



## **Contract**

### **For the Provision of a Care and Wellbeing Service - Extra Care Housing**

**2016-2019**

## Contract for the Provision of Care and Wellbeing Service – Extra Care Housing

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## Section A - Authorised Signatories to the Contract & Definitions of Terms

**A1** This Deed of Contract will commence on the:

**1<sup>st</sup> July 2016**

**A2** and will terminate on the:

**31<sup>st</sup> June 2019**

**A3** This Contract is made between:

**The Council of the Borough and County of the Town of Poole**

(The Purchaser)

**A4** and:

(The Provider)

**A5** for the provision of:

**A Care and Wellbeing Service - Extra Care Housing**

**A6** The Hourly Rate of:

**See Contract Clause C - Payment and Contract Price**

**A7** For the purpose of this Contract the Purchaser's Contact will be:

**Andrew Lewis**

**A8** and the Provider's Contact will be:

**A9 Authorised Signatories to the Contract:**

Provider:

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**Service Name:**

<b>Provision of a Care and Wellbeing Service - Extra Care Housing</b>
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This Contract is signed by the Duly Authorised Signatories:

On behalf of The Purchasers:

Name:

<b>Sue Lee</b>
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Position:

<b>Principal Officer, Commissioning and Improvement – People Services</b>
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Signature:

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Date:

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On behalf of The Provider:

Name:

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Position:

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Signature:

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Date:

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## **B STANDARD CONDITIONS**

### **B1 Duration of Contract**

- B1.1 This Contract shall commence on **1<sup>st</sup> July 2016** and shall terminate on **31<sup>st</sup> June 2019** with the option for the Council with the agreement of the Service Provider to extend for a further 2 years thereafter subject to earlier termination, annual review, funding availability and satisfactory performance throughout the initial contract period. The Contract will be reviewed at least 3 months before the end of the contract period.

### **B2 Authorised Representatives**

- B2.1 The Council will appoint an Authorised Representative to act in the name of the Council for the purposes of the Contract and will tell the Provider in writing who that person is and how to contact him/her; and will tell the Provider in writing of any change to the Authorised Representative.
- B2.2 The Provider must comply with written instructions given by the Authorised Representative unless the instruction would amount to a Variation to this Contract in which case it will be dealt with in accordance with the procedure set out in this Contract.
- B2.3 The Authorised Representative may appoint one or more Monitoring Officers. A decision, request or orders of the Monitoring Officer(s) must be treated in the same way as one made by the Authorised Representative.
- B2.4 The decision of the Authorised Representative made in accordance with this Contract is binding on both parties except where this Contract specifically provides otherwise.

### **B3 Independent Contractor and Employees**

- B3.1 Nothing in this Contract shall be construed as creating a legal partnership, a contract of employment or a relationship of principal and agent between the Purchaser and the Provider.
- B3.2 The Provider is not and shall in no circumstances hold itself out as being the servant or agent of the Purchaser for any purpose other than those expressly conferred by this Contract.
- B3.3 The Provider is not and shall in no circumstances hold itself out as being authorised to enter into any Contract on behalf of the Purchaser or in any other way to bind the Purchaser to the performance, variation, release or discharge of any obligation.
- B3.4 The Provider's staff are not and shall not hold themselves out as being, or shall they be held out by the Provider as being, servants or agents of the Purchaser for any purposes other than those expressly conferred by this Contract.
- B3.5 Any information to be provided or assistance to be rendered pursuant to this Clause shall be at no cost to the Purchaser.

## **B4 Provider Obligations - General**

- B4.1 The Provider will from the Commencement Date hold itself available to perform the Service and will when called upon to do so by the Council will perform the Service for a Service User comprehensively and strictly in accordance with the provisions of this Contract and (but without limitation) in accordance with:
- All Legislation (including Legislative Change) Consents and Best Practice as are relevant to the Service (including such standards or guidance as come into force after the Commencement Date);
  - Registration requirements.
  - The Contract Documents, including the Specification and any Method Statements;
  - The Service User's Support Plan and, if required, Moving and Handling Care Plan.
  - AND in an efficient, professional, ethical and courteous manner and in a manner which enhances the interests and reputation of the Council.
- B4.2 The Provider must tell the Authorised Representative in writing immediately it receives any notice or other communication from any regulatory body alleging that the Provider does not comply, or suggesting that it may not comply, with the requirements of any Legislation, guidance and/or Best Practice and must immediately give a free copy of any such notice to the Council.
- B4.3 The Provider shall co-operate as far as is reasonable with the Purchaser's staff and any contractors appointed by the Purchaser for any purposes connected to the Services provided this does not involve the Provider in additional expense.
- B4.4 The Provider must make sure that the requirements of this Contract and any relevant policies of the Provider have been drawn to the attention of each member of its staff; and that its staff have a detailed knowledge of them and are required to comply fully.
- B4.5 Liaison The Provider must liaise with and co-ordinate its activities with those of any other provider or sub-contractor employed directly or indirectly by the Council so that the Service and any other service delivered by any other provider or sub-contractor is delivered in the best possible way
- B4.6 Meetings The Provider and Purchaser will arrange meetings in connection with the Contract, over the contract period to discuss relevant issues as they arise.
- B4.7 Inspection The Provider must allow anyone Authorised by the Council to enter and inspect without prior notice at any time any premises and to inspect any person, equipment or materials used in the performance of the Contract
- B4.8 Subject to Clause B4.9 the Provider shall make good with all practicable speed at its own expense any breach of its obligations to perform the Services.
- B4.9 The provisions of Clause B4.8 shall not apply to any defect or damage which arises or develops as a result of unreasonable alteration to the Services made by the Purchaser or any negligent act or omission of the Purchaser or any breach by the Purchaser of this Contract or any cause beyond the Provider's reasonable control.



B4.10 The Provider shall carry out its obligations under this Contract in such a manner so as not to unduly interfere with the orderly carrying out of the Council's existing services.

B4.11 The Provider will act in good faith towards the Purchaser.

B4.12 The Provider shall ensure that they complete the outstanding information that is required in relation to National Minimum Data Set (NMDS) on an annual basis. The Provider shall also ensure that they complete the Contract information Tool as referred to in the Contract Specification.

B4.13 The Provider shall as part of their obligation to notify CQC of **any** statutory notices immediately forward a copy of such notice in writing by post to the Service Improvement Team, Commissioning and Improvement – People Services, Borough of Poole, Civic Centre, Poole, BH15 2RU or by email to [serviceimprovementteam@poole.gov.uk](mailto:serviceimprovementteam@poole.gov.uk)

B4.14 The Provider shall provide part of this Service within Service Users' own homes, which is compatible with Service Users' individual circumstances and lifestyle and in the least obtrusive way reasonably possible. This Service shall be provided with the consistency and continuity reasonably possible taking account of the Provider's obligations hereunder and its turnover of staff, in terms of the numbers of staff deployed, to minimise to the extent reasonably possible any material disruption to the Service User and/or their carer.

B4.15 The Provider shall use all reasonable endeavours to develop and maintain a partnership role between the Borough of Poole and the independent sector with the aim of ensuring the delivery of a Support Service in accordance with this Agreement.

## **B5 PROVIDERS MANAGER AND PROVIDERS STAFF**

### **B5.1 The Provider's Manager**

B5.1.1 The Provider must appoint a Manager to act in the name of the Provider and must tell the Authorised Representative in writing who they are and contact details; and must tell the Provider in writing of any change. Any communication given to the Manager is deemed to have been given to the Provider.

B5.1.2 The Provider must make sure that their Manager or a competent Authorised representative is available to speak to and to meet the Authorised Representative whenever the Authorised Representative reasonably requires.

B5.1.3 The Manager must consult with the Authorised Representative or any Monitoring Officer as often as is necessary to ensure the continuous and efficient provision of the Service.

B5.1.4 The Provider's management staff must have the aptitude, skills, knowledge and experience required to act as leaders for this Service.

## **B5.2 Provider's Staff**

- B5.2.1 Continuity of Service The Provider must employ enough staff to make sure that the Service is provided in accordance with this Contract including during public and staff holidays or other absence whether through sickness, maternity leave, industrial action, or otherwise.
- B5.2.2 Standard of staff The Provider must employ, appoint or instruct in and about the provision of the Service only such persons as in its reasonable opinion having made due and reasonable inquiry are careful, skilled, honest and suitably qualified and experienced in the work which they are to perform and in particular in relation to:-
- a. all relevant provisions of the Contract;
  - b. all relevant policies, rules, procedures and the standards of the Council;
  - c. all relevant rules, procedures and statutory requirements affecting the relevant tasks to be undertaken by such person, including those relating to health and safety at work and including the Provider's own health and safety policy;
  - d. the prevention of danger to Service Users and other persons.
- B5.2.3 Management and Training The Provider must provide to a good standard all necessary management and supervision to ensure that the Provider's Staff are at all times adequately supervised and can properly perform their duties in accordance with the Contract. The Provider must make sure that the Provider's Staff are suitably trained in the use of relevant equipment, machinery and systems and in the performance of the tasks required.
- B5.2.4 Standards and Behaviour The Provider must make sure that all the Provider's Staff abide by the standards, rules and regulations established by the Provider for its own staff, including all safety and other regulations and completion of time recording requirements and that they maintain strict discipline and good order and do not engage in behaviour or activities which could be contrary to or detrimental to the Service or the Council's interests or would be offensive to any Service User or other person.
- B5.2.5 Misconduct The Provider must have a policy approved by the Council in place to investigate any allegation of misconduct by the Provider's Staff and must follow that policy. "Misconduct" includes, but is not limited to, fraud or theft, physical or mental abuse (including threatening behaviour, physical restraint, deprivation of care or harassment), any type of sexual exploitation, neglect of Service Users' requirements. The Provider must keep a record of and tell the Authorised Representative about all instances of misconduct or alleged misconduct together with details of how such misconduct is being dealt with. Any investigations must be carried out to the satisfaction of the Council.
- B5.2.6 Safeguarding The Provider must adhere to the Purchaser's Dorset Safeguarding Protection Policy in place on the abuse of vulnerable adults and must follow that policy. The Provider's Staff must be given specific training and guidance into how to respond to disclosures, identify and report abuse or suspected abuse without compromising the personal safety of Service Users as detailed in Clause D5 (Safeguarding Adults).

- B5.2.7 Gifts The Provider must have a written policy approved by the Council in place on the receipt of gifts and must follow that policy. The Provider and the Provider's Staff must not accept financial inducements or any other form of money taking or reward from Service Users that contravenes the Provider's policy.
- B5.2.8 Service Users money The Provider and the Provider's staff must adhere to the Purchaser's Managing Other People's Money Policy (Appendix A) and must follow that policy.
- B5.2.9 Sensibilities The Provider must take full account of and make sure that the Provider's Staff take full account of all cultural and religious beliefs and sensibilities of Service Users (including those based on ethnicity) when performing the Service. In recognition of these sensibilities, the Provider must make sure that extra care is taken by staff in their behaviour, demeanour, dress and speech.
- B5.2.10 Identification The Provider must provide a means of identification to the Provider's Staff, in an approved tamper proof form which must include photographs. All of the Provider's Staff must carry such identification at all times on their person and make it available for inspection by any person who might reasonably ask to see it.
- B5.2.11 Staff payment The Provider shall at all times be fully responsible for the payment of all wages, salaries, sick and other pay, PAYE, employers pension contributions, income or other taxes, national insurance contributions or levies of any kind relating to or arising out of the employment of any Provider's Staff and must fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof.
- B5.2.12 The Provider shall comply with Minimum Wage Legislation.
- B5.2.13 Dress The Provider's Staff must at all times while engaged in provision of the Service be properly and presentably dressed.

## **B6 Premises**

- B6.1 The Provider must at all times during the Contract Period provide and maintain such premises or facilities of whatever nature as are required for the proper and efficient performance of the Contract.

## **B7 No Partnership or Agency**

- B7.1 Nothing in this Contract creates a partnership or relationship of agency between the Council and the Provider.

## **B8 Contracts (Rights of Third Parties) Act 1999 Declaration**

- B8.1 The parties to this Contract agree that none of the provisions of this Contract or any document to be entered into under this Contract are intended to or will operate to confer any benefit under the Contracts (Rights of Third Parties) Act 1999 on any person who is not named as a party to this Contract.

## **C PAYMENT AND CONTRACT PRICE**

### **C1 Contract Price**

- C1.1 The contract price shall be the amount payable by the Purchaser to the Provider for the Service as specified in the Contract.
- C1.2 In consideration of the provision of the Services by the Provider in accordance with the terms of this Contract, the Purchaser shall pay the Provider the monies due under the terms of this Contract from **1<sup>st</sup> July 2016 to 31<sup>st</sup> June 2019**, excluding VAT where applicable. For the avoidance of doubt the Council may make a Deduction of any Default Costs, but is not obliged to do so, and any failure to do so is not a waiver of its rights to claim and recover such monies in any way howsoever.
- C1.3 This service shall be paid at the declared unit rates between the Purchaser and the Provider, excluding VAT where applicable. The Purchaser and the Provider during the period of the contract shall work towards payment of the service based on individual Service User Care Plan outcomes and the ability to 'bank' and use hours in a planned way over a designated period of time.
- C1.4 The contract allows for flexibility to carry forward hours from one week to the next and this would only apply to day support (at the rate of £14 per hour). Void hours are to be included in bank hours and to be distributed between all three schemes.
- C1.5 A shortfall of hours cannot be carried forward to the next 4 week accounting period.
- C1.6 There will be no flexibility to carry forward hours from one week to the next with regard to night care between 22:00 – 07:00.
- C1.7 The declared rates are set and agreed.

£14.00 per hour

The declared rate will be effective for the first year of the contract and will be reviewed annually regarding inflationary costs and/or legislative changes.

The above declared rates will apply 24/7 and will apply if a person requires waking night support.

- C1.8 If the Provider withdraws, makes unavailable, or fails to provide any Service, either temporarily or permanently, the Provider shall reimburse the Service Purchaser the relevant proportion of the Price.

### **C2 Payment**

- C2.1 The Provider shall invoice the Purchaser 4 weekly in the format required by the Purchaser showing as follows:

- Service Users names
- Address
- Reference number

- 1:1 day and evening hours

The invoice will be for the payment of the initial agreed hours confirmed at the Contract Implementation meetings, this is due to each site having a different start date.

If there are any changes required to the personalised agreed hours for each site, they will be amended in blocks of 50 hours increases and decreases. If additional hours are required, this will require written approval from:

Principal Officer, Older People, Long Term Conditions and Carers  
Commissioning & Improvement  
Borough of Poole  
Civic Centre  
Poole  
Dorset  
BH15 2RU

**C2.2 Invoices to be sent to:**

Finance Team  
Adult Social Care-Services  
Borough of Poole  
Civic Centre Annexe  
Civic Centre  
POOLE  
BH15 2RU

**C2.3** This is the current invoice payment method. During the period of the contract the Purchaser will develop and implement a more streamlined payment system.

**C2.4** The date of the invoice shall reflect the time that it was sent for payment, invoices should be dated for the current month, not in arrears or in advance of months of service.

**C2.5** The Purchaser shall arrange for payment by BACS directly into the Provider's Bank Account for the service provided within 30 days of receipt of the invoice, if all details shown on the invoice are correct. The Provider shall invoice from a Monday to a Sunday.

**C2.6** The Purchaser will not accept 'back invoicing'. If however, an instance arises where 'back invoicing' is required then this will be by negotiation with the Purchaser and the Provider. If it is agreed to accept a 'back' invoice, this invoice will only be accepted if the back date is not longer than two months previously.

**C2.7** Where there may be invoice queries between the Purchaser and the Provider, the party shall endeavour to deal with the query within 28 days of the query arising.

**C3 Recovery of Sums**

**C3.1** The Council is entitled at common law and in equity to set off against its indebtedness to the Provider any debt owed to it by the Provider under this Contract; or any debt owed under any other Contract the Provider may have with the Council; or any liability, damage, loss, costs, charges and expenses which the Council has incurred because of any breach by the Provider of this Contract or of any other Contract with the Council.

- C3.2 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Contract or under any other Contract or contract with the Council.
- C3.3 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, at any time shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.4 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 a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.
- C3.5 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **C4 Price Adjustment on Extension of the Initial Contract Period**

- C4.1 The Contract Price shall apply for the Contract Period, subject to available funding and ongoing satisfactory delivery. In the event that the Council agrees to extend the Contract Period on the expiry beyond the date in B1 the Parties will enter negotiations in good faith to agree a variation in the Contract Price.
- C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause F5, the Contract shall terminate at the end of the Contract Period.
- C4.3 If a variation in the Contract Price is agreed between the Council and the Service Provider, the revised Contract Price will take effect from the first day of any period of extension and shall be confirmed in writing.

#### **D. STATUTORY OBLIGATIONS AND REGULATIONS**

##### **D1 Prevention of Corruption and Probity**

- D1.1 The Service Provider shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.2 The Service Provider warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.
- D1.3 If the Service Provider, its Staff or anyone acting on the Service Provider's behalf,

engages in conduct prohibited by clauses D1.1 or D1.2, the Council may:

- terminate the Contract and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of those clauses.

D1.4 The Provider must tell the Council immediately in writing of any possible conflict of interest between the interests of any of the Council, the Provider, and any other client of the Provider and the Provider must take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Authorised Representative.

D1.5 The Provider shall in all matters arising in the performance of this Contract conform with all relevant Legislation, applicable to this Contract, including without limitation all laws governing discriminatory employment practices.

D1.6 The Provider shall take all reasonable steps in the performance of this Contract not in any manner to endanger the safety or limit the convenience of Service Users.

D1.7 In any court, tribunal, the Commission for Racial Equality, the Equal Opportunities Commission, the Disability Rights Commission or any replacement entity, should make any finding of unlawful discrimination or unlawful employment practice, act or default against the Provider, then the Provider shall take all necessary steps to make good any damage and prevent recurrence of such unlawful discrimination, act or default. The Purchaser may require the Provider to provide full details of the steps taken to prevent such recurrence.

## **D2 Prevention of Fraud**

D2.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Service Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Council.

D2.2 The Service Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Service Provider or its Staff commits fraud in relation to this or any other contract with the Council, it may:

- terminate the Contract and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of this clause.

### **D3 Equality**

- D3.1 The Provider shall ensure that they have an Equality Policy in place that is similar to and reflects the Borough of Poole aims and commitment to equality.
- D3.2 The Provider shall ensure that they provide a Service that is non-discriminatory and promotes equality of opportunity for all by catering for the differing needs regardless of ethnic origin, gender, disability, age, sexual orientation or religion/belief.
- D3.3 The Provider must not treat any service user less favourably than another person by reason only of his or her age, race, gender, colour, nationality, disability, ethnic origin, religion or sexuality in relation to anything relevant to the delivery of the Service or otherwise and must follow Best Practice and comply with Legislation in relation to equal opportunities and to the extent that they are not inconsistent with the foregoing the Provider's and the Council's Equal Opportunities Policies (but in the event of conflict must act as the Authorised Representative requires).
- D3.4 The Provider must adopt a policy which complies with its own obligations under the Disability Discrimination Act 1995, the Race Relations Act 1976, Race Relations Amendment Act 2001 Act, the Human Rights Act 1998 and the Equality Act 2010 and any subsequent guidance and good practice in relation to that legislation AND which ensures that the Council also complies in relation to the provision of the Service, and must provide the Service in accordance with those requirements both in terms of the Provider's employment practices and in relation to the provision of the Service (including in relation to any premises used in connection with the Service).
- D3.5 If any Court or Tribunal or the Commission for Racial Equality, Equal Opportunities Commission and/or any similar or equivalent body established to monitor the Disability Discrimination Act 1995 makes any finding of unlawful discrimination against the Provider then the Provider must immediately tell give the Authorised Representative full details in writing of such findings and must give full details of and take all necessary steps to prevent recurrence.
- D3.6 The Provider must provide such information as the Council may reasonably request for the purpose of assessing the Provider's compliance with this clause.
- D3.7 In providing the Service, the Provider shall observe the Commission for Racial Equality's Code of Practice for Employment (the 'Code'), any updates to the Code, or any code which may replace it. The Provider shall provide the Purchaser with such information as may be reasonably required in order to access the Provider's compliance with the Code.
- D3.8 All Providers staff should be trained to meet the needs of people from minority ethnic communities and will respect their cultural traditions and religious observations.
- D3.9 The Provider organisation shall respect the cultural and religious needs of Service Users/carers which will be taken into account in delivering the Service. This will include respecting Service Users needs and wishes on Holy days, Sabbaths and religious festivals when providing the service.

### **D4 Human Rights**



- D4.1 Providers shall familiarise themselves with the 'Convention Rights' of the Human Rights Act 1998 and ensure that all policies, procedures and practices are compatible with the European Convention on Human Rights.
- D4.2 All staff and volunteers shall be trained to apply the principles of the 'Convention Rights' in their work with Service Users to reflect best practice in respecting fairness and the dignity of the individual.
- D4.3 The Purchaser shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance with this Condition by the Provider. The Provider shall not resume provision of the Services or such part until the Purchaser is satisfied that the non-compliance has been rectified.

## **D5 Safeguarding Adults**

### **D5.1 Safeguarding Adults**

- D5.1.1 The term "Vulnerable Adult" refers to any person aged 18 years and over whom:
- Is or may be in need of Community Care Services by reason of mental or other disability, age or illness; and
  - Is or may be unable to take care of himself or herself; or
  - Is unable to protect themselves against significant harm or serious exploitation
- ("Who Decides" - Lord Chancellor's Office, 1997 and "No Secrets", 2000)
- D5.1.2 The term 'abuse' describes a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to a person including physical, emotional, financial, sexual, racial abuse, neglect and abuse through the misapplication of drugs.
- D5.1.3 Consideration needs to be given to a number of factors:-
- Anyone may experience abuse;
  - Abuse may be a single or repeated act;
  - Abuse may be physical, verbal or psychological;
  - Abuse may be a deliberate act or may be the result of a failure to act appropriately;
  - Abuse may occur within a personal relationship or within a professional relationship where there is an expectation of trust;
  - Abuse may take place in any setting; for example a person's own home, in a care home, in a hospital, day centre or public place.
- These acts may be through Omission or Commission in either respect they need to be appropriately alerted to Adult Social Care.
- D5.1.4 The Provider shall have in place robust Safeguarding Adults Procedures to prevent and respond to abuse which link with the Multi-Agency Safeguarding Adults Policy & Procedures set out by the Borough of Poole.
- D5.1.5 The Provider shall ensure all staff, at all levels shall attend Safeguarding Adults

awareness training with a competent trainer which meets the National Competence Framework for Safeguarding Adults for Staff Group A. Staff shall attend refresher training every 3 years in line with Dorset policy.

- D5.1.6 All in house training sessions to have aims and outcomes plus session plans and evidence of taught time. Identified trainer with evidence of competence to train in subject area. Safeguarding Adults training to be attended in line with Multi-Agency Safeguarding Adults Policy provided by local authority and the National Competence Framework for Safeguarding Adults.
- D5.1.7 Managers to attend Safeguarding Adults training for Staff Group B which adheres to the National Competence Framework for Safeguarding Adults. Refresher training every 2 years in line with the recommended Safeguarding training pathway.
- D5.1.8 Should the Provider become aware of abuse or neglect perpetrated by any person or persons whatever their relationship to the service user, then the Provider has a duty to ensure that this is alerted to Social Services within twenty four hours in accordance with the Multi-Agency Safeguarding Adults Policy & Procedures set out by the Borough of Poole.
- D5.1.9 Should the Provider become aware that a member of staff is abusing, or allegedly abusing, a vulnerable person they will use their internal staff disciplinary procedures to take action to protect vulnerable adults/children. This may involve suspending the member of staff pending the outcome of the Safeguarding Adults Investigation.
- D5.1.10 The Purchaser will inform the Police immediately if a Safeguarding Adults Alert is believed to be a serious crime. This will include cases involving physical, sexual or financial abuse of a Service User.
- D5.1.11 When the Provider becomes aware of potential abuse within their service they will ensure immediate safety needs of the individual/s are met:-
- Victim of alleged abuse is safe
  - Any necessary emergency medical treatment has been arranged; ambulance requested where appropriate
  - Police contacted if clear criminal act alleged
  - All forensic evidence is preserved
  - Staff safety and safety of others, e.g. prior to a police arrest
- D5.1.12 The Provider will work with the Purchasers' Service Improvement Team and the Social Services trained investigator throughout the course of any Safeguarding Adults Alert.
- D5.1.13 The Provider will comply with an Adult Safeguarding Plan implemented by the Purchaser following the outcome of a Safeguarding Adults Investigation.
- D5.1.14 The Provider will comply with the Service Improvement Action Plan if implemented by the Purchaser following the outcome of a Safeguarding Adults Investigation.
- D5.1.15 The recommendations from any investigation with timescales for completion will include the Purchasers Contracts and Service Improvement Team following up as

part of the review process, whether the provider has achieved these.

## **D6 Disclosure and Barring Service Checks (DBS)**

- D6.1 The Provider must carry out checks with the Disclosure and Barring Service on all staff or volunteers engaged to provide, or supervise the provision of the Service. The cost of this will be borne by the Provider. Failure to do so is a fundamental breach of this Contract and may result in the termination of this Contract by the Council.
- D6.2 The Provider must ensure that DBS checks are renewed every three years as a minimum. This shall be actioned by either a full Disclosure or and Barring Service check or by a Status Check.
- D6.3 Where the carrying out of checks with the DBS the Provider must take all reasonable measures to ensure that staff and volunteers are suitable for the work they will be undertaking. This must include staff and volunteers being asked to declare previous convictions and informed that failure to declare convictions which subsequently come to light may result in dismissal.
- D6.4 The Provider must maintain appropriate records in accordance with DBS requirements to evidence that a DBS check and any associated risk assessment of the individual's suitability has been completed.
- D6.5 The Purchaser requires all the Provider's Staff that come into contact with vulnerable adults to provide information to the Provider about such criminal convictions, bindovers, findings, cautions or other information as are referred to in this Clause. If, owing to the nature of any part of the Service, any member of the Provider's Staff are exempt from Section 4(2) of the Rehabilitation of Offenders Act 1974, then the information required by the Provider must also relate to convictions which would otherwise be spent.
- D6.6 The Provider must take reasonable steps to make sure that all of the Provider's Staff are suitable to be employed in or otherwise engaged to perform the Service. 'Reasonable steps' means making checks and inquiries (before their engagement by the Provider) so that the Provider is able to assess their suitability; and taking suitable references about the person's character, background or convictions (including obtaining relevant Criminal Conviction Certificates, Disclosure Barring Certificates or Criminal Record Certificates pursuant to the Police Act 1997 and making checks against statutory writs established under the Protection of Children Act 1999 (as amended by the Health and Social Care Community Health and Standards Act 2003) and the Protection of Children Act 2004 and the Care Standards Act 2000; and passing all relevant information to the Council, where relevant. Where the Provider is employing Staff from overseas, the Provider must see a copy (not less than three months old) of the applicant's Code of Good Practice from his/her country of origin.
- D6.7 As a matter of good practice, the Provider shall be required to take up two written references as a minimum when recruiting staff. At least one of these references should be sourced from the line manager of their previous employment and the references should include the following checks and information:
- Full details of dates of employments throughout their career history are provided

and any gaps are suitably justified i.e. Day/Month/Year.

- Detail of the position held in their previous employment.
- Their reason for leaving the previous post.
- Details of any disciplinary action that may have been taken.
- Whether or not the previous employer would willingly re-employ the individual

D6.8 The Provider must obtain written permission from all of the Provider's Staff for the Council to make any checks with the Police, or Government Departments or any other similar bodies for details of any convictions including where permitted spent convictions or any convictions which would call into question the suitability of that person to be employed or engaged to perform any part of the Service and must immediately pass those written permissions to the Authorised Representative. The receipt of those permissions by the Council does not release the Provider from any obligation under this Clause.

D6.9 The Provider must immediately remove from the provision of the Service any of the Provider's Staff whom the Provider knows or should reasonably have known:-

- has any criminal conviction, bindover, finding and/or caution OR have been subject to any finding by a Civil Court or Tribunal in connection with any matter OR are not suitable to be employed or otherwise engaged to perform, where any of those matters call into question the suitability of that person to be employed or otherwise engaged to perform any part of the Service; or
- has failed to provide information about any criminal convictions, bindover, findings and/or cautions requested by the Provider or the Council or any other Authorised person.

D6.10 The Provider must immediately remove from the provision of the Service anyone who the Council reasonably requires by notice in writing to the Provider, to be removed from the provision of the Service.

D6.11 The Provider must tell the Council if it becomes aware of any circumstances which if brought to the attention of the Council might lead to the Council requiring the removal of any of the Provider's Staff.

Failure to remove the member/s of staff shall be a breach of this contract and the Service Provider shall be liable for any costs incurred by the Council to require removal.

## **D7 Complaints**

D7.1 The Provider shall operate a procedure for examining and recording Service User's complaints. Service Users must be informed in writing of the means of registering a complaint, how the complaint will be dealt with, and the outcome.

D7.2 Where a complaint is unresolved, it shall be recorded and a copy of any such record shall be forwarded to the Purchaser within two working days.

D7.3 If a Service User is not satisfied with the outcome of a particular complaint he/she must be informed of his/her right to seek redress by writing to:

The Complaints Manager, Commissioning & Improvement – People Services  
Borough of Poole

Civic Centre  
POOLE  
BH15 2RU

Telephone: 01202 261158

Email: [comments.adultsocialcare@poole.gov.uk](mailto:comments.adultsocialcare@poole.gov.uk)

D7.4 The Service User shall also be informed of his/her right to complain directly to Adult Social Care/Commissioning & Improvement - People Services without going through the Provider's complaints procedure.

D.7.5 If the complaint concerns safeguarding issues then the appropriate procedure must be followed and immediately reported to the Authorised Representative.

## **D8 Third Party Benefit**

D8.1 For the avoidance of doubt, nothing in this agreement shall confer or purport to confer on any third party any benefit or the right to enforce any term of the contract, except in so far as the parties have expressly agreed that a third party may enforce a term.

## **D9 Health and Safety and Environmental Protection**

D9.1 The Provider and its staff shall in all matters arising under this Contract comply with all relevant legal provisions, including all Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice and any amendments thereof.

D9.2 Without prejudice to the generality of the above the Provider shall at all times comply with the requirements of the Health and Safety at Work Act 1974, the Management of the Health and Safety at Work Regulations 1999 and all other Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice and all other rules and amendments thereto, pertaining to health and safety.

D9.3 The Provider shall have a written Health and Safety Policy in place and shall follow review this policy to ensure that it complies with best legislation, guidance and professional and industry practice for similar operations.

D9.4 The Provider shall as a minimum ensure that the Provider's staff have an understanding of first aid and shall comply with any provisions in the specification.

D9.5 The Provider shall operate an out of hours emergency telephone number outside their normal working hours number. This number should be available for alarm calls and incidents requiring a presence.

D9.6 Without prejudice to the terms of clause 9.11 the Purchaser shall have the right to require the cessation of the whole or any part of the services in the event of serious non compliance by the Provider or its staff of any health and safety requirements or other legal requirements until it is satisfied that the said requirements are being complied with and any breach or breaches have been rectified.

D9.7 If such steps or remedial action is required because of the default of Provider then the costs actually incurred by the Council together with an administration charge of £10% will be immediately payable by the Provider to the Council and recovered as a debt or in such other way as the Council chooses.

D9.8 Fire precautions must meet statutory and local requirements and the Provider must ensure all its staff and service users are trained in fire safety on a routine basis and that the requirements of the General Service Specification are met or exceeded.

D9.9 The Provider shall be responsible for the observance by itself and by any Provider Party of all applicable health and safety precautions necessary for the protection of itself, any Provider Party, any Purchaser Party and Service Users and any other persons whilst carrying out the Services, including all precautions required to be taken by or under any applicable Legislation. The Provider shall be responsible for the observance by itself, and by any Provider Party of all applicable rules, regulations and requirements of statutory or regulatory authorities concerning the Services.

D9.10 The Provider shall immediately and in any event within 48 hours report to the Purchaser all accidents, which ordinarily require reporting in accordance with the Health and Safety at Work etc. Act 1974 or any subsequent rules and amendments thereof.

D9.11 Breach of Health and Safety If the Council acting reasonably considers that there is or is likely to be a breach of any requirement relating to health and safety; or if there is any risk to any person; or if there is an accident or other event which to the opinion of the Authorised Representative necessitates urgent remedial action, the Council may:-

- require the immediate cessation of the provision of the Service or any part; and/or
- tell the Provider in writing what action it requires the Provider to take to remedy that breach or abate that risk and may also state any timescales within which such steps are to be taken; and/or
- itself take such steps or remedial action (or pay or employ others to do the same) as may in the reasonable opinion of the Authorised Representative be necessary to remedy that breach or abate that risk, provided that the Authorised Representative must tell the Provider of the action required as soon as it is reasonably practicable to do so. If such steps or remedial action are necessary because of the default of the Provider then the costs actually incurred by the Council together with an administration charge of 10% will be immediately payable by the Provider to the Council and recovered as a debt or in such other way as the Council chooses; and/or
- suspend the provision of the Service or any part of it for such a period as the Authorised Representative considers appropriate in the circumstances.

D9.12 The Provider shall nominate a person to be responsible for health and safety matters as required by the Health and Safety at Work etc Act 1974 and the Management of Health & Safety at Work Regulations 1992 or any subsequent rules and amendments thereof.

D9.13 The Purchaser shall be empowered to suspend the provision of the service or part thereof, should the Provider be deemed to be not fulfilling a legal responsibility in terms of Health and Safety matters. The Provider shall not resume provision of the service or such part of the service until the Purchaser is satisfied that the non-compliance has been rectified.

## **D10 Access**

D10.1 The Service Provider shall not restrict any form of reasonable access by the Council's representatives to any member of staff or any user who is in receipt of a Service under

this Contract or to any records or documents pertaining to the user, or to any buildings belonging to or controlled by the Service Provider.

D10.2 Whenever possible, the Service Provider shall be given reasonable notice of a visit by a representative from the Council.

D10.3 The Council reserves the right to visit the Service provided under this Contract unannounced to ensure compliance with the Service Provider's own Policies and Procedures and to ensure the consistent performance of the Service.

D10.4 In visiting or inspecting the provision of the Service, the Council shall have due regard for the nature of the Service being provided particularly where this involves sensitive Services for vulnerable User groups.

## **D11 Legal and Policy Framework**

D11.1 The Provider shall be aware of the following legislation and strategies as it affects the service(s) they provide and ensure that, where it is applicable their organisation has in place policies, procedures and practices that meet these legislative requirements and service standards.

Providers shall be prepared to provide evidence of their use as part of the monitoring processes associated with the agreement.

### **Equality and Employment**

- Employment Equality (Religion or Belief) Regulations, 2003
- Employment Equality (Sexual Orientation) Regulations, 2003
- Employment Rights Act, 1996 (as amended by the Growth and Infrastructure Act, 2013)
- Equality Act, 2010
- Lifting Operations and Lifting Equipment Regulations, 1998 (LOLER)
- Management of Health and Safety at Work Regulations, 1999 (as amended by the Health and Safety (Miscellaneous Amendments) Regulations, 2002)
- Manual Handling Operations Regulations, 1992
- Provision and Use of Work Equipment Regulations, 1998 (PUWER)
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, 2013 (RIDDOR)
- Working Time Regulations, 1998

### **Health, Care and Disability**

- AIDS Control Act, 1987
- Care Act 2014
- Care Standards Act, 2000
- Carers and Disabled Children Act, 2000 (as amended by the Carers (Equal Opportunities) Act, 2004)
- Carers (Equal Opportunities) Act, 2004
- Carers (Recognition and Services) Act, 1995
- Chronically Sick and Disabled Persons Act, 1970 (as amended by the Chronically Sick and Disabled Persons (Amendment) Regulations, 2004)
- Community Care (Direct Payments) Act, 1996
- Dangerous Drugs Act, 1920
- Disabled Person (Services, Consultation and Representation) Act, 1986

- End of Life Strategy – Promoting High Quality Care for Adults at the End of Their Lives, 2012
- Fair Access to Care, 2002
- Health Act, 1999 (as amended by the Health and Social Care Acts, 2008, 2012)
- Health and Safety at Work Act, 1974
- Health and Social Care Acts, 2001, 2008, 2012
- Health Services and Public Health Act, 1968
- Liberating the NHS, 2010
- Medical (Professional Performance) Act, 1995
- Medicines Act, 1968 (as amended by the Health Act, 2009)
- Mental Capacity Act, 2005
- Misuse of Drugs Act, 1971 (as amended by the Police Reform and Social Responsibility Act, 2011; Drugs Act, 2005; Policing and Crime Act, 2009)
- National Assistance Act, 1948 (as amended by the Health and Social Care Act, 2008; Health Act, 2007)
- National Carers Strategy – Carers at the Heart of 21<sup>st</sup> Century Families and Communities; 2008
- National Dementia Strategy – Living Well with Dementia, 2009
- National Health Service Act, 1977
- National Stroke Strategy, 2007
- NHS and Community Care Act, 1990
- Our Health, Our Care, Our Say, 2006
- Putting People First Concordat, 2007

### **Local Government**

- Local Authority Social Services Act, 1970
- Local Authority Social Services and National Health Service Complaints (England) Regulations, 2009
- Local Government Act, 2000

### **Miscellaneous**

- Children Act, 1989
- Contracts (Rights of Third Parties) Act, 1999
- Control of Substances Hazardous to Health Regulations, 2002 (COSHH) (as amended by the Control of Substances Hazardous to Health (Amendment) Regulations, 2004)
- Data Protection Act, 1998
- Food Safety Act, 1990
- Freedom of Information Act, 2000
- Housing Act, 1996 (as amended by the Homelessness Act, 2002; Anti-Social Behaviour Act, 2003; Housing Act, 2004; Police and Justice Act, 2006; Housing and Regeneration Act, 2008; Localism Act, 2011)
- Human Rights Act, 1998
- Police Act, 1997 (as amended by the Serious Organised Crime and Police Act, 2005; Protection of Freedoms Act, 2012)
- Race Relations Act, 1976 (as amended by the Race Relations Amendment Act, 2000)
- Rehabilitation of Offenders Act, 1974 (as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order, 2013). Sex Discrimination (Gender Reassignment)

The following legislation and strategies relate specifically to requirements for adults with



a learning disability and/or autism.

Valuing People Now: a new three year strategy for people with learning disabilities. Department of Health, (2009), Building on the original Valuing People White paper in 2001.

Fulfilling and Rewarding Lives – The Strategy for Adults with Autism in England and Implementation Guidance (2010). With clear goals to increase staff understanding, improving diagnosis and assessment of needs, supporting people in transition and involving people in decision making.

DH Winterbourne View Review – Concordat: Programme of Action (2012)

DH Transforming care: A National Response to Winterbourne View (2012)

Health Inequalities and People with Learning Disabilities in the UK: Implications and actions for commissioners and providers of social care, (2011) Sue Turner (IHAL).

Improving Health and Lives - Confidential inquiry into the premature deaths of people with learning disabilities, (2013)

Improving the health and wellbeing of people with learning disabilities – world class commissioning. Department of Health, (2009)

National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised)

Personalisation through Person Centred Planning. Department of Health. (2010)

Raising our Sights: services for adults with profound intellectual and multiple disabilities. Tizard Centre, (2010)

Royal College of Speech & Language Therapists – Five Good Communication Standards, London RCSLT 2013

Services for People with Learning Disability and Challenging Behaviour or Mental Health Needs, (revised, 2007) Professor J Mansell. Emphasising the need to develop services locally to enable people to remain close to family and their community.

The 2011 Green paper: Support and aspiration: A new approach to special educational needs and disability', with the proposed introduction of Education, Health and Care Plans for young people up to the age of 25 with SEN.

The Operating Framework for the NHS in England 2013/14 referencing the 2011/12 framework addition of a 'placeholder' indicator for measuring reducing premature mortality in people with learning disabilities. This has been identified as 'Excess under 60 mortality rate in adults with learning disabilities'

Working Together for Change: using person centred information for commissioning. Department of Health, (2009)

D11.2 In addition to the Legislation, the Purchaser expects Providers to have in place policies, procedures and practices that meet, as a minimum, the following requirements:

- Complaints Procedures
- Confidentiality Policy
- Multi-Agency Safeguarding Adults Policy and Procedures
- Finance Policy and Procedures
- Managing Risk and Service User choice
- User consultation and involvement policy
- Emergencies including no reply
- Staff/Volunteer safety
- Whistle blowing
- Medication Policy and Procedures
- Fire Safety
- Disciplinary Policy
- Adult Protection Policy
- Lone Worker Policy
- Managing Diversity Policy

## **E PROTECTION OF INFORMATION**

### **E1 Data Protection Act**

- E1.1 The Provider shall ensure that itself and any sub-contractors, servants or agents comply at all times with all statutory provisions, principles and relevant national guidance and codes concerning the holding, disclosure and security of personal data as defined in the Data Protection Act 1998, and shall consult the Purchaser before complying with any data access request under such Act. The Provider shall indemnify the Purchaser against any costs and damages in respect of any claim, which may be made by a 'data subject' in relation to any breach of any requirements of the Act on the part of the Provider or its sub-contractors, servants or agents.
- E1.2 The Provider must not divulge any information related to the Purchaser except as given permission by the Purchaser in writing.
- E1.3 To facilitate contract monitoring in terms of recruitment and selection and to meet the requirements of the Data Protection Act 1998 the Provider shall obtain from each employee written permission for Authorised Representatives of the Purchaser to access personal files.

### **E2 Confidentiality**

- E2.1 This clause E2 shall continue to be in force notwithstanding the termination or expiry of this Agreement

- E2.2 Neither the Purchaser nor the Provider nor any person connected with them in any way divulge maliciously or without consent to any person or persons information of a confidential nature including any information pertaining to or arising from this Contract.
- E2.3 The Provider shall not and shall ensure so far as is reasonably possible that its employees do not divulge to any third party any information concerning a service users without the consent of the service user and the Provider, except as may be required by Law, requested by the police or regulatory agencies or to their professional advisers where reasonably necessary for the performance of their professional services.
- E2.4 The Purchaser and the Provider will take appropriate actions against its employees for any breaches of confidentiality as described above.
- E2.5 The Purchaser may disclose information relating to the Provider to monitoring and inspection agencies. The Council may also publish from time to time, statistical information about the purchase of services, which may relate to this service.
- E2.6 To facilitate contract monitoring in terms of recruitment and selection and to meet the requirements of the Data Protection Act 1998, the Provider shall obtain from each employee written permission, for Authorised Representatives of the Borough of Poole to access personal files.
- E2.7 The Provider acknowledges and accepts that it may receive information of a confidential nature relating to the Purchaser or the supply of the Service. The Provider undertakes to the Purchaser that it will use such confidential information solely for the purposes required by this Agreement and will not disclose the same unless:-
- The Purchaser has consented in writing to such disclosure; or
  - Such disclosure is to approved sub-Providers to the extent necessary to supply the Service; or
  - Such disclosure is required by law; or
  - Such information is already in the public domain, other than as a result of breach of any obligation of confidentiality.
- E2.8 The Provider shall ensure that all information held pertaining to Service Users is kept secure and reasonable steps are taken to prevent theft or loss, i.e. written information is locked in cabinets. Providers shall also comply with the requirements of the Data Protection Act 1998:
- Personal data as defined in the Data Protection Act 1998 supplied by and/or processed on behalf of the Purchaser (either electronic or manual) is owned by the Purchaser. The Purchaser is the Data Controller under the terms of the Act;
  - The Provider is the Data Processor under the terms of the Act;
  - The Provider shall maintain appropriate confidentiality and security arrangements in respect of all personal data supplied by and/or processed on behalf of the Purchaser and must comply fully with the principles of the Act when processing the personal data;
  - The Provider shall provide to the Purchaser upon request evidence to the Purchaser's reasonable satisfaction that it can comply with this obligation which for the avoidance of doubt is a fundamental condition of the Agreement.
- E2.9 The Provider shall ensure that its Staff and approved Sub-Contractors comply with the provisions of clause F1 (sub contracting).

- E2.10 The parties agree to ensure they will comply at all times with the provisions and obligations contained in the Data Protection Act 1998 and the data protection principles set out in the Data Protection Act 1998 in storing and processing personal data. In the event that either party acquires personal data from the other, the party acquiring the personal data will only process it with the consent of the party from whom it is acquired. Both parties agree to indemnify each other in respect of any unauthorised disclosure of personal data.
- E2.11 The Provider shall ensure that they register and use the Borough of Poole encryption service for the purposes of sending and receiving all sensitive information or Personal Identification Data via email.

### **E3 Freedom of Information**

- E3.1 The Provider acknowledges that the Purchaser is subject to the requirements of the Code of Practice on Access to Government Information (2nd Edition), the Freedom of Information Act (FOIA) and the Environmental Information Regulations and shall assist and cooperate with the Purchaser (at the Provider's expense) to enable the Purchaser to comply with these Information disclosure requirements.
- E3.2 The Provider shall ensure that any procured Provider Party shall:-
- E3.3 Transfer the Request for Information to the Purchaser as soon as practicable after receipt and in any event within 2 (two) Working Days of receiving a Request for Information;
- E3.4 Provide the Purchaser with a copy of all Information in its possession or power in the form that the Purchaser requires within 5 (five) Working Days (or such other period as the Purchaser may specify) of the Purchaser requesting that Information; and
- E3.5 Provide all necessary assistance as reasonably requested by the Purchaser to enable the Purchaser to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA [or Regulation 5 of the Environmental Information Regulations].
- E3.6 The Purchaser shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:-
- E3.7 Is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information (2nd Edition), the FOIA or the Environmental Information Regulations;
- E3.8 Is to be disclosed in response to a Request for Information, and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Purchaser.
- E3.9 The Provider acknowledges that the Purchaser may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information (2nd Edition), the FOIA, or the Environmental Information Regulations to disclose Information:-

- without consulting with the Provider, or
- following consultation with the Provider and having taken its views into account.

E3.10 The Provider shall ensure that all information produced in the course of this Contract or relating to the Contract is retained for disclosure and shall permit the Purchaser to inspect such records as requested from time to time.

E3.11 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Purchaser may nevertheless be obliged to disclose Confidential Information in accordance with clause E2.

#### **E4 Intellectual Property Rights**

E4.1 The Provider warrants that in the performance of this Contract it will not infringe any copyright, patent, registered design, design rights or trademark or other intellectual property rights of any third party.

E4.2 The Provider must fully indemnify the Council on demand against all losses, actions, Claims, proceedings, expenses, costs and damages of whatsoever nature arising out of the breach of the warranty in this Clause.

E4.3 The Provider must defend, at its expense, any claim or action brought against the Council alleging that there has been, in connection with the delivery of the Service, any infringement of any copyright, patent, registered design right or trademark or other intellectual property right and must pay all costs and damages.

E4.4 Copyright in the Contract Documents vests so far as it lawfully can in the Council but the Provider may obtain or make at its own expense any further copies required for use by the Provider in the provision of the Service.

E4.5 When copyright in any document related to the provision of the Service is vested in the Provider or any agent or sub-contractor, the Council has the unrestricted right to use such documents.

E4.6 The Purchaser will promptly notify the Provider in writing of any alleged infringement of which it has notice;

E4.7 Any Intellectual Property which was in the ownership of the Purchaser prior to the start of the Contract Period shall remain the property of the Purchaser save that the Purchaser hereby grants to the Provider a non-exclusive, royalty-free, licence (with rights to grant sub-licences) for the Contract Period of any such background Intellectual Property for the purposes of carrying out the Services or any of the Provider's rights or obligations under this Contract.

E4.8 Any Intellectual Property which was in the ownership of the Provider prior to the start of the Contract Period or which arises directly or indirectly from the provision of the Services or the Provider's obligations under this Contract ("Provider IPR") shall remain the property of the Provider save that the Provider hereby grants to the Purchaser a personal, non-transferable, non-exclusive, royalty-free licence for the term of this contract of any such Provider IPR for the purposes of any of the Purchaser's rights or obligations under this Contract. For the avoidance of any doubt

, the Purchaser shall not grant sub-licences in relation to the Provider IPR to any third party or use for commercial purpose without the prior written consent of the Provider.

## **E5 Media**

- E5.1 Neither party shall, without the prior written consent of the other, make any press release, respond to enquiries from any newspaper, TV or radio company or other broadcasting organisation, or make any other statement to the media (together called 'media activity') about any matter which is the subject of this Contract (including matters concerning any Service User) or about its relationship with the other party or any Service User.
- E5.2 If either party seeks the written consent of the other party to do any media activity it must first submit to the other party the text of such media activity for approval and give details of to whom it is to be given. The other party reserves the right to refuse such consent in its reasonable discretion and/or to reasonably require the party seeking consent to amend the content of the media activity.

## **E6 Audit**

- E6.1 The Provider shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Services Provided under it, all expenditure reimbursed by the Purchaser and all payments made by the Purchaser.
- E6.2 The Provider shall on request afford the Purchaser or the Purchasers representatives such access to those records as may be required by the Purchaser in connection with the Contract.

## **F CONTROL OF THE CONTRACT**

### **F1 Sub-Contracting and Assignment**

- F1.1 The Provider shall not sub-contract service provision arising under this Contract without seeking prior written consent of the Purchasers Authorised Representative whose consent shall not unreasonably be withheld or delayed.
- F1.2 The Provider shall not assign this Agreement in whole or in part to any third party without the prior written consent of the Purchaser, such consent not to be unreasonably withheld or delayed.
- F1.3 In addition to those circumstances in which the Council is required by law to do so the Council may assign and transfer all or some of its rights and liabilities under the whole or any part of the Contract to another body which is or will be after the assignment carrying on the functions of the Council to which this Contract relates.

### **F2 Resolution of Disputes**

- F2.1 The parties will use their best endeavours to resolve by agreement any disagreement or dispute between them.

- F2.2 Subject to the Purchasers right to serve a default notice under Clause H3, if either party considers that the other has failed to comply with the terms of the Contract or any other question, dispute of difference arises between the parties concerning this Agreement, then, unless it is sufficient to lead to an immediate termination of the Agreement, the following procedure will apply.
- F2.3 The matter will be discussed at a meeting between all parties Authorised Representatives within 15 working days of the dispute arising.
- F2.4 If not resolved, then a meeting is to be arranged between the senior management of the Purchaser and the Provider. Again this may be called at a request of either party and should take place within 10 working days of the meeting held in accordance with clause F2.3.
- F2.5 If the matter cannot be satisfactorily resolved through discussion or a senior management meeting the parties may discuss and agree an alternative process for the resolution of the difference between the parties. If a process of alternative dispute resolution ('ADR') is not agreed within a further period calculated as 30 days from the date the dispute arose then clause F£ of the Contract shall apply.

### **F3 Arbitration**

- F3.1 In the event of failure to resolve the dispute by a process of ADR which may include resolution through independent mediation, the issue shall be resolved by arbitration and under the provisions of the Arbitration Act 1996 and unless the arbitrator so orders the fees thereof shall be paid by the Council and the Service Provider in equal shares.
- F3.2 To commence arbitration under clause F3.1 after giving notice to the other party of the request a written request may be submitted by either party for the appointment of an independent arbitrator by the President or Vice President of the Chartered Institute of Arbitrators.

### **F4 Waiver**

- F4.1 Failure by either party at any time to enforce the provisions of this Contract or to require performance by the Provider of any of the provisions of this Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Agreement or any part thereof or the right of the Provider to enforce any provision in accordance with its terms.

### **F5 Variation Notices**

- F.5.1 Subject to the provisions of this Clause F5, the Purchaser or the Provider may at any time during the terms of this Contract request a variation to any or all of the Services. If a variation is requested the Party requesting it shall serve a notice on the other identifying the proposed variation which shall be called a Variation Notice. The Service Provider shall be entitled to refuse its agreement to a Variation Notice if:

- It will be unable to obtain any necessary consents;
- Implementation would bring about a breach of Legislation.

- F.5.2 Each Variation Notice shall contain:

- A description of the variation
- The originator and date of the decision to recommend a variation
- The reason for the variation
- Full details of the variations required to the relevant parts of the Service-the Contract or the Specification
- A timetable for implementation of the variation together with any proposals for acceptance of the Variation Notice.
- Details of the likely impact, if any, of the variation on other aspects of the Contract; the Service Specification and the Services including but not limited to:-
  - the staff to be provided
  - the documentation to be provided
  - working arrangements; and
  - other contractual issues
  - the date of expiry of validity of the Variation Notice; and
  - provision for signature by the Purchaser

F5.3 Where the parties agree that a potential variation should be implemented the parties shall record the variation in writing by a deed of variation.

F.5.4 Until a variation, including the cost of the variation, has been agreed by the Purchaser, the Provider shall continue to perform its existing Service obligations without performing the requested or recommended change.

F.5.5 If there is any disagreement between the Parties relating to whether there should be any change to the Contract price for any variation the dispute resolution provisions of the Contract will apply.

F.5.6 Within twenty (20) working days of receipt of the Provider's Variation Notice the Purchaser shall give written notice to the Provider of whether or not it accepts the Variation Notice. If the Purchaser accepts the Variation Notice the Variation shall be effected and the Contract Price shall be adjusted in accordance with the accepted Variation Notice with effect from the date of the Purchasers acceptance of the Variation Notice.

F.5.7 Both parties shall consult with each other to agree the necessary changes required to the Service Specification.

## **F6 Severance**

F6.1 Each provision of this Contract shall be construed separately and, notwithstanding that any such provision may prove to be illegal or unenforceable, the remaining provisions of this Contract shall continue in full force and effect.

F6.2 If any provision of the Contract is invalid or unenforceable in any way, that will in no way impair or affect any other provisions all of which will remain in full force and effect.

F6.3 The rights of the Council including (but without limitation) rights to compensation under this Contract:

1. may be exercised as often as necessary;
2. are cumulative and are not exclusive of its rights under general law;
3. may be waived only in writing and specifically.



## **F7 Law**

**F7.1** The formation, construction, performance, validity and all aspects whatsoever of this Contract shall be governed by English law and subject to Termination Clause H1 the parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

## **F8 Force Majeure**

**F8.1** No party to this Agreement shall be liable to perform its obligation under this Agreement if such failure results from circumstances which could not have been contemplated and which are beyond the party's reasonable control.

## **F9 Gratuities**

**F9.1** The Service Provider shall not, whether by itself or by any person employed by it to perform the Service, solicit or accept any gratuity or any other form of reward for any part of the Service other than as may be provided for in the Contract Documents.

## **F10 Assistance in Legal Proceedings**

**F10.1** The Provider must co-operate fully with the Council in connection with any legal proceedings, Ombudsman inquiries, public inquiry, tribunal or arbitration in which the Council may become involved or any relevant disciplinary hearing internal to the Council arising out of the provision of the Service (together called "proceedings"). This includes providing documentation and statements from staff and giving evidence in proceedings.

**F10.2** Where the Provider or any of the Provider's staff become aware of anything which might cause an Ombudsman's enquiry, claim or legal proceedings in connection with the Service or the Contract it must notify the Authorised Representative immediately in writing. Such notification must include all relevant information to enable the Authorised Representative to investigate the matter fully.

**F10.3** Any financial cost which the Council incurs as a result of failure by the Provider to comply with the obligations herein is recoverable by the Council from the Provider.

## **F11 Value for Money**

**F11.1** Throughout the Contract Period the parties agree that they shall, acting reasonably, work together to ensure that the Contract and the Service Providers performance of the Service represents value for money and best value generally and provides continuous improvement for the benefit of the Council having regard at all times to the basis on which the Service Provider's proposal was submitted to the Council and taking account of then current Government guidance and principles. This commitment by the parties to pursue and achieve value for money shall apply to clauses F2, F3 and F5.

## **F12 Monitoring and Evaluation**

**F12.1** The Provider will co-operate with all monitoring and evaluation processes as determined by the Purchaser to ensure that the conditions and standards of the Agreement and Service Specification are being met. This will include allowing access and inspection of

services and relevant records within the Home and discussion with staff and service users.

F12.2 The Purchaser shall monitor and review the service provision with particular reference to outcome measures specified within Service Specification.

F12.3 The Provider shall attend meetings as required by the Purchaser in connection with the service and matters arising under this Agreement the Provider will:-

- Permit any person authorised by the Purchaser to enter at any reasonable time with or without notice to inspect the Establishment or any premises from which the Services are being provided.
- Provide immediate access to records of Service Users placed by the Purchaser and other such records as the Purchaser may reasonably request including Staff files.
- Produce such statistical information as the Purchaser may reasonably request in a format to be agreed with the Purchaser promptly and at no additional cost to the Purchaser. This information will include but not be limited to the following:-
  - Quantitative information on Service provided;
  - Service User's name including gender identification;
  - Service User's date of birth;
  - Service User's ethnicity;
  - Staff employment details, including recruitment, training & supervision.

F12.4 The Provider will provide such information to the Council as it may reasonably require including the outcome of any complaints concerning the care as requested and all reports produced by the Care Quality Commission, if so requested by the Purchaser. The Council may seek information relating to the performance of the Agreement from any agency, which monitors or inspects the Purchaser.

F12.5 The Provider is to establish a means of quality management within the Service with self-monitoring of standards and objectives which comply with the standards detailed in the Service Specification.

F12.6 Details of the Providers quality management control shall be available to the Monitoring Officers of the Purchaser upon request. Quality shall be monitored under the following categories:

- management of staff, supervision and training;
- service activity and outcomes. The Provider shall need to achieve the measurable outcomes specified in the Service User's Support Planning documentation and demonstrate forward planning and consistency of delivery;
- representation and complaints procedure;
- Inspection of the latest CQC report (applicable to Lots 1 and 2 only)
- Completion of National Minimum Data Set (NMDS). (applicable to Lots 1 and 2 only)

The Provider will be required to send when requested:-

- proof of adequate insurance as specified in G1, which is continuously in place;
- a health and safety policy document which the Purchaser shall approve;
- a recruitment and selection policy, which the Purchaser shall approve.

Other details that may be requested include those that relate to the fulfilment of any of the requirements of the Contract and Service Specification

F12.7 The Provider shall ensure that all staff are requested to sign a record agreeing to access of their personal file being granted to the Purchaser for monitoring purposes.

F12.8 The provider is required to have an Emergency/Contingency Plan that covers for unplanned incidents, a copy of which should be made available to the Purchaser on request.

F12.9 The Contingency Plan should include, but not be limited to:-

- Emergency evacuation (for example fire/flood)
- Extremes of temperature (for example heat wave or freezing);
- Loss of utility supplies (for example water, gas or electric power);
- Control of infectious diseases and cross infection (for example diarrhoea and vomiting);
- Epidemics and pandemics (for example influenza and Bird Flu)

F12.10 The Provider is required to have a robust Infection Control Policy in place that is approved by the Contracts and Service Improvement Team. The Policy must be made available for monitoring purposes when requested by the Purchaser.

F12.11 If an emergency arises the Provider shall contact the Adult Social Care Help Desk on 01202 633902 or out of normal office hours the Purchasers out of hours team on 01202 657279 as soon as possible.

F12.12 In order to comply with its fiduciary responsibilities the Purchaser may from time to time require access upon reasonable request to financial information including but not limited to the Providers annual audited accounts, in order to establish the continuing financial viability of the Provider. Other information may also include a satisfactory financial reference from their bank or financial institution. Such information will be treated in the strictest of confidence and only for the purpose for which it was requested and the Purchaser will inform the Provider of any concerns which may arise from it.

F12.13 The process of Contract Monitoring and Evaluation shall not duplicate, replace or take preference over the review process of the registration and inspection functions of the appropriate Care Quality Commission.

F12.14 The Service Provider shall make available to the Purchaser , when requested, a copy of the following policies, procedures or other documentation:

- Statement of purpose, business plan and latest copy of any relevant inspection reports;
- Accounts (audited where required by the Companies Act) and other relevant financial information (where this is reasonable);
- Evidence of adequate insurance cover (as set out in Condition G);
- Health and safety, equal opportunities, risk assessment and quality standards policy;
- Policy & procedure for staff recruitment, induction, training and development;

- Complaint procedure and copy of records relating to complaints made in relation to the Service and the Service Provider's response.
- Safeguarding Children and Young People's Policy;
- Planning Permissions and Building Regulations Consents relating to the use of the Service Provider's premises for delivery of the Service;

And, any other documentation that may be reasonably required.

## **F13 Operational and Financial Records**

### **F13.1 Complete records**

The Provider must maintain current complete and accurate financial and operational records in relation to all work carried out in the provision of the Service including (but not limited to) a daily record of the nature and quality of the Service performed under this Contract. These records and all other records referred to in this clause and in the Contract and Specification must be available for inspection by the Authorised Representative and any other person Authorised by the Council at all reasonable times. Copies must be provided to the Council forthwith upon request. Records must be kept in an Approved Form, legibly and easily accessible and must be stored in a way which means that they are readily retrievable and do not suffer damage or deterioration, including where such records are held electronically.

### **F13.2 Staff records**

The Provider must maintain complete current and accurate records of the activities of the Provider's Staff in the performance of the Service including any details required to be kept by the Provider pursuant to this Contract and details of attendances. The records must show which staff exercise supervision and details of recruitment, training and supervision.

### **F13.3 Retention of records**

The Provider must retain all such records during the Contract Period and for at least six years after the Termination Date.

### **F13.4 Requests for information**

The Provider must provide requested information or documents no later than ten Working Days from the date of the request, or sooner if (in the opinion of the Council) that is necessary. This provision will survive the termination or earlier expiry of this Contract.

### **F13.5 Provider's Accounts**

13.5.1 The Provider must have audited accounts which must give an overall view of the total resources made available to it from whatever source during the year and how they have been expended, which must be adopted at the Provider's annual general meeting. The accounts must be audited by a qualified accountant who is in possession of a practising certificate from the Institute of Chartered Accountants or the Chartered Association of Certified Accountants.

13.5.2 All documents relating to the audit must be kept for a minimum of six (6) years from the date of completion of the audit.

- 13.5.3 The Provider must allow the Authorised Representative and/or any person(s) Authorised by the Authorised Representative at any reasonable time on written notice to examine its accounts, books and any other supporting documentation.
- 13.5.4 The Provider must acknowledge that it is in receipt of payments from the Council within its annual report and/or published accounts.
- 13.5.5 The Provider must show in its final audited accounts how payments by the Council and other sources of finance have been used by the Provider.
- 13.5.6 Where the Provider is a registered charity it must comply with the requirements of the Charities Act 1992, and any related legislation with regard to the preparation and submission of accounts and otherwise.
- 13.5.7 Where the Provider is a company, it must comply with all requirements of the Companies Act 1985 and other relevant requirements.
- 13.5.8 During the period of this contract the Purchaser and Provider will work together to develop a streamlined payment process which uses information from the Provider's Electronic Monitoring System to pay against actual time delivery.

## **F14 TUPE**

- F14.1 If the provision of whole or any part of the Services transfers to another Provider including a transfer of services back or to the Council the following conditions shall apply:
- F14.2 After either Party has given notice to terminate this Agreement (as herein provided) or at any other time as directed by the Council and within 10 Working Days of being so requested by the Council the Service Provider shall fully and accurately disclose to the Council or directly to any potential new Provider all relevant TUPE information in relation to all employees engaged in providing the Service as the Council may request, in particular but not necessarily restricted to any of the following:
- a list of employees employed by the Service Provider who are eligible to transfer;
  - a list of agency workers, agents and independent contractors engaged by the Service Provider;
  - the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
  - the terms and conditions of employment of the eligible employees, including their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement;
  - details of any court or tribunal case, claim or action brought by an eligible employee against the Service Provider within the previous two years and details of any court or tribunal cases that the Service Provider has reasonable grounds to believe that an eligible employee may bring against the Service Provider arising out of the eligible employee's employment with the Service Provider;
  - details of any disciplinary procedure taken against any relevant employee or grievance procedure taken by an eligible employee within the previous 2 years in circumstances where the Employment Act 2002 (Dispute Resolution) Regulations 2004 apply.

F14.3 The Service Provider shall warrant the accuracy of all the TUPE information provided to any new Service Provider and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any Tenderer for any services which are substantially the same as the Services (or any part thereof).

F14.4 Where notice to terminate this Agreement for whatever reason has been given, the Service Provider shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the eligible employee/s and their trade union or employee representatives as the Council or new Service Provider may reasonably request.

F14.5 The Service Provider shall be responsible for all employee liabilities and shall meet any employee costs incurred or arising before the date of any TUPE transfer and shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:

- vary or purport or promise to vary the terms and conditions of employment of any person mainly employed in the delivery of the Services or any the eligible employee/s or any employee employed in connection with the Services;
- materially increase or decrease the number of employees employed in connection with the Services at the date of this Agreement;
- without a reasonable cause assign or redeploy the eligible employee/s or any employee mainly employed in connection with the Service to other duties unconnected with the Service.

## **F15 Amendments**

F15.1 Save in relation to the operational service requirements, any amendment to this Contract including any variation must be agreed in writing and signed by the Authorised Representatives of the parties.

## **F16 Relationship Between the Parties**

F16.1 Nothing in this Contract shall imply that there is any relationship between the parties of partnership, joint venture or principal and agent and accordingly neither of the parties shall have the right or authority to act on behalf of the other nor to bind the other by contract or otherwise.

## **F17 Taxes**

F17.1 The Council must pay to the Provider all VAT properly payable. The Provider must issue to the Council a tax invoice in respect of VAT.

F17.2 The Provider and the Council must co-operate with each other in their dealings with HM Customs & Excise in relation to VAT. The Provider and the Council must give each other access to all relevant documents and accounting records as are necessary for each to be able to meet their legal obligations in respect of accounting for VAT.

## **F18 Warranties**

**F18.11 The Provider warrants and represents to the Council that:-**

F18.1.1 before entering into this Contract it has made its own investigations and research and has satisfied itself in respect of all matters relating to the Contract and that it has not entered into this Contract in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council;

F18.1.2 it has full power and authority to enter into the Contract, to deliver the Service and otherwise to perform its obligations in accordance with the Contract;

F18.1.3 the Contract has been duly executed by or on behalf of the Provider and is binding on it;

F18.1.4 it has available to it resources which are sufficient to enable it to perform its obligations under the Contract including:-

- i. technical resources and rights to provide the Service;
- ii. financial resources which it reasonably considers sufficient to enable it to meet its obligations under the Contract and sufficient to cover any cost overruns and deductions which it reasonably anticipates might occur including payments of damages, compensation and reimbursement to the Council;
- iii. sufficient skilled staff, equipment, materials and other resources; and the Provider is not aware of any liability (actual, contingent or prospective) or commitment to which it is subject which may affect its ability to perform such obligations;

F18.1.5 it has obtained and will maintain in full force and effect all necessary consents, licences and permissions to enable it to carry out the Service;

F18.1.6 it is not aware of any pending or threatened litigation proceedings or investigation;

F18.1.7 in entering into this Contract it has not committed a Prohibited Act.

F18.2 The representations and warranties in this Clause will survive the execution of this Contract and be deemed to be repeated on each anniversary of the Commencement Date.

**F19 Liens**

F19.1 The Provider agrees that they will not at any time during the term of the Contract Period or at any time thereafter claim or seek to enforce any lien, charge, right of possession or other rights or encumbrances over property of whatever nature owned by the Council or by any Service User.

**F20 Conflicts of Interest**

F20.1 The Provider must tell the Council immediately in writing of any possible conflict of interest between the interests of any of the Council, the Provider, and any other client of the Provider and the Provider must take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Authorised Representative.

## **G LIABILITIES**

### **G1 Liability, Indemnity and Insurance**

- G1.1 The Provider shall be liable for and shall indemnify the Purchaser against all actions, claims, costs, etc. arising from injury to or the death of any person and/or the loss of or damage to any property, including property belonging to the Purchaser, (except and to the extent that such actions, claims, costs, etc. may arise out of the act, default or negligence of the Purchaser, its employees or agents).
- G1.2 The Provider must pay to the Council on demand any liability under these indemnities
- G1.3 Provider shall maintain the following insurance with a reputable insurance company or companies:
- \* Public liability insurance with a minimum limit of indemnity of £5 million for any one occurrence or series of occurrences arising from any one event.
  - \* Employers liability insurance of £10 million.
  - \* Professional indemnity insurance covering the Provider's liability hereunder and including inter alia any negligence, omission or default on the Provider's part, its Sub-contractors and their respective employees for a limit of indemnity of not less than £5million for each and every claim
  - \* Any other insurance reasonably required by the Council.
- G1.4 The Provider shall produce such evidence as the Purchaser may reasonably require to confirm that the insurance referred to above has been effected and is in force at all times.
- G1.5 Where a Service User is admitted to the home the Provider shall inform the Service User and his/her family of the level of insurance (if any) for personal possessions for which the Provider is covered.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination**

- H1.1 Either party may terminate this Contract at any time during its term by giving not less than six (6) months written notice to that effect (or lesser period by agreement between the parties). Any such notice will state the reasons for termination which shall be substantial and reasonable in all the relevant circumstances and not frivolous or vexatious. During the period of notice both parties shall co-operate to ensure that the interests of the service users are met under whatever new arrangements may be proposed. Neither party shall serve notice to terminate in circumstances where the dispute resolution process is ongoing unless for a reason set out in clause H1.
- H1.2 The Council shall be entitled to terminate this Agreement, but not unreasonably or vexatiously, with immediate effect and recover from the Provider the amount of any loss resulting from such termination if the Provider:
- persistently breaches its obligations under the Agreement.
  - commits any other material breach of any of its obligations under this Agreement and (in the case of a breach which is capable of being remedied) fails to remedy



such breach within 28 days (or such other time that may be specified) of receiving written notice from the Council specifying the breach complained of.

- has been convicted of an offence under the provisions of the National Care Standards Act 2000 and regulations thereto and any subsequent amendments.
- has received notice of proposed cancellation of its registration under the National Care Standards Act 2000 or ceases to hold the appropriate registration under the National Care Standards Act 2000.
- shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the agreement of any other agreement with the Purchaser, or for showing or forbearing to show favour or disfavour to any person in relation to the agreement with the Borough of Poole, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Provider), or if in relation to any agreement with the Purchaser, the Provider or any person employed by him or acting on his behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Sub-section (2) of Section 117 of the Local Government Act 1972.
- becomes bankrupt, or makes a composition or arrangements with his creditors, or has a proposal in respect of its company for voluntary arrangements for composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986.
- has an application made under the Insolvency Act 1986 to the court for the appointment of an administrative receiver.
- has a winding-up order made or (expect for the purpose of amalgamation or reconstruction) a resolution for voluntary winding up passed;
- has a provisional liquidator, receiver or manager of its business or undertaking duly appointed.
- offers any improper inducements or exerts unreasonable pressure upon potential residents or their relatives, or others with an interest to attempt to encourage the potential resident to go into the Providers home.
- takes unreasonable financial advantage of the relationship with the service user.
- (Where the Provider is a charity) the Charity Commission begin any investigation into the status of the Provider;

H1.3 In the event of termination by the Council, under clause D9 (Health & Safety) the Provider will co-operate with the Council to ensure that the interests of service users are met. The Council shall not be liable for any consequential economic or financial losses incurred by the Provider arising out of such termination.

## **H2 Effect of Termination and Expiry**

H2.1 Both before and after termination or expiry of this Contract or any part of it, the Provider must give assistance and comply with all reasonable requirements that the Council may specify with a view to ensuring the orderly and efficient handover of the Service to the Council or to any Successor Provider.

H2.2 Upon termination or expiry of the Contract or any part of it, the Provider must:-

do everything necessary at no additional cost to the Council to make sure that the Service can be performed by the Council (or such other person as may be appointed by the Council) in the manner and to the standards set out in this Contract;  
do everything and execute and deliver all documentation necessary to comply with its obligations.

H2.3 Upon termination or expiry of the Contract (whether of the whole Contract or part), the Council (without prejudice to any other rights it has under this Contract):-

- is no longer under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contract have been calculated;
- (only upon the happening of a Termination Event) is entitled to employ and pay other persons (including the Council) to provide and complete the provision of the Service or any part thereof and to use all such Provider's physical resources or other things and all such drawings, details, descriptive schedules or other documents for the purpose thereof;
- (only upon the happening of a Termination Event) is entitled to recover the costs and expenses of the Council on a Quasi Basis and full indemnity basis in terminating the Provider's employment and in making alternative arrangements for the provision of the Service or any part thereof including all costs of a tender process including fees and any loss or damage resulting from or arising out of the termination of the Provider's employment. All such costs and expenses may be deducted from any sum which would otherwise have been due from the Council to the Provider under the Contract or any other Contract and the Council may recover the same from the Provider as a debt.

### **H3 Default**

H3.1 Without prejudice to any other remedy that might be available to the Purchaser if at any time the Provider fails to provide the service in accordance with the requirements of the Contract, Service Specifications and Support Planning documentation to the satisfaction of the Purchaser, then the Purchaser will notify the Provider in writing and will require rectification of the default within a maximum of 28 days or such other period of time considered reasonably by the Purchaser given the nature of the default. The service of a default notice shall not be subject to the dispute resolution process unless the council in its absolute discretion agrees.

H3.2 Cases which in the opinion of the Purchaser are serious cases will require rectification within 7 days.

H3.3 Notwithstanding the provisions of clause D5 (Safeguarding Adults) where the Purchaser has served a default notice the Purchaser may implement a temporary embargo on further placements with the Provider until the Council is satisfied the Provider will comply with the terms of this Agreement.

### **H4 Accrued Rights and Effect of Termination**

H4.1 Termination of this Contract howsoever arising shall be without prejudice to the rights and duties of either party accrued prior to termination. The clauses of this Agreement, which expressly or impliedly have effect after termination, will continue to be enforceable

notwithstanding termination.

## **H5 Bribery and Corruption**

H5.1 The Parties agree that it shall be a fundamental breach of this Contract and the Purchaser shall be entitled to terminate this Contract forthwith and recover from the Provider any loss or damage (including reasonable legal and administrative costs and the costs of re-tendering for the provision of the Services) directly resulting from such cancellation if:

H5.1.1 The Provider shall have offered, or given, or agreed corruptly to give to any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Contract or any other contract with the Purchaser; or

H5.1.2 The like acts shall have been done by any person employed by the Provider or acting on its behalf

H5.1.3 In relation to any contract with the Purchaser, the Provider or person employed by it or acting on its behalf shall:

Have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or

Have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

H5.1.4 Provided always that if Clauses H5.1.2 or H5.1.3 (Bribery and Corruption) applies this Contract shall not be terminable provided that the Provider takes all reasonable action to terminate the contract of the person employed or employed on its behalf within 14 days of having actual knowledge or notice of the corrupt act.

## **H6 Industrial Action**

H6.1 If the Provider's staff take industrial action it remains the Provider's responsibility to meet the requirements of the Contract. The Provider must tell the Authorised Representative immediately of the impending or actual dispute that may affect the Provider's ability to provide the Service to the standards required under the Contract.

H6.2 If there is industrial action by the Council staff or other Council Providers which affects the Service provided by the Provider, the Provider must co-operate with the Authorised Representative to ensure that the Service continues to be provided, or perform the level of Service decided by the Authorised Representative to be satisfactory in the circumstances.

## **H7 Notices**

H7.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

H7.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail, letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission. Such letters shall be addressed to the other Party and sent to the last known address of the Party. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] Working Days after the day on which the letter was

posted, or [4] hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

H7.3 Either party is to ensure that the contact details for the contract are maintained and either party may change their details in writing at any time during the contract period.

## **I TERMS**

### **I1 Definition and Interpretation**

- I1.1 In this Contract, the words and phrases used in a Clause or Appendix to this Contract have the meanings given to them in the Clause, Appendix, Glossary of Terms, Service Specifications or elsewhere.
- I1.2 Words in the singular include the plural and vice versa, the masculine includes the feminine and the neuter and vice versa, and words importing individuals shall be treated as importing corporations and vice versa.
- I1.3 Clause headings are for ease of reference only and do not affect construction of this Contract.
- I1.4 References to any Act of Parliament or any Order, Regulation, Statute, Statutory Instrument Code of Practice, Guidance, Bylaw, Directive or instrument, including any European Union instruments, whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it.
- I1.5 This Contract is binding on the parties to this Contract and their permitted successors and assigns.
- I1.6 Nothing in this Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of this Contract, and the provisions of this Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permissible by law
- I1.7 The Schedules form part of this Contract and will have the same force and effect as if expressly set out in the body of this Contract.
- I1.8 The Contract Documents constitute the entire agreement between the Parties with respect to the subject matter covered by them and supersede and replace all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties. Neither Party has entered into this Contract in reliance of any warranty, representation, undertaking, stipulation or agreement other than those contained in this Contract.

### **I2 Glossary of Terms**

In these conditions, except where the Contract otherwise requires, the following expressions have the meanings hereby ascribed to them:

Abuse	A single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to a person including physical, emotional, financial, sexual, racial abuse, neglect and abuse through the misapplication of drugs.
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Authorised	The authorised representative of the Purchaser or the Provider
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Representative	(as the case may be) and “Authorised Representatives” shall mean both the Purchaser’s Authorised Representative and the Provider’s Authorised Representative.
Borough of Poole	The geographical area that is the Borough and County of the Town of Poole.
Carer	Any relation, friend, or neighbour who is caring for or helping to care for the Service User in an unpaid capacity
Care Worker	The person delivering the care services under the terms and conditions of this contract.
Case Manager	The Officers who have responsibility for assessing need and arranging the purchase of Community Care, this will include Social Workers, Care Managers and Health Staff working within the Community Learning Disability Team and Social Workers, Care Managers within the Primary Care Locality Teams for adults with Autism.
Clinical Case Manager	A member of the Continuing Healthcare Clinical Team, who is the authorised representative of the NHS Continuing Healthcare commissioner, responsible for the regular review and assessment of care to determine eligibility for this service.
Community Learning Disability Team	Authorised Representative(s) of Adult Social Care (the Purchaser) responsible for ensuring that the assessed needs of the individual Service User are met.
Contract	This Contract which comprises the General Conditions, Service Specification and Appendices
Contract Documents	This Contract and the Schedules
Contract Manager	The Council’s Head of Housing and Community Services who shall act as the Authorised Representative for the purpose of this Contract (or in default of such appointment the person nominated by the Council to take this role).
Contract Price	The fees and payments detailed in the Appendices with any additions or deductions agreed in writing by the Parties or provided for under this Contract.
Contract Year	The period of twelve (12) months commencing on and including the Commencement Date and each subsequent period of twelve (12) months commencing on each anniversary of the Commencement Date, provided that the final Contract Year shall be such period as commences on and includes the anniversary of the Commencement Date that falls in the year in which this Contract expires or is terminated (for whatever reason) and ends on and includes the date of expiry or earlier termination of this

Contract (as the case may be).

Contracting Authority	Means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 other than the Authority.
CQC – The Care Quality Commission	Is the organisation which is responsible for the registration and inspection of all domiciliary care agencies. All Providers of Person Centred Care and Support will be required to maintain registration under the Health and Social Care Act 2008 (or any subsequent amendment) and evidence consistently high standards against CQC compliance.
Direct Losses	All damages, losses, liabilities, costs, expenses (including other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgements, proceedings, internal costs or demands excluding Indirect Losses but including the costs attributable to the Purchaser's loss of use.
Direct Payment	The amount of money allocated to the individual Service User as a Personal Budget which is taken and managed by the Service User to purchase their care services. Service Users may take all or some of their Personal Budget as a Direct Payment. Service Users eligible for either a Social care Personal Budget or NHS Personal Health Budget will be able to use their Direct Payment to access services under this contract.
FOIA	Means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Purchaser in relation to such legislation.
Force Majeure	Includes the occurrence after the Commencement Date of war, civil war, riot, civil unrest, civil emergency, terrorist attack or threat of terrorist attack, nuclear, chemical or biological contamination or an act of God.
General Change in Law	Means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which would affect or relate to a comparable supply of Services of the same or a similar nature to the supply of the Services.
Indirect Losses	Loss of profits, loss of business or loss of business opportunity or any consequential or indirect loss of any nature.
Intellectual Property	All interests and rights of any nature whether such rights exist, or are of a kind which exist, at the time of this Contract or whether they or that kind only come into existence afterwards. These include all of the following: copyright works, trade marks,

database rights, designs, discoveries, inventions, improvements, know-how, confidential information, all rights in all of these or arising out of them, applications for and registrations of them and the rights in them, and the right to apply for any form of protection for any of these things and rights. In each case it includes the aforesaid title, interests and rights in every part of the world for their full term, including any renewals and extensions, the right to receive any income from them, and the right to sue in respect of any past, continuing or future infringement of any of them, and to claim and receive damages (or an account of profits) and interest in respect of any such infringement).

Learning Disability

A significant reduced ability to understand new and complex information, to learn new skills (impaired intelligence), with, a reduced ability to cope independently (impaired social functioning); which started before adulthood, with a lasting effect on development.

Legislation

Any Act of Parliament or subordinate Legislation within the meaning of section 21 (1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom.

Monitoring Officer

Authorised Representative(s) of Adult Social Care (the Purchaser) responsible for ensuring the standards and conditions of the Contract and Service Specifications are met.

Moving and Handling  
Care Plan

A document which is specific to an individual who requires assistance with their transfers and/or walking. The document specifies the number of staff, any equipment and the procedures to be followed when care staff and /or carers are assisting the individual to move. This document should be completed following an assessment by the Provider. For more complex needs and more specialised knowledge of moving and handling techniques, an assessment via the Purchaser's Occupational Therapy service or Back Care Advisor will be required.

'NHS' and 'Dorset CCG'

Dorset Clinical Commissioning Group which is responsible for Commissioning services for Service Users eligible to receive support through continuing health care.

'NHS Continuing  
Healthcare' or 'continuing  
care'

A service or services arranged and fully funded by the NHS. Eligibility to CHC is determined only when an individual has achieved an optimal level of rehabilitation and is subject to regular review and assessment. Patients who meet eligibility criteria have a 'primary health need' and typically have care needs that are complex, intense and unpredictable. They require high quality care delivered by well trained staff who can provide a flexible and reliable service. Care arranged may be long or short term and tailored to meet individual needs. This service will only serve the population of Poole who are registered with a General



Practitioner associated with Dorset CCG. The guidelines for NHS Continuing Healthcare, including legal requirements can be found in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care available on the Department of Health website.

Outcome	The end result of the service provided by a Provider, which can be used to measure the effectiveness of the service. An outcome may be a strategic outcome which is applicable to all Service Users, or an individual outcome which pertains to the individual Service User and is identified in each Support Plan.
Personalisation	The process by which state-provided services can be adapted to suit Service Users. This means everyone having choice and control over the shape of their support along with a greater emphasis on prevention and early intervention.
Price	The total Price payable to the Provider for services, within the maximum levels determined by the Purchaser.
Provider /Service Provider/Housing Provider	Proprietor/owner of the home/company providing the care/support service or his/her duly authorised representative or agent.
'Purchaser' or 'Commissioner'	The Borough of Poole, which is responsible for Commissioning services for Service Users eligible to receive support under the Fair Access to Care Criteria and for setting local standards of service for people funding their own care provision.
Purchaser Support Plan	The plan drawn up by the designated Case Manager following the assessment of the Service User, which identifies the Service User's needs and agreed outcomes, and how these are to be met; and which shall be updated from time to time in accordance with the Service User's needs. This may also include a care diary for some Service Users. In the case of NHS Continuing Health Care funded Service Users, this shall be 'the Care Plan'.
Provider Support Plan	A Plan developed by the Provider which identifies how the outcomes in the Service User's Support Plan are to be met. This will be in an accessible format to the Service User and make best use of Person Centred Planning (PCP) approaches. This Provider Support Plan, and any subsequent amendments required to meet changing circumstances, shall be agreed with the relevant Case Manager.
Review	Arrangements made by the Purchaser with the provider and the Service User to consider any aspect of the agreement or the performance of the service.
Safeguarding	The obligation of all partners to proactively protect the welfare of

vulnerable adults in receipt of this service from all forms of abuse or harm. The Provider agrees to adhere to the requirements on the Borough of Poole safeguarding policy and any subsequent amendment of it.

Service Specification	Document referred to as Lot 2 Person Centred Care and Support or Lot 3 Housing Related Support which sets out the standards which apply to the Provision of Services for people with a Learning Disability and/or Autism.
Service User	An individual receiving the care of the Provider. Any reference to the Service User shall, where appropriate, include the Service User's duly authorised representative.
'Staff' or 'provider staff'	Employees, agents, members and volunteers of the Provider who undertake the provision of care services.
Support Planning Documentation	A range of documentation including the Supported Assessment Questionnaire, Care Diary, Support Plan and any subsequent reviews drawn up by the Community Learning Disability Team or other professionals identifying Service User needs and how these are to be met.
Vulnerable Adult	Any person aged 18 years and over who is or may be in need of Community Care Services by reason of mental or other disability, age or illness; and is or may be unable to take care of him or herself; or is unable to protect themselves against significant harm or serious exploitation.

AND any other words shall where they are defined in a Specification or a Schedule or Appendix have the same meaning herein as so defined.