and
  - (d) requiring the Supplier to provide to the Council, within ten Working Days of service of the formal warning notice, a rectification plan specifying how the Supplier will address the breach and the causes of the breach and prevent its reoccurrence.
- 32.2 If, following service of a warning notice the breach specified has continued beyond thirty days or recurred in three or more months within the six month period after the date of service, then the Council may serve a Termination Notice.
- 32.3 A warning notice may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.

### **33. Termination**

- 33.1 Without affecting any other right or remedy available to it, and subject to clause 31, the Council may terminate this agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Supplier if one or more of the following circumstances occurs or exists:
- (a) if the Supplier is in material breach of this agreement, which is in the reasonable opinion of the Council irremediable;
  - (b) the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;
  - (c) the Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
  - (d) the circumstances referred to in clause 8.2 occur;
  - (e) the circumstances referred to in clause 31.10 occur;
  - (f) the circumstances referred to in clause 32.2 occur;
  - (g) a Consistent Failure has occurred;
  - (h) a Catastrophic Failure has occurred;

- (i) if there is an Insolvency Event;
- (j) if the Council elects to terminate pursuant to clause 36.6;
- (k) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;

33.2 For the avoidance of doubt, for the purposes of this agreement, the following issues are considered to be material breaches (but nothing in this clause shall preclude any other breach form being considered a material breach):

- (a) minor repeated and/or serious non-compliance with the provisions of the Health and Safety at Work etc. Act 1974, and any subsequent health and safety regulations by the Supplier;
- (b) minor repeated and/or serious non-compliance with the Council and partnership's Multi-Agency Safeguarding policies and procedures and any subsequent policies and procedures produced by the Council in conjunction with partnership commissioning bodies.
- (c) Minor repeated and/or serious non-compliance with the Council's quality assurance or contract management requirements
- (d) performance of the Service without insurance cover as required under this Council;
- (e) non-compliance with the requirements of race relations, equal opportunities legislation and disability discrimination legislation by the Supplier
- (f) any episode of Abuse;
- (g) the Supplier is convicted of an offence under the provisions of the Care Standards Act 2000 and regulations thereto and any subsequent amendments;
- (h) multiple uses of unqualified or untrained Supplier Personnel;
- (i) Non-compliance with any relevant regulatory bodies including the CQC or any relevant legislation relating to the provision of the Services;
- (j) the Supplier is unable to provide the care required under the Care Standards Act 2000 and associated regulations and standards.
- (k) Any breach constituting a termination breach in accordance with the Quality and Performance Standards at Schedule 3

33.3 The Council may give the Supplier written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies. A notice of an intention to terminate under this clause must:

- (a) set out which termination ground the Council considers applies pursuant to section 78(2) of the Procurement Act 2023 together with the Council's reasons for deciding to terminate on this basis;
- (b) invite the Supplier to make representations to the Council about the existence of the termination ground and the Council's decision to terminate;
- (c) specify the means by which, and the time by which, such representations must be made; and

- (d) insofar as it states the Council's intention to terminate by reference to the status of a Sub-contractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time by which the Supplier may terminate the Subcontract and, if necessary, appoint an alternative Subcontractor.

- 33.4 On expiry of the time for the Supplier to make representations under clause 33.3(c), if, after considering any representations, the Council is satisfied that the termination ground applies, it may terminate the agreement with immediate effect by giving final written notice to the Supplier.
- 33.5 Without affecting any other right or remedy available to it, the either Party may terminate this Agreement by giving written notice to the other Party with immediate effect if:
  - (a) the right to terminate set out at clause 6.2 arises;
  - (b) the right to terminate set out at clause 6.3 arises;
- 33.6 Either party may, during the continuance of a Force Majeure Event, terminate this agreement if the circumstances in clause 35.6 arise.
- 33.7 The Supplier may terminate this agreement in the event that the Council commits a Termination Payment Default by giving 30 days' written notice to the Council. In the event that the Council remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.
- 33.8 This agreement shall terminate automatically upon the death of the Customer.

#### **34. Termination on notice**

- 34.1 Without affecting any other right or remedy available to it, the Council may terminate this agreement at any time by giving thirty days' written notice to the Supplier.
- 34.2 The Council may terminate this agreement or any part of this agreement on fourteen days' written notice if the mental and/or physical condition of the Customer deteriorates, or the needs of the Customer change, to the extent that the Services as described in the agreement can no longer provide the appropriate support to meet that Customer's needs.

#### **35. Force majeure**

- 35.1 Subject to the remaining provisions of this clause 35, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 35.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 35.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than two days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

35.4 If the Supplier is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of service similar to the Services, or if they are the result of the Supplier's failure to comply with the Business Continuity Plan (unless such failure is also due to a Force Majeure Event affecting the operation of the Business Continuity Plan).

35.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

35.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 22 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 4 weeks' notice to the Affected Party.

## **36. Prevention of bribery**

36.1 The Supplier represents and warrants that neither it, nor any Supplier Personnel:

- (a) has committed a Prohibited Act;
- (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

36.2 The Supplier shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause **36.1** at the relevant time.

36.3 The Supplier shall (and shall procure that its Supplier Personnel shall) during the Term:

- (a) not commit a Prohibited Act;
- (b) not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any

of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

- (c) comply with the Council's Anti-bribery and Anti-Corruption Policy as updated from time to time;
- (d) notify the Council (in writing) if it becomes aware of any breach of clause 36.3(a) or clause 36.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this agreement.

36.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this agreement and the steps taken to comply with its obligations under clause 36.3.

36.5 The Supplier shall allow the Council and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause 29.

36.6 If the Supplier is in default under this clause 36 the Council may by notice:

- (a) require the Supplier to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the default; or
- (b) immediately terminate this agreement.

36.7 Any notice served by the Council under clause 36.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this agreement shall terminate).

## **37. Modern slavery**

37.1 The Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (Anti-slavery Laws) including but not limited to the Modern Slavery Act 2015;
- (b) comply with the Council's Anti-Slavery Policy;
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
- (d) include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 37; and
- (e) notify the Council (in writing) as soon as it becomes aware of any breach or suspected breach of clause 37.1.

37.2 The Supplier represents and warrants throughout the Term that:

- (a) neither the Supplier nor any of its officers, employees or Sub-Contractors:



- (i) has been convicted of any offence involving slavery and human trafficking anywhere in the world; or
- (ii) having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; or
- (iii) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in any government procurement programmes or other government contracts.

37.3 The Supplier shall implement due diligence procedures for its Sub-Contractors or any part of its supply chain performing obligations under this agreement to ensure that there is no slavery or human trafficking taking place.

37.4 The Supplier shall:

- (a) maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with this agreement;
- (b) without prejudice to clause 29, if the Council reasonably suspects the Supplier of breach of clause 37, permit the Council and its third party representatives to have access to and take copies of any records and any other information at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 37; and
- (c) implement annual audits of its compliance and its Sub-Contractors' compliance with the Anti-Slavery Policy, either directly or through a third party auditor.

37.5 The Supplier shall:

- (a) implement a system of training for its employees, and Sub-Contractors to ensure compliance with the Anti-Slavery Policy and Anti-slavery Laws;
- (b) keep a record of all training offered and completed by its employees, and subcontractors to ensure compliance with the Anti-Slavery Policy and Anti-slavery Laws and shall make a copy of the record available to the Council on request.

### **38. Consequences of termination or expiry**

38.1 On the expiry of the Term or if this agreement is terminated for any reason the Supplier shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Supplier at no additional cost to the Council.

38.2 On termination or expiry of this (or where reasonably so required by the Council before such completion) the Supplier shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Supplier Chief Executive Officer shall certify full compliance with this clause.

- 38.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 10.3 (provision of records), clause 24 (Indemnities), clause 25 (Insurance), clause 26 (Freedom of Information), clause 27 (Data Processing), clause 28 (Confidentiality), clause 29 (Audit) and this clause 38 (Consequences of termination), shall remain in full force and effect.
- 38.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

## **General provisions**

### **39. Waiver**

- 39.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 39.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

### **40. Rights and remedies**

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

### **41. Severance**

- 41.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 41.2 If any provision or part-provision of this agreement is deemed deleted under clause 41.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **42. No partnership or agency**

- 42.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 42.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **43. Third party rights**

- 43.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

#### **44. Assignment and other dealings**

- 44.1 The Council may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Supplier.
- 44.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

#### **45. Publicity**

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Council's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

#### **46. Notices**

- 46.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
    - (i) Council: [CommissioningSupport@derby.gov.uk](mailto:CommissioningSupport@derby.gov.uk)
    - (ii) Supplier: to be notified within 10 Working Days of the Commencement Date (or, failing that, any valid email address of the Supplier known to the Council.)
- 46.2 Any notice shall be deemed to have been received:
- (a) If delivered by hand, at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
  - (c) if sent by email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when Working Hours resume.
- 46.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### **47. Entire agreement**

- 47.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 47.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 47.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

#### **48. Variation**

Subject to clause 20, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).

#### **49. Counterparts**

- 49.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement.
- 49.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

#### **50. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

#### **51. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## **Day Opportunities Services**

### **SPECIFICATION**

## **1. COMMISSIONING INTENTIONS**

In line with national policy directives, the Council aims to reduce the demand for institutional care by increasing options for community support and commissioning services which promote and support Customer independence.

To contribute to this, the Council wishes to ensure there is a vibrant and innovative day opportunities market for our Customers that:

- improves and maintains their overall well-being.
- enables and increases independence.
- can meet their diverse range of needs and differing levels of complexity.
- evidence value for money.
- has consistency of quality.
- offers a choice of opportunity and ensures individual awareness of those opportunities.
- enables Customers (where they are able) to receive lower levels of, or completely exit, commissioned support.

This market area is currently primarily direct payments led, however, there is a need for managed services. It has been identified there can sometimes be difficulties with understanding and management of direct payments.

## **2. SERVICE OUTCOMES**

It is expected the following will be achieved for Customers through providing the Services:

- Overall physical abilities and mental health and well-being is improved and maintained.
- Ability for greater independence, skills and confidence is increased and full potential realised.
- Strengths, skills, and assets within their families/support network and as part of their community is maximised, this strength-based approach encourages a focus on an individuals' personal, community and social network strengths and using these to support the achievement of outcomes.
- A wide range of community-based activities is offered enabling Customers to develop relationships, contribute to society and fulfil their potential by building on existing and learning new skills which enhance their daily life.
- Less reliance on traditional social care delivery models of paid support and moving on to more innovative and creative solutions leading ultimately into mainstream and universal non-commissioned provision as far as possible, with any eligible needs within the Care Act 2014 continuing to be met as determined by the social care assessment.
- Positive behaviour support – reduce behaviours which present a risk or limit a customer's access to universal services.
- Meeting sensory needs – inclusion, participation, and meeting someone's sensory needs/managing anxiety.

- Relief care for carers/parents to support maintaining customer remaining at home.
- Providers to support with deaf, blind or deaf-blind customers with communication support needs or requirements.

### **3. BROKERING SERVICES**

#### **3.1 ASSESSMENT AND SUPPORT PLANNING**

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

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

Service Requests shared with the Supplier will include: My Self-Assessment; Council Support Plan and risk assessments if appropriate.

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

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

Sample forms can be found at the end of this Schedule.

The Supplier will work with the Council and Customers to decide how the Customer's desired outcomes will be met.

The Supplier will be required to develop a Support Plan.

#### **3.2 SUPPORT PLANS**

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

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

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

Support plans ensure that for each Customer that their disability, gender, sexual orientation, cultural and religious needs are taken into account in any support arrangement. The care and support plan will refer to means of empowering, facilitating choice, regaining or acquiring skills and/or maintaining existing skills. It will clearly define the service to be provided, showing how the service will be delivered to meet assessed need, promote independence and support Customer to live a fulfilled life, making the most of their capacity and potential.

## **4. CORE REQUIREMENTS**

### **4.1 SERVICE DESCRIPTION**

This Service Specification sets out the Council's requirements for the provision of outcome focused, person-centred day opportunities that provide eligible Customers aged 16+ years (including older adults aged 65+) with a range of activities that will help them achieve a fulfilling and independent life contributing to improving their overall well-being as well as, where appropriate, giving their Carers a break.

Customers may be older adults living with multiple long-term conditions, frailty and dementia, or younger adults with physical and / or learning difficulties/ neurodiversity. Services are also required for Customers with primary needs relating to their mental health.

### **4.2 LOCATION**

The Supplier will be located within the Derby City area, which is defined as within Derby City or a 10-mile radius of the Derby City boundary.

### **4.3 SUPPORT**

The Supplier shall:

**Deliver Customer outcomes:** The quality of the Service will be measured by the improvement in the outcomes for individual Customer. Individual Customer outcomes will be identified by each Customer within their 'My Self-Assessment' and if appropriate this will include views of their family carers or representatives. These outcomes will be specified by the Council when requesting a Service and monitored as part of ongoing Service management.

The Supplier will agree with each Customer how and when they will be supported to achieve their outcomes and specify this in the Supplier's Support Plan.

**Provide personalised support:** Services must be planned and delivered in a way that is asset based and enabling to maximise self-care and independence. Support Plans and Service delivery will evidence that support solutions build on and develop a customer's strengths, abilities, and support within their support network. This will require Services to adapt to the Customer's changing needs, wishes and circumstances including support to access appropriate equipment and other support Services.

**Support individual choice and control:** Support Plans, risk assessments and the delivery of the Service will need to show that the views of Customers and, if appropriate, the views of carers



within their support network. This may involve supporting individuals to take risks in their lives and Suppliers will need to ensure Support Plans and risk assessments reflect how they will support Customers to manage these risks are considered.

#### **4.4 CUSTOMERS**

Customers for these Services will:

- Be ordinarily resident within the boundaries of Derby City Council.
- Be 16+ years of age – there is no upper age limit.
- Have eligible care or support needs as defined by the Council in meeting its duties under the Care Act.

Customers who require this Service will have a wide range of moderate to highly complex needs.

The Supplier will need to develop personalised Support Plans that identify clear and quantifiable ways that they will support the Customer to achieve their individual outcomes.

The Suppliers will the Service to the Customer on an individual basis based on their assessed needs and preferences, including demonstration of skills and experience required.

### **5. IMPLEMENTATION / CONTRACT TIMETABLE**

#### **5.1 CONTRACT**

The initial Framework term will be three years with the option to extend for a period or periods of up to a further five years.

Individual Agreement duration will be specific to each individual Customer.

#### **5.2 SERVICES TIMESCALES**

In adopting a personalised approach, the Service will deliver in accordance with the Customer's Care and Support Plan, identified needs and reasonable preferences/expectations and broadly within the following availability parameters:

- 09:00-22:00 hrs
- Monday to Sunday
- Up to 52 weeks of the year, payment will be made for up to 50 weeks of the year allowing for leave, 28 days' notice should be given by the customer/carer to allow for adjustments for rotas, for those providers who are not open for 52 weeks of the year this will be on a pro rata basis (where the building-based provision is not accessible at certain times of the year, alternative support can be provided as an alternative)

### **6. WORKING METHODS, CONFIDENTIALITY AND CODES OF PRACTICES**

## **6.1 CORPORATE AND SERVICE POLICIES**

The Supplier shall take account of best practice and national policy directives relevant to their Service areas and keep themselves up to date with developments and updated guidance as necessary – this may include NICE guidelines, codes of practice of relevant regulatory bodies and specific requirements made upon the delivery of Service in respect of professional or quality assurance schemes they may be signatories to.

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

### **Derby City Council Plan 2022-25**

*Council Plan 2022-2025 (derby.gov.uk)*

### **Derby City Commissioning Strategy 2024-27**

*adults commissioning strategy 2024-2027 (derby.gov.uk)*

### **Market Position Statement**

*ASC Market Position Statement and Market Sufficiency Strategy 2024 v1 (derby.gov.uk)*

### **Quality Assurance Protocol**

*adults quality assurance protocol 2024 (derby.gov.uk)*

### **Your Life Your Choice**

*Adult social care - Your Life Your Choice - Derby City Council*

### **Personal Budgets**

*Personal budgets - Derby City Council*

### **For Customers with Learning Disabilities and Autism**

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

## For Customers with Dementia

- <https://www.nice.org.uk/guidance/ng97> NICE guidance
- National Dementia Strategy 2009  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/168220/dh\\_094051.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/168220/dh_094051.pdf)

Providers should ensure that services offered are managed in line with the principles and service models outlined in this list of documents.

## 6.2 LEGISLATION

The Council is required to provide Services in compliance with legislative frameworks, national policy and guidance and as such it is expected all Suppliers will comply with these and seek to address any future relevant legislative and policy changes that may arise. Current legislation and relevant policy and guidance affecting this Service include, but are not limited to:

- The Care Act 2014 (The Supplier is required to embrace and embed principles of 'Prevent, Reduce, Delay', which changes the dependency culture of assessing for Services to an approach that builds upon a Customer's assets and the support networks they have in their local communities).
- The Children and Families Act 2014
- The Mental Health Act 1983 (amended 1987)
- Health and Social Care Act 2008: code of practice on the prevention and control of infections (July 2015)
- Human Rights Act (1998)
- Data Protection Act (2018)
- The Mental Capacity Act Code of Practice (2007)
- The Mental Health Act Code of Practice (2015)
- The Deprivation of Liberty Safeguards (DoLS) Code of Practice (2008)
- Equalities Act (2010)
- Health & Safety at Work Act (1974)
- Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations (1995) (RIDDOR)
- The Autism Act (2009)
- Food Hygiene (if relevant, minimum standard level 2 or equivalent for food handlers, updated every 3 years)
- The Suppliers need to ensure that fire safety precautions are in place to reduce the risk of fire and protect customers, staff and visitors in the event of fire. Please see link for further guidance <https://www.gov.uk/government/publications/fire-safety-risk-assessment-small-and-medium-places-of-assembly/fire-safety-risk-assessment-small-and-medium-places-of-assembly-accessible>

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

The Supplier will be required to be aware of and follow appropriate guidance

Provided by nationally recognised agencies, including:

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

### **6.3 INFORMATION SHARING**

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

Emergency or life-threatening situations may warrant the sharing of relevant information with the relevant emergency Services without informed consent.

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

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

As a minimum this means:

- Customers are informed of how their personal data will be processed.
- Staff will not share information about Customers outside of the workplace.
- Records will be accurate and kept up to date.
- Customers will have a right to access to information held about them.
- Personal tasks will be carried out in complete privacy.
- Personal data will be kept secure at all times.
- Any disclosure of personal information must be done securely.

- Personal data will not be collected that is not required for the provision of the Service.

## **6.4 DATA PROTECTION**

The Supplier will have a Data Protection policy that governs conduct of Staff and volunteers to ensure personal data is kept secure.

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

The Supplier will ensure signed confidentiality agreements are in place for all members of Staff working on the framework.

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

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

## **6.5 LOCATION OF PERSONAL DATA STORAGE/BACK-UP**

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

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

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

## **6.6 RECORD KEEPING**

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

- person centred care and Support Plans;
- Daily logs and incident logs
- risk assessments and capacity assessments;
- preparing reports for and attending Customer reviews;

- Staff rosters;
- details of all Staff employed and Staff changes;
- Staff records including training and induction;
- records of all accidents/incidents involving staff/Customers with follow up risk assessments and records of actions taken.

## 6.7 TECHNOLOGY DEVELOPMENT AND INNOVATION

The Supplier will at least have access to appropriate IT software in order to deliver the requirements of the Service. This will include technology such as use of Microsoft Office (or equivalent, as long as it is compatible with Microsoft Office), email, ability to send and receive electronic communications securely. Where Staff operate outside the office environment the Supplier will ensure Staff have appropriate technology to ensure their safety.

The Council has an aspiration throughout the life of this contract to develop its use of electronic systems to support the effective management of Services. Suppliers will be required to work with the Council to develop, implement and deliver methods of electronic systems and new technologies, that are compatible with the Council's systems and requirements as and when developments take place. This will include, as a minimum, the requirement for Suppliers to update the Council's Supplier Portal to enable good communication about any changes to Staff or circumstances that may affect the Service. The Provider Portal will also facilitate timely and accurate payments to be made once in place. Suppliers will therefore be expected to have their own electronic records/ case management systems and be forward thinking in adoption of new and creative technologies to both work collaboratively and more effectively support customers.

The Council is creating a TEC (Technology Enabled Care) Strategy and is committed to co-produced solutions in harnessing TEC with relevant partners. The strategy will set the direction for outcomes focussed services enabled by technology. Suppliers are encouraged to be innovative and dynamic in embedding technology enabled care to continually improve care, wellbeing, and sustained tenancies. The Council's telephone-based monitoring service and TEC provider, Carelink, will also play a growing role in the procurement, installation, and monitoring of TEC, and it is expected that Suppliers will work with the Council to adopt new technologies as part of support plans, where appropriate, to most effectively meet customers eligible needs and desired outcomes.

TSA (TEC Services Association), the national independent advisory body for the technology enabled care sector, have produced a graphic to demonstrate how technology should be delivered through a collaborative approach in order to achieve this, you can see the graphic on slide 5 of [this presentation](#). In future years on this Framework and following publication of the Council's TEC Strategy, Suppliers may be required to be QSF Certified [TEC Quality - quality and standards](#). Although this is not a requirement for the initial setting up of the Framework, it would be an allowable Variation within the Contract Period.

## 6.8 SAFEGUARDING

Both the Council and the Supplier must follow laid-down national and local safeguarding procedures as part of the process of managing and preventing serious concerns.

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

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

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

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

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

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

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

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

The Supplier is expected to have a clear statement outlining their responsibilities towards Customers available for all Staff.

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

## **6.9 EQUALITY AND DIVERSITY**

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

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

- Eliminating discrimination, harassment, and victimisation and any other conduct that is prohibited by the Equality Act 2010
- Advance equality of opportunity
- Foster good relations between people who share a relevant protected characteristic and those who do not

Having due regard means the Supplier needs to:

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

The Council also expects the Supplier to:

- capture effective data collection on employees and people and analyse these statistics
- produce equality impact assessments on policies, procedures and Services that may have an impact on people or the Service as a whole
- provide one or more equality objectives at least every four years.

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

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

The Supplier will ensure that it has access to appropriate translation Services/resources to enable equity of access and understanding.

The Successful Bidder will recognise and make provision for cultural and religious needs such as prayer time and specific food preparation eg Halal, Food allergies, Gluten).

## **6.10 DIGNITY**



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

Further information can be found at:

*Our equality commitment - Derby City Council*

*About the Dignity in Care Campaign*

The Supplier will ensure that Customers are always treated with respect and will ensure their personal sense of significance is enhanced Including:

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

## **6.11 FOOD LEGISLATION**

The Supplier is to comply with all current and future legislation regarding Food Safety and Hygiene where it applies in the performance of this Service. Specifically where any commissioned activity is covered by regulation of the Food Standards Agency  
<https://www.food.gov.uk/>

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

*Register a food business - Derby City Council*

## **7. QUALITY AND PERFORMANCE STANDARDS**

Whilst this Service does not require registration with CQC as a regulated activity, Suppliers must be mindful of their delivery standards being equivalent to any relevant Good Industry Practice. When delivering the Service, the Provider is expected to always adhere to the Care Quality Commission (CQC) Fundamental Standards, please also refer to service description.

## **7.1 QUALITY STANDARDS**

The Supplier will be required to meet the council risk assessed standards. The Council assesses all Suppliers based on several criteria i.e. financial sustainability, quality, good communication, contract KPI compliance etc. Suppliers are rated based on this risk assessment. If a Supplier is assessed as Inadequate this will be deemed as a breach of contract and may result in immediate termination of contract. Full details will be given as part of the implementation of the contract management process and is subject to change.

## **7.2 QUALITY ASSURANCE PROCEDURES**

The Supplier must comply with the following:

- the Council will seek evidence through monitoring the Service, that the delivery of Services is focussed on flexible care and support and the outcomes from the individuals' My Self-Assessment in line with this Specification.
- Suppliers will be required to permit access to any employees of Derby City Council, or agents working on their behalf, and to facilitate access to records in accordance with the quality assurance and contract monitoring requirements of this contract
- Suppliers will be required to undertake a self-assessment audit return on at least an annual basis
- thematic monitoring/audit visits carried out by Derby City Council in relation to the standards stipulated
- monitoring and compliance meetings
- financial reporting including the requirement of the Supplier to report on any financial difficulties which may result in the non-delivery of the Service in full or in part
- Duty of Candour – including the requirement of the Supplier to report on any other difficulties or risks inherent in the delivery of this Service which may result in the non-delivery of the Service in full or in part
- reviews of care or support packages including feedback from key stakeholders including the Customer and social care worker
- Derby and Derbyshire joint safeguarding adults' policy and procedures
- medication reporting where appropriate
- Suppliers must be responsive to Customer's daily changing circumstances and complete accurate recording
- Suppliers must meet the outcomes of assessments/care plans
- Suppliers must remain compliant with other statutory requirements, such as Fire Safety and Environmental Health
- member of Derby Care Association (DeCA)
- attendance at Supplier Forums (DeCA)
- compliance with Derby City Council's requirements for future electronic monitoring reporting.

- Infection Prevention Control (IPC) - DCC Commissioning Team are working in partnership colleagues from Public Health, health and safety and nurses who are specialists in infection, prevention, and control. As part of your contract with the Council, the commissioners require Team Derby to undertake a visit with each day centre.

During the visit, members from team Derby will advise on key requirements in managing infections and observe the services application of key health and safety legislation, such as the Control of Substances Hazardous to Health Regulations. The team will also provide support with advice, guidance and training should it be required.

### **7.3 ASSESSMENT PROCESS**

This will include:

- Suppliers to complete an annual self-assessment audit
- details of the Supplier's management structure
- feedback from Customers, Carers, and family members as well as professionals from the Council or partner agencies
- evidence of contingency planning
- provision of financial reporting to confirm the ongoing financial sustainability of the Supplier.
- quality assurance visits, compliance meetings, reviews, response to safeguarding and complaints, timely incident reports and action plans.

### **7.4 PERFORMANCE TARGETS**

In delivering Day Opportunities Suppliers must demonstrate there is:

- a positive behaviour plan and risk management plan in place relevant to the individual Customer's needs;
- evidence of one-to-one support provided directly to Customers where this is required;
- the correct Staff: Customer ratio in place for group/sessional activities
- an annual Staff training plan in place that covers mandatory and non-mandatory training required to provide a quality service and this shows Staff attendance and attainment;
- joint working with local statutory and non-statutory Suppliers in the locality where this adds value and supports Customer outcomes.
- evidence of the Health and Well-being of Customers being supported in a pro-active and personalised way.
- evidence of general maintenance and a programme for future maintenance
- evidence of complaints and resolutions
- continued knowledge gathering and information sharing with Customers regarding issues and relevant opportunities in their local area.

### **7.5 REPORTING / CONTRACT MONITORING**

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

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

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

The Council will conduct quality visits as determined by the volume, complexity, risk rating, or other Service factors as determined by the Council. The Council may conduct these visits through any designated officer and jointly with other statutory bodies as per the needs and interests of the Customer(s) concerned.

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

#### Quality Assurance - Derby City Council

## **8. STAFF**

### **8.1 RECRUITMENT & COMPETENCIES**

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

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

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

The Supplier will ensure that all staff working on an Individual Agreement will have undergone the necessary clearance checks, including Enhanced Disclosure and Barring Service (DBS) checks and Protection of Vulnerable Adults (POVA) checks and meet the necessary requirements before appointed, when required. They will also undergo any other relevant checks required under future legislation. Documentary evidence of this may be requested by the Council.

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

If recruiting overseas the Supplier will follow the government's Code of practice for the international recruitment of health and social care personnel in England - GOV.UK ([www.gov.uk](http://www.gov.uk)) to ensure ethical recruitment of workers. The Supplier will follow the international recruitment toolkit guidance to good practice. *International recruitment toolkit for adult social care providers: a guide to good practice - GOV.UK*

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

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

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

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

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

The Supplier shall:

- have a procedure approved by the Council for dealing with allegations or suspicions of abuse;
- ensure that all Staff are trained at induction in the proactive prevention of abuse, in the identification of relevant incidents, in following the reporting procedures and training should be updated at least annually;
- maintain a proactive approach to prevent Abuse;
- adhere to rigorous recruitment practices to deter those who actively seek vulnerable people to exploit or abuse.
- address issues around bullying and have in place an anti-bullying policy which should be linked to their safeguarding procedures as appropriate. It is expected that Staff and Customers will be made aware of this policy and that relevant training will be given to Staff.

## **8.2 TRAINING AND MAINTENANCE**

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

The key priorities are:

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

For further details click the link [www.joinedupcarederbyshire.co.uk](http://www.joinedupcarederbyshire.co.uk) for further information and ways to get involved.

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

Suppliers must ensure that all Staff have access to and complete:

- training on all areas required by legislation, local policies, The Council and regulators including the Care Quality Commission that are applicable to the service.
- person specific training requirements required to deliver the personalised support for Customers as specified in their My Self-Assessment, Support Plans and Individual Agreements.

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

The Supplier will:

- a) ensure that Staff have the necessary training, qualifications, skills, competencies, personal qualities, and value base to enable them to relate well to Customers i.e. NVQ level 1/2 in Social Care;
- b) conduct regular reviews of staffing capacity and capability to ensure they have sufficient numbers of suitably trained and experienced Staff to deliver the service;
- c) ensure all managers of the service are appropriately experienced and qualified to effectively run the service. It is required that the manager responsible for overall day to day management of the service will hold or be working towards at least a Level 4 qualification in care or another recognised equivalent qualification and an appropriate management qualification, i.e. Level 4 in Management or Certificate in Management or equivalent;
- d) ensure provision of a structured induction process for all new Staff, including completion of Skills for Care's Care Certificate that is linked to National Standards, is completed by all new Staff, and a basic training programme for Staff or volunteers appropriate to the needs of the Customer group, before working unsupervised with the Customer;

- e) carry out a training needs analysis for each new member of Staff and this will be incorporated into the Staff training and development plan;
- f) ensure that Staff are only working with Customers for whom they have been appropriately trained to provide care and support for;
- g) review the training needs of each Staff member at least annually to identify when refresher and training updates are required which will be incorporated in the Staff development and training programme.

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

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

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

### 8.3 STAFF TRAINING REQUIREMENTS

Mandatory training requirements for relevant staff must be completed and updated as per latest guidance. Examples may include (this is not an exhaustive list, links, and information is correct at time of tender):

<b><u>Essential</u></b>	<b><u>Desirable/Area Dependent</u></b>
Oliver McGowan Mandatory Training <b>*FREE*</b> only essential if CQC registered	Oliver McGowan Mandatory Training <b>*FREE*</b>
Safeguarding <b>*FREE*</b> Provided by DSAB <a href="#">Click here to book online</a>	Autism Awareness Suggested provider Citizens Advice Autism Service Contact: Jacob Hopkins <a href="mailto:jhopkins@citizensadvicemidmercia.org.uk">jhopkins@citizensadvicemidmercia.org.uk</a>
Emergency First Aid at Work Suggested provider DCC WFLD Book on via <a href="mailto:WLD.Admin@derby.gov.uk">WLD.Admin@derby.gov.uk</a>	Stoma & Catheter Care Suggested provider DCC WFLD Book on via <a href="mailto:WLD.Admin@derby.gov.uk">WLD.Admin@derby.gov.uk</a>
Assisting & Moving Suggested provider DCC WFLD	Dementia & Delirium Pathway Suggested provider DCC WFLD

(( <a href="https://mycare.derby.gov.uk/Services/971">https://mycare.derby.gov.uk/Services/971</a> ) Book on via <a href="mailto:WLD.Admin@derby.gov.uk">WLD.Admin@derby.gov.uk</a>	Book on via <a href="mailto:WLD.Admin@derby.gov.uk">WLD.Admin@derby.gov.uk</a>
Medication Administration for Carers /or Managers, suggested provider  DCC WFLD (cost £40 per learner) Book on via <a href="mailto:WLD.Admin@derby.gov.uk">WLD.Admin@derby.gov.uk</a>	Epilepsy & Seizure Awareness  Suggested provider  DCC WFLD (cost £15 per learner) Book on via <a href="mailto:WLD.Admin@derby.gov.uk">WLD.Admin@derby.gov.uk</a>
Health & Safety Awareness	Falls prevention and management
Fire Safety - based on building the Day service is within	Mental Health Awareness
Infection Prevention & Control <b>*FREE*</b> (This will be provided by Public Health within the first year subject to funding)	Support with identified medical conditions; management of medication (this is mandatory if handling medication)
Moving and Handling	Tissue Viability/Skin & Hydration Care  Suggested provider  DCC WFLD Book on via <a href="mailto:WLD.Admin@derby.gov.uk">WLD.Admin@derby.gov.uk</a>
Dignity in Care	
Communication Skills – verbal & non-verbal	
Understanding Challenging Behaviour Competency	
Equalities and Diversity awareness	
Risk Assessment and Management	
Mental Capacity Act (update every 2 years)	
Food Hygiene	
GDPR - Data Protection + Record Keeping	

Training around requirements of appropriate legislation, e.g. Care Act, Autism Act etc. That is appropriate for the Customers who are supported by the Service.



#### **8.4 ADDITIONAL/SPECIALIST TRAINING**

The Supplier, or the Council, may identify additional training that is required for the delivery of the service to an individual Customer or Customer group.

The Supplier must ensure that any staff working with a customer have undergone any additional training required to meet the Customer's identified needs.

#### **8.5 TRAINING RECORDS**

The Supplier will supply, on request:

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

#### **8.6 STAFF SUPPORT & APPRAISALS**

The Supplier will be required to have the following in place:

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

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

#### **8.7 INTERFACE WITH OTHER SUPPLIERS / SUPPLIERS**

Suppliers are expected to work, as necessary, in partnership with a wide range of statutory and non-statutory partners to meet the needs of Customers. Suppliers are expected to build and develop relationships with partners based on the needs of their customers. This will include, but is not limited to:

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

Where there is a requirement to share personal data and information, Information Sharing Agreements will be developed where applicable.

## 9. PROMOTING WELL BEING AND INDEPENDENCE

The Service will support Customers to improve and sustain their overall well-being through enabling access to a range of activities designed to develop and maximise social and community inclusion and increase their confidence and self-esteem both in a home environment and/or out in the community. It is likely that support will be over a longer period in order to achieve the goals and outcomes defined in their individual Care and Support Plan.

### 9.1 ACTIVITIES

The activities to be accessed should enable better:

<b>Social/Community Inclusion through -</b>	<b>Well, Being through -</b>	<b>Confidence/Self Esteem through -</b>
<ul style="list-style-type: none"> <li>• Making friends/ friendship groups</li> <li>• Developing and maintaining relationships</li> <li>• Being able to communicate</li> <li>• Building trust</li> <li>• Having fun and enjoyment</li> <li>• Going out</li> <li>• Volunteering / employment</li> <li>• Improving social skills</li> </ul>	<ul style="list-style-type: none"> <li>• Exercise</li> <li>• Sport</li> <li>• Diet/Nutrition</li> <li>• Relaxation</li> <li>• Hygiene</li> <li>• Hobbies</li> <li>• Appropriate facilities</li> <li>• Self-care skills</li> </ul>	<ul style="list-style-type: none"> <li>• Creativity (e.g. arts, music, writing)</li> <li>• Self-expression (e.g. dance, drama)</li> <li>• Achievement (e.g. learning new skill/language, winning award/ certificate)</li> <li>• Money management skills</li> <li>• Developing new or existing interests</li> <li>• Achieving outcomes and goals</li> <li>• Training, volunteering, and employment opportunities</li> </ul>

The above is not an exhaustive list and activities should be personalised to the Customer in line with their Council Care and Support Plan.

The Service will need to develop a clear pathway for each Customer that will enable them to live safely, independently, and autonomously access mainstream social, leisure, education, and wider community opportunities as far as possible.

This will include, but is not limited to:

Living at Home	Out in the Community	General
<ul style="list-style-type: none"> <li>• Food choice and preparation</li> <li>• Keeping a home clean and tidy</li> <li>• Paying bills and money management</li> <li>• Gardening</li> <li>• Safety in the home and garden</li> <li>• Cleaning</li> <li>• Healthy eating</li> </ul>	<ul style="list-style-type: none"> <li>• Knowledge of local community services e.g. leisure/sports centres, cinemas, restaurants,</li> <li>• Knowledge of local groups e.g. walking/rambling, interests/hobbies, social</li> <li>• Keeping safe whilst out and about</li> <li>• Independent Travel training</li> <li>• Where to go for advice</li> <li>• Shopping</li> <li>• Arranging and making bookings/reservations</li> </ul>	<ul style="list-style-type: none"> <li>• Self-Care</li> <li>• Dressing appropriately</li> <li>• Washing</li> <li>• Personal hygiene</li> <li>• Toileting</li> <li>• Health management</li> <li>• Building resilience</li> <li>• Improving communication skills</li> <li>• Managing medication</li> <li>• Socialisation</li> <li>• Keeping safe</li> </ul>

## 9.2 COMMUNITY FACILITIES

The Supplier will ensure that any community facility used for the provision of this Service:

- Is within, or no more than 10 miles outside, the Derby City Council boundary in order to be easily accessible for customers;
- Is fit for purpose and compliant with relevant aspects of the Equalities Act 2010;
- Is safe, clean, and appropriate for the activity to be delivered;
- Has equipment to be used that is of a good standard, safe, compliant with any Health and Safety regulations, operated by adequately trained people and easily accessible to Customers;
- Has appropriate changing and toileting facilities to meet the needs of Customers;
- Is welcoming, friendly, and inclusive;
- For those Customers with Autism and/or Challenging Behaviours be appropriate to their specific needs where the environment will not trigger any adverse reaction.

The Supplier will ensure that any activity/resource accessed out in the community is appropriately risk assessed and processes are in place to manage and support Customers' safety whilst still enabling them to enjoy and be challenged, as necessary, to help them achieve their outcomes and aspirations. The Supplier will make available to the Council any risk assessments it requires for monitoring purposes or as part of an investigation where concerns or a complaint has been raised in relation to the Customer's safety.

It is expected that any regular community activities/resources to be accessed are within, and no more than 10 miles outside, the Derby City Council boundary unless it is agreed by the Council that support to access an activity/resource outside of this boundary tolerance is needed to achieve individual Customer outcomes (this would exclude any one off trips e.g. zoo, seaside etc.). The Supplier will evidence that it has made all reasonable effort to source an appropriate activity/resource within these parameters before approaching the Council.

### **9.3 GROUP ACTIVITIES**

It is expected that for group activities the Supplier will take into consideration the abilities of Customers to be included in that group and ensure no Customer is disadvantaged or the achievement of their individual outcomes is compromised. A person-centred approach to care and support will facilitate Customer feedback to allow them to develop services and activities, delivering choice and control.

### **9.4 MEALS**

Any meals provided by the Supplier must be nutritional and all refreshments (including meals) must adhere to appropriate health and safety standards. The Supplier will recognise and make provision for cultural and religious needs such as prayer time and specific food preparation (e.g. Halal, Allergies, Gluten) if appropriate. The Council will not be liable for the cost of any refreshments (including meals) and the Supplier will charge the Customer directly for any refreshments. The council should be notified of any additional charges customers are being requested to pay.

### **9.5 TRANSPORT**

It is envisaged that Customers will be supported to travel as independently as possible. However, Suppliers may wish to decide to provide transport as part of the Service if the Customer is unable to travel independently and charge Customers accordingly through private arrangements.

Suppliers may be asked in the future to supply prices inclusive of transport on an individual contract basis or in relation to overall service delivery as a varied requirement.

The Supplier is to ensure that any driver/vehicle used in relation to transport Customers meets the legal and insurance requirements to provide this transport. The transport must also be suitable to meet the Customers' needs.

### **9.6 IMPROPER CONDUCT**

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

- (a) Abuse
- (b) fraud and theft from Customers
- (c) sexual misconduct or sexual exploitation

- (d) improper inducements, including inducements offered to employees of the Council
- (e) conspiracy with officer or officers of the Council or any Staff to defraud or disadvantage Customers
- (f) financial malpractice
- (g) business continuity failure.

## **10. RISK MANAGEMENT AND CAPACITY – CUSTOMERS**

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

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

## **11. IR35 (INTERMEDIARIES LEGISLATION) AMENDMENT FOR OFF-PAYROLL WORKING IN THE PUBLIC SECTOR**

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

–

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

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

## **SAMPLE SERVICE REQUEST FORMS**

Available on request are the following sample service request forms:

- Care Act Needs Assessment
- Support Plan
- Risk Assessment
- Individual Agreement to Buy Day Services

To request a copy please contact [commissioningsupport@derby.gov.uk](mailto:commissioningsupport@derby.gov.uk)

## Schedule 2 Example Service Request Form

Contract No. «ClientSSRefWithoutProtocolPrefix» «EarliestCPLIStartDate»

### **INDIVIDUAL AGREEMENT TO BUY A SPECIFIED LEVEL OF DAY SERVICES**

THE COUNCIL: **Derby City Council, Council House, Corporation Street, Derby, DE1 2FS**

THE SUPPLIER: **«Provider» - «ServiceAddressOneLine»**

THE CUSTOMER: **«ClientFullName» - «ClientAddressOneLine»**

1. This contract supersedes all previous contracts and only the detail contained herein shall apply to this arrangement.

2. It is agreed between the Council, the Service Provider and the Customer that the Customer shall receive Day Services from the Services Commencement Date, «EarliestCPLIStartDate» in accordance with the provisions of the terms and conditions of the agreement for the provision of day opportunities services.

3. This incorporates the conditions set out in the Council's current 'Provision of Day Opportunities Services Terms and Conditions', copies of which have been provided and can be found here: [XXX], and additional copies may be obtained from the , **Adults Commissioning, Integration, and Market Development, People Services, 1st Floor The Council House, Corporation Street, Derby DE1 2FS.**

4. **The weekly payment by the Council will be as follows:**

Total Weekly Cost: «WeeklyCosts»

«CPLI\_BeginTable»

#### Services

##### «CPLI\_ServiceLevel»

<b>Service:</b>	«CPLI_ServiceName»	<b>Care Pkg Ref:</b>	«CPLI_CarePackageRef»
<b>Start Date:</b>	«CPLI_StartDateDescription»	<b>End Date:</b>	«CPLI_EndDateDescription»
<b>Quantity:</b>	«CPLI_QuantityDescription»	<b>Cost:</b>	«CPLI_CostDescription»

«IF\_CPLI\_IsTimetabledAndHourly»

Time	Duration	Mon	Tue	Wed	Thu	Fri	Sat	Sun
«CPLI_TimeTable_BeginTable»«Timetable_EntryTime»	«Timetable_Duration»	«TimeTable_MondayTick»	«TimeTable_TuesdayTick»	«TimeTable_WednesdayTick»	«TimeTable_ThursdayTick»	«TimeTable_FridayTick»	«TimeTable_SaturdayTick»	«TimeTable_SundayTick»

«ENDIF\_CPLI\_IsTimetabledAndHourly»

«IF\_CPLI\_IsTimetabledAndQuantity»

Quantity	Mon	Tue	Wed	Thu	Fri	Sat	Sun
«CPLI_TimeTable_BeginTable»«Timetable_QuantityDescription»	«TimeTable_MondayTick»	«TimeTable_TuesdayTick»	«TimeTable_WednesdayTick»	«TimeTable_ThursdayTick»	«TimeTable_FridayTick»	«TimeTable_SaturdayTick»	«TimeTable_SundayTick»

«ENDIF\_CPLI\_IsTimetabledAndQuantity»

«IF\_CPLI\_HasSuspensions»

SUSPENSIONS			
Affects Payments	Reason	Start Date	End Date
«CPLI_Suspension_BeginTable»«Suspension_AffectsPaymentsYesNo»	«Suspension_Reason»	«Suspension_StartDate»	«Suspension_EndDate»«CPLI_Suspension_EndTable»

«ENDIF\_CPLI\_HasSuspensions»

«CPLI\_EndTable»

## 5. CONTACTS IN THE COUNCIL

Contact Support can be contacted by telephoning or writing to: **Community Support Team, People Services, 1st Floor, The Council House, Corporation Street, Derby, DE1 2FS, Telephone: 01332 640825 Email: [Contact.Support@derby.gov.uk](mailto:Contact.Support@derby.gov.uk)**



The Commissioning Team can be contacted by emailing or writing to the **Team, Adults Commissioning, Integration, and Market Development, People Services People Services, 1st Floor, The Council House, Corporation Street, Derby, DE1 2FS.** Email: [Commissioningsupport@derby.gov.uk](mailto:Commissioningsupport@derby.gov.uk)

Any queries regarding financial arrangements should be made to **Community Care Charging & Support Team, The Council House, Corporation Street, Derby, DE1 2FS.** Email: [HomeCareCharging@derby.gov.uk](mailto:HomeCareCharging@derby.gov.uk)

6. **SERVICE PROVIDER CONTACT**

**Registered Manager - «ServiceManagerName» - «Provider» - «ServiceAddressOneLine»**

Agreed this day of **«DateGenerated»**  
Between

For and on Behalf of The Council  
**Signature:**

and

For and on Behalf of The Provider  
**Signature:**

**Andrew Muirhead**  
Head of Adults  
Commissioning,  
Integration, and Market  
Development

**Designation:**

**Andrew Appleyard**  
Service Director  
Adult Social Care  
Services

## Schedule 3 Performance regime

### Part 1 KPIs

#### 1. The KPIs

1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table.

Ref	Theme	Description	Target %
KPI1	Outcomes <sup>1</sup>	Making progress to outcomes set by the social worker, carers and customer.	95-100% Good 80-94% Requires Improvement Less than 80% Inadequate
KPI2	Social/Community Participation <sup>2</sup>	Increase in Customer involvement in social or community activities.	As above
KPI3	Involvement in planning their own support <sup>3</sup>	Customers/Carers have been involved in planning their own support.	100%
KPI5	Joint working / interface	Attendance to contract management meetings and member of DeCA  (Contact email: <a href="mailto:info@derbyca.org.uk">info@derbyca.org.uk</a> )	100%
KPI6	Workforce	Staff have achieved or are working towards completion of the Care Certificate/equivalent.	90%
KPI7	Workforce	Compliance rates for the staff training matrix (see the matrix at paragraph 8.3 of this Schedule).	85%
KPI8	Workforce	Have an active Adult Social Care Workforce Data Set account with Skills for Care	100%

<sup>1</sup> Specific Outcomes, Measurements and Targets will be agreed between the Supplier and the social worker for the Customer prior to the start of the Services and may be adjusted throughout the life of the Agreement by the agreement of the parties.

<sup>2</sup> Specific Outcomes, Measurements and Targets will be agreed between the Supplier and the social worker for the Customer prior to the start of the Services and may be adjusted throughout the life of the Agreement by the agreement of the parties.

<sup>3</sup> Specific Outcomes, Measurements and Targets will be agreed between the Supplier and the social worker for the Customer prior to the start of the Services and may be adjusted throughout the life of the Agreement by the agreement of the parties.

Ref	Theme	Description	Target %
		<a href="http://skillsforcare.org.uk">Getting started with ASC-WDS (skillsforcare.org.uk)</a>	
KPI9	Complaints	Formal complaint investigations led by the Supplier will provide an outcome letter within 30 Working Days of the complaint being logged.	100%
KPI11	Safeguarding Incidents	Reduction in number and resolution time of safeguarding concerns.	(Target to be agreed as part of contract monitoring meetings after 12 months)

**1.2** The Supplier shall monitor its performance against each Target KPI and shall send the Council a report detailing the Achieved KPIs.

## **Part 2 Consistent failure**

### **1. Consistent failure**

In this agreement, **Consistent Failure** shall mean:

- (a) a failure to meet 4 or more Target KPIs in a rolling 12 month period;
- (b) the Council serving three Remediation Notices in a rolling 12 month period; or
- (c) the Supplier repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

## Schedule 4 Quality and Performance Standards

### 1. RISK ASSESSMENT

- 1.1 The Supplier will be required to meet the council risk assessed standards. The Council assesses all Suppliers based on several criteria i.e. financial sustainability, quality, good communication, contract KPI compliance etc. Suppliers are rated based on this risk assessment (please see detail of ratings below). If a Supplier is assessed as Inadequate this will be deemed as a material breach of contract and may result in immediate termination of contract. Full details will be given as part of the implementation of the contract management process and is subject to change.

Please see below table of ratings:

Rating	Description of potential factors included in rating (this is not an exhaustive list)
Gold	Exceptional Management & oversight, financially sustainable, Council Quality Team rating Green, CQC rating Good or above (if registered), High KPI compliance
Silver	Good Management & Organisation, financially sustainable, Council Quality Team rating Amber or above, CQC rating RI or above (if registered), High KPI compliance
Bronze	Improvements needed in several areas
Other	Not yet assessed etc.
Inadequate	Poor Management & oversight, immediate financial risk to sustainability, Council Quality Team rating Red, CQC rating Inadequate (if registered), poor KPI compliance

\*Please note: If a Supplier has a Council quality rating of Red and/or Inadequate CQC rating (if registered) they are automatically rated as Inadequate overall.

- 1.2 Where a Supplier is risk assessed as inadequate this will trigger the Remediation Plan Process.

## 2. QUALITY RATING

2.1 Following quality audits Suppliers will be assessed and RAG rated, this rating is incorporated into the providers Overall risk assessed rating as above.

2.2 The QMT's RAG status is as follows:

(These are not exhaustive lists)

<b>Red</b>	<ul style="list-style-type: none"><li>• CQC Notice of Proposal of Closure (NOP)</li><li>• CQC Rating of Inadequate and/or Warning Notices</li><li>• High level and/or seriousness of Safeguarding Notifications</li><li>• Lack of sufficient evidence demonstrating ability to address high number of and/or serious Safeguarding alerts which are adversely impacting on customers well-being.</li><li>• High risk of closure i.e., financial pressures (possible need to move customers / find alternative services)</li><li>• High level and/or seriousness of Safeguarding Notifications</li><li>• Suspension</li><li>• Health and Safety Audit – scoring 50% or less</li><li>• Default Notice(s)/Enforcement(s)</li><li>• More than one contract breach notice</li></ul>
<b>Amber</b>	<ul style="list-style-type: none"><li>• Contract breach notice</li><li>• Environmental Enforcement Notice(s)</li><li>• Derbyshire Fire and Rescue Enforcement Notice(s)</li><li>• Infection control risks</li><li>• Environmental Health Notice(s)</li><li>• Planning Enforcements</li><li>• Safeguarding's / Whistle blows (not yet resolved)</li><li>• CQC inspection report – requires improvement.</li><li>• No registered manager in place</li><li>• Concerns from GP, Fieldworkers, Healthcare Professionals</li><li>• Quality Audit undertaken and risks identified / provider not responding to actions.</li><li>• Health and Safety Audit – scoring between 60% and 50%</li><li>• Unresolved customer complaints</li></ul>
<b>Green</b>	<ul style="list-style-type: none"><li>• Some actions on plan outstanding but no significant concerns</li><li>• Audit undertaken and any actions have been addressed</li><li>• Nil concerns raised by GP, Fieldworkers, Healthcare Professionals</li><li>• Good customer feedback</li></ul>

## 3. RISK METRICS

3.1 Ratings are assessed across the following risk metrics:

Category	Metric
Quality	Latest CQC Rating
Quality	Latest QMO Rating (RAG rated, please see below for further detail)

Management	No listed registered manager (if CQC Registered)
Management	No listed nominated individual (if CQC Registered)
Staffing	% of shifts staffed by agency over last quarter
Staffing	High level of international recruits locally, as a proportion of total staff locally
Staffing	High level of staff turnover
Customers	Assurance that assessments of customer care needs are carried out prior to acceptance into service
Safeguarding	No. of safeguarding's (proportionate to service)
Complaints	No. of complaints received in last quarter
Complaints	% of complaints responded to within 30 working days
Compliance	Contract KPI's % complied to
Compliance	Assurance of accurate and up to date policies in place in line with all legal and contractual duties
Compliance	Assurance of appropriate and in-date employers' liability insurance in place and on display
Compliance	Assurance of appropriate and in-date public liability insurance in place and on display
Compliance	Assurance of adequate vehicle insurance (if applicable)
Compliance	Assurance of up-to-date business continuity plans
Financial sustainability	Assurance of financial sustainability

## Schedule 5 Customer Need Levels

Need Level	Customer Needs	Group Rate (Session rate – minimum 6hrs)	1:1 Per Hour (centre or community)
Low – Group Support, 1:1	<p>customers who can be supported in a low-level group</p> <p>customers who can be left alone for short periods of time.</p> <p>needs low level support with communication</p> <p>needs a verbal prompt with personal care, hygiene.</p>	£61.20	£17.48
Medium – Small Group Support, 1:1	<p>customers who can be supported in a smaller group</p> <p>can go out as a group (would stay with a member of staff and be aware of traffic risks)</p> <p>may require extra support with communication.</p> <p>need verbal prompts with hygiene, personal care.</p> <p>positive behaviour management</p>	£74.97	£17.48
High – Small Group Support, 1:1	<p>support in the day service always</p> <p>behaviours that challenge</p> <p>can be part of a group but may need 1:1</p> <p>customers who require one dedicated member of staff available to them at all times due to behaviour</p> <p>medical risks e.g. Severe Epilepsy</p> <p>requires support when going into the community</p> <p>personal care included</p>	£91.76	£21.74

	<p>may require high level of support with communicating</p> <p>high risk of falls</p> <p>high mobility difficulties</p> <p>hoisting for personal care or physical support.</p>		
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## **Schedule 6 Contract management**

### **1. Authorised representatives**

- 1.1 The Council's initial Authorised Representative: The Council's Senior Commissioning Officer
- 1.2 The Supplier's initial Authorised Representative: To be notified to the Council within 10 Working Days of the Commencement Date.

## **Change control**

### **1. General principles**

- 1.1 Where the Council or the Supplier sees a need to change this agreement, 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 0.
- 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 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 0, 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 agreement by the Council; or
  - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where a written request for a Change 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 agreement 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 agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Council and the Supplier; and
- (k) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement under clause 33.3 will be apportioned.

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) accept the Change Control Note by arranging 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 agreement.

## Schedule 7 Variation Form

### Variation Form

No of Service Request Form being varied: .....

Name of Customer: .....

Variation Form No: .....

### **BETWEEN:**

DERBY CITY COUNCIL (**the Council**)

and

[*NAME OF SUPPLIER*] (**the Supplier**)

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

Authorised to sign for and on behalf of the Council

Signature.....

Date.....

Name in capitals.....

Address.....  
.....

Authorised to sign for and on behalf of the Supplier

Signature.....

Date.....

Name in capitals.....

Address.....  
.....

## **Schedule 8 TUPE**

### **1. Definitions**

In this Schedule, the following definitions shall apply:

**Employee Liabilities:** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- a. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b. unfair, wrongful or constructive dismissal compensation;
- c. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d. compensation for less favourable treatment of part-time workers or fixed term employees;
- e. outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- f. employment claims whether in tort, contract or statute or otherwise;
- g. any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

**Former Supplier:** a supplier supplying services to the Council before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

**Relevant Transfer:** a transfer of employment to which the Employment Regulations applies;

**Relevant Transfer Date:** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**Replacement Services:** any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Council internally and/or by any third party;

**Replacement Supplier:** any third party service provider of Replacement Services appointed by the Council from time to time (or where the Council is providing replacement Services for its own account, the Council );

**Replacement Sub-contractor:** a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

**Service Transfer:** any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

**Service Transfer Date:** the date of a Service Transfer;

**Staffing Information:** in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the DPA 2018), but including in an anonymised format:

- a. their ages, dates of commencement of employment or engagement and gender;
- b. details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- c. the identity of the employer or relevant contracting Party;
- d. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- e. their wages, salaries and profit sharing arrangements as applicable;
- f. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- g. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- h. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- i. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- j. any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**Supplier Personnel:** all directors, officers, employees, agents, consultants and contractors of the Supplier and/or any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;

**Supplier's Final Personnel List:** a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

**Supplier's Provisional Personnel List:** a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**Transferring Supplier Employees:** those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

#### **4. Interpretation**

- 4.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council , Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

#### **No transfer of employees at commencement of Services**

#### **5. Procedure in the event of transfer**

- 5.1 The Council and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Council and/or any Former Supplier.
- 5.2 If any employee of the Council and/or a Former Supplier claims, or it is determined in relation to any employee of the Council and/or a Former Supplier, that his/her contract of employment has been transferred from the Council and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Council and, where required by the Council , give notice to the Former Supplier; and
  - (b) the Council and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Council or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 5.3 If an offer referred to in clause 5.2(b) is accepted (or if the situation has otherwise been resolved by the Council and/or the Former Supplier), the Supplier shall, or shall procure

that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

5.4 If by the end of the 15 Working Day period specified in clause 5.2(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

5.5 the Supplier and/or the Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

## **6. Indemnities**

6.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of clause 5.2 to clause 5.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to clause 6.4, the Council shall:

- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Council referred to in clause 5.2 made pursuant to the provisions of clause 5.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of clause 5.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

6.2 If any such person as is described in clause 5.2 is neither re employed by the Council and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in clause 5.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

6.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to clause 6.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Council and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Council



and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

6.4 The indemnities in clause 6.1:

- (a) shall not apply to:
  - (i) in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
  - (ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in clause 5.2(a) is made by the Supplier and/or any Sub-contractor to the Council and, if applicable, Former Supplier within six months of the Effective Date.

**7. Procurement obligations**

- 7.1 Where in this schedule the Council accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Council's contract with the Former Supplier contains a contractual right in that regard which the Council may enforce, or otherwise so that it requires only that the Council must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**Employment exit provisions**

**8. Pre-service transfer obligations**

- 8.1 The Supplier agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
  - (c) the date which is 12 months before the end of the Term; and
  - (d) receipt of a written request of the Council at any time (provided that the Council shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the DPA 2018, the Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Council .

- 8.2 At least 28 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Council or at the direction of the Council to any Replacement Supplier and/or any Replacement Sub-contractor:
- (a) the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - (b) the Staffing Information in relation to the Supplier's Final Personnel List (insofar as such information has not previously been provided).
- 8.3 The Council shall be permitted to use and disclose information provided by the Supplier under clause 8.1 and clause 8.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 8.4 The Supplier warrants, for the benefit of the Council , any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to clause 8.1 and clause 8.2 shall be true and accurate in all material respects at the time of providing the information.
- 8.5 From the date of the earliest event referred to in clause 8.1(a), clause 8.1(b) and clause 8.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Personnel List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
  - (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
  - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;

- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Council or, at the direction of the Council, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.

8.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

8.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Council, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Council or, at the direction of the Council, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **9. Employment regulations exit provisions**

- 9.1 The Council and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Council and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 9.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 9.3 Subject to clause 9.4, the Supplier shall indemnify the Council and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or

- (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Council and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Council and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

- 9.4 The indemnities in clause 9.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
  - (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 9.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- (a) the Council shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
  - (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 9.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Council shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 9.7 If after the 15 Working Day period specified in clause 9.5(b) has elapsed:
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved

the Council shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

- 9.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of clause 9.5 to clause 9.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 9.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 9.9 The indemnity in clause 9.8:
- (a) shall not apply to:
    - (i) in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
    - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in clause 9.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six months of the Service Transfer Date.
- 9.10 If any such person as is described in clause 9.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in clause 9.5 to clause 9.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 9.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Supplier and/or any Sub-contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-contractor.

9.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Council and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Council, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

9.13 Subject to clause 9.14, the Council shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under



regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

9.14 The indemnities in clause 9.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## **Schedule 9    Safeguarding Policies**

### **10.    Safeguarding Children Policy**

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

### **11.    Safeguarding Adults Policy**

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

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

## Schedule 10 Data processing

Subject matter of processing:	Personal data to facilitate the care of customers in Day Opportunities Services.
Duration of Processing:	duration of the contract
Nature & Purpose of Processing:	<p>The Council has statutory duties in relation to the safeguarding of adults and young people in care and promoting education, training, and employment.</p> <p>The overall purpose of the sharing of information is to allow Day Opportunities Services to be provided to the adult or young person in need. This purpose helps ensure the promotion of high-quality care packages, fair access to opportunities, diversity, and increased choice.</p> <p>Providers will provide support in the form of outcome focused, person-centered day opportunities that provide eligible Customers aged 16+ years (including older adults aged 65+) with a range of activities that will help them achieve a fulfilling and independent life contributing to improving their overall well-being as well as, where appropriate, giving their Carers a break.</p> <p>Customers may be older adults living with multiple long-term conditions, frailty and dementia, or younger adults with physical and / or learning difficulties/ neurodiversity. Services are also required for Customers with primary needs relating to their mental health.</p> <p>Providers will provide support to each adult or young person to help them move towards independence and to ensure their individual needs are met. They will also record and report any safeguarding issues and serious causes for concern to Social Care and the relevant applicable authority (e.g., the Police, Ambulance Service etc.). The nature of support required will be determined by the adult's Social Worker and outlined in their Local Authority Care Plan. Social Care will hold responsibility for all care planning</p>

	<p>decisions and will direct the nature of the support required.</p> <p>The Council will exchange information and documents with Adult Social Care providers safely, quickly and easily, so that providers make expressions of interest and can bid on available packages of care and deliver services.</p>
Business Purposes:	<p>Day Opportunities Services</p> <p>To deliver statutory day opportunities services to eligible Derby City customers.</p> <p>This purpose helps ensure the promotion of high-quality care, fair access to opportunities, diversity, and increased choice. Additionally the service is an important support for carers and enables the individuals they care for to remain in their home for as long as possible.</p>
Personal Data Categories:	<ul style="list-style-type: none"> <li>• Anonymised Service User Care Plan and Anonymised Service Delivery Request details exported from LAS Case Management system</li> <li>• Service User specific details only shared with the the successful provider on award of the care package</li> <li>• Frequency of care</li> <li>• Start date</li> <li>• Package Requirements (location in City, customer preferences etc.</li> <li>• Service level required and Individual Budget available.</li> <li>• Package Notes</li> <li>• Name</li> <li>• Gender</li> <li>• Date of Birth</li> <li>• Marital Status (if applicable)</li> <li>• NHS Number</li> <li>• National Insurance Number</li> <li>• Home Address</li> <li>• Current Address</li> </ul>

	<ul style="list-style-type: none"> <li>• Contact Methods (e.g. mobile phone number, homes phone number, email address)</li> <li>• GP details</li> <li>• Next of Kin details, including name, address, contact details</li> <li>• Family and carer details, including name, address, contact details</li> <li>• Names of relevant relationships / family members</li> <li>• School/college details</li> </ul> <p><b>Special Category Data</b></p> <ul style="list-style-type: none"> <li>• Details of reviews and assessments on progress made towards outcomes</li> <li>• Ethnic Origin</li> <li>• Health details including healthcare provider</li> <li>• Looked after status</li> <li>• Special Education Needs and Disability details (SEND)</li> <li>• School exclusions and behavioral support details</li> </ul> <p>Also:</p> <ul style="list-style-type: none"> <li>• Criminal convictions relating to adult or young people</li> <li>• Criminal convictions relating to provider support staff</li> </ul>
Categories of Data Subject:	<ul style="list-style-type: none"> <li>• Recipients of Adult Social Care services (Community/Residential Care)</li> <li>• Allocated Social Worker</li> <li>• Once a successful Provider has been selected, no further personal is sent via the eBrokerage system. Customer information will be sent by secure email (Egress)</li> <li>• If no successful (framework or off-framework) Provider is selected on the OCC eBrokerage module, alternative providers will be contacted via secure email (Egress Switch) to attempt to source a suitable service for the customer.</li> <li>• Derby City Council staff</li> <li>• Provider support workers</li> </ul>

	<ul style="list-style-type: none"> <li>• Vulnerable young people who are assessed by Social Care as a Child in Need, Looked After Child or Care Leaver</li> </ul>
Destruction	<p>No data will be destroyed before the project is over.</p> <p>At the end of the project data will be deleted from computer systems once the relevant retention period is over.</p> <p>Statistical data including no personal or special category data regarding the number of referrals etc will be held indefinitely for monitoring purposes.</p> <p>For data on Adult's Commissioning MS SharePoint site, a retention period for all documents created or saved onto the site it is mandatory. Each document is assigned a category which relates to the appropriate retention period and a retention period deadline date (6 Months from that date the data will be deleted).</p> <p>The Provider shall ensure that any Shared Personal Data is returned to the Council or destroyed in accordance with the agreed Deletion Procedure as follows:</p> <ol style="list-style-type: none"> <li>a. on termination of its involvement in this Agreement;</li> <li>b. on expiry of the Term of this Agreement; or</li> <li>c. once Processing of the Shared Personal Data is no longer necessary for the purposes it was originally shared for.</li> </ol>
Authorised Persons:	<p>Senior Commissioning Officer</p> <p>Lead Commissioner</p> <p>Head of Commissioning</p>
Approved Processors/Subprocessors:	<p>Social Worker</p> <p>Brokerage Officer</p>

	<p>Quality Monitoring Officer</p> <p>Supplier</p> <p>NHS bodies</p> <p>Local Authorities within D2N2</p>
<b>International Transfers</b>	<p>Parties must identify the territory that is subject to such Adequacy Regulations in accordance with UK Data Protection Legislation</p>