

[Insert Date] to [Insert Date]

Agreement for the Provision of:

**DERBYSHIRE SUPPORT SERVICE FOR YOUNG
CARERS AND THEIR FAMILIES**

between

(1) Derbyshire County Council

and

(2) [Provider]

Contract Ref No: [Insert]

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THIS AGREEMENT is made on

BETWEEN:-

- (1) **DERBYSHIRE COUNTY COUNCIL** whose principal place of business is at County Hall, Matlock, Derbyshire DE4 3AG (the **Council**); and
- (2) **[Provider]** whose registered address is at **[Address]** (the **Provider**).

BACKGROUND

- (A) On **[xxxx]**, the Council issued the invitation to tender and supporting documents (the **Invitation to Tender**) for the provision of support services for young carers and their families.
- (B) In response to the Invitation to Tender, the Provider submitted a tender dated **[xxxx]** and following the tender process was selected to provide the support services.
- (C) The Parties have agreed for the Provider to provide the support services in accordance with the terms and conditions of this Agreement.

IT IS AGREED as follows:-

1 DEFINITIONS & INTERPRETATION

1.1 The following words shall have the meanings given below:

Agreement	This agreement between the Council and the Provider consisting of these clauses and any attached schedules and appendices
Charges	The charges set out in Schedule 2 to be paid by the Council to the Provider in consideration for provision of the Services
Confidential Information	Any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1989 and commercially sensitive information
Contract Manager	The Council's and the Provider's representatives with responsibility for management of the Services as detailed in Schedule 4
Data Protection Legislation	The Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes

	of practice issued by the Information Commissioner
DBS	The Disclosure and Barring Service which was established under the Protection of Freedoms Act 2012 and merged the criminal records checking and barring functions previously carried out by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA)
FOIA	The Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
Force Majeure	Any cause preventing either Party from performing any or all of its obligations under this Agreement which arises from or is attributable to circumstances beyond the reasonable control of the Party so prevented, including strikes or other industrial disputes involving the workforce of any third party, act of God, government actions, war, riot, hostilities, terrorist attack or activity, or civil commotion.
Indirect Losses	<ul style="list-style-type: none"> (i) loss of profits (other than profits directly and solely attributable to the provision of the Services); (ii) loss of use; (iii) loss of production; (iv) increased operating costs; (v) loss of business; (vi) loss of business opportunity; (vii) loss of reputation; (viii) loss of goodwill; or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis
Losses	All damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses; for the purposes of this Agreement, Losses shall include the re-procurement costs of the Council in procuring a third party to supply replacement Services or part of the Services (or similar or equivalent services)
Record of Plan	A record produced by the Provider that details the support to be provided to a Service User
Personal Data	means any personal data or sensitive personal data (as defined in the Data Protection Act 1998) which is processed by the Provider pursuant to or in connection with this Agreement;

Quality Standards	The standards, outputs and outcomes set out in the Specification
Relevant Conviction	A conviction which appears to involve any kind of violence (including threatening behaviour, intention to harm or actual bodily harm), any sexual offence, drugs, firearms, arson or terrorism.
Services	Provision of support services for young carers and their families as detailed in the Specification and the Tender Response
Service User	Each young person to whom the Services are to be provided for, as further described in the Specification
Specification	The Council's requirements for the provision of the Services, to be undertaken by the Provider pursuant to this Agreement, as attached at Schedule 1
Staff	All persons engaged by the Provider to perform its obligations under this Agreement including the Provider's employees, volunteers, agents, suppliers and sub-contractors
Staff Vetting Procedures	The Council's procedures for the vetting of Staff as advised to the Provider by the Council
Tender Response	The Provider's response to the Council's Invitation to Tender, including the documents attached at Schedule 3 (if any)
Working Day	A day (other than a Saturday or Sunday), on which banks are open for domestic business.

- 1.2 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
- 1.3 Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- 1.4 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.5 References to any statute or statutory provision shall include (i) any subordinate legislation made under it (ii) any provision which has modified or re-enacted (whether with or without modification) and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.6 All references in this Agreement to clauses and schedules are to the clauses, and schedules to this Agreement unless otherwise stated.

2 TERM

- 2.1 This Agreement shall be effective from the **Commencement Date** of [insert date] and shall continue in force for a period of three (3) years until [insert date] (the **Fixed Term**, with an option to extend in accordance with clause 2.2 (**Term**)).
- 2.2 The Council may extend this Agreement for two (2) further periods of one (1) year's duration, subject to giving the Provider three (3) months' notice before expiry.

3 CONDITIONS APPLICABLE

- 3.1 This Agreement shall apply to the contractual relationship between the Council and the Provider, to the exclusion of all other terms and conditions including any terms and conditions which the Provider may purport to apply.
- 3.2 In the event of any conflict between any of the documents comprising this Agreement, the order of priority shall be as follows:
- a) the terms of this Agreement;
 - b) Schedule 1 (Invitation to Tender);
 - c) Schedule 2 (the Charges); and
 - d) Schedule 3 (Provider's Tender Response).

4 THE SERVICES

- 4.1 The Provider shall provide the Services during the Term in accordance with this Agreement.
- 4.2 The Provider shall provide the Services with the highest level of skill, care and diligence and in a good and workmanlike manner in accordance with the best practices prevailing in the industry that the Services form part.
- 4.3 If, in the reasonable opinion of the Council, the Services do not meet the requirements of this Agreement, the Council may require the Provider to re-schedule and carry out the Services in accordance with the requirements, within such reasonable time as requested by the Council, at the Provider's own expense (except where non-compliance is caused by the Council).

5 REVIEWS

- 5.1 The Services to be provided by the Provider to each particular Service User, will be agreed with the Council and the Service User and set out in the Service User's Record of Plan, which will be reviewed at least six monthly by the Council's Contract Manager and the Provider's Contract Manager.
- 5.2 A sample of Service Users' Record of Plan will be reviewed by Council officers, including but not limited to Children's Services Quality Assurance personnel and the Council's Contract Manager.

- 5.3 The overall Service will be subject to review at least six monthly by the Council's Contract Manager and the Provider's Contract Manager.

6 STATUTORY COMPLIANCE, INCLUDING EQUALITY

- 6.1 The Provider shall comply with all statutes, laws, orders, regulations, bye-laws and statutory codes of practice having the force of law and being applicable to the performance of this Agreement and the Provider shall be responsible for obtaining all licences, consents or permits required for the performance of this Agreement. This shall include, but not be limited to, the Provider discharging its obligations under this Agreement and provide Services in accordance with its responsibilities in accordance with the Equal Pay Act 1970, the Human Rights Act 1998 and the Equality Act 2010 and shall in addition discharge its obligations under this Agreement and provide the Services in a manner consistent with the Council's policies on equality.
- 6.2 The Provider shall provide a copy of its written policy of equality and diversity on request.

7 HEALTH AND SAFETY

- 7.1 The Provider shall be fully responsible for the adequacy and safety of all of its activities carried out in connection with this Agreement, and shall comply in all aspects with the Health and Safety at Work etc Act, 1974 and any enactments thereof.
- 7.2 The Provider shall provide a copy of its written Health and Safety policy to the Council prior to the commencement of this Agreement.
- 7.3 The Provider shall ensure that its Health and Safety Policy has been drawn to the attention of all its Staff, and that all of its management and supervisory Staff have a good understanding of this policy and that they observe the policy and ensure that the Provider's Staff comply fully with its provisions.
- 7.4 The Provider shall carry out a Health and Safety Risk Assessment on an individual package, as defined by the Management of Health and Safety at Work Regulations 1992, using the Record of Plan and any risk assessment documentation, including those provided by the Council. The health and safety of the Service User shall not be put at risk as a consequence of the way the Services are delivered or by any act or omission of the Provider.
- 7.5 The Provider shall ensure that risks are assessed in accordance with legislative requirements and that all reasonably practicable precautions and working methods are followed, and that information, instruction, training and supervision are provided to the Provider's Staff to ensure that such precautions are followed.
- 7.6 The Provider shall ensure that its Staff are aware of action to be taken in the event of fire, and shall carry out regular tests of alarms and escape procedures.

8 MONITORING AND EVALUATION

- 8.1 The Council will monitor and review the performance of the Provider under this Agreement and the standard of the Services provided by the Provider.
- 8.2 The Provider shall cooperate with the Council and provide written evidence as requested by the Council and shall make available relevant Staff (excluding Staff who are absent due to confirmed annual leave or ill health) as necessary to support and assist the Council with internal and external inspection readiness activity, e.g. OFSTED.
- 8.3 The Provider's Contract Manager will submit to the Council statistical reports regarding the Provider's adherence to Quality Standards in respect of the Service and compliance with this Agreement on a quarterly basis.
- 8.4 Monitoring of the Services will incorporate feedback from Service Users and, where appropriate management representatives of the Council and other referring agencies.
- 8.5 The Provider shall submit to the Council an annual report no later than the 31 May for each year of the Agreement, such report to include information on performance with regard to achievement of Quality Standards and compliance in general with this Agreement.
- 8.6 Subject to clause 12, the Provider shall provide the Council with any information reasonably required for monitoring the performance of this Agreement, preparation of the Council's cabinet reports, government statistics or information required to respond to enquiries/complaints from Councillors or members of the public, or which is necessary for the performance of the Council's statutory responsibilities.
- 8.7 The Provider shall put in place systems of self-monitoring, so as to provide the Council with such information as it may reasonably require, including but not limited to:
- Complaints and compliments;
 - Accidents and incidents;
 - Racial and sexual harassment;
 - Monitoring Service Users' and Staff feedback;
 - Details of the Services delivered (to each Service User);
 - Details of Staff turnover; and
 - Performance against standards identified in the Specification.
- 8.8 In the event that the Council reasonably considers that the Quality Standards are not being met and/or the Services are not being performed in accordance with the Specification then the Parties shall follow the procedure set out in clauses 8.8(a) and (b) below:
- a) the Parties shall arrange a meeting to be held within two weeks of any meeting request submitted by the Council. At the meeting, the Council shall offer support and guidance as to how the Services can be improved and the Parties shall, acting reasonably and in good faith at all times, cooperate to reach a mutually acceptable solution to improve the Provider's delivery of the Services;
 - b) in the event that, after submission of the next quarterly report following

the meeting described in clause 8.8(a) above, the Council still reasonably considers that the Quality Standards are not being met and/or the Services are not being performed in accordance with the Specification, then the Council shall have the option at its absolute discretion to:

- i) withhold such proportion of the Charges which reflect a genuine assessment of the Losses suffered and Losses which may subsequently be suffered by the Council as a result of the Quality Standards and/or the Specification not being adhered to; or
- ii) terminate this Agreement with immediate effect; or
- iii) request a further meeting in accordance with the procedure set out in clause 8.8(a) above and allow the Provider a further opportunity to improve the delivery of the Services, in which case the procedure set out in this clause 8.8 shall be repeated until either the delivery of the Services meets the Quality Standards and the Specification or the Council terminates this Agreement in accordance with clause 8.8(b)(ii) above.

9 COMPLAINTS AND SERIOUS INCIDENTS PROCEDURE

- 9.1 The Provider shall operate a complaints procedure using its own established system or refer to the Council's complaints procedure. Service Users will have the choice of using either complaints procedure. The Provider will co-operate with the Council to carry out any investigations dealt with further to a complaint from a Service User. Details of complaints resolved directly by the Provider should be made available in summary to the Council in meetings or reports. Unresolved complaints or complaints of a serious nature shall be notified by the Provider to the Council.
- 9.2 Serious incidents should be notified to the Service User's social worker immediately. Where the Service User does not have a social worker the Council's Contract Manager should be informed.
- 9.3 All complaints and serious incidents will be reviewed in summary at the quarterly monitoring meeting held between the Party's Contract Managers.

10 CONFIDENTIALITY AND NON-DISCLOSURE

- 10.1 Each Party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other Party (including such information relating to the suppliers affiliates or subcontractors of the owning Party) disclosed or obtained as a result of the relationship of the Parties under this Agreement and shall not use nor disclose the same save for the purposes of the proper performance of this Agreement or with the prior written consent of the other Party.
- 10.2 Where disclosure is made to any employee, consultant, adviser or agent, it shall be made subject to obligations equivalent to those set out in this Agreement. Each Party shall use all reasonable endeavours to procure that any such employee, consultant, adviser or agent complies with all those obligations.

- 10.3 Each Party shall be responsible to the other Party in respect of any disclosure or use of any of the other Party's Confidential Information by a person to whom disclosure is made.
- 10.4 The obligations of confidentiality in this clause 10 shall not extend to a Party in respect of any matter which that Party can show:
- 10.4.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
 - 10.4.2 was in its written records prior to the commencement date and not subject to any obligations as to confidentiality; or
 - 10.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
 - 10.4.4 is required to be disclosed under any applicable law, or by order of a court of governmental body or authority of competent jurisdiction.
- 10.5 Each Party acknowledges that any Confidential Information and copies thereof disclosed by either Party to the other shall remain the property of the disclosing Party.

11 FREEDOM OF INFORMATION

- 11.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and shall:
- 11.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA;
 - 11.1.2 transfer to the Council any requests for information made to the Provider relating to this Agreement that it receives as soon as practicable and in any event within 2 days of receipt;
 - 11.1.3 provide the Council with a copy of all information belonging to the Council requested in any request for information which is in its possession or control in the form that the Council requires within 5 days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
 - 11.1.4 not respond directly to any request for information unless authorised in writing to do so by the Council.
- 11.2 The Provider acknowledges that the Council may be required under the FOIA to disclose information concerning the Provider or the Services (including commercially sensitive information) without consulting or obtaining consent from the Provider. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 11.3 Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any information relating to the Provider or the Services is exempt from disclosure in accordance with the FOIA.

12 DATA PROTECTION

- 12.1 The Provider shall ensure that any processing of Personal Data that may be

performed by the Provider or its Staff shall be in compliance with Data Protection Legislation.

12.2 Notwithstanding the general obligation in clause 12.1, where the Provider is processing Personal Data for the Council the Provider shall:

12.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998;

12.2.2 provide the Council with such information as the Council may reasonably request to satisfy itself that the Provider is complying with its obligations under Data Protection Legislation;

12.2.3 promptly notify the Council of:

- (i) any breach of the security requirements as referred to in clause 12.2.1; and
- (ii) any request for Personal Data; and

12.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under Data Protection Legislation.

12.3 When handling Council data (whether or not Personal Data), the Provider shall ensure the security of the data is maintained in line with the security requirements of the Council as notified to the Provider from time to time.

12.4 Upon reasonable notice to the Provider, the Council shall be entitled to audit the procedures of the Provider (which shall include the right to enter the Provider's premises and access its systems, including IT systems) for the purpose of ensuring compliance with this clause and to satisfy itself that the Provider is so complying.

12.5 The Provider shall not appoint a third party (including, without limitation, a sub-contractor) to process any data pursuant to this Agreement without the prior written consent of the Council.

12.6 The Provider shall procure that any third party with whom it contracts agrees to terms including clauses the same as, or no less onerous than, those contained in this clause.

12.7 The Provider shall indemnify the Council against any actions, claims or losses that are incurred or caused or to be incurred for breaches of any Data Protection Legislation by the Provider.

13 CHILD PROTECTION AND PROTECTION OF VULNERABLE ADULTS

13.1 The Provider shall comply with the Council's Safeguarding Children's Board Policy and Procedures, a copy of which can be accessed at <http://www.derbyshirescb.org.uk/>

13.2 The Provider shall have procedures in place to identify children in need and take appropriate action and shall include safe recruitment practices.

13.3 The Provider shall comply with the Council's Adult Protection (Safeguarding Adults) Policy and Procedures

- 13.4 The procedures required under clause 13.2 shall be consistent with the Council's guidelines on intimate care, such as limiting the number of Staff providing intimate personal care to the minimum possible, and shall include the information set out in the paragraph titled 'Safeguarding - Child Protection and Adult Protection' in the General Conditions of Contract attached at Schedule 1.

14 CHARGES AND PAYMENT

- 14.1 The Charges shall remain fixed for the Term and shall include every cost and expense of the Provider directly or indirectly incurred in connection with the performance of the Services.
- 14.2 The Council shall pay the Charges to the Provider quarterly in arrears subject to receiving a valid invoice from the Provider.
- 14.3 The Contractor shall ensure that each invoice contains the following information:
- (i) the date of the invoice;
 - (ii) the quarterly service period to which the relevant Charge(s) relate;
 - (iii) details of the correct Agreement reference;
 - (iv) a contact name and telephone number of the Provider's finance department in the event of administrative queries;
 - (v) the banking details for payment to the Provider via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 14.4 The Council shall pay each valid undisputed invoice from the Provider no later than thirty (30) days from the date of its receipt by the Council (the **Due Date**).
- 14.5 All Charges referred to in this Agreement shall be exclusive of any VAT, and any other similar taxes, duties or levies or other deductions or withholdings in countries or jurisdictions outside the United Kingdom, which taxes shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice.
- 14.6 If any sum payable under this Agreement is not paid within thirty (30) days after the Due Date, the Provider shall be entitled (without prejudice to the Provider's other rights and remedies) to charge interest on that sum on a daily basis (before as well as after any judgment) from the Due Date to the date of payment at the rate of two (2) per cent above the base rate of the Bank of England from time to time in force.
- 14.7 The Provider shall not be entitled to charge interest under clause 14.6 in respect of any sum which is the subject of bona fide dispute, provided that the Council shall pay any undisputed amounts in accordance with this Agreement and:
- a) the Council shall notify the Provider of any such dispute as soon as reasonably practicable and shall refer the matter for resolution by recourse to the dispute resolution procedure set out in clause 28; and

- b) in the event that it is determined that any disputed sum is payable to the Provider, the date of any such determination shall constitute the Due Date in respect of that sum.
- 14.8 The Provider shall be wholly responsible for all taxes and National Insurance and other contributions, which may be payable out of, or as a result of, any fees or other monies paid or payable by the Council under this Agreement.
- 14.9 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing any part or all of this Agreement, it shall ensure a provision is included in such sub-contract which requires payment to be made of all undisputed sums due by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 14.10 Without prejudice to any other right or remedy it may have, if any sum of money is recoverable from or payable by the Provider under the Agreement (including any sum which the Provider is liable to pay to the Council in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Provider under the Agreement or under any other agreement with the Council. The Provider shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.

15 AUDIT

- 15.1 The Provider will allow access to a copy of, or internet access to, fully audited accounts or a statement of its organisation's turnover, profit and loss and cash flow position or a statement of its organisation's cash flow forecast and a bank letter outlining the current cash and credit facility provision, if required to do so by the Council.
- 15.2 The Provider shall provide the Council, the Council's internal or external auditors, OFSTED, the Department for Education and the Local Government Ombudsman with access to its Staff, financial records, minute books and any other relevant information, explanation and evidence (including obtaining relevant copies) as to the propriety of its affairs and its performance of this Agreement as may be required.
- 15.3 The Provider shall afford the Council, the Council's internal or external auditors, OFSTED, the Department for Education and the Local Government Ombudsman all co-operation and assistance reasonably required for the purposes of carrying out an audit of the Provider's propriety and its performance of this Agreement.
- 15.4 The Council shall use all reasonable endeavours to ensure that its auditors cause the minimum amount of disruption to the business of the Provider, and shall comply with the procedures and security requirements of the Provider whilst on the Provider's premises.

16 PREMISES

- 16.1 The Provider agrees throughout the Term:

- i) to ensure any premises used for the delivery of the Services are clean, tidy and in good repair; and
- ii) to be responsible for any applicable outgoings associated with the premises.

16.2 Without prejudice to clause 7, the Provider shall:

- i) comply with all health and safety standards within the premises and will notify the landlord (if applicable) of any identified hazards at the premises to ensure these are rectified;
- ii) maintain at a satisfactory level any furniture and fittings that are provided by the Provider and will carry out or notify the landlord (if applicable) of any maintenance required to any furniture or equipment in order to prevent risks to Service Users and any visitor to the premises .

16.3 All furnishings and equipment at the premises provided by the Provider must be to the appropriate British Standards or European equivalent.

17 STAFF & DBS

17.1 The Provider will have, and comply with a written policy on personal matters for Staff. This shall include appropriate procedures for recruitment, disciplinary and grievance issues, training and development and equal opportunities and complaints procedure. The Provider will provide the Council with a copy of such policy on request.

17.2 The Provider will ensure that all Staff employed or engaged in the provision of the Services:

- (i) comply with such health and safety policy as the Provider shall have in force from time to time (a copy of which shall be provided to the Council on or before the date hereof); and
- (ii) in the case of Staff working directly with young people, have been the subject of an enhanced DBS check.

17.3 The Council may require the Provider to ensure that any person employed in the provision of the Services has undertaken a DBS check as per the Staff Vetting Procedures. The Provider shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Provider to have a Relevant Conviction (whether as a result of a police check or through a DBS certificate) is employed or engaged in the provision of any part of the Services.

17.4 Any Staff employed by the Provider to perform its obligations under this Agreement will remain at all times the responsibility of the Provider and any costs, liabilities or expenses incurred by the Provider as employer during or at the expiry of the Agreement shall be the sole responsibility of the Provider.

18 PUBLICITY

18.1 For the purposes of this Agreement, '**Publicity**' shall mean any media releases, public announcements or public disclosures of the Provider relating to this Agreement or its subject matter, including, but not limited to

promotional or marketing material (but excluding any announcement intended solely for internal distribution by the Parties or any disclosure required by legal, accounting or regulatory requirements).

- 18.2 The Council shall have the right at any time and from time to time to review in advance any Publicity or proposed Publicity and to amend or prohibit any such Publicity prior to its release.

19 SUB-CONTRACTING AND ASSIGNMENT

- 19.1 The Provider shall not assign, novate, sub-contract, grant any security interest over or otherwise transfer any rights or obligations under this Agreement, or any document referred to in it, without the prior written consent of the Council. Such consent shall be at the absolute discretion of the Council.
- 19.2 The Provider shall be responsible for the acts, omissions, defaults and neglect of its sub-contractors or any transferee, whether or not approval has been given to their appointment or the transfer, as if they were its own and no consent given by the Council shall relieve the Provider of any of its obligations or liability under this Agreement.

20 INDEMNITY, INSURANCE AND LIABILITY

- 20.1 The Provider agrees to indemnify and keep indemnified the Council from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, or breach of its statutory duty or breach of an obligation under the Data Protection Legislation, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or breach of statutory duty or breach of an obligation under the Data Protection Legislation by the Council.
- 20.2 The Provider shall maintain the following minimum insurance cover and shall provide copies of the policies to the Council before commencement of the Services and from time to time upon request:
- (a) Employers' Liability - minimum £10,000,000 (ten million pounds) in respect of any one occurrence or series of occurrences arising out of any one event;
 - (b) Public Liability - minimum £5,000,000 (five million pounds) for any one claim in respect of any one occurrence or series of occurrences arising out of any one event; and
 - (c) Professional Indemnity - minimum of £2,000,000 (two million pounds) for each and every claim.
- 20.3 The Provider undertakes to maintain professional indemnity insurance for the Term, at a level no less than the minimum set out in clause 20.2(c) for a minimum period of six (6) years after termination or expiry of the Agreement (howsoever arising) and shall, on the Council's request, produce a current insurance certificate giving full details of cover.
- 20.4 Neither Party shall be liable to the other Party (as far as permitted by law) for

Indirect Losses in connection with this Agreement.

- 20.5 Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Agreement.
- 20.6 Nothing in this Agreement will exclude or limit the liability of either Party for:
 - 20.6.1 death or personal injury caused by its negligence;
 - 20.6.2 fraud or fraudulent misrepresentation; or
 - 20.6.3 any other act or omission, liability for which may not be limited under any applicable law.
- 20.7 Subject to clauses 20.6 and 20.8, the Provider's maximum liability under this Agreement shall not exceed £5,000,000 (five million pounds GBP) per event or connected series of events. This limitation applies regardless of the form of action whether in contract or in tort, including without limitation negligence, or otherwise.
- 20.8 The Provider's liability to the Council for any loss or damage howsoever arising suffered by the Council in relation to any breach by the Provider of its obligations under or in connection with the Data Protection Act 1998 howsoever arising shall be unlimited.
- 20.9 Subject to clause 20.6, the Council's total aggregate liability in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, arising under or in connection with this Agreement shall be limited to the Charges.
- 20.10 Each provision of this clause 20 limiting or excluding liability operates separately in itself and survives independently of the others. If any part is held by a court to be unreasonable or inapplicable in any circumstances, the other parts will continue to apply.

21 INTELLECTUAL PROPERTY RIGHTS

- 21.1 The Provider hereby grants to the Council a royalty-free, non-exclusive, non-transferable licence to such of the Provider's pre-existing Intellectual Property Rights and for such term as the Council shall require solely for the purposes of this Agreement and such other purposes as it shall reasonably require that relate to the use and provision of the Services.
- 21.2 All Intellectual Property Rights in any materials (in whatever form or media, including training, marketing, promotional or publicity materials) relating to the provision of the Services prepared by the Provider for the Council under this Agreement shall belong to the Council and may not be used by the Provider for any other purpose without the prior written consent of the Council.
- 21.3 The Provider warrants that:
 - 21.3.1 the provision of the Services shall not infringe any Intellectual Property Rights of any third party; and
 - 21.3.2 none of the materials described in clauses 21.1 to 21.2 infringe the Intellectual Property Rights of any third party; and
 - 21.3.3 it shall defend, hold harmless and indemnify the Council against all loss, damage, claims, liabilities, fees, costs and expenses arising out

of any claim that the provision of the Services or the materials infringes any Intellectual Property Right of any third party.

- 21.4 So far as permitted by law, the Provider's liability under the indemnity in clause 21.4 shall not exceed an overall aggregate limit of £5,000,000 (five million pounds).

22 VARIATION

- 22.1 Any variation to this Agreement must be agreed by the Parties, recorded in writing and signed by both Parties.
- 22.2 Any variation agreed pursuant to clause 22.1 must also specify any amendments to the Charges as a result of such variation.

23 TERMINATION AND DEFAULT

- 23.1 The Council shall be entitled to terminate this Agreement with immediate effect by notice in writing to the Provider, if the Provider commits a material or persistent breach of this Agreement and, in the case of a breach capable of remedy, fails to remedy the breach within ten (10) Working Days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- 23.2 The Council may at any time by written notice immediately terminate this Agreement as from the date of service of such notice without liability for compensation or damages:
- a) upon the Provider passing a resolution for winding-up or having a petition to wind up presented against it or going into liquidation, whether voluntary or compulsory (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Agreement) or suffering a winding-up order being made against it or going into administration;
 - b) if the Provider proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is made in relation to the Provider under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by that party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the Provider and any of its creditors;
 - c) if a receiver or administrative receiver or administrator is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of the Provider;
 - d) if the Provider is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) or ceases to or threatens to cease to carry on its business or enters into a composition with its creditors;
 - e) if the Provider undergoes a substantial change of control or ownership which the Council considers in its absolute discretion to be detrimental to the Council's commercial interests provided such notice is served

within sixty (60) days of the Council becoming aware of the change of control or ownership;

- f) if the Provider suffers an event which has a similar effect to the events described in clauses 23.2 a)-e) above;
- g) if this Contract has been subject to substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contract Regulations 2015;
- h) If the Provider was, at the time when this Agreement was awarded, in one of the situations referred to in regulation 57(1) of the Public Contract Regulations 2015, including as a result of the application of regulation 57(2), and therefore should not have been awarded this Agreement;
- i) If any competent court makes an award for ineffectiveness of this Agreement under the Public Contract Regulations 2015; or
- j) If this Agreement should not have been awarded to the Provider in view of a serious infringement of the obligations of the Treaty on the European Union, the Treaty on the Functioning of the European Union (the "TFEU") or the Public Contracts Directive 2014 that has been declared by the Court of Justice of the European Union under a procedure under Article 258 of TFEU.

23.3 The Council may terminate this Agreement for any reason at any time on giving written notice of a minimum of three (3) months' to the Provider.

23.4 The Provider may terminate this Agreement with immediate effect by written notice to the Council if the Council materially and repeatedly breaches its obligation to pay the Provider the Charges in accordance with the provisions set out in clause 14.

23.5 Any termination of this Agreement (however caused) shall not affect any accrued rights or liabilities of either Party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or continue in force on or after such termination, except that the Council shall not be liable to the Provider for any loss, claims, damage, fees, liabilities, costs or expenses, whether direct, indirect, financial, economic, consequential (including without limitation loss of profit, loss of goodwill, loss of sale revenue, loss of contract and loss of opportunity) or otherwise, suffered by Provider as a direct or indirect result of such termination.

23.6 The Provider shall not cease providing the Services to an individual Service User without obtaining the prior written consent of the Council's Contract Manager.

24 CONSEQUENCES OF TERMINATION

24.1 On the expiry or termination of this Agreement (for whatever reason) the following provisions shall apply:

- 24.1.1 the relationship of the Parties shall cease save as (and to the extent) expressly provided for in this clause 24;
- 24.1.2 the provisions of clauses 10, 11, 12, 18, 20, 21, 24, 27, 28, 32, 35 and 37 shall continue in full force and effect;
- 24.1.3 the Provider shall promptly return to the Council or dispose of in accordance with the Council's instructions, all Confidential Information and other data and documents and copies thereof disclosed or supplied to the Provider and all working papers, computer disks and tapes or other material and copies provided to or prepared by the Provider in each case pursuant or in relation to either this Agreement or any previous obligation owed to the Council and shall certify in writing to the Council when the same has been completed.
- 24.1.4 the Provider shall at its own expense do all such things and execute all documents necessary to comply with its obligations under this clause 24.
- 24.2 All rights and obligations of the Parties shall cease to have effect immediately upon termination of this Agreement except that termination shall not affect:
 - 24.2.1 the accrued rights and obligations of the Parties at the date of termination;
 - 24.2.2 the continued existence and validity of the rights and obligations of the Parties under the clauses which are expressed or by implication are intended to survive or come into effect on or after termination or which are necessary for the interpretation or enforcement of this Agreement.

25 RISK MANAGEMENT

The Provider shall notify the Council immediately if it believes the actions of a Service User pose a risk to themselves or others, or presents a set of circumstances likely to bring risk upon the Council.

26 AGENCY

The Provider shall not be the agent of the Council for the purposes of the provision of the Services under this Agreement. Nothing in this Agreement shall create any agency joint venture or partnership between the Council and the Provider nor shall the Council be liable for any losses, claims, demands, damages or liability arising out of the provision of the Services by the Provider.

27 NOTICES

Any notice to the Council or the Provider provided under this Agreement shall be deemed to be sufficiently served if addressed and delivered personally to or sent by recorded delivery post to Derbyshire County Council, Children and Younger Adults Department, County Hall, Matlock, Derbyshire, DE4 3AG and to the Provider at its last known address. Notices sent by post shall be deemed to have been received on the second Working Day after posting and notices delivered personally shall be deemed to have been received on the day on which they are served.

28 DISPUTE RESOLUTION

- 28.1 In the event that there is any dispute between the Council and the Provider in connection with any of the provisions of this Agreement, including any dispute over the potential costs of proposed variations to the Services, the dispute shall first be discussed by the Council's Contract Manager and the Provider's Contract Manager in order to ascertain the exact nature of the dispute and possible approaches to its resolution.
- 28.2 In the event that the Parties are unable to resolve the dispute within 21 days of the dispute being referred to them pursuant to clause 28.1 above, the dispute shall be referred by notice in writing to the Director of Children's Services Department of the Council and the Chief Executive of the Provider who shall within 21 days of receipt of such a notice meet to consider and endeavour to resolve the dispute.
- 28.3 If the dispute remains unresolved after discussions between the representatives in accordance with clause 28.2 above then the dispute shall be referred to mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure and, if necessary thereafter, to either arbitration or litigation.
- 28.4 Neither Party may initiate any legal action until the process set out in clauses 28.1 to 28.3 above has been completed unless such Party has reasonable cause to do so to avoid damage to its business or to protect any right of action it may have.
- 28.5 Unless this Agreement has already been terminated by the date of the notice of dispute, the Provider shall, in every case, continue to provide the Services with all due diligence regardless of the nature of the dispute and the Council shall continue to make payment of the Charges (excluding any disputed sums) in accordance with Schedule 2.

29 FORCE MAJEURE

- 29.1 Subject to the provisions of this clause 29, neither Party shall be liable for any delay in meeting, or failure to meet, its obligations under this Agreement due to an event of Force Majeure.
- 29.2 If either Party is prevented from or delayed in performing any of its obligations under this Agreement by an event of Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances of that event and shall, subject to service of such notice, and having taken all reasonable steps to avoid such prevention or delay, have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure event during the continuation of such event.
- 29.3 If the Force Majeure in question prevails for a continuous period in excess of ten (10) Working Days, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing on such alternative arrangements as may be fair and reasonable.
- 29.4 If either Party is prevented from performance of its obligations for a continuous period in excess of sixty (60) days, the other Party may on twenty (20) days written notice on the Party so prevented terminate this Agreement,

in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

- 29.5 The Party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure shall use its best endeavours to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the Force Majeure event.

30 TRANSFER OF OWNERSHIP

- 30.1 The Provider shall give the Council 28 days' written notice of any intended change of ownership of the Provider's organisation.
- 30.2 If the corporate status of the Provider is subject at any time to acquisition and/or merger the Council reserves the right to terminate this Agreement in accordance with clause 23.2(e).

31 ENVIRONMENTAL STRATEGY

The Provider shall provide the Services in accordance with the Council's environmental policy.

32 CONTRACTS (RIGHTS OF THE THIRD PARTIES) ACT 1999

Neither the Council nor the Provider intends to confer any right or benefit upon a Third Party and for the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

33 BRIBERY AND FRAUD

- 33.1 The Council may terminate this Agreement by written notice with immediate effect, and recover from the Provider all Losses resulting from such termination, if the Provider, or any of its Staff(in all cases whether or not acting with the Provider's knowledge):

33.1.1 directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

33.1.2 directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

33.1.3 commits any offence:

- (i) under Section 117(2) of the Local Government Act 1972;
- (ii) under the Bribery Act 2010;
- (iii) under legislation creating offences concerning fraudulent acts;

- (iv) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- (v) defrauds, attempts to defraud or conspires to defraud the Council

34 INFORMATION AND RE-TENDERING

- 34.1 Subject to clause 10 (Confidentiality) and 12 (Data Protection Act), at the Council's reasonable request, the Provider must at its own cost:
- 34.1.1 provide the Council with such information and data, including personal records, as the Council may reasonably require within fourteen (14) days to enable it to prepare the necessary documentation to procure another person or body or to make alternative arrangements to provide the same or similar services (which for the avoidance of doubt includes the performance of the Services by the Council itself);
 - 34.1.2 shall co-operate with the Council (at the Council's reasonable request) to secure as necessary the continuity of the Service, its orderly winding up, the administration of any recoupment provision and other exit and succession arrangements as the case may be and the Provider shall do such other things and execute such documents as may be necessary for such purpose;
 - 34.1.3 assist the Council and/or the replacement provider(s) to the extent reasonably required to facilitate the smooth migration of the Services to the Council or the replacement provider(s); and
 - 34.1.4 at the end of the Term transfer all young people's records to the Council or a new provider (with appropriate consent) at no additional cost.

35 TUPE

- 35.1 All Staff will remain at all times the responsibility of the Provider and any costs, liabilities or expenses incurred by the Provider as employer during or at the expiry of this Agreement shall be the sole responsibility of the Provider.
- 35.2 The Provider will comply with all of its legal obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") and act in compliance with the Code of Practice on Workforce Matters in Local Council Service Contracts 2003 and Code of Practice on Workforce Matters in Public Sector Service Contracts 2005 as well as any amendment, replacement or further guidance.
- 35.3 Within twenty (20) Working Days of the Commencement Date, the Provider must provide the Council with all reasonably requested information on the Provider's Staff engaged in the provision of the relevant Services. The Provider must also provide this same information, updated, within twenty (20) Working Days of each anniversary of the Commencement Date (including such anniversaries as they fall within any extension period).
- 35.4 Where the Council has notified the Provider that it intends to tender or retender any of the Services, the Provider must within ten (10) Working Days following written request (unless otherwise agreed in writing) provide the Council with all reasonably requested information on the Provider's Staff

engaged in the provision of the Services who may be subject to TUPE, including:

- (a) the total number of Staff whose employment with the Provider is liable to be terminated at the expiry of this Agreement but for any operation of law;
- (b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given);
- (c) full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found;
- (d) details of pensions entitlements, if any;
- (e) job titles of the members of Staff affected and the qualifications required for each position;
- (f) details of any disciplinary and or grievance proceedings involving the employee within the previous two years;
- (g) details of any outstanding claims the employee has brought against the Provider within the last two years or are currently outstanding;
- (h) details of any claims that the Provider has reasonable grounds to believe the employee may bring against the transferor, arising out of the employee's employment with the transferor;
- (i) details of any collective agreements in respect of any transferring employee; and
- (j) any other information that is relevant and to be determined.

The Provider acknowledges that the information provided under this clause 35.4 is likely to be released within a re-procurement procedure to all potential tenderers.

35.5 In the event that the information provided by the Provider becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall immediately notify the Council of the inaccuracies and provide the amended information.

35.6 The Council will be entitled to use, and disclose, this information as necessary for the purpose of future service provision, including but not limited to the purposes of TUPE and of re-tendering. The Provider will co-operate with the re-tendering of the Agreement by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

35.7 The Provider shall indemnify and keep indemnified the Council and any replacement provider against any Losses in respect of any inaccuracy in or omission from the information provided under clause 35.4.

35.8 During the three (3) months immediately preceding the expiry of this Agreement or at any time following a notice of termination of this Agreement or of any part of the Service being given, the Provider must not and must procure that its sub-contractors do not, without the prior written consent of the Council, in relation to any persons engaged in the provision of the Service:

- (a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
- (b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any sub-contractor whatsoever unless with the prior written consent of the Council (except in the ordinary course of business);
- (c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
- (d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service;
- (e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service; and/or
- (f) vary, introduce, remove and/or amend any other right and/or power of any individual engaged in the provision of the Services or the relevant Service which may be enforceable, by virtue of TUPE, against the Council and/or any replacement provider following a relevant transfer as defined under TUPE.

35.9 The Provider shall indemnify and keep indemnified the Council and any replacement provider against any Losses incurred by the Council and/or the replacement provider in connection with any claim or demand by any transferring employee under TUPE.

36 GENERAL

36.1 This Agreement contains the entire agreement between the Parties in relation to its subject-matter of the Agreement. This Agreement supersedes all other prior negotiations representations and undertakings whether written or oral except that this clause shall not exclude liability for fraudulent misrepresentation.

36.2 The rights and remedies of either Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence,

forbearance or extension of time granted by such Party to the other nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. The waiver by either Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

- 36.3 If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of this omission.
- 36.4 The Provider shall not be relieved of its obligations to perform the Services in accordance with the terms of the Agreement as the result of a change in law which comes into effect after the Commencement Date.

37 GOVERNING LAW & JURISDICTION

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England and the Parties submit to the exclusive jurisdiction of the courts of England.

IN WITNESS OF THE ABOVE the Parties have signed this Agreement on the date written at the head of this Agreement.

SIGNED by or on behalf of the Parties on the date which first appears in this Agreement

Signed:
(For and on behalf of the Council)

Name (in block capitals):

Designation:

Date:

Signed:
(For and on behalf of the Provider)

Name (in block capitals):

Designation:

Date:

SCHEDULE 1

SPECIFICATION

SCHEDULE 2

PRICE SCHEDULE

To enable us to process your invoices please include the following information:-

Vendor Number:

Cost Centre:

Please address all invoices to:-

Financial Services
Children and Younger Adults Department
Room 268
County Hall
Matlock, Derbyshire
DE4 3AG

SCHEDULE 3

PROVIDER'S TENDER RESPONSE

SCHEDULE 4

CONTRACT MANAGERS

Details of Contract Managers

FOR DERBYSHIRE COUNTY COUNCIL

Contract Manager: xxxxxxxxxxxx
Derbyshire County Council, Children and Younger Adults, County Hall, Matlock, DE4
3AG
Telephone Number: 01629 5xxxxx
E-mail: xxxxxxxxxxxxxxxxxxxxxxxxx

FOR THE PROVIDER

Contract Manager:

Telephone Number:
E-mail: