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Terms and Conditions

**Preliminaries**

1. Definitions and interpretation
   1. In this Call Off Agreement capitalised expressions and all other words and phrases shall have the meaning given to it in the Dynamic Purchasing System Agreement.
   2. If a capitalised expression or words or phrases does not have an interpretation in the Dynamic Purchasing System Agreement, and unless the context otherwise requires, it shall have the meaning set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
   3. If a capitalised expression does not have an interpretation in the Dynamic Purchasing System Agreement, the Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
   4. In the event of and only to the extent of any conflict between the Service Offer, the Call Off Terms and the provisions of the Dynamic Purchasing System Agreement, the conflict shall be resolved in accordance with the following order of precedence:
      * 1. the Dynamic Purchasing System Agreement;
        2. the Call Off Terms;
        3. the Service Offer.

**Duration of Call Off Agreement**

1. Call off Agreement Period
   1. This Call Off Agreement shall commence on the Call Off Commencement Date and shall expire on the Call Off Expiry Date unless it is terminated earlier in accordance with the terms of this Call Off Agreement or otherwise by operation of Law.
2. Services
   1. Provision of the Services
   2. The Service Provider acknowledges and agrees that the Council relies on the skill and judgment of the Service Provider in the provision of the Services and the performance of its obligations under this Call Off Agreement.

**Call Off Agreement Governance**

1. Representatives
   1. Each Party shall have a representative for the duration of this Call Off Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Agreement.
   2. The initial Service Provider Representative shall be the person named as such in the Service Offer. The Service Provider may, by written notice to the Council, revoke or amend the authority of the Service Provider Representative or appoint a new Service Provider Representative.
   3. The initial Council Representative shall be the person communicated to the Service Provider via the DPS Platform from time to time. The Council may, by written notice to the Service Provider, revoke or amend the authority of the Council Representative or appoint a new Council Representative.

**Payment, Taxation And Value For Money Provisions**

1. Call Off Charges and Payment
   1. Call Off Charges
      1. In consideration of the Service Provider carrying out its obligations under this Call Off Agreement, including the provision of the Services, the Council shall pay the undisputed Call Off Charges in accordance with the pricing, payment and invoicing procedure in Call Off Schedule 3 (Call Off Charges, Payment and Invoicing).
      2. If the Council fails to pay any undisputed Call Off Charges properly invoiced under this Call Off Agreement, the Service Provider shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
      3. VAT
         1. The Service Provider and the Council acknowledge and agree that the supply of the Services by the Service Provider will be exempt for VAT purposes and accordingly no amount in respect of VAT will be payable by the Council in respect of the delivery or performance of the Services.  If Her Majesty's Revenue and Custom determines that any VAT shall become chargeable in respect of the delivery or the performance of any of the Services, all Call Off Charges and all payments by the Council to the Service Provider shall be deemed to be inclusive of VAT and the Service Provider shall account for VAT applied at the prevalent rate set by Her Majesty's Revenue and Customs applicable at the time of delivery or performance of the Services to which the relevant payment relates.
         2. The Service Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider for the delivery or the performance of any of the Services under any Call Off Contract.  Any amounts due under this Clause 5.1.3(b) shall be paid by the Service Provider no less than five (5) Business Days before the date upon which the VAT or other liability is payable by the Council.
      4. Retention and Set Off
         1. The Council may retain or set off any amount owed to it by the Service Provider against any amount due to the Service Provider under this Call Off Agreement or under any other agreement between the Service Provider and the Council.
         2. If the Council wishes to exercise its right pursuant to Clause 5.1.4 it shall give notice to the Service Provider within thirty (30) days of receipt of the relevant invoice, setting out the Council’s reasons for retaining or setting off the relevant Call Off Charges.
         3. The Service Provider shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has obtained a sealed court order from a court of competent jurisdiction requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

**Remedies and Relief**

1. Force Majeure
   1. Subject to the remainder of this Clause 6 (and, in relation to the Service Provider, subject to its compliance with its obligations in Clause 11.4), a Party may claim relief under this Clause 6 from liability for failure to meet its obligations under this Call Off Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Service Provider in performing its obligations under this Call Off Agreement which results from a failure or delay by an agent, Sub-Contractor or Service Provider shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Service Provider is itself impeded by a Force Majeure Event from complying with an obligation to the Service Provider.
   2. The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
   3. If the Service Provider is the Affected Party, it shall not be entitled to claim relief under this Clause 6 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 services similar to the Services required by this Call Off Agreement.
   4. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Agreement.
   5. Relief from liability for the Affected Party under this Clause 6 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Agreement and shall not be dependent on the serving of notice under Clause 6.4.

**Termination and Exit Management**

1. Council’s Termination Rights
   1. Termination on Material Default
      1. The Council may terminate this Call Off Agreement for material Default by issuing a Termination Notice to the Service Provider where:
         1. the representation and warranty given by the Service Provider under the DPS Agreement is materially untrue or misleading;
         2. the Service Provider commits any material Default of this Call Off Agreement which is not, in the reasonable opinion of the Council, capable of remedy; and/or
      2. For the purpose of Clause 7.1.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.
   2. Termination in Relation to Financial Standing
      1. The Council may terminate this Call Off Agreement by issuing a Termination Notice to the Service Provider where in the reasonable opinion of the Council there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider which:
         1. adversely impacts on the Service Provider's ability to supply the Services under this Call Off Agreement; or
         2. could reasonably be expected to have an adverse impact on the Service Provider’s ability to supply the Services under this Call Off Agreement.
   3. Termination on Insolvency
      1. The Council may terminate this Call Off Agreement by issuing a Termination Notice to the Service Provider where an Insolvency Event affecting the Service Provider occurs.
   4. Termination on Change of Control
      1. The Service Provider shall notify the Council immediately if the Service Provider undergoes a Change of Control and provided this does not contravene any Law shall notify the Council immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Council may terminate this Call Off Agreement by issuing a Termination Notice to the Service Provider within 1 (one) Month of:
         1. being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
         2. where no notification has been made, the date that the Council becomes aware of the Change of Control,

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

* 1. Termination Without Cause
     1. The Council shall have the right to terminate this Call Off Agreement by giving at least ten (10) Business Days' written notice to the Service Provider.
  2. Termination in Relation to Dynamic Purchasing System Agreement
     1. The Council may terminate this Call Off Agreement by issuing a Termination Notice to the Service Provider if the Dynamic Purchasing System Agreement is terminated for any reason whatsoever.
  3. Termination in Relation to Variation
     1. The Council may terminate this Call Off Agreement by issuing a Termination Notice to the Service Provider for failure of the Parties to agree or the Service Provider to implement a Variation in accordance with the Variation Procedure.

1. Service Provider Termination Rights
   1. The Service Provider may, by issuing a Termination Notice to the Council, terminate this Call Off Agreement if the Council fails to pay an undisputed sum due to the Service Provider under this Call Off Agreement which in aggregate exceeds five thousand pounds (£5,000) and such amount remains outstanding forty (40) Business Days (the “**Undisputed Sums Time Period**”) after the receipt by the Council of a written notice of non-payment from the Service Provider specifying:
      1. the Council's failure to pay; and
      2. the correct overdue and undisputed sum; and
      3. the reasons why the undisputed sum is due; and
      4. the requirement on the Council to remedy the failure to pay; and

this Call Off Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Business Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under this Call Off Agreement including Clause 5.1.4 (Retention and Set off).

* 1. The Service Provider shall not suspend the supply of the Services for failure of the Council to pay undisputed sums of money (whether in whole or in part).

1. Termination By Either Party
   1. Termination for continuing Force Majeure Event
      1. Either Party may, by issuing a Termination Notice to the other Party terminate this Call Off Agreement if, in accordance with Clause 6 (Force Majeure) the circumstances as more particularly described therein arise.
2. Partial Termination, Suspension and Partial Suspension
   1. Where the Council has the right to terminate this Call Off Agreement, the Council shall be entitled to terminate or suspend all or part of this Call Off Agreement provided always that, if the Council elects to terminate or suspend this Call Off Agreement in part, the parts of this Call Off Agreement not terminated or suspended can, in the Council's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Agreement.
   2. The Service Provider has the right to suspend the delivery of all or part of the Services for a reasonable period where there is or has been:
      1. illegal or prohibited use of all or part of the Services; or
      2. legal, regulatory, police or security services instruction to suspend all or part of the Services.
   3. Any suspension of this Call Off Agreement under Clause 10.1 shall be for such period as the Council may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Council.
3. Consequences Of Expiry Or Termination
   1. Consequences of termination under Clauses 7.1 (Termination on Material Default), 7.2 (Termination in Relation to Financial Standing) and 7.3 (Termination on Insolvency)
      1. Where the Council:
         1. terminates (in whole or in part) this Call Off Agreement under any of the Clauses referred to in Clause 11.1; and
         2. then makes other arrangements for the supply of the Services,

the Council may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Call Off Agreement Period provided that Council shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Council to the Service Provider until the Council has established the final cost of making those other arrangements.

* 1. Consequences of termination under Clause 9.1 (Termination for Continuing Force Majeure Event)
     1. The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 9.1 (Termination for Continuing Force Majeure Event).
  2. Consequences of Termination for Any Reason
     1. Save as otherwise expressly provided in this Call Off Agreement:
        1. termination or expiry of this Call Off Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Agreement prior to termination or expiration and nothing in this Call Off Agreement shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
        2. termination of this Call Off Agreement shall not affect the continuing rights, remedies or obligations of the Council or the Service Provider under Clauses 11 (Consequences of Expiry or Termination), 12 (Entire Agreement), 13 (Third Party Rights), 14 (Notices), (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Agreement Charges, Payment and Invoicing), and, without limitation to the foregoing, any other provision of this Call Off Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

1. Entire Agreement
   1. This Call Off Agreement and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
   2. Neither Party has been given, nor entered into this Call Off Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Agreement.
   3. Nothing in this Clause 12 shall exclude any liability in respect of misrepresentations made fraudulently.
2. Third Party Rights
   1. A person who is not a Party to this Call Off Agreement has no right under the CRTPA to enforce any term of this Call Off Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
3. Notices
   1. Except as otherwise expressly provided within this Call Off Agreement, any notices sent under this Call Off Agreement must be in writing. For the purpose of this Clause 32, an e-mail sent to the relevant Council at either [contractsadults@cornwall.gov.uk](mailto:contractsadults@cornwall.gov.uk) is accepted as being **in writing**.
   2. Subject to Clause 14.3, the following table sets out the method by which notices may be served under this Call Off Agreement and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| Manner of Delivery | Deemed time of delivery | Proof of Service |
| Email | 9.00am on the first Working Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message |

* 1. The following notices may only be served as an attachment to an email:
     1. any Termination Notice (Clause 7 (Council Termination Rights)),
     2. any notice in respect of:
        1. partial termination, suspension or partial suspension (Clause 10 (Partial Termination, Suspension and Partial Suspension)),
        2. Default or Council Cause; and
     3. any Dispute Notice.
  2. This Clause 14 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 (other than the service of a Dispute Notice under the Dispute Resolution Procedure).
  3. For the purposes of this Clause 14, the email address of each Party shall be the email address for the Council as set out in Clause 14.1 and the Service Provider Representative set out in the Service Order.



Call Off Definitions

In accordance with Clause [1](#bookmark2) (Definitions and Interpretations) of this Call Off Agreement the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| **Affected Party** | means the party seeking to claim relief in respect of a Force Majeure; |
| **Best Practice** | means those standards, practices, methods and procedures of working that conform to Law and guidance issued by the CQC, the Social Care Institute of Excellence, any Relevant Council and any Regulatory Body in relation to the subject matter of the Services; |
| **Call for Competition Procedure** | means the award procedure described in paragraph 4 of DPS Schedule 3 (Call For Competition Procedure) of the Dynamic Purchasing System Agreement; |
| **Call Off Commencement Date** | means the date of commencement of this Call Off Agreement as set out in the Service Order; |
| **Call Off Agreement** | means a legally binding agreement (entered into pursuant to the provisions of the Dynamic Purchasing System Agreement) for the provision of the Services made between a Council and the Service Provider, which shall comprise the terms and conditions of the Dynamic Purchasing System Agreement and the Call Off Terms (amended or refined where required by the Council and permissible pursuant to DPS Schedule 3 (Call for Competition Procedure) and the Call Off Charges; |
| **Call Off Charges** | means the prices (exclusive of any applicable VAT), payable to the Service Provider by the Council under this Call Off Agreement, as set out in Call Off Schedule 3 (Call Off Agreement Charges, Payment and Invoicing), for the full and proper performance by the Service Provider of its obligations under this Call Off Agreement; |
| **Call Off Agreement Period** | means the term of this Call Off Agreement from the Call Off Commencement Date until the Call Off Expiry Date; |
| **Call Off Expiry Date** | means:   1. the end date of the Call Off Agreement Period as notified to the Service Provider by the Council from time to time; or 2. if this Call Off Agreement is terminated before any date communicated to the Service Provider in accordance with (a) above, the earlier date of termination of this Call Off Agreement; |
| **Call Off Schedule** | means a schedule to this Call Off Agreement; |
| **Call Off Terms** | means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules; |
| **Council Cause** | means any breach of the obligations of the Council or any other default, act, omission, negligence or statement of the Council, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Agreement and in respect of which the Council is liable to the Service Provider; |
| **Default** | means any breach of the obligations of the Service Provider (including but not limited to the abandonment of this Call Off Agreement in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Service Provider, of its Sub- Contractors or any Service Provider Staff howsoever arising in connection with or in relation to the subject-matter of this Call Off Agreement and in respect of which the Service Provider is liable to the Council; |
| **Force Majeure** | means any event, occurrence, circumstance, matter or cause affecting the performance by either the Council or the Service Provider of its obligations arising from:   * + - 1. acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Agreement;       2. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;       3. acts of the Crown, local government or Regulatory Bodies; fire, flood or any disaster; and       4. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:          1. any industrial dispute relating to the Service Provider, the Service Provider Staff (including any subsets of them) or any other failure in the Service Provider or the Sub-Contractor's supply chain; and          2. any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and          3. any failure of delay caused by a lack of funds; |
| **Force Majeure Notice** | means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event; |
| **VAT** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |



Services

1. Introduction
   1. This Call Off Schedule specifies the Services to be provided under this Call Off Agreement and the Service Provider shall deliver the Services in accordance with this Call Off Agreement.
   2. The Services to be provided under this Call Off Agreement shall be those tasks and services set out in the Support Plan attached to the Order Form associated with this Call Off Agreement and as more fully described in the Specification.



Call Off Contract Charges, Payment and Invoicing

1. Interpretation
   1. In this Call Off Schedule 3 capitalised terms shall have the meaning given to them in Schedule 1 (Definitions and Interpretation) of this Call Off Contract, save that the following expressions shall have the following meanings unless the context otherwise requires:

|  |  |
| --- | --- |
| **"Actual Weekly Cost"** | has the meaning given to it in paragraph 4.1 of this Call Off Schedule 3; |
| **"Commissioned Duration"** | means the amount of time the Council reasonably expects it would take for a Service Provider to deliver the Services in respect of a Service Visit as set out in the Service Request and the Support Plan; |
| **"Call Off Contract Charges"** | means the hourly rates (as more particularly described in the Service Request Response) payable to the Service Provider by the Council under this Call Off Contract pursuant to Call Off Schedule 3 for the actual performance by the Service Provider of its obligations under this Call Off Contract; |
| **"Disputed Invoice"** | has the meaning given to it in paragraph 3.9 of this Call Off Schedule 3; |
| **"Eligible Needs"** | means the needs which the Council has determined as eligible for funding pursuant to section 7 of the Local Authority Social Services Act 1970 entitled "Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care, England 2010 or such other guidance as is issued by the Secretary of State from time to time; |
| **"Eligible Needs Costs"** | means the total cost of any Call-Off Contract Charges in respect of the Services required for a Service User's Eligible Needs; |
| **"Exception Service Visit"** | has the meaning given to it in paragraph 5.2 of this Call Off Schedule 3; |
| **"Final Invoice"** | has the meaning given to it in paragraph 3.11.1 of this Call Off Schedule 3; |
| **"Gross Amount"** | has the meaning given to it in paragraph 3.1.1 (a) of this Call Off Schedule 3; |
| **"Invoice Period"** | means a recurring period of four (4) weeks, from 00:00 hours Saturday to 23:59 hours Friday, commencing on 9 June 2018; |
| **"Purchase Order"** | means the Council's standard adult social care purchase order which it is necessary for the Council to create in order to generate a purchase order number for the delivery of any services including the Services and which is required in order for the Council to authorise payments to its suppliers. For the avoidance of doubt where the term "Purchase Order" is used in this Call-Off Contract, such term expressly excludes any terms or conditions, either expressly set out or implied or incorporated in any way whatsoever in the Council's standard form purchase order; |
| **"Restart"** | has the meaning given to it in paragraph 7.1.3 of this Call Off Schedule 3; |
| **"Retention Period"** | has the meaning given to it in paragraph 7.1.1 of this Call Off Schedule 3; |
| **"Service User Contribution"** | means the weekly financial contribution assessed by the Council (from time to time) as being the maximum amount payable by a Service User in respect of his or her Eligible Needs Costs; |
| **"Service User Identifiable Data"** | means data of Service Users that enables identification of the same Service Users including without limitation, name, date of birth, National Insurance Number; |
| **"Service Visits"** | means a visit by a Service Provider staff member to a Service User’s home for the purpose of delivering the Services; |
| **"Undisputed Invoice"** | has the meaning given to it in paragraph 3.11.2 of this Call Off Schedule 3; |
| **"Valid Invoice"** | has the meaning given to it in paragraph 2.4 of this Call Off Schedule 3; |
| **"Week"** | means the period from Saturday to Friday (inclusive), and the term "Weekly" shall be construed accordingly. |

1. Call Off Contract Charges
   1. The hourly rates which are applicable to this Call Off Contract are those set out in the Service Request Response to the Service Request associated with this Call Off Contract.
2. Invoicing - General
   1. The Service Provider shall invoice the Council within thirty (30) calendar days of the final day of the immediately preceding Invoice Period for payment of:
      1. the Call Off Contract Charges incurred in relation to the Services during the immediately preceding Invoice Period (the "**Period**") save in relation to:
         1. those Call Off Contract Charges incurred during the Period which are equivalent to the value of the Service User Contribution for the Period (the "**Service User Recoverable Sum**") and the Parties acknowledge and agree that the Council shall have no liability therefor in respect of the Service User Recoverable Sum and the Service Provider shall use its best endeavours to recover the same from the Service User and in the event of non-payment of the Service User Recoverable Sum by the Service User, the Service Provider shall comply with the processes for non-payment of Service User Contributions in accordance with paragraph 8 of DPS Schedule 2 Part B (Domestic Support Services Specification) **PROVIDED ALWAYS** that the Council shall become liable for all Call Off Contract Charges incurred in relation to the Services in the Period (save in relation to any Exception Service Visit where the provisions of paragraph 3.1.2 shall apply) (the "**Gross Amount**") should the Council serve a written notice on the Service Provider notifying the Service Provider that the Council will become liable for the Gross Amount on a specified date in such notice; and
         2. any Exception Service Visit where the provisions of paragraph 3.1.2 shall apply; plus
      2. the Call Off Contract Charges applicable for any Exception Service Visit during the immediately preceding Invoice Period calculated in accordance with paragraph 6 below.
   2. Subject to paragraph 3.3, the Service Provider shall submit invoices for the Services to:

By Email: [adultsfinance@cornwall.gov.uk](mailto:adultsfinance@cornwall.gov.uk)

By Post:

Adults Payments, Cornwall Council

1st Floor, East Wing, County Hall

Treyew Road, Truro, Cornwall, TR1 3AY

* 1. The Service Provider shall ensure that any invoice raised in accordance with paragraphs 2.1 to 2.3 (“**Valid Invoice**”):
     1. identifies the relevant Order Form and/or Purchase Order number(s);
     2. contains the name and address of the relevant Service Provider;
     3. contains a unique invoice number and invoice date;
     4. is identified by the adult social care user ID reference number;
     5. contains details of the relevant Invoice Period;
     6. contains Actual Weekly Costs during the relevant Invoice Period;
     7. contains the Service Provider’s bank details;
     8. contains any other information reasonably required by the Council and as notified to the Service Provider from time to time.
  2. The Service Provider shall ensure that Service User Identifiable Data is not included in any invoice. In the event such data is shown on any invoice, such invoice will not be regarded as a Valid Invoice and shall be cancelled from the Council's payments system.
  3. The Service Provider shall ensure that submission of invoices in accordance with this Call Off Schedule 3 is via a secure transfer route with adequate security levels to meet the Data Protection Laws taking into account the level of sensitivity of the data being submitted.
  4. The Service Provider shall not submit an invoice prior to such dates as more particularly described in paragraph 3.1. Where a Service Provider submits invoices outside such dates, the invoice will not be regarded a Valid Invoice.
  5. If an invalid invoice is entered into the Council’s payments system, the Service Provider will be required to submit a credit note for it and resubmit a new invoice in accordance with this Call Off Schedule 3.
  6. The Council shall pay the Service Provider all elements of a Valid Invoice in full where it reasonably believes that such sums are valid and properly due within thirty (30) calendar days of receipt.
  7. Where the Council reasonably believe an invoice contains a sum which is not valid and properly due, such invoice shall be deemed to be a "**Disputed Invoice**", and the Council shall notify the Service Provider within twenty (20) days of receipt setting out the reasons why the Council consider such invoice to contain a sum which is not valid and properly due.
  8. The Parties shall endeavour to resolve the issues in respect of a Disputed Invoice.
  9. If:
     1. the Parties resolve the issues as referred to in paragraph 3.9 of this Call Off Schedule 3, the Service Provider shall submit a further invoice (a "**Final Invoice**") to the Council and the Council shall pay the Service Provider the amount set out in the Final Invoice within thirty (30) days of receipt.
     2. the Parties do not resolve the issues as referred to in paragraph 3.9 of this Call Off Schedule 3, the Service Provider shall submit a further invoice for any undisputed amount (an "**Undisputed Invoice**") to the Council and the Council shall pay the Service Provider the amount set out in the Undisputed Invoice within thirty (30) days of receipt.
  10. Any amount in the Disputed Invoice which remains disputed by the Parties shall be referred to the Dispute Resolution Procedure.

1. Actual Weekly Costs
   1. The Service Provider shall evidence and collate information on each Service Visit undertaken by the Service Provider Staff in each Week in order to calculate the Call Off Contract Charges on a Weekly basis (the "**Actual** **Weekly Cost**").
   2. The Service Provider shall calculate the Actual Weekly Cost for the previous Week using information it may have in respect of a Service Visit.
   3. Upon submission of invoices pursuant to this Call Off Schedule 3, the Service Provider shall provide such appropriate Actual Weekly Cost information as may be required in order to discharge its obligations pursuant to paragraph 3.3 and in particular paragraph 3.3.6.
2. Service Visit Requirements and Payment
   1. The Council shall pay the Service Provider the Call Off Contract Charges for the Commissioned Duration for any Service Visit in the following circumstances:
      1. where a Service User cancels the Service Visit and provides the Service Provider with less than twelve (12) hours’ notice of the same;
      2. where the Service User requires a Service Provider Staff member to finish a Service Visit before all the Services have been fully and completely delivered;
      3. where the Service User is not at home at the time of the Service Visit; or
      4. where a Service Provider Staff member is unable to gain access to a Service User's property, where all attempts to gain access in accordance with the Specification have been exhausted.
      5. Where the Council notify that the Service Visit is undertaken during the Empowerment Period.
   2. Each of paragraphs 5.1.1 to 5.1.5 shall be defined as an "Exception Service Visit" and collectively as the "Exception Service Visits".
3. The Service Provider shall record the occurrence of any Exception Service Visit and shall provide written and auditable evidence of such circumstances to the Council.
4. Payment
   1. The Council shall pay any Undisputed Invoice within thirty (30) days of receipt.
5. Adjustment of Call Off Contract Charges
   1. The Call Off Contract Charges may only be varied:
      1. due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause [18.2](#bookmark56) of this Call Off Contract (Legislative Change); or
      2. due to an increase in the LWF Living Wage.
   2. Subject to paragraph 9.2 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the Call Off Contract Period.
6. Implementation Of Adjusted Call Off Contract Charges
   1. Variations in accordance with the provisions of this Call Off Schedule to all or part the Call Off Contract Charges (as the case may be) shall be made by the Council to take effect:
      1. in accordance with Clauses 7.2 and 7.3 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 10.1.1 of this Call Off Schedule;

in accordance with Clause 9.1.5 of this Call Off Contract where an adjustment to the Call Off Contract Charges is made in accordance with paragraph [10.1.](#bookmark199)2 of this Call Off Schedule.