



SPOT PURCHASING AGREEMENT

FOR

THE PROVISION OF

DOMICILIARY CARE AND SUPPORT SERVICES
FOR ADULTS & CHILDREN

TERM AND CONDITIONS

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RECITALS

WHEREAS:

- A. The Council operates a Framework Agreement for purchasing Domiciliary Care services for children and adults, both within and outside the Council's administrative area of the Borough of Telford & Wrekin. However, there may be occasions when it is necessary for the Council to purchase Domiciliary Care from Providers that are not on the Framework Agreement. On these occasions, the Council will spot purchase care using these Domiciliary Care Spot Purchase Agreement Terms and Conditions.
- B. The Council will select Providers to be awarded this Spot Purchasing Agreement where circumstances dictate and following a competitive procurement process.
- C. The Service User's specific care needs at their Premises under a Care and Support Plan are detailed in Schedule A - Service Specification, and in the respective Individual Service Agreements for Adult and Child Care (the "ISA's").
- D. This Spot Purchasing Agreement consists of these Conditions, the Particulars and, Schedules A to G and their Appendices. In the event of conflicting interpretations, these documents shall take precedence as detailed at clause 10.
- E. The Council is the Local Authority for the administrative area of Telford and Wrekin for the purposes of the Local Authority Social Services Act 1970. And is empowered under Part III the National Assistance Act 1948 and section (3) of the Local Government (Contracts) Act 1997 to provide Domiciliary Care for persons aged 18 and over who by reason of illness or disability are in need of care and attention within their home which is otherwise not available to them, and under the National Health Service and Community Care Act 1990 to provide community care Services as that expression is defined in the National Health Service and Community Care Act 1990.
- F. The Provider is appropriately registered with the CQC for the Service outlined in Schedule A (Service Specification).
- G. Providers have complied with relevant CQC registration requirements and regulations, as applicable and any other registrations and regulations and subsequent amendments which may be released from time to time. The proposed Service must safeguard and promote the welfare of children and young people in accordance with the Children Act 1989; the Children Act 2004; Working Together to Safeguard Children statutory guidance (DCSF, 2010); and the Telford & Wrekin Local Safeguarding Children's Board (T&W LSCB) Policies and Procedures, Disability Equality Act 2010.
- H. The Council is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Council wishes to procure are Best Value functions.
- I. The Council is a Cooperative Council and mindful of its obligations under the Public Services (Social Value) Act 2012 and intends to encourage small to

medium size local providers to tender to provide the Services under the Spot Purchasing Agreement as well as the larger providers.

PART 1 GENERAL PROVISIONS

1. Definitions and Interpretations

1.1 In this Spot Purchasing Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

DEFINITION TABLE	
Word/Phrase	Definition
1999 Act	Shall mean the Local Government Act 1999
Agreement to Vary ISA (Children)	The document used to vary any current and agreed Services under an ISA(Children) and substantially in the form appended to Schedule K at Appendix 2(b)
Adult Social Care Payments Team	The Telford & Wrekin Council Adult Social Care Payments Team
Advocacy Service	Shall mean a Service that will support or encourage a person/s to exercise their rights in order to uphold their rights
Spot Purchasing Agreement	Shall mean the Conditions, the Particulars and , Schedules A – K and their Appendices
Assessment	Shall mean the assessment undertaken by the Council leading to the Care and Support Plan
Assistive Technology	Shall mean any product or Service designed and/or used to increase, maintain and improve the functional capabilities and independence of people with cognitive, physical or communications difficulties and older people
Authorised Representative	Shall mean an individual authorised to Enter and View as part of a Local Healthwatch’s function as described in the Health and social Care Act 2012
BACS	Shall mean Bankers Automated Clearing Service
Best Value	Shall mean the duty imposed on the Council by Part 1 of the 1999 Act and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act
Brokerage Process	The process by which the Brokerage Team procures care services for Service Users with assessed needs
Brokerage Team	The Telford & Wrekin Council Social Care team or teams that undertake the Brokerage Process
Business Continuity Plan	A collection of procedures which is developed, compiled and maintained in readiness for use in the event of any type of disruption whatever its size or cause, with the aim of ensuring business operations continue and recovery from disruption is quick and effective

Care and Support Plan	Shall mean the care and support that the Council is obliged to provide to Adults under the NHS and Community Care Act 1990, the National Assistance Act 1948 and to Children under the Children's Act 1989 and Health, social care Act 2008 (regulated activity) regulation 2010, the Disability Equality Act 2010 and In relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006
Care Package	The specific care requirements of the Service User that are the subject of the Mini-Competition Procedure and that relate to the assessed needs within the Care & Support Plan
Charges	Shall mean the value of the payments made to the Provider relating to ISAs awarded in accordance with clause 18 (Mini Competition Procedure) for provision of the Service.
Commencement Date	Shall mean the commencement date of care provision as stated on the ISA
Community Care Assessment	Shall mean an assessment in accordance with the requirements of National Health Service and Community Care Act 1990
Confidential Information	Shall mean information in accordance with Clause 44 (Confidentiality)
Contracting Authority	Shall mean any Contracting Authority as defined in Regulation 3 of the Public Contracts Regulations 2006 (as amended) other than the Council
Contract Review	Shall mean a review of the Provider's provision of and compliance with the Spot Purchasing Agreement
(The) Council	Shall mean the Borough of Telford and Wrekin
Council Policies and Procedures	Policies and Procedures can be accessed through request to the Council's Representative
Council's Representative	Shall mean the person nominated pursuant to Clause 8 (The Council's Representative)
CQC	Care Quality Commission
Data Protection Act / DPA	Shall mean the Data Protection Act 1998 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 Commission or relevant government department in relation to such legislation
DBS	Shall mean the Disclosure and Barring Service established under the Protection of Freedoms Act 2012. Previously known as 'Criminal Records Bureau' established pursuant to Part V of the Police Act 1997
Default	Shall mean any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Spot Purchasing Agreement. and in respect of which such Party is liable to the other
Dispute Resolution	Shall mean the process to be followed if the Parties fail to agree upon any issue arising under this Spot Purchasing Agreement

	as set out in Clause 80
Domiciliary Care	Shall mean Care and Support in the home or community that helps people cope with disability or illness and allows them to remain as independent, healthy as well as they wish to be, also to offer support to families and carers
Electronic Monitoring System	A system by which the actual time care is delivered is electronically recorded via the care worker logging in and out at the beginning and end of the delivered care
Emergency Care	Any care provided in response to an Emergency Situation
Emergency Situation	Any situation of an immediate, urgent, or critical nature, regardless of its cause, which may seriously endanger or threaten the health or safety of individuals
Enablement Care	Care to help maintain or regain independence, empowering individuals with the skills and confidence to complete daily living skills
Enhanced Disclosure	Shall mean a disclosure secured in accordance with the DBS Service
Environmental Information / EI Regulations	Shall mean the Environmental Information Regulations 2004
Essential Standards Of Quality and Safety	Shall mean a set of compliance standards set out by the Department of Health
Expert	Person appointed in accordance with Clause 80 (Dispute Resolution)
Expiry Date	Shall be as defined at Clause 2 (Term)
Extended Term	Shall mean the extension of the duration of the Spot Purchasing Agreement agreed in accordance with Clause 2 (Term)
Financial Year	Shall mean the period from 1 April in any year to 31 March in the following year
FOIA	Shall mean the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
Formal Complaint	Shall mean any complaint that is referred into and dealt with under the Complaints Procedure
Fraud	Shall mean any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Spot Purchasing Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown
General Change in Law	Shall mean 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
Individual Spot Purchase	Shall mean the contract between the Provider and the Council relating to an individual package of Care with a Service User

Agreement (ISA)	incorporating the specific ISA terms and conditions and the terms of this Spot Purchasing Agreement, by reference
Indirect Losses	Shall mean loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis
Information	Shall have the meaning given under section 84 of the Freedom of Information Act 2000
Initial Term	Shall mean the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of the Spot Purchasing Agreement
Instant Review Meeting	Shall mean a Notice which the Council is entitled to serve on the Provider stating that one or more of the Annual Contract Reviews has been brought forward at less than twenty-eight (28) days' Notice
Intellectual Property Rights	Shall mean patents, inventions, trade marks, Service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
Invitation to Quote	Issued by the Council and forms part of the mini-competition documentation detailing the services required under each Care & Support Plan and ISA and includes the Care Package Request Form (Adults) and the Referral Form (Children) substantially in the form appended at Appendix 1(a) and Appendix 2(a) at Schedules J & K respectively
Invitation to Tender	Shall mean the statement of Service requirement issued by the Council in respect of the performance of the Services. The Invitation to Tender has been incorporated into this Spot Purchasing Agreement
Law	Shall mean any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply
Liaison	Shall mean ongoing cooperation of the Parties
Losses	means 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
Lots	Lots 1 Adult Domiciliary Services & Lot 2 Children Domiciliary

	Services
Material Breach	Shall mean a Persistent / Serious Default that the Parties have been unable to remedy
Mediator / Mediation Provider	an individual who is appointed in accordance with Clause 80 (Dispute Resolution) to mediate between parties if they are in dispute
Month	Shall mean calendar month
Named Employee	Shall have the meaning given to it in Schedule D (Disclosure and Barring Service)
NHS and Community Care Act 1990	Shall refer to legislation and any regulations and standards from time to time made there under which ensure Service Users' needs are appropriately assessed
Non-Specialist Care	Generic care that is not characterised by a dominant specialist need as associated with mental health concerns, learning disabilities, substance misuse, physical disabilities, autism or dementia
Notice	Shall mean any written communication issued to a Party that is sent by hand, registered post or by the recorded delivery service, or electronic mail
Palliative Care	Care to help relieve the symptoms, pain and stress of a serious illness, to include care at the end of life
Parent Company	Shall mean the organisation that has a controlling stake in the Provider
Party	Shall mean the Provider or the Council being the signatories to this Spot Purchasing Agreement and "Parties" shall be construed accordingly
Persistent Default	Shall mean where the Provider has committed more than two Defaults during any consecutive period of six (6) Months, whether or not these are the same Defaults or different Defaults and even if the Default was put right
Provider	Shall mean the legal entity responsible for delivering the Services under this Spot Purchasing Agreement.
Provider's Representative	Shall mean the person nominated pursuant to Clause 9 (The Provider's Representative)
Quality Standards	Shall mean the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body that a skilled and experienced operator engaged in the same type of industry or business as the Provider would reasonably and ordinarily be expected to comply
Registration Standards	Shall mean such standards of Service as is necessary to achieve registration under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and any regulations and standards from time to time made there under
Regulated Activities	As listed within the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010.

Regulated Activity	In relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006
Regulated Activity Provider	as defined in Section 6 of the Safeguarding Vulnerable Groups Act 2006
Regulatory Body/Bodies	Shall mean those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Spot Purchasing Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly. However, this does not include any body of which membership is voluntary
Relevant Transfer	Means if upon termination of this Spot Purchasing Agreement or any related ISA the Services provided are transferred to a Replacement Provider then TUPE may apply. In such circumstances the contracts of employment of those Staff who are essentially dedicated to the Spot Purchasing Agreement or any related ISA let under it will transfer to the new Provider (a Relevant Transfer) who will inherit the rights, duties and liabilities in relation to them
Replacement Provider	Shall mean any other Provider appointed by the Council to supply any Service which is substantially similar to any of the Services which the Council receives in substitution for any of the Services following the termination or partial termination of this Spot Purchasing Agreement
Requests for Information	Shall have the meaning set out in FOIA or any apparent request for Information under the FOIA or the Environment Information Regulations
RIDDOR	Shall mean the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
Schedule	Shall mean a document attached to, and forming part of, this Spot Purchasing Agreement and the ISA
Scheduled Review	A planned review of Service Users' needs
Serious Default	Shall mean a Default by the Provider which materially prejudices the health, safety or welfare of a Service User
Service Specification	Shall mean the description of the Service to be provided under this Spot Purchasing Agreement and attached as Schedule A (Service Specification)
Service User	Shall mean any person in receipt of the Services as detailed in Schedule A (Service Specification) who has been assessed for Care under the National Health Service and Community Care Act 1990; and/or meets Local Authority Eligibility Criteria for Care
Service User Representative	Any person making a representation on the behalf of the Service User in either personal and professional capacity
Service Outcome	the required impacts or end results of the Services, which are

	described in the Service Specification
Service Quality Requirements	Defined requirements on the Provider by which they are able to demonstrate service quality, as detailed in Schedule C – The Service Specification
Service Quality Targets	Targets by which Service quality will be measured, as detailed in Schedule C – The Service Specification
Service User Outcome	The required impacts or end results of the provision of Services for the Service User. Will often be defined in the Care and Support Plan
Socialisation Mileage	Any mileage that the Council requests Provider Staff to undertake for or on behalf of the Service User as part of the Care Package
Specialist Care	Care that is dominated by the specialist nature of the care need associated particularly with Service Users who; have mental health concerns, substance misuse concerns, learning disabilities, physical disabilities, autism, or dementia
Staff	Shall mean the persons who are employed or deployed by the Provider to provide the Services. All persons employed by the Provider to perform its obligations under the Spot Purchasing Agreement together with the Provider's servants, agents, volunteers, suppliers and sub-contractors used in the performance of its obligations under the Spot Purchasing Agreement
Supporting People	The provision of housing related support to enable older and vulnerable people to live more independently
Suspension	Shall mean temporary cessation by the Council of the any of the Services associated with this Spot Purchasing Agreement
Tender	Shall mean the documents which form the basis of the Spot Purchasing Agreement
Term	Shall mean the period from the Commencement Date to Expiry Date of the Spot Purchasing Agreement as stated on the ISA (unless an extension has been agreed) in accordance with Clause 2 (Term)
TUPE Regulations	Shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 which will come into force on 31 January 2014.) and the Transfers of Undertakings Directive 2001
Unscheduled Review	An unplanned review of Service Users' needs
Variation	Shall mean an amendment to this Spot Purchasing Agreement or to the Services or any of the schedules in accordance with Clause 56 (Variation)
VAT	Shall mean Valued Added Tax chargeable under English Law for the time being and any similar additional tax
Volunteer	Shall mean any unpaid member of Staff who is not an employee of the Provider
Working Day	Shall mean between 09:00 and 17:00 Monday to Friday

	inclusive, but does not include any days which are bank holidays or public holidays
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- 1.2 Except as otherwise expressly provided, the documents comprising this Spot Purchasing Agreement are to be mutually explanatory of one another.
- 1.3 Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any EU Directives, by-laws, licences, statutory instruments, rules, regulations, orders, Notices, directions, consents or permissions made under the same.
- 1.4 An obligation in this Spot Purchasing Agreement by either of the Parties, not to do something, shall be construed as including an obligation to use reasonable endeavours not to permit it to be done by a third party (whether with express or implied authority, or otherwise).
- 1.5 Time shall not be of the essence, unless otherwise stated.
- 1.6 Any requirement in this Spot Purchasing Agreement for the Council to give its consent or Spot Purchasing Agreement means the consent or Spot Purchasing Agreement must be given in writing (subject to any contrary provision) by an officer of the Council who has the necessary delegated authority.
- 1.7 The headings in this Spot Purchasing Agreement are for ease of reference only and the words in italics are for explanatory purposes only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 1.8 The expression 'person' used in this Spot Purchasing Agreement shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- 1.9 References in this Spot Purchasing Agreement to the "Council" and the "Provider" shall include their respective successors in title and any reference to any government department or other relevant authority is deemed to include its or their successors.
- 1.10 Words denoting one gender include the other genders.
- 1.11 Words in the singular shall include the plural and vice versa.
- 1.12 Words denoting individuals shall be treated as including a body of persons corporate or unincorporated.
- 1.13 References to Clauses, sections, paragraphs, Schedules and Appendices are references to the Clauses, sections, paragraphs, Schedules and appendices of this Spot Purchasing Agreement(subject to any contrary indication).

- 1.14 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 the preceding words where a wider construction is possible.
- 1.15 The Schedules form part of the Spot Purchasing Agreement and shall have effect as if set out in full in the body of the Spot Purchasing Agreement and any reference to Spot Purchasing Agreement includes the Schedules.
- 1.16 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2. Term

- 2.1 This Spot Purchasing Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with the succeeding provisions of this Spot Purchasing Agreement, or otherwise, until the end date / review date stated in the ISA. (the Initial Term), when it shall expire automatically without Notice.
- 2.2 The Council shall have the right, at any time, to extend this Spot Purchasing Agreement. The extension period is based upon the Provider confirming that their Tender submission remains unchanged and answering any questions provided (to the Council’s absolute satisfaction) that cover any variation to the Specification within the forthcoming extension period.
- 2.3 Not Used.
- 2.4 During any Extended Term, the respective obligations of the Parties under this Spot Purchasing Agreement shall continue in full force and effect (subject only to any Variation) until the expiry of the Extended Term.
- 2.5 Unless it is terminated earlier in accordance with the succeeding provisions of this Spot Purchasing Agreement, or otherwise, this Spot Purchasing Agreement shall expire automatically without Notice at the end of the Extended Term.

3. Scope of the Spot Purchasing Agreement

- 3.1 The required Services to be delivered for the benefit of a Service User will be detailed in the Service Specification and in the respective Adult or Children’s ISA.
- 3.2 Not Used.
- 3.3 Non-Exclusivity - the Provider acknowledges that, in entering this Spot Purchasing Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Provider and that the Council is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services

which are the same as or similar to the Services.

3.4 Nothing in this Spot Purchasing Agreement shall be construed as creating a partnership or a contract of employment, between the Council and the Provider or as constituting either Party as the agent of the other for any purpose whatsoever except as specified by the terms of the Spot Purchasing Agreement.

3.5 Unless otherwise expressly provided for in this Spot Purchasing Agreement, each of the Parties shall bear its own costs respectively in connection with the formation and operation of this Spot Purchasing Agreement.

3.6 Individual Service Agreements (“ISA”)

(a) By entering into an ISA with the Council, you are agreeing to these Terms and Conditions and associated Schedules.

(b) The form of each ISA (Adult or Children) will be substantially as appended to Schedule J and K respectively but may be amended from time to time by the Council, at the Council’s discretion.

4. The Council’s Obligations

4.1 In the absence of any express statement to the contrary, the Council’s obligations under this Spot Purchasing Agreement are obligations of the Council in its capacity as a contracting counter party only.

4.2 Nothing contained in this Spot Purchasing Agreement shall restrict or fetter the exercise by the Council in its capacity as a Local Authority, of its various rights, discretions, duties, powers and obligations under any statute, statutory instrument, order, regulation, byelaw or other Law, in particular in relation to social service functions.

5. The Provider’s Obligations

5.1 The Provider shall ensure that it has the capability to provide the Services with effect from midnight immediately prior to the Commencement Date (time being of the essence).

5.2 The Provider must deliver the Services in accordance with the terms and conditions of the Spot Purchasing Agreement and the respective ISA and in particular (without limitation) Schedule A (Service Specification).

5.3 The Provider agrees that the Council has the power to inspect and examine the performance of the Services and compliance with the terms of this Spot Purchasing Agreement at any premises where any part of the Service is being performed.

- 5.4 The Provider must at all times deliver the Services in accordance with all applicable legal requirements which apply under any Law.
- 5.5 Neither the Provider nor its Staff shall in any circumstances hold itself or themselves out as being the agent or employee of the Council, or purport to enter into any contract on behalf of the Council, or bind the Council to any undertaking unless otherwise agreed in writing by the Council (at its absolute discretion).
- 5.6 The Provider shall be registered and shall remain registered throughout the Term and throughout any Extended Term with any relevant Regulatory Bodies.
- 5.7 The Provider acknowledges that the provision and the manner in which Domiciliary Care is provided may be apt to change in the future and the Provider agrees that where it is informed of any proposed changes by the Council to work with the Council in a spirit of cooperation and good faith to ensure that such changes are developed and implemented to the Council's satisfaction.

6. The Entirety of the Contract

- 6.1 This Spot Purchasing Agreement and any documents referred herein represent the entire understanding between the Parties and in the absence of any express contrary statement in this Spot Purchasing Agreement, the Spot Purchasing Agreement supersedes all representations, understandings and agreements, whether oral or written, which have been made by either of the Parties to the other (whether directly or indirectly).
- 6.2 This Spot Purchasing Agreement may be executed by the Parties in counterparts, each of which when executed and delivered shall constitute an original of this Spot Purchasing Agreement, but all counterparts together shall constitute one and the same instrument.

7. Notices

- 7.1 Except as otherwise expressly provided within the Spot Purchasing Agreement, no Notice or other communication from one Party to the other shall have any validity under the Spot Purchasing Agreement unless made in writing by or on behalf of the Party concerned.
- 7.2 Any Notice which is served under this Spot Purchasing Agreement by either Party on the other shall be sent by either electronic mail, or fax, or recorded delivery, to the appropriate person and the relevant address as specified in the ISA.
- 7.3 Any Notice which is served in accordance with this Clause 7 (Notices) shall be deemed to have been given either (as applicable) two (2) Working Days after the date on which it was posted, or within four (4) hours in the case of an electronic or facsimile transmission (provided that the same is received

on a Working Day and if not, then on the first Working Day thereafter, or sooner if the other Party acknowledges receipt sooner).

8. The Council's Representative

- 8.1 The Council shall appoint a Council Representative to act on behalf of the Council for all purposes connected with the Spot Purchasing Agreement (in the absence of any other indication). Details of the Council's Representative are set out in the ISA.
- 8.2 The Council shall immediately give Notice to the Provider of any change in the identity, address and telephone numbers of the Council's Representative. The Council shall also give the maximum possible Notice to the Provider before changing the Council Representative.
- 8.3 The Council's Representative may from time to time appoint one or more persons to act for the Council's Representative generally or for specified purposes or periods. As soon as is reasonably practicable after any such appointment is made the Council's Representative shall give written Notice thereof to the Provider.
- 8.4 Any Notice, information, instruction or other communication given to the Council's Representative or any person appointed to act as the Council's Representative shall be deemed to have been given to the Council.

9. The Provider's Representative

- 9.1 The Provider shall appoint a Representative to act on behalf of the Provider for all purposes connected with the Spot Purchasing Agreement. Details of the Provider's Representative are set out in the ISA.
- 9.2 The Provider's Representative may from time to time appoint one or more persons to act for the Provider's Representative generally or for specified purposes or periods. As soon as is reasonably practicable after any such appointment is made the Provider's Representative shall give written Notice thereof to the Council.
- 9.3 Any Notice, information, instruction or other communication given to the Provider's Representative or those appointed to act as the Provider's Representative shall be deemed to have been given to the Provider.
- 9.4 The Provider shall immediately give Notice to the Council of any change in the identity, address and telephone numbers of the Provider's Representative. The Provider shall also give the maximum possible Notice to the Council before changing its Provider's Representative.

10. Ambiguities and Conflicts

- 10.1 If either of the Parties becomes aware of any ambiguities or discrepancies

in the Spot Purchasing Agreement, then they shall immediately serve Notice of these on the Council's Representative, who shall then issue each of the Parties with an appropriate clarification or an appropriate Variation.

- 10.2 If there is any conflict at any time between the provisions of the Spot Purchasing Agreement or any other document which is referred to in or attached to this Agreement, then the conflict shall be resolved in accordance with the following order of priority:
- 10.2.1 Clauses 1 to 80 of these Conditions (inclusive) and including any documents incorporated by reference therein;
 - 10.2.2 Schedule A (Service Specification) to this Spot Purchasing Agreement;
 - 10.2.3 Schedule J and Schedule K of this Spot Purchasing Agreement;
 - 10.25 Schedule D, E, F, G, H & I of this Spot Purchasing Agreement (inclusive);
 - 10.2.4 any document which is varied pursuant to Clause 56 (Variation);
 - 10.2.5 any other document which is referred to in or annexed to this Spot Purchasing Agreement

11. Conflicts of Interest

- 11.1 The Provider must take appropriate steps to ensure that neither the Provider nor any agent, supplier, sub-contractor or member of Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be, an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Spot Purchasing Agreement. The Provider will promptly disclose to the Council full particulars of any such conflict of interest, or potential conflict of interest, which may arise.
- 11.2 The Council reserves the right to terminate the Spot Purchasing Agreement immediately by Notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Spot Purchasing Agreement. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 11.3 The provision of this Clause 11 (Conflicts of Interest) shall apply throughout the Term and thereafter for a period of twenty-four (24) months after expiry or termination of this Spot Purchasing Agreement.
- 11.4 The Provider shall be deemed to have satisfied itself about all aspects of this Spot Purchasing Agreement before submitting the Tender and to have obtained its own independent legal advice with regard to the same.

- 11.5 The Provider shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably have influenced the Tender.
- 11.6 The Provider:
- 11.6.1 as at the Commencement Date, warrants and represents that all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Spot Purchasing Agreement; and
 - 11.6.2 shall promptly notify the Council in writing if it becomes aware during the performance of the Spot Purchasing Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Quality Standards.

12. TUPE

- 12.1 The parties agree that the provisions of Schedule E (TUPE) shall apply to any Relevant Transfer of staff under this Spot Purchasing Agreement.

PART 2 PROVISION OF THE SERVICES

13. The Services

- 13.1 The Services shall commence in accordance with the requirements of the Spot Purchasing Agreement.
- 13.2 The Services shall be provided only to:
- 13.2.1 People who live in the Borough of Telford and Wrekin
 - 13.2.2 People to whom care Services are being or may be provided in the Borough of Telford and Wrekin
 - 13.2.3 People from the Borough of Telford and Wrekin to whom Services are being provided in any place.
- 13.3 The Services shall be provided by the Provider in accordance with Service levels outlined in Schedule A (Service Specification).
- 13.4 The Provider shall at all times comply with and take into account all applicable Laws, the requirements of any court with relevant jurisdiction and also any relevant local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of either the United Kingdom or of the European Union.

- 13.5 The Provider must notify the Council in writing of any changes in management to the Services delivered under this Spot Purchasing Agreement.

14. Standard of Work

- 14.1 When providing the Services, the Provider shall comply with:
- 14.1.1 the standards and other requirements which are set out in all relevant current and future statutory provisions that apply to this Spot Purchasing Agreement and the Services, and also the applicable requirements of any relevant Regulatory Body;
 - 14.1.2 Schedule A (Service Specification) and all other local requirements that are set out in or referred to in this Spot Purchasing Agreement with regard to the standards with which the Services must comply subject to Clause 56 (Variation).

15. Self-Directed Support

- 15.1 Where applicable to the provision of the Services the Provider shall work with the Council to support the delivery of its responsibilities under the Health and Social Care Acts 2008 and 2012 and The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 and the ministerial concordat Putting People First, a shared vision and commitment to the transformation of Adult Social Care 2007.

16. Provider's Staff

- 16.1 The Provider shall employ sufficiently trained, suitably qualified and experienced staff to ensure that the Services are provided throughout the Term in compliance in all respects with the Contract Standards and as detailed more fully in Schedule A (Service Specification) and (where applicable) the other Schedules.
- 16.2 The Provider shall ensure that it has sufficient Staff to provide the Services in Schedule A (Service Specification) during any period of Staff absence due to sickness, maternity leave, and Staff holidays or otherwise.
- 16.3 The Provider shall ensure that the Staff employed for the provision of the Services shall at all times exercise due care and diligence in the execution of their duties.
- 16.4 The Provider shall also ensure that its Staff are given appropriate training, instruction and are adequately supervised at all times with regard to their provision of the Services.
- 16.5 The Provider shall:

- 16.5.1 ensure and monitor all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service;
- 16.5.2 employ an equal opportunities policy when selecting its Staff, provided that the ability to provide good quality Services shall be the main criterion;
- 16.5.3 implement a thorough system of staff selection by requiring the completion of a comprehensive written job application form, which requires the applicant to (inter alia) disclose full details of the following to ensure their suitability to provide the Services to the Service Users:
 - 16.5.3.1. their individual qualifications, employment experience and character information;
 - 16.5.3.2. details of any criminal convictions, regardless of whether or not the convictions are classified as spent under the Rehabilitation of Offenders Act 1974 (having regard to the application of Sub-section 4(3)(a) of the said Act).
- 16.5.4 obtain at least two (2) written references for each potential Staff appointee, one (1) of which must be from their immediate previous employer (or each immediate previous employer if the person in question had more than one (1) job in the period of six (6) months immediately prior to them becoming employed by the Provider);
- 16.5.5 diligently follow up each written reference by a telephone call to the relevant referee in order to verify the reference;
- 16.5.6 not appoint any person as a member of its Staff if the Provider is unable to secure a satisfactory and reliable reference from the relevant individual's immediate previous employer in accordance with sub-clauses 16.5.3 and 16.5.4 of this Clause (subject to any contrary written approval from the Council's Representative);
- 16.5.7 comply with the requirements of sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006.
- 16.5.8 not allow any member of Staff to commence employment in relation to the provision of the Services prior to the Provider's receipt of a satisfactory DBS check that complies with the requirements of Schedule D (Disclosure and Barring Service);
- 16.5.9 give Notice to the Council immediately if any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Provider (or any employee of a sub-contractor involved in the provision of the Services);
- 16.5.10 comply diligently throughout the Term and throughout any Extended Term with the DBS requirements.
- 16.5.11 The Council's Representative (acting reasonably) shall be

entitled to require the Provider to remove immediately from the provision of the Services any member of Staff who has not been appointed in accordance with clauses 16.1 to 16.5. The Provider shall however have the right to make representations to the Council's Representative about any such requirement. After taking any representations into account, the Council's Representative shall be entitled to confirm, revoke or vary his decision on behalf of the Council and the Provider shall comply diligently with any such decision.

- 16.6 The Provider shall bear its own cost arising from any Notice, instruction or decision of the Council under this Clause 16 (Provider's Staff) provided that the Council acts reasonably.
- 16.7 The Provider to ensure a recruitment and retention policy is in place, and updated at least annually.

17. Rights of Access and Inspection

- 17.1 The Provider shall allow officers of the Council to have reasonable access to the Provider's premises, equipment, financial and bank account records (including both personal and business bank account records of any directors or proprietors) Staff records and Staff, to enable the Council to ascertain that (firstly) the Services are being provided in accordance with the Spot Purchasing Agreement and (secondly) all Safeguarding requirements are being met.
- 17.2 Any information which is made available to the Council under this Clause 17 (Rights of Access and Inspection) shall be treated as Confidential Information by the Council.
- 17.3 The Provider shall upon reasonable Notice from the Council permit or procure permission for the Authorised Representatives of the Telford and Wrekin Healthwatch to have access to and observe the carrying-on of activities on premises.
- 17.4 The Provider shall, upon request, provide appropriate information to the Telford and Wrekin Healthwatch in respect of the Services provided under this Spot Purchasing Agreement to enable it to carry out its functions.
- 17.5 Clause 17.3 shall not apply if the presence of the Authorised Representative of the Telford and Wrekin Healthwatch would compromise the effective provision of the Services by the Provider, or the privacy or dignity of any Service User.

PART 2 (a) AWARDS FOLLOWING MINI-COMPETITIONS

18. Mini-Competition Procedure

18.1 If the Council (at its sole discretion) decides to award an ISA for the purchase of Services under Lots 1 or 2 (or both) for a particular Service User, it will be under the Terms and Conditions of this Spot Purchasing Agreement. In such circumstances, the Council shall:

(a) invite tenders by undertaking a mini-competition for the Services required via the issuing of an Invitation to Quote

(b) set a reasonable time limit for the receipt of such tenders

(c) keep each tender confidential

(d) apply the following award criteria to the Providers' compliant tender submitted through the mini-competition as the basis of its selection under the following process:

Stage 1

- All tender responses to the mini completion are recorded.
- All tender responses which indicate they can meet the Service Users needs are taken through to Stage 2, with the exception of any Providers that are in default.

Stage 2

- Consideration as to whether the Provider can meet the time and task schedule requested. Providers that meet both Service User need (Stage 1) and the time and task schedule (Stage 2) will go through to Stage 3

Stage 3

- The ISA will be awarded to the Provider submitting the lowest price under the mini-competition

In circumstances (and only in such circumstances) where no Providers are fully able to meet the time and task schedule - but where there are Providers who can almost meet the time and task schedule - the Brokerage Team will consider the lowest tender and liaise with the Service User regarding their flexibility to change the times at which tasks are delivered.

18.2 The Provider agrees that all tenders submitted pursuant to this clause shall remain open for acceptance for thirty (30) days and during that time will

constitute an irrevocable offer by the Provider to carry out the Services in the Lots to which its tender relates

18.3 The Provider accepts that the award of an ISA is at the sole discretion of the Council

PART 3 PERFORMANCE and MONITORING

19. Quality Assurance and Performance Monitoring

19.1 The Provider's Representative and the Council's Representative may be required to attend a Contract Review meeting at a mutually convenient time and location once during every year of the Term and to discuss:

19.1.1 The manner and extent of the Provider's provision of the Services pursuant to this Spot Purchasing Agreement and the Schedules.

19.1.2 Any other relevant issues which may arise from time to time. With specific reference to Part 3 (Performance and Monitoring) of the terms and conditions and Schedule A (Service Specification) and Schedule D (Monitoring Quality and Performance).

19.2 Contract Reviews may be carried out at a different time upon Spot Purchasing Agreement by both Parties or if applicable in accordance with Clause 56 (Variation).

19.3 The Provider shall throughout the Term demonstrate and maintain a properly documented and effective system of quality assurance in relation to the Services.

19.4 The Provider shall at all times co-operate with the Council's processes for monitoring and evaluating the quality of the Services and compliance with this Spot Purchasing Agreement in whatever way is reasonably requested by the Council, including the compliance by the Provider with the performance monitoring arrangements which are set out in Schedule A (Service Specification) and 0 (Monitoring Quality and Performance).

19.5 The Provider is obliged to inform Service Users of the outcome of any Contract Monitoring Review reports issued by the Council in an appropriate format as agreed by the Parties.

19.6 The Provider shall provide the Council with such monitoring information including activity statistics and financial data as the Council may reasonably require upon two (2) weeks' Notice to ensure the Services are provided in accordance with the provisions of this Spot Purchasing Agreement detailed requirements outlined in 0 (Monitoring Quality and Performance).

20. Service Outcomes

- 20.1 The Provider and the Council shall each follow and diligently comply with Clause 20 (Service Outcomes) and Schedule A (Service Specification) in order to ensure that the Provider is offering Services which deliver, or work towards delivering, the Service Outcomes.
- 20.2 The Provider shall be proactive and cooperative (at its own expense) in working with the Council to maintain and develop the Service Outcomes in order to ensure that the Services are progressively developed to meet changing needs and demands as the Term proceeds.
- 20.3 The Provider shall also work with the Council (at its own expense) to support the development of processes and practices that monitor and develop the assessment of individual Service User Outcomes.

21. Contract Review

- 21.1 The Council shall periodically undertake a review of the Provider's performance of the Services (in whole or in part, at the Council's discretion) under this Agreement. The frequency and format of the Contract Reviews shall be as prescribed in Schedule A (Service Specification).
- 21.2 The Provider shall co-operate with the Council from time to time in evaluating the effectiveness and appropriateness of the Service.
- 21.3 The Provider is obliged to inform Service Users of the outcome of any review reports issued by the Council in an appropriate format as agreed by the Parties.
- 21.4 The Provider shall provide the Council with such monitoring information including activity statistics and financial data as the Council may reasonably require upon two (2) weeks written Notice to ensure the Services are provided in accordance with the provisions of this Spot Purchasing Agreement detailed requirements outlined in Schedule D (Monitoring Quality and Performance).
- 21.5 The Provider shall (at its own expense) afford all reasonable cooperation, resources and facilities to enable the Council to carry out Contract Reviews without interference and shall provide to the Council all reasonable information required by it for such purposes.

22. Change Control Procedure

- 22.1 If either Party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 22.2 If either Party requests a change to the scope or execution of the Services,

the Provider shall, within a reasonable time, provide a written estimate to the Council of the following information:

- 22.2.1 the likely time required to implement the change;
 - 22.2.2 any necessary Variations to the Provider's charges arising from the change; and
 - 22.2.3 any other impact of the change on this Spot Purchasing Agreement.
- 22.3 If the Council wishes the Provider to proceed with the change, the Provider has no obligation to do so unless and until the Parties have agreed any necessary Variations to its charges, the Services, and any other relevant terms of this Spot Purchasing Agreement to take account of the change and this Spot Purchasing Agreement has been varied in accordance with Clause 56 (Variation).

23. Information Provision and Exchange

- 23.1 The Provider must compile and maintain such information as may reasonably be required by the Council. In specifying the information to be compiled and maintained for this purpose the Council will have regard to any directions or guidance which any governing, statutory or Regulatory Body may issue relating to the form and extent of such information.
- 23.2 It is the responsibility of the Provider to inform the Council immediately (normally the first Working Day) and confirm in writing to the Council's Representative within twenty-four (24) hours, if any of the following occur:
- 23.2.1 Death of a Service User
 - 23.2.2 Service User leaves the Service
 - 23.2.3 Service User is admitted to hospital
 - 23.2.4 Formal Complaints received from the Service User or a Representative of the Service User
 - 23.2.5 Allegations of, or actual abuse to a Service user
 - 23.2.6 Significant change to the physical or mental condition of the Service User.
- 23.3 The Provider must also notify the Council of the following:
- 23.3.1 Major Injury to a Service User as defined in RIDDOR.
 - 23.3.2 Outcomes of any Regulatory Body visits / reports
 - 23.3.3 Termination of employment for any member of staff due to misconduct.
 - 23.3.4 Any significant changes (temporary or permanent) to the Service Provision as specified in the Schedules.

- 23.3.5 As a result of any misconduct or mismanagement on the Provider's part a Regulatory Body directs an inquiry into or serves Notice or makes an order of any kind in relation to the Provider;
- 23.3.6 Or any registration which the Provider must maintain in order to provide any of the Services is withdrawn or cancelled or is threatened to be withdrawn or cancelled.
- 23.4 Subject to the provisions of Clauses 43 (Data Protection) and Clause 44 (Confidentiality), the Provider shall facilitate the electronic exchange, between the Parties, of any or all data, information, files, records, documents and the like, in relation to provision of Services under this Spot Purchasing Agreement.

24. Council's Best Value Duty

- 24.1 The Parties agree and acknowledge that the 1999 Act applies to the Services and the Provider shall, at no cost to the Council, provide all reasonably necessary assistance to allow the Council to comply with its general duty under Section 3 of the 1999 Act throughout the Term.

25. Complaints

- 25.1 The Provider shall with effect from the Commencement Date implement and maintain a Complaints Procedure entitling a Service User, a Service User Representative, a Commissioner, the Local Healthwatch, or any Healthcare or Social Care Professional involved in the care to make a formal complaint about any aspect of the provision of the Services. The Complaints Procedure should provide for the complaint to be properly investigated and the Service User should receive a written response.
- 25.2 The Provider's Complaints Procedure must be fully integrated with and compatible with the Council's procedure for dealing with complaints which the Council may at its absolute discretion amend from time to time.
- 25.3 All Service Users shall be informed of their right to make a complaint and shall be provided with a copy of the Provider's Complaints Procedure.
- 25.4 The Provider is required to make Service Users aware that they may also make a complaint direct to the Council, any relevant Regulatory Body or Advocacy Service.
- 25.5 At the reasonable request of the Council's Representative, the Provider's Representative shall supply full details to the Council of any complaint which has been made to the Provider about the Services and the Provider's response to the complaint in question.
- 25.6 The Provider shall notify the Council of any changes to the Provider's Complaints Procedure.

- 25.7 The Council may use any information, statistics or records, relating to complaints made to the Council under the Council's complaints procedure, to assess performance of the Provider and compliance to this Spot Purchasing Agreement.

26. Whistleblowing

- 26.1 The Provider shall ensure that it has a 'whistleblowing' procedure (which shall first be approved by the Council, such approval not to be unreasonably withheld) and the Provider shall implement this procedure no later than the Commencement Date and maintain the same throughout the Term of the Spot Purchasing Agreement.
- 26.2 The Provider confirms that the Council is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and the Provider declares that any of its Staff who make a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and it will make its Staff aware of this provision.
- 26.3 The Provider further declares that any provision in any contract (for the avoidance of doubt including any contract of employment) purporting to preclude a member of its Staff from making a protected disclosure is void

PART 4 CHARGES and PAYMENT

27. Purchasing of Services under an ISA

- 27.1 From the Commencement Date and thereafter during the Term the Provider shall (where the Provider's mini-tender has been successful and its Charges agreed) provide the Services to Service Users in accordance with Schedule A (Service Specification) and the respective ISA
- 27.2 From the Commencement Date and thereafter during the Term the Council shall (where the Provider's mini-tender has been successful) purchase the Services in return for payment of the Charges and the Provider will provide the Services at the Premises exclusively to the Council.
- 27.3 The Council shall decide upon appropriate admissions of Service Users for Services following the outcome of an Assessment under the NHS and Community Care Act 1990 and the Children's Act 1989 and the Disability Equality Act 2010 providing that this does not contravene Registration Standards or other statutory requirements.

28. Financial Arrangements

- 28.1 In consideration of the provision of the Services under this Spot Purchasing Agreement and ISA, the Council shall pay the Charges to the Provider for the Services which it provides in compliance with this Spot Purchasing

Agreement, in accordance with Clause 28 (Financial Arrangements), Clause 29 (Payment and VAT) and Schedule C (Financial Provision).

- 28.2 The provisions of Schedule C (Financial Provision) shall also apply generally to this Spot Purchasing Agreement in order to regulate the financial arrangements between the Parties in relation to the Services.
- 28.3 The Provider shall not, without the consent of the Council, attempt to secure any additional contributions from the Service User or Service User Representative for (or in relation to) any of the Service provisions under this Spot Purchasing Agreement.
- 28.4 The Council may reduce payment in respect of any Services which the Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.
- 28.5 In the event that the cost to the Provider of performing its obligations under the Spot Purchasing Agreement increases or decreases as a result of a change of Law, the provisions of Clause 79 (Legislative Change) shall apply.

29. Payment and VAT

- 29.1 Payments in respect of Adult and Children's ISA's differ and will be made in accordance with the arrangements set out in Schedule C (Financial Provision)
- 29.2 Where the Provider with the prior consent of the Council has properly incurred expenditure in providing additional Services under an ISA outside those defined within this Spot Purchasing Agreement for Service Users the Council shall on production of invoice pay all such costs incurred in that regard.
- 29.3 The Charge does not include VAT.
- 29.4 The Charges shall be paid in pounds sterling, unless otherwise specified Schedule C (Financial Provision).
- 29.5 The Provider acknowledges that the payment of the Charges to the Provider by the Council is to cover all overheads incurred (or to be incurred) by the Provider in complying with the provisions of this Spot Purchasing Agreement and therefore no other sum shall be payable by the Council for the Services unless either, expressly provided for under this Spot Purchasing Agreement, or otherwise agreed in writing by the Council (at the Council's absolute discretion).
- 29.6 If the Council gives its written consent to the Provider, to enable the Provider to either employ agency personnel to supplement its Staff, or to provide part of the Services via a sub-contractor, then the onus for the payment of any related costs or fees which are consequentially incurred shall lie entirely with the Provider. Therefore there shall be no alteration to

the Charges, as a consequence of the circumstances which are referred to in this clause, unless the Council (in its absolute discretion) specifically agrees in writing to the contrary.

- 29.7 A failure by the Provider to comply with the financial requirements referred to in clause 28 (Financial Arrangements) will be regarded as a breach of the terms of the Spot Purchasing Agreement.
- 29.8 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Spot Purchasing Agreement under Clause 68 (Termination of Services) for failure to pay undisputed charges.

30. Withholding of Payment

- 30.1 The Council may withhold payments if the Provider does not provide the Council with the information required in Clauses 23 (Information Provision and Exchange), 31.1 (Provider's Financial Responsibilities) and a (Financial Provision) and 0 (Monitoring Quality and Performance) within the required timescales. Details of the timescales for the provision of information will be made available and will be sent to the Provider on commencement of the Spot Purchasing Agreement. The payment will be released on receipt of the information and no interest will be payable for the late payment.

31. Provider's Financial Responsibilities

- 31.1 The Provider shall provide upon request, to the Council's Representative, a copy of its audited accounts and specific accounts relating to the provision of Services under this Spot Purchasing Agreement (both to be in a format and containing such reasonable information as may be agreed by the parties) within six (6) Months of the relevant accounting reference date.

32. Charges Review

- 32.1 Each Financial Year the Council will review the Charges paid for Services taking into account, but not limited to, the resources available to the Council and relevant price indices.
- 32.2 The Council will determine, at its discretion, any Variation in the Charges paid for Services which shall take effect from 1 April each financial year or such other date as agreed by the Parties subject to the requirements of Clause 56 (Variation).
- 32.3 The Provider shall be notified in writing of the outcome of the review of the Charges by way of Notice giving at least one (1) months written Notice. Any change will be made in accordance with Clause 56 (Variation).

33. Recovery of Sums Due

- 33.1 Wherever under the Spot Purchasing Agreement or an ISA any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any Default), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Spot Purchasing Agreement or ISA or under any other Spot Purchasing Agreement or Contract with the Council
- 33.2 Any overpayment by either Party, whether under the Spot Purchasing Agreement or ISA or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the party in receipt of the overpayment.
- 33.3 A Party requesting payment may charge interest to the Party withholding payment at a rate of two per cent (2%) per annum above the base lending rate of the Bank of England from time to time, from the date that the monies became overdue as provided for in Clause 33 and thereafter until payment is received.
- 33.4 For the avoidance of doubt no interest shall be payable in respect of any withheld disputed monies if it is found that the Party withholding payment was correct in doing so.
- 33.5 The Parties agree that Clauses 33.1 to 33.3 (inclusive) provide a substantial remedy in respect of any late payment of sums due under this Spot Purchasing Agreement. Therefore the Late Payment of Commercial Debts (Interest) Act 1998 shall not apply to this Spot Purchasing Agreement.

34. The Euro

- 34.1 Any requirement in Law to account for the Services in Euros (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider at nil charge to the Council.
- 34.2 The Council shall provide reasonable assistance to the Provider to facilitate any change which is implemented under Clause 34.1.

PART 5 STATUTORY OBLIGATIONS, CODES OF PRACTICE and REGULATIONS

35. Adult & Children Protection Procedures & Children's Rights

Adult Protection Children's Safeguarding Procedures

- 35.1 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 35.2 The Provider shall:
- 35.2.1 ensure that all Staff are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - 35.2.2 monitor the level and validity of the checks under this Clause 35 (Adult Protection Children's Safeguarding Procedure) for each member of Staff.
- 35.3 The Provider warrants that at all times for the purposes of this Spot Purchasing Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 35.4 The Provider shall not employ or use the Services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to children or vulnerable adults.
- 35.5 The Provider shall immediately notify the Council and the Disclosure and Barring Service about any member of Staff where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.
- 35.6 The Provider shall immediately notify the Council in writing of any information that is required under this Clause or it reasonably requests to enable it to be satisfied that the obligations of this Clause have been met.
- 35.7 Where applicable to the Services, the Provider shall adopt the Council's procedures for dealing with allegations or suspicions of abuse including Adult Protection Procedures and Safeguarding Children Board's Procedures for Safeguarding Children and Promoting their Welfare" (as amended from time to time during the Term).
- 35.8 The Council's Representative must be notified immediately by telephone (followed up by email) by the Provider of all instances of suspected abuse of any Service User which comes to the attention of the Provider by any means pursuant to the operation of this Spot Purchasing Agreement.
- 35.9 In cases of actual or suspected abuse to a Service User the Provider must

ensure strict adherence to any local Multi Agency Adult Protection Policy and Procedure as amended from time to time in order to protect the Service User, and in so doing shall comply with requirements of any investigation carried out by the Council.

35.10 The Provider to ensure that the requirement of a Staff disciplinary process into any allegation is started and completed in accordance with MAAPP 2009

35.11 The Provider must have an awareness of the requirements of the Joint Shropshire and Telford and Wrekin Child Protection Procedures also the Safeguarding Children Board's Procedures where the Provider has any concerns for the safety or welfare of the persons under the age of eighteen (18) years old that come to the Provider's attention whilst providing the Service.

35.12 Children's Rights

35.12.1 The Provider will have a clear policy and procedure in relation to Children's rights that fully comply with:

- The Children Act 1989 as amended from time to time;
- The UN Convention on the Rights of the Child (Article 12);
- The National Standards for The Provision of Children's Advocacy Services 2003;

35.12.2 The policy and procedure shall be made clear to staff of the Provider by the Provider via induction, training and development, staff meetings and supervision

36. Compliance with Relevant Requirements and Relevant Policies

36.1 The Provider shall ensure that persons associated with it or other persons who are performing Services in connection with this Spot Purchasing Agreement shall:

36.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010

36.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

36.1.3 comply with the Council's Ethics, Anti-bribery and Anti-corruption Policies in each case as the Council or the relevant industry body may update them from time to time.

36.1.4 not do, or omit to do, any act that will cause or lead the Council

to be in breach of any of the Relevant Requirements or Relevant Policies;

- 36.1.5 promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Spot Purchasing Agreement;
 - 36.1.6 have and shall maintain in place throughout the Term of this Spot Purchasing Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 36 (Compliance With Relevant Requirements And Relevant Policies) , and will enforce them where appropriate;
 - 36.1.7 if requested, provide the Council with any reasonable assistance, at the Provider's own cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements (or Relevant Policies);
 - 36.1.8 within one (1) month prior to the Commencement Date of this Spot Purchasing Agreement, and annually thereafter, certify to the Council in writing and signed by The Provider's Representative of the Provider's compliance with this Clause 36 (Compliance With Relevant Requirements And Relevant Policies) by the Provider and all persons associated with it or other persons who are performing Services in connection with this Spot Purchasing Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 36.2 The Provider shall indemnify the Council against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Council as a result of any breach of this Clause 36 (Compliance With Relevant Requirements And Relevant Policies) by the Provider or any breach of provisions equivalent to this Clause 36 (Compliance With Relevant Requirements And Relevant Policies) in any Subcontract by any Subcontractor.
- 36.3 Additional audit and record keeping
- 36.3.1 The record keeping, audit and other related terms and obligations set out in Clause 43 (Data Protection), Clause 44 (Confidentiality), 45 (Security of Confidential Information) and Clause 48 (Audit and the Audit Commission) shall equally apply to the Provider's compliance with this Clause 36 (Compliance With Relevant Requirements And Relevant Policies) and, without limitation, shall extend to all payments made by the Provider in connection with this Spot Purchasing Agreement.
 - 36.3.2 Without prejudice to Clause 43 (Data Protection), Clause 44

(Confidentiality), 45 (Security of Confidential Information) and Clause 48 (Audit and the Audit Commission), if the Council reasonably suspects the Provider or any person associated with the Provider of breach of this Clause 36 (Compliance With Relevant Requirements And Relevant Policies), the Council and its third party representatives shall have the right to immediately access and take copies of any records and any other information held at the Provider's premises and to meet with the Provider's personnel to audit the Provider's compliance with its obligations under this Clause 36 (Compliance With Relevant Requirements And Relevant Policies). The Provider shall give all necessary assistance to the conduct of such audit during the Term of this Spot Purchasing Agreement and for a period of three (3) years after termination of this Spot Purchasing Agreement.

36.3.3 The rights of audit granted in clause 48 (Audit and the Audit Commission) and this Clause 36.3 shall continue for three (3) years after termination of this Spot Purchasing Agreement.

36.3.4 Audit access by any third party representative of the Council shall be subject to such representative agreeing confidentiality obligations equivalent to those in Clause 44 (Confidentiality) in respect of the information obtained, always provided that all information obtained may be disclosed to the Council.

36.4 The Provider warrants and represents that:

36.4.1 its responses to the Council's anti-bribery and anti-corruption due diligence questionnaire are complete and accurate;

36.4.2 neither the Provider nor any of its officers, employees or other persons associated with it:

36.4.2.1. has been convicted of any offence involving bribery or corruption, fraud or dishonesty;

36.4.2.2. having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or

36.4.2.3. has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts;

36.5 The Provider shall promptly notify the Council if, at any time during the Term of this Spot Purchasing Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Clause 36.4 at the relevant time.

- 36.6 Breach of this Clause 36 (Compliance with Relevant Requirements and Relevant Policies) shall be deemed a material breach under Clause 64 (Termination on Default).
- 36.7 If the Council terminates this Spot Purchasing Agreement for breach of this Clause 36 (Compliance With Relevant Requirements And Relevant Policies), the Provider shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.
- 36.8 Regardless of any other provision in this Spot Purchasing Agreement, the Council shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.
- 36.9 No subcontract shall be entered into without the prior written approval of the Council.
- 36.10 Any subcontract shall be recorded in writing and shall:
- 36.10.1 impose on and secure from the Subcontractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Provider in this Clause 36 (Compliance with Relevant Requirements and Relevant Policies) (except for this Clause 36.10) in each case for the benefit of the Council, such provisions to be directly enforceable by the Council under the Contract (Rights of Third Parties) Act 1999:
 - 36.10.2 include an undertaking from the subcontractor in favour of the Council (directly enforceable by the Council under the 1999 Act) not to enter into any further Subcontract with any third party;
 - 36.10.3 include provisions, directly enforceable by the Council under the 1999 Act, granting the Council and its representatives:
 - 36.10.3.1. the same direct access to the premises, records, information and personnel of the subcontractor as the Council has to the premises, records, information and personnel of the Provider; and
 - 36.10.3.2. the same auditing rights in respect of the subcontractor's compliance with the relevant terms and conditions as the Council has regarding the Provider's compliance with this Clause 36 (Compliance with Relevant Requirements and Relevant Policies);
 - 36.10.4 include provisions allowing termination of the subcontract by the Provider in accordance with Clause 68 (Termination of Services) and a provision for automatic termination of the subcontract in the event of, and at the same time as, the termination of this Spot Purchasing Agreement.
- 36.11 After any subcontract has been entered into, the Provider shall:

- 36.11.1 within thirty (30) days of it being entered into, provide the Council with a copy of the subcontract;
 - 36.11.2 be responsible for the observance and performance by the subcontractor of the relevant terms and conditions, and shall be directly liable to the Council for any breach by the subcontractor of any of the relevant terms and conditions;
 - 36.11.3 notify the Council in the case of any such breach; and
 - 36.11.4 if the subcontractor fails to perform or observe any of the relevant terms and conditions, and if requested by the Council, immediately give the subcontractor Notice, specifying the breach complained of, and:
 - 36.11.4.1. where the breach is not capable of remedy, terminating the subcontract immediately; or
 - 36.11.4.2. where the breach is capable of remedy, giving Notice that the subcontract is to terminate thirty (30) days from the date of the Notice being given unless the subcontractor has remedied the breach within that period.
- 36.12 For the purpose of this Clause 36 (Compliance with Relevant Requirements and Relevant Policies):
- 36.12.1 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act, and section 8 of that Act respectively and, for the purpose of this Clause 36, a person associated with the Provider includes but is not limited to any subcontractor;
 - 36.12.2 subcontract means:
 - 36.12.2.1. any subcontract; and
 - 36.12.2.2. any Spot Purchasing Agreement or commitment to enter into a subcontract, relating to Services to be supplied under this Spot Purchasing Agreement (in their entirety or any part of them), whether formal or informal and whether or not in writing.
 - 36.12.3 subcontractor means any party to the relevant subcontract which has agreed to supply any Services to the Provider.

37. Human Rights

- 37.1 The Provider shall comply with the Human Rights Act 1998 as if it were a 'Public Authority' within the meaning of the Human Rights Act 1998. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998

37.2 The Provider shall indemnify the Council from and against any liability, loss, claim or proceedings arising out of any violation of the Human Rights Act 1998 by the Provider in the course of providing the Services.

38. Discrimination

38.1 Throughout the Term the Provider shall:

38.1.1 comply with the requirements of the Equality Act 2010 and the Human Rights Act 1998 or other relevant legislation;

38.1.2 promote race equality, equal opportunities and anti-discrimination in relation to the use and operation of the Services and also in relation to the Provider's related employment practices;

38.1.3 use its best endeavours in relation to the Services (without prejudice to the general application of the preceding provisions of this Clause) to:

38.1.3.1. eliminate unlawful racial discrimination;

38.1.3.2. promote good relations between people of different racial groups;

38.1.3.3. promote equality of opportunity; and

38.1.3.4. monitor the effectiveness of its policies in achieving compliance with the requirements of this Clause.

38.2 The Provider shall indemnify the Council against all liabilities resulting from any failure by it to comply with Clause 38.1

38.3 The Provider shall take all reasonable steps to secure the strict observance of Clause 38.1 by all Staff and agents of the Provider and all suppliers and subcontractors employed in the execution of the Spot Purchasing Agreement. The Provider shall also provide such information as the Council may reasonably require for the purpose of assessing the Provider's continuing compliance with this Clause 38 (Discrimination) at any time during the Term.

39. Rights of Third Parties

39.1 Except as expressly provided within this Spot Purchasing Agreement, a person who is not a Party to this Spot Purchasing Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any clause of this Spot Purchasing Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that act.

39.2 The rights of the Parties to terminate, rescind or agree any Variation, waiver or settlement under this Spot Purchasing Agreement are not subject to the consent of any other person

40. Health and Safety

- 40.1 In relation to Staff, the Provider shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Laws pertaining to the health and safety of Staff and others who may be affected by the Provider's acts or omissions in providing the Services and shall require that any sub-contractors also comply strictly with this requirement.
- 40.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.
- 40.3 The Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Spot Purchasing Agreement and the acts of its Staff. The Provider shall notify the Council in writing if any method or practice set out in Schedule A (Service Specification) shall be or shall become an unsafe method of work.
- 40.4 In accordance with Clause 59 (Suspension of Services) Council reserves the right to serve Notice on the Provider to suspend the provision of the Services in whole or in part without paying compensation to the Provider if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of either the Health and Safety at Work etc Act 1974 or any of the provisions within this Clause 39.1 (Health and Safety).

41. Smoking Policy

- 41.1 The Provider must put in place, and operate to, a Smoking Policy for as long as this Spot Purchasing Agreements in force, and provide the Council with a copy of the policy if requested to do so.
- 41.2 The Provider must ensure that its Smoking Policy complies with all relevant statutory obligations.

42. Environmental Requirements

- 42.1 The Provider shall perform this Spot Purchasing Agreement in accordance with the Council's Environmental Policy, which is available upon request.

PART 6 PROTECTION OF INFORMATION

43. Data Protection

- 43.1 The Parties acknowledge and accept that the provision of the Services will involve the transfer of personal data to the Provider and the subsequent processing of personal data which will be governed by the provisions of the Data Protection Act 1998.

- 43.2 The Provider acknowledges that the Council may at its absolute discretion from time to time amend its policy in respect of the processing of personal and sensitive personal data by third parties and will notify the Provider of any changes.
- 43.3 The Provider shall (and shall procure that any of its Staff who are involved in the provision of the Services) comply with any notification requirements under the Data Protection Act 1998 and both Parties shall duly observe all their obligations under the DPA 1998 which arise in connection with this Spot Purchasing Agreement.
- 43.4 The Provider shall ensure that it has in place appropriate technical and contractual 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 of the DPA 1998.
- 43.5 Upon request the Provider shall provide the Council with such information, as the Council may reasonably require, to satisfy itself that the Provider is complying with its obligations under the DPA 1998 in relation to this Spot Purchasing Agreement.
- 43.6 The Provider shall also:
- 43.6.1 immediately notify the Council of any breach of the security measures which are required to be put in place pursuant to this Clause 43 (Data Protection); and
 - 43.6.2 ensure that it does nothing knowingly or negligently which places the Council in breach of the Council's obligations under the DPA 1998.
- 43.7 To enable the Provider to disclose records and information to the Council in compliance with the provisions of this Spot Purchasing Agreement without committing any breach of the requirements of the Data Protection Act 1998, the Provider shall:
- 43.7.1 ensure that it has given an appropriate and comprehensive notification to the Council in accordance with Section 8 of the Data Protection Act 1998, so that (inter alia):
 - 43.7.1.1. the purposes for which it is registered to process data under Part III of the Data Protection Act 1998, include its compliance under this Spot Purchasing Agreement and the disclosure to the Council of any information and data which the Council is entitled to access under this Agreement;
 - 43.7.1.2. the Council is included as one of the recipients to whom the Provider is registered as intending to disclose data.
 - 43.7.2 be diligent in obtaining the advance written consent of its Staff and the Service Users to the disclosure to the Council of any

information and data which the Council is entitled to access under this Spot Purchasing Agreement.

- 43.8 On the Expiry Date or earlier termination of this Spot Purchasing Agreement and in accordance with legislation and local agreements the Provider shall upon receiving Notice from the Council:
- 43.8.1 return to the Council all records in an agreed form, timescale and location or
 - 43.8.2 otherwise destroy or dispose of such records in a secure manner and in accordance with any specific instructions which are issued by the Council in writing to the Provider.
- 43.9 This Clause 43 (Data Protection) shall survive termination of the Service Contract.

44. Confidentiality

- 44.1 Each of the Parties shall treat all Confidential Information as confidential and safeguard it accordingly and not disclose any Confidential Information to any other person without the prior written approval of the other Party, except:
- 44.1.1 to such persons and to such extent as may be reasonably necessary for the proper performance of the Spot Purchasing Agreement;
 - 44.1.2 where disclosure is otherwise expressly permitted by the provisions of the Spot Purchasing Agreement;
 - 44.1.3 where disclosure relates to the quality or performance of the Spot Purchasing Agreement;
 - 44.1.4 in respect of Safeguarding issues which have arisen under this Spot Purchasing Agreement;
 - 44.1.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EI Regulations or pursuant to any other Law;
 - 44.1.6 where such information is or becomes public knowledge (otherwise than by breach of this Clause 44 (Confidentiality));
 - 44.1.7 for disclosures by the Council of any document to which it is a party and which the Parties to this Spot Purchasing Agreement have agreed contains no commercially sensitive information;
 - 44.1.8 to enable a determination to be made under Clause 80 (Dispute Resolution);
 - 44.1.9 where such information which was in the possession of the receiving Party without restriction as to its disclosure, before receiving it from the disclosing Party;

- 44.1.10 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 44.1.11 that is independently developed without access to such information.
- 44.2 The Provider shall take all necessary precautions to ensure that Confidential Information which is obtained from the Council, its servants or agents under or in connection with the Spot Purchasing Agreement:
- 44.2.1 is given only to such of the Staff and its professional advisors or consultants who are engaged to advise it in connection with the Spot Purchasing Agreement, or as is strictly necessary for the performance of the Spot Purchasing Agreement;
 - 44.2.2 is treated as confidential and not disclosed (without prior approval) or used by either the Provider or any of the Staff or such professional advisors or consultants otherwise than for the purposes of the Spot Purchasing Agreement.
 - 44.2.3 is the property of the Council
- 44.3 Nothing in this Clause 44 (Confidentiality) shall prevent the Council from disclosing Confidential Information:
- 44.3.1 for the purpose of the examination and certification of the Council's accounts;
 - 44.3.2 any examination of the economy, efficiency and effectiveness with which the Council has used its resources;
 - 44.3.3 to any government department or any other Contracting Authority (and all government departments or Contracting Authorities receiving such information shall be entitled to further disclose any information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority); or
 - 44.3.4 to any person engaged in providing any Services to the Council for any purpose relating to or ancillary to this Spot Purchasing Agreement provided that in disclosing such information the Council discloses only the information which is reasonably necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given to the Council by the receiving third party where this is reasonably practical.
- 44.4 Nothing in this Clause shall prevent either of the Parties from using any techniques, ideas or knowledge gained during the performance of the Spot Purchasing Agreement in the course of its normal business, to the extent that this does not result in a disclosure of any Confidential Information or an infringement of any Intellectual Property Right.

45. Security of Confidential Information

- 45.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Spot Purchasing Agreement, the Provider undertakes to maintain throughout the Term appropriate effective security systems which have been approved by the Council
- 45.2 The Provider shall immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Spot Purchasing Agreement and shall keep a concise chronological record of such breaches. The Provider shall use its best endeavours to recover any such Confidential Information or data however it may be recorded. The Provider shall also co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data relating to this Spot Purchasing Agreement.
- 45.3 Subject only to the preceding provisions of this Clause, neither Party shall release Confidential Information to any third party, provided that this restriction shall not apply (firstly) in circumstances where this is inherently necessary to enable the Services to be provided in accordance with this Spot Purchasing Agreement, or (secondly) if the Party in question is required to make such disclosure pursuant to and in accordance with either, the provisions of the Freedom of Information Act 2000 or the Audit Commission Act 1998, or (thirdly) in circumstances where such disclosure is necessary to comply with the requirements of either, any other enactment, or any order made by any court of law.
- 45.4 If required by the Council in relation to the Services, the Provider shall provide reasonable assistance to the Council to enable the Council to comply with the various requirements of any relevant access to information legislation, including (but not by way of limitation) the FOIA and the DPA 1998.
- 45.5 Each of the Parties acknowledges the duties and obligations which are placed on the Council by access to information legislation (including, but not by way of limitation, the FOIA and the DPA 1998). While the Council agrees as far as practicable to use its reasonable endeavours to afford the Provider an opportunity to comment in advance on any disclosure of information which the Council has been requested to make pursuant to the said legislation, the exercise of the Council's discretion in such matters shall be absolute.
- 45.6 The provisions of this Clause 45 (Security of Confidential Information) shall apply throughout the Term and indefinitely after their respective expiry or termination of the Spot Purchasing Agreement.

46. Freedom of Information

- 46.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with its information disclosure obligations.
- 46.2 The Provider agrees to indemnify the Council in respect of all claims which may directly arise as a consequence of any act or omission by the Provider which prohibits or delays the Council complying with its legal obligations.
- 46.3 The Provider shall and shall procure that any sub-contractors under this Spot Purchasing Agreement (if any) shall:
 - 46.3.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 46.3.2 in no event respond directly to a request for information unless expressly authorised to do so by the Council;
 - 46.3.3 provide the Council with a copy of all information in its possession or power in the form that the Council requires (acting reasonably) within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council requesting that information; and
 - 46.3.4 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance which is set out in either Section 10 of the FOIA or regulation 5 of the EI Regulations (as applicable).
- 46.4 The Council shall be responsible for determining at its absolute discretion whether in relation to this Spot Purchasing Agreement any information:
 - 46.4.1 is exempt from disclosure in accordance with the provisions of either the FOIA or the EI Regulations; and
 - 46.4.2 is to be disclosed in response to a request for information, and therefore in no event will the Provider respond directly to a request for information about this Spot Purchasing Agreement unless it is expressly authorised to do so by the Council.
- 46.5 The Provider acknowledges that the Council may, in acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA (issued under Section 45 of the FOIA, November 2004), be obliged under the FOIA or the EI Regulations to disclose information:
 - 46.5.1 without consulting with the Provider; or
 - 46.5.2 following consultation with the Provider and having taken its views into account.
- 46.6 The Provider must ensure that all information produced in the course of the operation of the Spot Purchasing Agreement or relating to the Spot

Purchasing Agreements retained for disclosure and must permit the Council to inspect such records as requested by it from time to time during the Term.

- 46.7 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 46.4.

47. Publicity, Media and Official Enquiries

- 47.1 Without prejudice to the Council's obligations under the FOIA, neither Party shall make any press announcements or publicise the Spot Purchasing Agreement in any way, or use each other's crests or logos, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 47.2 The Provider shall not publish any material referring to the Spot Purchasing Agreement or the Council without the prior written Spot Purchasing Agreement of the Council, such consent not to be unreasonably withheld or delayed.
- 47.3 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 47.1 by all their servants, employees, agents and consultants. The Provider shall take all reasonable steps to ensure the observance of the provisions of Clause 47.1 by its sub-contractors.
- 47.4 Notwithstanding the provisions of Clause 47.1, the Council shall be entitled to publicise this Spot Purchasing Agreement in accordance with any legal obligation upon the Council, including any examination of this Spot Purchasing Agreement by the Audit Commission or otherwise
- 47.5 The provisions of this Clause 47 (Publicity, Media and Official Enquiries) shall apply throughout the Term and indefinitely after the Expiry Date or Termination.

48. Audit and the Audit Commission

- 48.1 The Provider shall keep and maintain until seven (7) years after the Term of the Spot Purchasing Agreement has been completed, or as long a period as may be agreed between the Parties in writing, full and accurate records of the Spot Purchasing Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. This timescale is subject to change to reflect current legislative/regulative and operational requirements.
- 48.2 The Provider shall on request afford the Council (or its designated representatives) reasonable access to the records which are referred to in Clause 48.1 to enable the Council to conduct an audit (as may be required by the Council, acting reasonably):

- 48.2.1 to review the integrity, confidentiality and security of any data relating to the Council or any Service Users;
 - 48.2.2 to review the Provider's compliance with the DPA 1998, the FOIA, in accordance with Clause 43 (Data Protection) and Clause 46 (Freedom of Information) and any other legislation applicable to the Services;
 - 48.2.3 to review any records created during the provision of the Services;
 - 48.2.4 to review any books of account kept by the Provider in connection with the provision of the Services;
 - 48.2.5 to carry out the audit and certification of the Council's accounts; and
 - 48.2.6 to carry out an examination pursuant to the Local Government and Public Involvement in Health Act 2007 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 48.3 Any irregularities which are identified by the Council in any Service User's financial records may be subject to a further investigation by the Council and the Provider shall cooperate fully with the Council to enable the Council to undertake any such investigation.

49. Intellectual Property Rights

- 49.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights:
- 49.1.1 furnished to or made available to the Provider by the Council pursuant to this Agreement shall remain the property of the Council;
 - 49.1.2 prepared by or for the Provider for use, or intended use, in relation to the performance of this Agreement shall belong to the Council and the Provider shall not, and shall procure that the Provider's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the proper performance of the Agreement) without prior approval use or disclose any such Intellectual Property Right, or any other information (whether or not relevant to the Agreement) which the Provider may obtain in performing the Services (except information which is already in the public domain).
- 49.2 The Provider shall obtain approval before using any material in relation to the performance of the Agreement which is or may be subject to any third party's Intellectual Property Right. The Provider shall also procure that the owner of any such rights either grants to the Council a non-exclusive licence, or if itself a licensee of those rights, grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. The Provider shall also ensure that any such licence or sub-licence shall be

non-exclusive, perpetual and irrevocable and includes the right to sub-license, transfer, novate or assign the same to other Contracting Authorities, any Replacement Provider, or to any other third party providing Services to the Council and shall be granted to the Council at no additional cost to the Council.

- 49.3 It is a condition of this Agreement that the Services will not infringe any Intellectual Property Right of any third party and the Provider shall during and after the Term on written demand indemnify and keep indemnified the Council from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim relates to the use of data (or other information or materials) which has been supplied by the Council and which is not required to be verified by the Provider under any provision of this Agreement.
- 49.4 The Council shall notify the Provider in writing of any claim or demand which is brought against the Council for infringement or alleged infringement of any Intellectual Property Right in relation to this Agreement in respect of materials supplied or licensed by the Provider. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any such claim for breach of this Clause 49, provided always that the Provider shall:
- 49.4.1 consult with the Council in good faith on all substantive issues which arise during the conduct of such litigation and any related negotiations;
 - 49.4.2 take due and proper account of the interests of the Council; and
 - 49.4.3 not settle or compromise any claim without the Council's prior written consent (which shall not be unreasonably withheld or delayed).
- 49.5 The Council shall at the written request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action which is brought against the Council or the Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Agreement and the Provider shall reimburse the Council on demand for all costs and expenses (including, but not limited to, legal costs and disbursements) which are properly incurred by the Council in doing so.
- 49.6 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Provider in connection with the performance of the Agreement.
- 49.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made under this Agreement or in the reasonable opinion of the Provider is likely to be made, the Provider may at

its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed) either:

- 49.7.1 modify any or all of the Services without reducing the performance or functionality of the same in terms of generating the Service Outcomes, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms of this Agreement shall apply mutatis mutandis to such modified Services and with any necessary changes to such modified Services or to the substitute Services; or
 - 49.7.2 procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council (acting reasonably).
- 49.8 On the Expiry Date or earlier Termination of this Agreement the Provider shall at the request of the Council immediately return to the Council all materials, work or records held, including any back-up media.
- 49.9 The provisions of this Clause 49 (Intellectual Property Rights) shall apply throughout the Term and indefinitely after its expiry or termination.

50. Transparency

- 50.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Spot Purchasing Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Spot Purchasing Agreements exempt from disclosure in accordance with the provisions of the FOIA.
- 50.2 Notwithstanding any other term of this Spot Purchasing Agreement hereby gives his consent for the Authority to publish the Spot Purchasing Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.

51. Information

- 51.1 Subject to Clause 43 (Data Protection) and Clause 44 (Confidentiality), at the Council's reasonable request, the Provider must provide to the Council such information and data as may reasonably be required to enable the Council to prepare the necessary documentation to appoint another organisation to provide the Services in the Provider's place.
- 51.2 All information requested must be provided to the Council within four (4) weeks.
- 51.3 The requirement set out in Clause 23 (Information Provision and Exchange) does not include any information or data which is considered commercially sensitive, other than that which is necessary to share in

relation to TUPE.

52. Overview Committee/Scrutiny Committee

- 52.1 If required by the Council to do so the Provider shall throughout the period of this Spot Purchasing Agreement and for a period of six years after expiry of this Spot Purchasing Agreement give all reasonable assistance to the Council including attending the Council's Overview Committee and/or Scrutiny Committee in order to answer questions pertaining to this Spot Purchasing Agreement should the need arise.
- 52.2 In the event that the Council requires the Provider's assistance after the expiry of this Spot Purchasing Agreement as referred to in Clause 52 (Overview Committee/Scrutiny Committee) the Council shall pay the reasonable expenses of the Provider arising as a result of providing such assistance.

PART 7 CONTROL OF THE SPOT PURCHASING AGREEMENT

53. Transfer (assign) and Sub-Contracting

- 53.1 Except where 53.4 and apply 53.5 applies, the Provider shall not assign, novate, sub-contract or in any other way dispose of its interest under this Spot Purchasing Agreement or any part of it without prior written approval of the Council, at the Council's discretion.
- 53.2 The Provider shall give a minimum of six (6) months' Notice to the Council of any such intention.
- 53.3 Sub-contracting any part of the Spot Purchasing Agreement shall not relieve the Provider of any of its obligations or duties under the Agreement.
- 53.4 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 53.5 The Provider shall not use the Services of agency staff to deliver the Services without prior approval, such approval not to be unreasonably withheld.
- 53.6 The Provider shall impose contract obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Spot Purchasing Agreement and shall procure that the subcontractor complies with such terms.
- 53.7 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council within five (5) Working Days of the making of any

such request.

53.8 Notwithstanding Clause 53.1, the Provider may assign to a third party (“the assignee”) the right to receive payment of any Charges under the Spot Purchasing Agreement or ISA or any part thereof due to the Provider under this Spot Purchasing Agreement (including any interest which the Council incurs for any delayed payments to the Provider. Any assignment under this Clause 53.4 shall be subject to:

53.8.1 reduction of any sums in respect of which the Council exercises its right of recovery under Clause 33 (Recovery of Sums Due);

53.8.2 all related rights of the Council under the contract in relation to the recovery of sums due but unpaid; and

53.8.3 the Council receiving notification under both Clauses 53.5 and 53.6

53.9 In the event that the Provider assigns the right to receive any Charges under the Spot Purchasing Agreement or ISA under Clause 53.4, the Provider or the assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

53.10 The Provider shall ensure that the assignee notifies the Council of the assignee’s contact information and bank account details to which the Council shall make payment

53.11 The provisions of Clause 28 (Financial Arrangements) shall continue to apply in all other respects after the assignment and shall not be amended without the approval of the Council.

53.12 Provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under the Spot Purchasing Agreement.

53.13 Any change in the legal status of the Council such that it ceases to be a Contracting Council shall not, subject to Clause 53.8, affect the validity of the Agreement. In such circumstances, the Spot Purchasing Agreement shall bind and inure to the benefit of any successor body to the Council.

53.14 If the rights and obligations under the Spot Purchasing Agreement are assigned, novated or otherwise disposed of pursuant to Clause 53.6 to a body which is not a Contracting Council or if there is a change in the legal status of the Council such that it ceases to be a Contracting Council (in the remainder of this Clause both such bodies being referred to as the “transferee”):

53.14.1 the rights of termination of the Council in Clauses 66 (Termination on insolvency and change of control) and 64 (Termination on Default) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, or Default of the transferee; and

- 53.14.2 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Spot Purchasing Agreement or any part thereof with the prior consent in writing of the Provider.
- 53.15 The Council may disclose to any transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Spot Purchasing Agreement. In such circumstances the Council shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Spot Purchasing Agreement and for no other purpose and shall take all reasonable steps to ensure that the transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 53.16 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Agreement.
- 53.17 The Provider shall give the Council's Representative at least twenty (20) Working Days' Notice if there is to be a Change of Control. There will be no automatic assignment of this Spot Purchasing Agreement in these circumstances and Clause 52 (Overview Committee/Scrutiny Committee) shall apply regardless of any such change in control.

54. Novation

- 54.1 This Spot Purchasing Agreements personal to the Provider. The Provider shall not novate or otherwise dispose of this Spot Purchasing Agreement or any part thereof without the previous consent in writing of the Council such consent not to be unreasonably withheld.
- 54.2 Subject to Clause 54.1 the Council shall be entitled to:
- 54.2.1 assign, novate or otherwise dispose of its rights and obligations under this Spot Purchasing Agreement or any part thereof to any contracting Council (a "Contracting Council"); or
- 54.2.2 novate this Spot Purchasing Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Council;
- 54.3 Provided that where such assignment, novation or other disposal increases the burden of the Provider's obligations pursuant to this Agreement, the Provider shall be entitled to such additional payments as may be agreed between the parties to compensate for such additional burdens.
- 54.4 Any change in the legal status of the Council such that it ceases to be a Contracting Council shall not, subject to Clause 53 (Transfer (assign) and Sub-Contracting), and affect the validity of this Spot Purchasing

Agreement. In such circumstances, this Spot Purchasing Agreement shall be binding on any successor body to the Council.

- 54.5 If this Spot Purchasing Agreement is novated to a body which is not a Contracting Council pursuant to Clause 54.1 or if a successor body which is not a Contracting Council becomes the Council pursuant to Clause 54.4 (in the remainder of this Clause both such bodies are referred to as the "transferee"):
- 54.6 The transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Spot Purchasing Agreement or any part thereof with the previous consent in writing of the Provider;
- 54.7 The Council shall be entitled to disclose to any transferee any confidential information of the Provider which relates to the performance of the Services by the Provider. In such circumstances the Council shall authorise the transferee to use such confidential information only for purposes relating to the performance of the Services and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by the confidentiality undertaking contained herein in relation to such confidential information.
- 54.8 Each of the Parties shall at their own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of whatever further actions (including the execution of further documents) that the other Party requires (acting reasonably) from time to time for the purpose of giving that other Party the full benefit of the provisions of this Spot Purchasing Agreement.

55. Waiver

- 55.1 The failure of either Party to insist upon strict performance of any provision of this Spot Purchasing Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Spot Purchasing Agreement.
- 55.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 7 (Notices).
- 55.3 A waiver of any right or remedy arising from a breach of the Spot Purchasing Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

56. Variation

- 56.1 The Council reserves the right (provided that it acts reasonably), on giving reasonable Notice to the Provider, from time to time to require changes to the Services (including the removal of Services, the addition of new

Services, or increasing or decreasing the Services, or specifying the order in which the Services are to be performed, or the locations where the Services are to be provided) for any reasons whatsoever, provided also that any such Variation does not amount to a material change to Schedule A (Service Specification).

- 56.2 Any Variation will be communicated by Notice to the Provider
- 56.3 All Variations shall be documented in writing by the Parties in the form of a deed of Variation to the Spot Purchasing Agreement, which on each occasion must be signed on behalf of each of the Parties by both the Council's Representative and the Provider's Representative.
- 56.4 The Council shall specify a time limit within which the Provider shall respond to a deed of Variation. Such time limits shall be reasonable having regard to the nature of the Variation.
- 56.5 In the event of a Variation taking effect, the Charges may also be varied. Any Variation in the Charges shall be calculated by the Council and agreed in writing with the Provider (such Spot Purchasing Agreement not to be unreasonably withheld or delayed) and shall be such amount as properly and fairly reflects the nature and extent of the impact of the Variation in question on the Charges in all the circumstances.
- 56.6 The Provider shall upon request by the Council provide such information as may be reasonably required to enable any such Variation of the Charges to be calculated by the Council.
- 56.7 In the event that the Provider is unable to accept the Variation to Schedule A (Service Specification) or where the Parties are unable to agree a change to the Spot Purchasing Agreement or ISA Charges, the Council may;
 - 56.7.1 allow the Provider to fulfil its obligations under the Spot Purchasing Agreement without the Variation to Schedule A (Service Specification);
 - 56.7.2 terminate the Spot Purchasing Agreement with immediate effect, except where the Provider has already delivered all or part of the Services or where the Provider can show evidence of substantial work being carried out to fulfil the requirements of the Schedule A (Service Specification); and in such case the Parties shall attempt to agree upon a resolution to the matter.
 - 56.7.3 where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause 80 (Dispute Resolution).

57. Severability

- 57.1 If any provision of this Spot Purchasing Agreement is held invalid, illegal or

unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect throughout the remainder of the Term.

- 57.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Spot Purchasing Agreement, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

58. Breach and Remedies in the Event of Inadequate Performance

- 58.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Spot Purchasing Agreement or ISA, then the Council shall notify the Provider, and where considered appropriate by the Council, investigate the complaint. The Council may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 64 (Termination on Default) of the Spot Purchasing Agreement.
- 58.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Spot Purchasing Agreement by the Provider, then the Council may, without prejudice to its rights under Clause 64 (Termination on Default), do any of the following:
- 58.2.1 without terminating the Spot Purchasing Agreement, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Spot Purchasing Agreement;
 - 58.2.2 without terminating the whole of the Spot Purchasing Agreement, terminate the Spot Purchasing Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Spot Purchasing Agreement/ISA Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - 58.2.3 terminate, in accordance with Clause 64 (Termination on Default), the whole of the Spot Purchasing Agreement.
- 58.3 Without prejudice to its right under Clause 33 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in

obtaining replacement Services.

- 58.4 Without prejudice to any other rights and remedies the Council may have pursuant to the Spot Purchasing Agreement, the Provider shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Provider's delay in the performance of its obligations under the Spot Purchasing Agreement and which delay the Provider has failed to remedy following reasonable Notice from the Council.
- 58.5 If the Provider fails to supply any of the Services in accordance with the provisions of the Spot Purchasing Agreement and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Council may direct.
- 58.6 In the event that:
- 58.6.1 the Provider fails to comply with Clause 58.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
 - 58.6.2 the Provider persistently fails to comply with Clause 58.4 above, the Council may terminate the Spot Purchasing Agreement with immediate effect by Notice in writing

59. Suspension of the Services

- 59.1 The Council may serve a Suspension Notice upon the Provider at any time if:
- 59.1.1 the Council wishes to investigate any alleged Default by the Provider, or other alleged event, which if substantiated would entitle the Council to terminate the Spot Purchasing Agreement; and/or
 - 59.1.2 a Regulatory Body directs an inquiry into the Provider's affairs on the grounds of actual or alleged misconduct or mismanagement.
- 59.2 If the Council serves a Suspension Notice upon the Provider, then the Council may either suspend the provision of the Services (or any relevant part thereof), , and the Provider shall comply diligently with any such suspension from and including the relevant specified date.
- 59.3 If the Council serves a Suspension Notice upon the Provider, then the Council may suspend the provision of the payments (or any relevant part thereof), specified by the Council in the Suspension Notice (acting reasonably) and the Provider shall comply diligently with any such suspension from and including the relevant specified date.
- 59.4 Any suspension of the Services (or any part thereof) under Clause 59.1

shall be reviewed by the Council not later than three (3) months after the Service of the relevant Suspension Notice (subject to Clause 59.4).

- 59.5 The Council shall ensure that any investigation which is carried out under Clause 59.1 is undertaken as quickly and diligently as possible and the Provider shall co-operate with any such investigation, including by providing information promptly to the Council if requested.
- 59.6 If during the suspension either, the Council shall request information from the Provider with respect to the investigation, and/or the Council shall request a written undertaking from the Provider to take particular steps and/or to refrain from particular action in order to avoid the repetition of a Default, then in calculating and applying the three (3) month time limit which is stated in Clause 59.3, the period of time which is taken by the Provider to meet the request shall be disregarded.
- 59.7 The Council shall make available to the Provider a copy of the report of the findings of any investigation which is undertaken pursuant to Clause 59.1 as soon as practicable after the investigation has been completed and the report has been made available to the Council.
- 59.8 Upon either, the cessation by the Council of any suspension of the Services (or any part thereof) which is implemented under Clause 59.1 or the closure of any investigation which is initiated by the Council under Clause 59.1, the Council shall serve Notice on the Provider to confirm the lifting of the suspension in question.
- 59.9 If the Council confirms any alleged Default or other alleged event pursuant to this Clause or a Regulatory Body finds the Provider responsible for misconduct or mismanagement in relation to this Spot Purchasing Agreement then the Council may take further action in accordance with the provisions of Part 9 (Default and Termination) of the Spot Purchasing Agreement.

PART 8 LIABILITIES

60. Indemnity and Insurance

- 60.1 Neither Party limits or excludes its liability to the other Party for:
- 60.1.1 fraud or fraudulent misrepresentation;
 - 60.1.2 death or personal injury caused by its negligence;
 - 60.1.3 breach of any obligation as to title implied by statute; or
 - 60.1.4 any other act or omission, liability for which may not be limited under any applicable Law.
- 60.2 The Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any

other liabilities whatsoever arising out of, in respect of or in connection with, the Spot Purchasing Agreement including but not limited to any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, wilful Default, fraud of itself or its Staff or its sub-contractors or any other loss which is caused directly or indirectly by any act or omission of the Provider.

- 60.3 This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.
- 60.4 Subject always to Clause 60.2 in no event shall either Party be liable to the other for:
- 60.4.1 indirect or consequential loss or damage; and/or
 - 60.4.2 loss of profits, business revenue, goodwill or anticipated (or otherwise) savings.
- 60.5 The provisions of Clause 60.2 shall not be taken as limiting the right of either Party to claim from the other Party for anything resulting directly from the default of the other Party.
- 60.6 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Spot Purchasing Agreement.
- 60.7 During the Term of this Spot Purchasing Agreement the Provider and any sub-contractor shall effect and maintain, with a reputable insurance company a policy or policies of insurance in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Spot Purchasing Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 60.8 Not used.
- 60.9 Within twenty (20) Working Days of the formation of this Spot Purchasing Agreement and on an annual basis for the remainder of the Term the Provider shall produce to the Council's Representative copies of all insurance policies referred to in this Clause 60 (Indemnity and Insurance) and the particulars, or a certificate from the insurer or broker to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies
- 60.10 The Provider shall hold adequate insurance for all vehicles which are used by the Provider to deliver the Services and ensure that any Staff using their personal motor vehicles to carry Service Users have valid business

insurance on their motor vehicles. The Provider shall also produce a copy of each such insurance policy (or any such specific insurance policy which is requested by the Council) to the Council's Representative if requested to do so, provided that if the Council requests this information more often than once a year without good reason then the Council shall meet the Provider's reasonable costs in complying with any such additional request.

- 60.11 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the Spot Purchasing Agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 60.12 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Spot Purchasing Agreement. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 60.2.
- 60.13 If the Council is of the opinion (acting reasonably) that any of the policies of insurance do not provide sufficient cover to comply with this Clause 60 (Indemnity and Insurance) then the Provider must rectify (or if applicable, ensure that the sub-Provider rectifies) the position as soon as possible.
- 60.14 The parties expressly agree that should any limitation or provision contained in this Clause 60 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

61. Warranties and Representations

- 61.1 The Provider warrants and represents that:
- 61.1.1 The Provider warrants that it has the necessary legal authority in the United Kingdom where it is established for the purpose of controlling the processing of the data and to use it for the purpose set out herein, and to give warranties and fulfil the undertakings set out herein.
- 61.1.2 The Provider will not enter into any arrangement to process the data outside the United Kingdom without the written permission of the Council
- 61.1.3 The Provider has in place security programs and procedures appropriate to the risks presented by the processing, to ensure that unauthorised persons will not have access to the data and that any persons it authorises to have access to the data will be bound by Spot Purchasing Agreement or otherwise to respect and maintain the confidentiality and security of the data.
- 61.1.4 The Provider warrants that it will comply with the obligations set

out in Clause 5 (The Provider's Obligations) and apply them to the processing of the data originally provided or subsequently amended.

- 61.1.5 in entering the Spot Purchasing Agreement it has not committed any Fraud;
- 61.1.6 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Spot Purchasing Agreement;
- 61.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Spot Purchasing Agreement;
- 61.1.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Spot Purchasing Agreement;
- 61.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 61.1.10 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Spot Purchasing Agreement;
- 61.1.11 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 61.1.12 the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

62. Financial Instability and Financial Distress

- 62.1 Within twenty (20) Working Days of receiving a written request from the Council, the Provider shall submit to the Council (free of charge) a copy of its latest annual accounts.
- 62.2 The provisions of Clause 62.4 and Clause 62.5 shall apply if any of the following contingencies occur at any time during the Term:

- 62.2.1 the Provider fails to submit statutory accounts before any statutory deadline;
 - 62.2.2 a Court Judgment is made against the Provider for a sum greater than or equal to 1% of the Provider's annual turnover, and the debt is not settled within twenty-eight (28) days;
 - 62.2.3 the Acid Test Ratio, calculated from the Provider's last annual accounts, falls below a ratio of 1:1;
 - 62.2.4 the Provider makes a loss in any financial year exceeding 5% of its turnover for the year in question;
 - 62.2.5 in respect of any premises which are essential to the delivery of the Services, any landlord makes an application to the courts to recover unpaid rent or for the forfeiture of the lease or tenancy of such premises;
 - 62.2.6 any person holding a mortgage or other charge over any premises which are essential to the delivery of the Services makes an application to the courts to recover unpaid loan obligations, or for possession of the premises, or for any similar order;
 - 62.2.7 the Council has reasonable grounds to believe that any of the events which are set out in the preceding sub-Clauses of this Clause has occurred, or is about to occur.
- 62.3 If any of the contingencies which are listed in Clause 62.2 occur, then the Provider shall serve Notice on the Council within two (2) Working Days of the date of the occurrence in question. If this Clause applies, then the Provider shall:
- 62.3.1 on receipt of a written request from the Council, furnish the Council with a copy of the Provider's latest accounts and a cash flow forecast for any coming period specified by the Council
 - 62.3.2 a reference from its bankers; and
 - 62.3.3 such other evidence that it is and will remain a going concern as the Council may reasonably require.
 - 62.3.4 meet the Council within five (5) Working Days of receipt of the written request which is referred to in Clause 62.3.1 in order to discuss its position with the Council and answer such questions as the Council may reasonably ask.
- 62.4 If upon considering the information which is referred to in Clause 62.3 the Council considers that the Provider is no longer a going concern or that there is a significant risk that the Provider will cease to be a going concern within six (6) months, then the below Clause 62.5 shall apply.
- 62.5 If this Clause 62 (Financial Instability and Financial Distress) applies then the Council may serve a financial distress Notice on the Provider.
- 62.6 Any financial distress Notice which is issued by the Council shall be sent to the Provider's last known electronic mail address and the Council shall use

its reasonable endeavours to contact the Provider by telephone to advise it that the financial distress Notice has been served. A copy shall then also be sent by the Council to the Provider immediately by recorded post.

- 62.7 Each financial distress Notice shall:
- 62.7.1 state that it is a financial distress Notice;
 - 62.7.2 set out the reasons why the Council believes that the Provider is no longer a going concern, or is at significant risk of ceasing to be a going concern within the next six (6) Months; and
 - 62.7.3 state that the Spot Purchasing Agreement is to terminate on either the date which is one (1) Month from and including the date of the Service of the financial distress Notice, or on such later date as the Council may specify (acting reasonably).
- 62.8 If following the receipt of a financial distress Notice the Provider does not accept that the Council is correct in its assessment that the Provider is either, no longer a going concern, or at a significant risk of ceasing to be a going concern within the next six (6) months, then it may serve on the Council, within ten (10) Working Days of receipt of the financial distress Notice, a Notice of appeal (the "Appeal Notice").
- 62.9 The Provider shall ensure that its Appeal Notice sets out the full grounds for its appeal against the financial distress Notice in question. The Provider shall also enclose with the Appeal Notice full, concise and pertinent information and evidence in support of the appeal.
- 62.10 The Council shall consider any Appeal Notice which is served on it by the Provider and shall at the Provider's request meet the Provider and/or its financial advisers within five (5) Working Days of the date of the Service of the Appeal Notice to discuss the same.
- 62.11 The Council shall notify the Provider within ten (10) Working Days of receipt of any Appeal Notice whether or not the Council accepts the appeal in question.
- 62.12 If the Council rejects any Appeal Notice which is served on it by the Provider, then the matter may be submitted by the Provider for determination in accordance with Clause 80 (Dispute Resolution).

PART 9 DEFAULT AND TERMINATION

63. Default and Default Notices

- 63.1 If the Council identifies any Default in the performance of the Spot Purchasing Agreement by the Provider, then the Council shall normally attempt to secure the rectification of the Default in question (and/or prevent any repetition of it) to its reasonable satisfaction, by either liaising with the Provider or carrying out a Contract Review, rather than immediately

resorting to the Service of a Default Notice pursuant to Clause 63.2 (in the interest of promoting a close working partnership between the Parties). However in circumstances where the Council considers that the breach of the Spot Purchasing Agreement is sufficiently serious and the Service of a Default Notice is a reasonable and proportionate response, the Council may nevertheless proceed directly to the Service of a Default Notice.

- 63.2 If the Provider is in breach of any of its obligations under this Spot Purchasing Agreement at any time, then, subject to Clause 63.1 and provided that the breach of contract in question is not de minimis in nature, the Council may serve a Default Notice on the Provider, in which the Council shall:
- 63.2.1 summarise the facts which constitute the Default in question;
 - 63.2.2 state precisely which provisions of this Spot Purchasing Agreement the Provider has failed to comply with;
 - 63.2.3 state the measures (if any and if practicable) which the Council requires the Provider to undertake (acting reasonably) to remedy the Default to the Council's reasonable satisfaction, or otherwise to avoid any repetition of the breach;
 - 63.2.4 state the period of time (having reasonable regard to the nature of the breach) within which the breach must be rectified by the Provider in accordance with the Default Notice and to the Council's reasonable satisfaction;
 - 63.2.5 state the sum which is to be charged by the Council pursuant to sub-Clause 63.3.2.
- 63.3 If the Council serves a Default Notice on the Provider pursuant to and in accordance with Clause 63.2:
- 63.3.1 then the Provider shall diligently comply with the requirements (if any) of the Default Notice;
 - 63.3.2 then the Council may deduct a sum of up to £500 (as assessed liquidated damages and not as a penalty) from any sums which are payable by it to the Provider under this Spot Purchasing Agreement in order to reimburse the Council for any administrative costs which it has incurred in connection with the investigation of the Default in question and the preparation/Service of the related Default Notice (subject to the Council having first complied with sub-Clause 63.2.5); and
 - 63.3.3 the Provider fails to comply with the Default Notice, then the Council may take any proper steps (if practicable) which are reasonably necessary to remedy the Default and may also deduct any expenses which are incurred by it as a consequence (as assessed liquidated damages and not as a penalty) from any sums which are payable by it to the Provider under this Agreement, provided that such expenses are first notified in writing to the Provider.

64. Termination on Default

- 64.1 The Council may terminate the Spot Purchasing Agreement by written Notice to the Provider with immediate effect if the Provider commits a Default and if:
- 64.1.1 the Provider has not remedied the Default to the satisfaction of the Council within twenty-five (25) Working Days, or such other period as may be specified by the Council, after issue of a written Notice specifying the Default and requesting it to be remedied; or
 - 64.1.2 after having committed a Default the Provider then commits a further Default which in the opinion of the Council (acting reasonably) is not of a de minimis nature in which case the Council's termination Notice to the Provider under this Clause shall also:
 - 64.1.2.1. summarise the facts which constitute the Default in question;
 - 64.1.2.2. state precisely which provisions of this Spot Purchasing Agreement the Provider has failed to comply with; or
 - 64.1.2.3. state that the Default is not, in the opinion of the Council, capable of remedy; or
 - 64.1.2.4. state that the Default is a Material Breach of the Agreement.
- 64.2 In the event that through any Default of the Provider, data transmitted or processed in connection with the Spot Purchasing Agreement is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

65. Alternative Remedies on Default by the Provider

- 65.1 If the Provider commits any Default which is not de minimis in nature and which is either not capable of being remedied, or is considered to be serious by the Council (acting reasonably) or is equivalent to any previous Default by the Provider then (without prejudice to any other rights or remedy to which the Council is entitled) the Council may do any of the following:
- 65.1.1 initiate a Contract Review;
 - 65.1.2 without terminating the Spot Purchasing Agreement itself, serve Notice on the Provider in order to suspend the Spot Purchasing Agreement by opting to provide or procure from an alternative source the provision of all or any part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be

able to provide all or any such part of the Services in accordance with the Spot Purchasing Agreement;

- 65.1.3 without terminating the whole of the Spot Purchasing Agreement, serve Notice on the Provider in order to terminate the Spot Purchasing Agreement in respect of any part of the Services only (whereupon a corresponding reduction in the Instalments shall be implemented by the Council) and thereafter itself provide or procure a third party to provide such part of the Services.
- 65.2 If the Council exercises its rights under either Clause 65.1.2 or Clause 65.1.3, then the Council may (subject to the Council using its reasonable endeavours to mitigate any such additional expenditure) charge the Provider for any reasonable costs which are properly incurred by it as a consequence (as assessed liquidated damages and not as a penalty) and either deduct the resulting amount from the next or any subsequent Instalment which becomes due to the Provider, or otherwise recover the same as a debt from the Provider. Such costs shall include any reasonable additional costs which are incurred by the Council in respect of the provision of the Services, or any part of the Services, throughout what would otherwise have been the remainder of the Term (either by the Council or any Replacement Provider) to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for the same under this Spot Purchasing Agreement.

66. Termination on insolvency and change of control

- 66.1 The Council may terminate the Spot Purchasing Agreement with immediate effect by Notice in writing where the Provider is a company and in respect of the Provider:
- 66.1.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 66.1.2 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party]; or
- 66.1.3 a petition is filed, a Notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party]; or

- 66.1.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a Notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company); or
- 66.1.5 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- 66.1.6 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- 66.1.7 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days; or
- 66.1.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 66.1.1 to clause 66.1.7(inclusive); or
- 66.1.9 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 66.1.10 there is a change of control of the other party (within the meaning of Section 1124 of the Corporation Tax Act 2010).

67. Serious Default and Suspension

- 67.1 If the Council determines that the Provider has committed a Serious Default the Council may convene a Contract Review Meeting between the Council's Representative and the Provider's Representative, and any other officers whom the Parties feel it is appropriate to attend.
- 67.2 In the event of the Provider committing a Serious Default, either a one off incident or as a failure to remedy a Default or Persistent Default in the prescribed timescale, the Council reserves the right to notify Healthwatch England of the Serious Default.
- 67.3 If at any time either Party believes it is appropriate, any Defaults, or Serious Defaults can be referred to the Multi Agency Adult Protection Policy and Procedure. In such circumstances the expectations of the Provider shall be in accordance with Clause 35 (Adult Protection Procedure)
- 67.4 If, despite the best endeavours of the Parties, attempts to resolve Defaults, Persistent Defaults or Serious Defaults fail, the Provider shall be deemed to have committed a Material Default and the Council reserves the right to terminate this Spot Purchasing Agreement in accordance with Clauses

67.3, 67.4 and 68.2.

68. Termination of Services

- 68.1 The Council may at any time by giving not less than three (3) months' Notice in writing terminate this Spot Purchasing Agreement as from the date of Service of such Notice if:
- 68.1.1 any of the circumstances detailed in Clause 36 (Compliance with Relevant Requirements and Relevant Policies) arise; or
 - 68.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Provider or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Council has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
 - 68.1.3 the Provider, being a company, passes a resolution, or the Court makes an order that the Provider or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Provider or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Provider or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 113, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or
 - 68.1.4 the Provider, being an individual, or where the Provider is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any

application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction;

- 68.1.5 the Provider, being a company, seeks to change the Regulated Activities, such that the revised Regulated Activity is not in accordance with the Regulated Activities indicated within this Spot Purchasing Agreement;
- 68.2 Without prejudice to Clause 68.1, either Party may at any time by giving Notice in writing terminate this Spot Purchasing Agreement with immediate effect as from the date of Service of such Notice, if:
 - 68.2.1 either Party is in Serious Default of any obligation under this Spot Purchasing Agreement and; the Serious Default is not capable of remedy;
 - 68.2.2 the Provider for any reason shall cease to be registered with CQC;
 - 68.2.3 the Provider is issued with a Notice from the Health and Safety Executive prohibiting it from operating;
- 68.3 Without prejudice to Clauses 68.1 and 68.2 above either Party shall have the right to terminate the Spot Purchasing Agreement at any time by giving twelve (12) months' Notice in writing to the other Party which period of Notice may be extended at any time before its expiry upon the Spot Purchasing Agreement in writing of both Parties.
- 68.4 In the event of the termination of this Spot Purchasing Agreement the Council shall be entitled to copies of all records relating to the Service unless prohibited by law, and the Council shall be at liberty to use the same in its absolute discretion. In the event of this Spot Purchasing Agreement being terminated during any Notice period both Parties shall ensure that the interests of the Service Users are met. During any such Notice period;
 - 68.4.1 should the Council decide, with Spot Purchasing Agreement with the Service User and their family or representatives, to facilitate uptake of a place at an alternative care Service the Service User shall leave the ISA at whatever time is in their best interests, and if needs be with immediate effect;
 - 68.4.2 in the event of this Spot Purchasing Agreement being terminated the Council's obligations under Clause 28, (Financial Arrangements) will cease and the Provider shall repay to the Council all (if any) of the payments already received for any element of the service that has not been provided.
 - 68.4.3 This Spot Purchasing Agreement can be suspended for forty-five (45) working days, if data security has been seriously breached. This should be detailed in writing and be evidenced by the Provider to the Council. Any suspension will be subject to

a risk assessment and a resolution meeting between nominated representatives of the Provider and the Council being held. This meeting will take place within fourteen (14) working days of the identification of any breach. The suspension may be lifted when the cause of the breach has been satisfactorily investigated and appropriate measures have been taken to address the situation.

69. Break Clause

- 69.1 Details of termination of this Spot Purchasing Agreement are included in the terms and conditions of the respective ISAs for Adults and Children.

70. Default by the Council and Termination by the Provider

- 70.1 If the Council is in material breach of any of its obligations under this Spot Purchasing Agreement at any time, then, provided that the breach of contract in question is not de-minimis in nature, the Provider may serve a Default Notice on the Council, in which the Provider shall:
- 70.1.1 summarise the facts which constitute the Default in question;
 - 70.1.2 state precisely which provisions of this Spot Purchasing Agreement the Council has failed to comply with;
 - 70.1.3 state the measures (if any and if practicable) which the Provider requires the Council to undertake (acting reasonably) to remedy the Default to the Provider's reasonable satisfaction, or otherwise to avoid any repetition of the Default;
 - 70.1.4 state the period of time (having reasonable regard to the nature of the breach) within which the breach must be rectified by the Council.
- 70.2 If the Council fails to comply with any Default Notice which is served by the Provider in accordance with Clause 70.1 (and the Default Notice is not in dispute between the Parties) then the Provider may terminate this Spot Purchasing Agreement (if the Council is in material Default of an obligation) by giving the Council at least (3) three months' Notice (or any lesser period of time by Spot Purchasing Agreement only between the Parties, each acting reasonably).
- 70.3 The Provider shall not exercise, or purport to exercise, any right to terminate this Spot Purchasing Agreement (or accept any repudiation of this Spot Purchasing Agreement) except as expressly set out in this Spot Purchasing Agreement.
- 70.4 Without prejudice to Clauses 70.1, 70.2 and 70.3 this Spot Purchasing Agreement shall terminate forthwith if the Provider shall cease for any reason to be registered with CQC.

71. Remedies Cumulative

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

72. Consequences of Termination

- 72.1 The termination or expiry of this Spot Purchasing Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 72.2 Where the Council terminates the Spot Purchasing Agreement under Clause 66.1 (Serious Default and Suspension), or terminates the provision of any part of the Spot Purchasing Agreement under that Clause, and then makes other arrangements for the provision of Services, the Council shall be entitled to recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Spot Purchasing Agreement is terminated under Clause 67 (Serious Default and Suspension), no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.
- 72.3 In the event of any termination of this Spot Purchasing Agreement pursuant to Clause 66.1 (Serious Default and Suspension) the Council shall, in respect of any non-discharged Services, be entitled without prejudice to the Council's other rights and remedies, to obtain a refund of any Charges paid by the Council in respect of any Services which have not been performed by the Provider in accordance with the terms of the non-discharged Spot Purchasing Agreement.
- 72.4 The Council shall not be liable under Clause 72 (Consequences of Termination) to pay any sum which:
- 72.4.1 was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or
 - 72.4.2 has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- 72.5 When added to any sums paid or due to the Provider under the Agreement, exceeds the total sum that would have been payable to the Provider if the Spot Purchasing Agreement had not been terminated prior to the end of this Agreement.
- 72.6 Is a claim by the Care/Support Provider for loss of profit, due to early termination of the Agreement.

- 72.7 At the end of the Spot Purchasing Agreement (howsoever arising) and/ or after the Term the Provider shall provide assistance to the Council and any new Provider appointed by the Council to continue or take over the performance of the Spot Purchasing Agreement in order to ensure an effective handover of all work then in progress. Where the end of Spot Purchasing Agreement arises due to the Provider's default, the Provider shall provide such assistance free of charge. Otherwise the Council shall pay the Provider's reasonable costs of providing the assistance, and the Provider shall take all reasonable steps to mitigate such costs.
- 72.8 In the event of the termination of this Spot Purchasing Agreement by either Party, the provisions of this Clause 72 (Consequences of Termination) and Clause 1 (Definitions and Interpretations), Clause 36 (Compliance with Relevant Requirements and Relevant Policies), Clause 44 (Confidentiality), Clause 72 (Consequences of Termination), Clause 79 (Legislative Change), Clause 78 (Law and Jurisdiction) and the provisions of Schedules A – G attached hereto shall survive the termination of this Spot Purchasing Agreement.
- 72.9 Where the Council re-lets the Spot Purchasing Agreement or any part thereof pursuant to Clause 66.1 (Serious Default and Suspension) the Provider shall make good to the Council all loss damages and expenses it may incur or be liable to in consequence of such re-letting as aforesaid for the period for which this Spot Purchasing Agreement shall have been accepted by the Council.
- 72.10 Save as otherwise expressly provided in the Agreement:
- 72.10.1 termination or expiry of the Spot Purchasing Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Spot Purchasing Agreement prior to termination or expiration and nothing in the Spot Purchasing Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 72.10.2 termination of the Spot Purchasing Agreement shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clause 28 (Financial Arrangements), Clause 33 (Recovery of Sums Due), Clause 43 (Data Protection Act), Clause 44 (Confidentiality), Clause 46 (Freedom of Information), Clause 49 (Intellectual Property Rights), Clause 48 (Audit and Audit Commission), Clause 71 (Remedies Cumulative), Clause 60 (Indemnity and Insurance), Clause 72 (Consequences of Termination) and Clause 78 (Law and Jurisdiction).
- 72.11 If either party terminates the Spot Purchasing Agreement relating to the accessing of data and its subsequent processing, the Provider shall immediately (within seven (7) days) securely return/transfer, if requested to do so by the Council, all data provided under this Agreement, in its possession or control, and certify in writing to the Council that it has done so, unless this is prohibited by the national law or regulator of the country in

which the Provider processes the data. Where this is the case, to the extent allowed under such requirements, the data will be kept confidential and will no longer be processed.

- 72.12 On the expiry or earlier termination of this Spot Purchasing Agreement or any individual ISA (including any variation) the Provider will with immediate effect return or procure the return of all files, (including copies) howsoever stored or kept (whether hardcopy or in electronic form) in relation to the Service User (at the Provider's expense) to the Council's Representative at the address given at Schedule A and will warrant to the Council that no such information has been retained by the Provider.

73. Continuing Rights and Remedies

- 73.1 Save as otherwise expressly provided for in this Spot Purchasing Agreement to the contrary, neither the termination nor the expiry of this Spot Purchasing Agreement shall prejudice any rights, remedies, or obligations which have already accrued or taken effect under this Spot Purchasing Agreement in relation to either of the Parties prior to the termination or expiry taking effect (as applicable) and nothing in this Spot Purchasing Agreement shall prejudice the right of either of the Parties to recover any amount outstanding from the other Party as at such termination or expiry (as applicable).

74. Disruption

- 74.1 The Provider shall ensure that it has business continuity plans in place for a range of emergency situations should they arise including but not limited to pandemic influenza and power cuts and severe weather conditions. The Provider will make this plan available to the Council at any time when requested.
- 74.2 The Provider shall take reasonable care to ensure that in the execution of this Spot Purchasing Agreement it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council.
- 74.3 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Spot Purchasing Agreement.
- 74.4 In the event of industrial action by the Staff or the Provider's suppliers the Provider shall seek the Council's approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under this Spot Purchasing Agreement.
- 74.5 The Provider shall inform the Council's Representative promptly and confirm in writing if the Provider is unable to or fails to provide the Services or any part thereof to a material degree or if the Provider is aware of anything which prevents or hinders or which may prevent or hinder the

Provider from materially complying with this Spot Purchasing Agreement.

- 74.6 If the Provider is temporarily unable to fulfill the requirements of this Spot Purchasing Agreement owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense incurred by the Provider in fulfilling the provisions of the Spot Purchasing Agreement as a result of such disruption.
- 74.7 If the Provider's proposals referred to in this Clause 74 (Disruption) are considered insufficient or unacceptable by the Council, then this Spot Purchasing Agreement may be terminated in accordance with Clause 72 (Consequences of Termination) and Clause 73 (Continuing Rights and Remedies)

75. Force Majeure

- 75.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Spot Purchasing Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Spot Purchasing Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Spot Purchasing Agreement for a period in excess of six (6) Months, either Party may terminate the Spot Purchasing Agreement with immediate effect by Notice in writing.
- 75.2 Any failure or delay by the Provider in performing its obligations under the Spot Purchasing Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 75.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 75.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

76. Business Continuity

- 76.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. Organisations which provide Services which underpin the Council's Service provision must therefore be able to continue to provide the Services in the event of an emergency. The Provider shall therefore prepare and implement a robust and viable business continuity plan that ensures the continuation of the provision of the Services

throughout the Term in accordance with the requirements of the Civil Contingencies Act 2004.

- 76.2 The Provider shall ensure that its Business Continuity Plan includes:
- 76.2.1 an introduction identifying the purpose of the Business Continuity Plan, its limitations and, exclusions and the individual members of Staff responsible for implementing the Business Continuity Plan;
 - 76.2.2 the clear aims and objectives that the Business Continuity Plan will achieve;
 - 76.2.3 the tasks and activities of the Provider's business and the risks associated with each of these tasks and activities;
 - 76.2.4 a full description of the policies, processes and procedures which are in place to support the Business Continuity Plan;
 - 76.2.5 the roles and responsibilities of the Provider, its Staff and its partners in implementing the Business Continuity Plan;
 - 76.2.6 the command and control arrangements which will operate to support the effectiveness of the Business Continuity Plan;
 - 76.2.7 the communications arrangements that will ensure that the Business Continuity Plan is widely understood by Staff and so that a business continuity management culture is embedded within the Provider's business in relation to the Services; and
 - 76.2.8 a Schedule detailing how and when the actions within the Business Continuity Plan will be tested, reviewed and updated by the Provider each year.
- 76.3 The Provider shall:
- 76.3.1 upon request by Notice from the Council, disclose to the Council the contents of its Business Continuity Plan (include any revisions made to it from time to time during the Term);
 - 76.3.2 allow the Council (at its discretion) from time to time during the Term to monitor the Provider's business continuity arrangements;
 - 76.3.3 serve Notice on the Council immediately if an incident occurs which activates the Business Continuity Plan (such notification to be served prior to the issue by the Provider of any notification to the press or other media); and
 - 76.3.4 provide the Council with details of how the Provider managed any incident which resulted in the activation of its Business Continuity Plan and any consequential amendments made by the Provider to the processes and/or procedures which are contained in or referred to in the Business Continuity Plan.

77. Handover

- 77.1 The Provider shall not make any charge to the Council or any Replacement Provider for any expenditure which is incurred (howsoever) in carrying out the handover arrangements which are set out in this Clause 77 (Handover).
- 77.2 Within one (1) month of the Expiry Date or earlier determination of the Term, the Provider shall serve Notice on the Council to seek confirmation as to whether or not the Council requires to take possession of the Provider's Service User files and other records and working papers (whether in paper or electronic form) in relation to the Services.
- 77.3 Within ten (10) Working Days of receiving the Provider's Notice under Clause 77.2, the Council shall serve a counter-Notice on the Provider setting out the Council's requirements (acting reasonably) with which the Provider must comply with regard to the Service User files and other records and working papers which are referred to in the Service Specification.
- 77.4 When implementing the arrangements in this Clause 77 (Handover), the Provider shall use all reasonable endeavours to transfer to the Council (or any Replacement Provider) all data in accordance with an industry standard format (or any other format reasonably specified by either the Council or the Replacement Provider in question) relating to the Services including (without limitation) all requests made to the Provider for any of the Services to be undertaken which have not been actioned or completed by the Provider.
- 77.5 The Provider shall also comply with the requirements of Schedule E (TUPE) in relation to the provision of information by the Provider to the Council about the Staff who are engaged in the provision of the Services (whether or not employed by the Provider).
- 77.6 The provisions of this Clause 77 (Handover) shall remain in force indefinitely between the Parties following the expiry or earlier termination of the Term.

PART 10 DISPUTE AND LAW

78. Law and Jurisdiction

- 78.1 Subject to the provisions of Clause 80 (Dispute Resolution), this Spot Purchasing Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties shall therefore submit to the exclusive jurisdiction of the courts of England and Wales.

79. Legislative Change

- 79.1 The Provider shall take all steps which are reasonably necessary to ensure that the Services are performed in accordance with the terms of this Spot Purchasing Agreement following any change in Law.
- 79.2 The Provider shall bear the cost of complying with all such statutes, enactments, orders, regulations or other similar instruments as are referenced in this Spot Purchasing Agreement and any amendments thereto.

80. Dispute Resolution

- 80.1 If a dispute arises out of or in connection with this Spot Purchasing Agreement or the performance, validity or enforceability of it (a "Dispute") then, except as expressly provided in this Agreement, the Parties shall follow the dispute resolution procedures set out in this Clause:
 - 80.1.1 either Party shall give to the other written Notice of the Dispute the immediate time that they become aware of such a Dispute. The Notice shall set out its nature and full particulars (a "Dispute Notice"), together with relevant supporting documentation. On Service of the Dispute Notice both contracting parties shall attempt in good faith to resolve the Dispute within five (5) working days from the date of the Dispute Notice;
 - 80.1.2 if the Parties are for any reason unable to resolve the Dispute within five (5) Working Days of Service of the Dispute Notice (or it becomes apparent in a shorter time period that the Dispute is unlikely to be resolved), the Dispute shall be referred to the Council's Representative and the Provider's Representative who shall attempt in good faith to resolve it within ten (10) Working Days from the date of the Dispute Notice; and
 - 80.1.3 if the Council's Representative and the Provider's Representative are for any reason unable to resolve the Dispute within fifteen (15) Working Days of the date of the Dispute Notice, then either Party may request by Notice to the other that the Dispute is referred to an Expert for determination.
- 80.2 For the purposes of this Clause 80 (Dispute Resolution), the "Expert" is the person appointed by the Parties in accordance with Clauses 80.3 and 80.4.
- 80.3 The Expert shall be appointed by Spot Purchasing Agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the president of the Law Society.
- 80.4 The Expert shall act on the following basis:

- 80.4.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 80.4.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 80.4.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within ten (10) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 80.4.4 any amount payable by one Party to the other Party as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 80.4.5 the Parties shall initially pay and bear the cost of the Expert in equal proportions;
- 80.4.6 the process shall be conducted in private and shall be confidential; and the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

APPENDICES

Schedule A The Service Specification

Service Specification – (Adults)

- A.1 Introduction
- A.1.1 The way in which the care for vulnerable and older people is delivered in society is changing. The Government recognises the implications of demographic trends and expectations of life, and has put in place a framework of policies, bills and acts to reform public services. The Putting People First Concordat set out a vision of a transformed adult care and support introducing the idea of a personalised system, where people have maximum choice and control over the services they receive.
- A.1.2 A 'Vision for Adult Social Care', 'Capable Communities and Active Citizens' and 'Think Local, Act Personal' maintains the drive toward personalisation of public services in health and social care. The Council have embedded many of these values by choosing to become a Co-Operative Council with the aim of offering safe, value for money services designed around people's lives. The outcomes expected within 'Our Health, Our Care, Our Say' continue to underpin service expectations.
- A.1.3 The Council recognise the value of domiciliary care services in supporting people to live independently, keep healthy and well and be part of their local community.
- A.1.4 The values and beliefs underpinning the delivery of domiciliary care are drawn from; assessment of the needs and expectations of people in the Borough; understanding demographic profile projections; interpreting the national transformation agenda for health and social care.
- A.1.5 The philosophy can be summarised in a Service which:
- i. Enables people to regain control of their lives
 - ii. Allows people to shape their own care service
 - iii. Supports people to make informed choices
 - iv. Empowers people to make decisions
 - v. Fosters independence and self care
 - vi. Offers flexible options of delivery and can respond to self direction
 - vii. Champions and encourages preventative approaches
 - viii. Allows people to regain or retain independence and confidence
 - ix. Enables people to become included in society
 - x. Offers an alternative to institutional care by responding to increasing care and health needs so as to help people stay in their own home,
- A.1.6 The purpose of the Service is to help people remain as independent,

healthy and well as they are able to be.

A.2 Service Overview

A.2.1 The Service will cover the following Service User groups:

- i. people aged eighteen (18) years and older with physical and sensory impairment, mental health concerns, learning disabilities, who abuse substances, who have autism, who have dementia.
- ii. people in the Service User groups above who are ordinarily resident in the borough of Telford and Wrekin

A.2.2 The Service will be provided to people who meet the Council's eligibility criteria under Fair Access to Care.

A.2.3 The Service will be provided within the Borough of Telford and Wrekin

A.2.4 The Service will provide care and support in Service Users' own homes or in a community, supported living or extra care housing setting.

A.2.5 Care may be provided, at specific times in the day, in accordance with a schedule setting out times and tasks or, in exceptional circumstances, over a full twenty-four (24) hour period (where the Support Plan identifies that this is required). The tasks that Providers are expected to be able to deliver are set out in Appendix 1.

A.2.6 Providers will deliver Enablement care; Palliative care; and Non-Specialist care as part of the Service

A.2.7 Specialist Care will be provided where the nature of the care delivered is dominated by a specialist need such as mental health concerns, learning disabilities, substance misuse, physical disabilities, autism, and dementia.

A.2.8 The Service will operate within the Council's personalised and community-based model. The model is built around promoting people's independence and wellbeing, with the intention of preventing, postponing and minimising peoples need for formal care.

A.2.9 The Service will compliment services that will be secured from local communities / groups and voluntary sector providers, to provide networks of support, to help people improve their health and well-being, and to reduce their need for more acute care and health services.

A.3 Contract Overview

A.3.1 This Agreement takes the form of a Spot Purchasing Agreement for domiciliary care. Purchasing from the PPF will be via use of an Individual Service Agreement (ISA). The ISA will invoke the terms and conditions of the Agreement.

A.3.2 Only in exceptional circumstances will care packages be placed with providers who are not part of this Agreement.

A.4 Service Requirements and Standards

A.4.1 OPERATION

- A.4.1.1 The Service will operate for twenty-four hours a day, seven days a week, fifty-two weeks a year.
- A.4.1.2 The Provider must advise the Council of any issues that relate to the consent to receive care. The Provider should advise the Council's Personal Budget Support Team if a Service User refuses to receive care as soon as practically possible.
- A.4.1.3 The Provider must advise the Council if the Service Users needs change. Care delivery timing and visit duration must be in accordance with the schedule associated with the Support Plan: The Provider must inform the Council's Personal Budget Support Team if Service Users wish to make significant changes to the delivery of their care ie timing, visit duration or care tasks.

A.4.2 REFERRAL PROCESS

- A.4.2.1 All Service Users will access the Service via The Council. Referral will follow application of the Adult Care and Support Community Care Policy.
- A.4.2.2 For Reablement, Rehabilitation and Prevention packages the Council will undertake a full assessment focussing on short-term (up to six weeks) interventions to help people regain their skills and confidence. The Council will co-ordinate and produce a Care and Support Plan and will agree with the Service User, services that will meet their requirements.
- A.4.2.3 The Council will also work with Service Users whose needs cannot be met via reablement, rehabilitation and prevention, or who require longer term care and/or support. A Care and Support Plan appropriate to longer term will be produced.
- A.4.2.4 Where a need to purchase domiciliary care is identified, the Care and Support Plans will be anonymised and used by the Council team managing brokerage as the basis for assessing Providers interest in delivering the Service.
- A.4.2.5 All referrals to Providers will be made from the Brokerage team, except in exceptional circumstances relating to discharge from hospital. The detailed procedures of the Brokerage Team in arranging a new or updated Service is set out in Schedule C: Finance. The procedures relating to discharge from hospital and associated suspension of service are set out in Clause 59: Suspension of Services.

A.4.3 GENERAL PROVISION

- A.4.3.1 Providers will produce a guide for Service Users and their carers explaining the services they provide, the aims of the service, and who is responsible for running the Service
- A.4.3.2 The Provider should understand and work to the values and beliefs in line with the philosophy and the Service model set out within this Schedule.
- A.4.3.3 Providers must support Service Users to understand the importance of eating and drinking well, and support Service Users to access, prepare

and eat nutritious meals and keep hydrated, giving particular consideration to the changes in the environment (eg very hot or very cold weather) and any medical conditions.

- A.4.3.4 Providers are expected to be aware of other providers or organisations that provide care and support services to Service Users, and to work with these organisations to ensure the best outcomes for the Service User.
- A.4.3.5 The Provider shall co-operate fully with the Council in relation to all aspects of the Multi-Agency Adult Protection Policy and Procedure and shall ensure staff awareness of the policy via induction and on-going training
- A.4.3.6 The Provider will engage with the Council and Telford and Wrekin CCG in any local or national initiatives responding to infection prevention and control issues and developing best practise around these issues. Provider Staff shall follow infection control best practise in delivering the Service.
- A.4.3.7 Provider Staff must treat Service Users with respect and kindness, and dress, speak and act in ways which are in keeping with this approach.

A.4.4 SERVICE USER REVIEW

- A.4.4.1 The Council will case manage Service User's needs, this may include identifying a change in the Care and Support Plan. If the Council identifies a requirement for change the Brokerage Team will be advised and will notify the Provider. The process for making changes to the ISA in arranging a new or updated Service is set out in Schedule C: Finance.

A.4.5 SPECIALIST CARE

- A.4.5.1 Providers should fully understand the best practice and training requirements including any local and locally endorsed national standards, procedures or practices. This must be reflected in the training commitment to Provider Staff.
- A.4.5.2 Staff supporting or delivering Specialist Care must have a high level of up to date training relevant to; understanding the needs of Service Users in receipt of Specialist Care; undertaking the care tasks associated with particular types of Specialist Care; and adopting an empathetic and person centred approach to care delivery.
- A.4.5.3 Providers will be mindful of, and where appropriate contribute to, any risk assessments linked to delivery of Specialist Care. Providers must deliver the Service giving regard to the content of the risk assessment.
- A.4.5.4 Providers must have excellent awareness of the values and beliefs that relate to particular types of Specialist Care and ensure Service delivery in accordance with these values and beliefs.

A.4.6 CARE IN AN EMERGENCY

- A.4.6.1 In the event of an Emergency Situation the Provider is expected to

provide any additional or varied care to that set out in the Care and Support Plan as required by the Service User.

- A.4.6.2 In an Emergency Situation the Provider should notify the Council as soon as practically possible of any Emergency Care delivered.
- A.4.6.3 Following delivery of Emergency Care the Provider will submit a request for a revision of payment within seven (7) days of the incident. The submission must include details of the Service User name, the date of the incident, the time spent responding to the incident and the tasks undertaken.
- A.4.6.4 The Council will notify the Provider if a request has been approved. If a request is not approved the Council will provide a written explanation.
- A.4.6.4 Disputed invoices will be dealt with in accordance with the provisions within the Finance Schedule.

A.4.7 GENERAL STAFFING

- A.4.7.1 It is expected that the Provider will have a robust recruitment and selection policy which is strictly adhered to. Make applicants aware that their employment will be exempt from the Rehabilitation of Offenders Act 1974. Recognise and prioritises applicants who have experience of providing care, especially domiciliary care
- A.4.7.2 Staff must be provided with:
 - i. a contract of employment
 - ii. a comprehensive job description
 - iii. monthly supervision from a line manager employed by the Provider
 - iv. a comprehensive induction and personalised training programme
 - v. access to specialist training
- A.4.7.3 The Provider must also keep Staff records on the premises and these must include:
 - i. a completed application form
 - ii. personal details e.g. address, phone number, next of kin
 - iii. qualifications
 - iv. details of all previous position held
 - v. commencement date
 - vi. number of hours contracted to worked
 - vii. two written references from previous employers
 - viii. staff must account for any gaps in employment and/or training
 - ix. declaration of any criminal record, and completion of Disclosure and Barring check prior to commencing any work with Service Users.
 - x. who Staff are directly responsible to and for.

- A.4.7.4 The records above must be kept up to date at all times and be available for inspection by the Council when requested.
- A.4.7.5 The Service must be appropriately staffed to effectively manage the hours of service and level of need at any one time.
- A.4.7.6 It is expected that the Provider will employ suitably qualified and competent staff in numbers which comply with at least the standards laid down by the Care Quality Commission and which reflect the requirement of this Service Specification, the Monitoring Schedule and the needs identified within Service User Care and Support Plans
- A.4.7.7 The Provider must detail its programme of staff induction and training. It is recommended that Staff hold or are working towards a Care based QFC 2 or 3 or the Registered Manager can demonstrate that through past work experience the staff meet the same standard.
- A.4.7.8 Skills and qualifications gaps in all staff are clearly identified at recruitment, and during ongoing supervision: Training activities put in place to allow staff to work toward gaining relevant skills and qualifications are specific to delivering domiciliary care, and, in particular, cover Specialist Care where appropriate.
- A.4.7.9 The Providers supervision and appraisal arrangements are clearly set out, communicated to staff, scheduled regularly and the processes take into account the need to meet the outcomes for service users set out in their Support Plan.
- A.4.7.10 The Provider must co-operate with all complaints or Safeguarding investigations undertaken by the Council. Where necessary the Registered Manager or a suitable representative will, if requested, attend any meeting to discuss either a complaint or vulnerable adult issues.

- A.4.8 REGISTERED MANAGER
- A.4.8.1 The Registered Manager in charge of the day to day management of the Service must be qualified, competent and experienced with a minimum of two years significant supervisory experience in a relevant care setting within the past five years.
- A.4.8.2 The Registered Manager will be accountable for the overall responsibility of the performance of the Service and the outcomes for Service Users.
- A.4.8.3 The Registered Manager must ensure that an accurate Staff rota indicating deployment of staff employed is maintained. The rota must reflect staff on duty at any time and be kept available for inspection at all times. Rotas should be planned to ensure continuity of contact between individual Staff and Service Users.
- A.4.8.4 The Registered Manager should have, or be working toward, a recognised qualification in care management. Where the Registered Manager is working toward a recognised qualification this training should be complete in no more than two (2) years of starting the qualification.

A.4.9 EQUALITY OF ACCESS AND TREATMENT

- A.4.9.1 Service Users will be treated equally and will be afforded fair opportunity within the Service.
- A.4.9.2 There will be an equality policy of no toleration of interpersonal abuse of a racial, religious, sexual or disablist nature from Service Users, whether this is directed at other Service Users, Staff or visitors. This Policy will be produced by the Service Provider and approved by the Council.

A.4.10 ENGAGING AND SUPPORTING SERVICE USERS AND CARERS

- A.4.10.1 The Provider is expected to support Service Users to engage in feedback work undertaken by the Council. The Provider must share with the Council, if requested, information from any Service User feedback work it undertakes and support any initiatives to secure Service User views that the Council leads or instigates
- A.4.10.2 Providers should be aware of and respect Carers, and understand the support and help that they provide. Providers should seek to deliver a service which compliments those provided by Carers, and should make the Council aware of any changes in the support that informal carers provide, where they are made aware of this.

A.4.11 EQUIPMENT AND ASSISTIVE TECHNOLOGY

- A.4.11.1 As part of assessment and support planning processes the Council will identify Assistive Technology or Equipment that helps Service Users increase and maintain their independence.
- A.4.11.2 The Provider must encourage and support the use of any equipment or Assistive Technology that the Council recommends, within and outside the home.
- A.4.11.3 The Provider should have processes in place to ensure Service Users understand what assistive technology is available and can be used to support the Service Users' in their own homes and will ensure its use is maximised in accordance with the outcomes within Service Users' Support Plans.
- A.4.11.4 Providers must respond to changes in Assistive Technology and Equipment solutions, helping Service Users understand and use new equipment, and advise the Council if there are any concerns about its adoption.
- A.4.11.5 For equipment that is not provided by the Provider, the expectation is that Service Users are supported to use and maintain their equipment in a safe and appropriate manner.

A.4.12 PARTNERSHIP WORKING

- A.4.12.1 If the Service is being provided in a supported living or extra care housing setting, the Provider will fully understand the services provided by the

Housing Provider and the organisations will work jointly to deliver a holistic service to Service Users. Where the Service is being provided alongside Nursing Care the Provider will fully understand the nature of the Nursing Care being delivered and will liaise with the provider of Nursing Care to ensure service provision is complimentary and person centred.

A.4.12.2 Where the delivery of the Service is combined with Supporting People services and Intensive Housing Management services the Provider will ensure seamless service provision.

A.4.13 POLICIES AND PRACTICES OF THE ORGANISATION

A.4.13.1 The Provider will ensure that the following policy and procedures are maintained and reviewed annually:

- i. Equal Opportunities
- ii. Disciplinary and Grievance
- iii. Data protection policy
- iv. Health and Safety
- v. Confidentiality
- vi. Recruitment and Selection
- vii. Safeguarding (compliant with the Council local Multi Agency Adult and Child Protection Policy and Procedures)
- viii. Whistleblowing
- ix. Food Safety
- x. Medicine safety and practice to include handling, storage, administration and disposal of medicines.
- xi. Code of Conduct
- xii. Personal safety while at work
- xiii. Quality assurance
- xiv. Moving and handling
- xv. Dealing with accidents and emergencies
- xvi. Handling money and financial matters
- xvii. Gifts and legacies
- xviii. Dealing with challenging behaviour
- xix. Entering and leaving a service user's home and safe keeping of keys
- xx. Discipline and grievance
- xxi. Staff development and training
- xxii. Complaints (compliant with the Councils policy & procedures)

A.4.13.2 Providers will ensure that policies refer to emerging national best practice

guidance and local initiatives.

- A.4.13.3 Providers will use induction, supervision, appraisal and training and development to make staff aware of the organisations policies and procedures, and that they are understood and being operated to.

A.5 Outcomes and Service Performance Indicators

A.5.1 OUTCOMES

- A.5.1.1 Change Outcomes are characterised by, improvements in symptoms, in physical functioning and in moral and confidence

- A.5.1.2 Maintenance and Prevention Outcomes; are characterised by

- i. meeting physical needs,
- ii. ensuring personal safety,
- iii. keeping alert and active,
- iv. having a clean and tidy home,
- v. having social contact and company,
- vi. having control over daily routines.

- A.5.1.3 Service Feature Outcomes; are characterised by Service Users;

- i. feeling respected and treated as an individual,
- ii. having a say and control over services,
- iii. receiving good value for money,
- iv. their service being compatible with other services and help,
- v. their service being respectful of their religious and cultural preferences.

- A.5.1.4 Service User Outcomes: Not all outcomes will be relevant to all Service Users at all times; there are many other aspects of a Service User's life that will contribute to outcomes being met. Targeted approaches will be used to secure feedback in relation to relevant Service User outcomes, linked to a set of Key Performance Indicators and evaluation of risk.

A.5.2 SERVICE QUALITY TARGETS & REQUIREMENTS

- A.5.2.1 The Service performance will be measured against the following criteria.

- A.5.2.2 Failure to meet the targets set may lead to default and/or renegotiation of the Contract at annual review

Service Quality Target	Description	Target	Measure
DC T1: Staffing	<ul style="list-style-type: none"> i. Service Users should be cared for by staff who are properly qualified and able to do their job. ii. There should be enough members of staff to keep people safe and meet their health and welfare needs. iii. Staff should be properly trained and supervised, and have chances to improve their skills. 	100% compliance	<ul style="list-style-type: none"> Evidence of DBS checks Induction Programme Staff Files Staffing mix, and staff rota. Training and Development programme Training Matrix completion. Supervision schedule and policy
DC T2: Delivery of a personalised service which demonstrates Service User engagement	<ul style="list-style-type: none"> i. The service should demonstrate how it ensures a personalised approach to care planning and service delivery. ii. Service users should be actively engaged in their care, and the delivery of the overall service. 	Evidence compliance.	<ul style="list-style-type: none"> Care Plans Service Users Meetings Service User Feedback Advocacy Services Contract Review Meetings Quarterly Reports Case Studies
DC T3: Outcome based practice	The service should demonstrate how it supports Service Users to retain their independence and confidence.	Evidence compliance.	<ul style="list-style-type: none"> Care and support plans Contract Review Meetings Quarterly Reports Case Studies

Service Quality Requirement	Validation Information
<i>For Universal expectations:</i>	
CQC Registration with no improvement notices	CQC Report review
Services and costs that are clearly communicated to the public.	Provider website Provider leaflets and supporting information.
Registered Manager has a recognised qualification in care management or be working toward a relevant qualification.	Training record review Training Matrix
Staff attitude – evidence that Service Users are treated with respect and kindness	Service User feedback. Compliments by Service Users Feedback from Operational Teams
Safeguarding – evidence that Provider Staff understand types of abuse, what they should do when they suspect abuse.	Safeguarding policy review Whistle blowing policy review Engagement with Council safeguarding polices and procedures Feedback from Operational Teams
Care calls are not missed.	Electronic monitoring processes where in place. Service user feedback. Feedback from Operational Teams
Care delivery that is at the times commissioned and of the durations commissioned, and takes into account the need for adequate travel time between calls.	Electronic monitoring processes where in place. Service user feedback. Feedback from Operational Teams
<i>For Specialist Care & Support Plan Specific expectations</i>	
Staff have a clear awareness and understanding of long term conditions and illnesses, and specialist needs.	Service User feedback Feedback from Operational Teams

A.5.3 QUALITY AND MONITORING

- A.5.3.1 All Providers must be registered with the Care Quality Commission (CGC) in accordance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2009 and the Care Quality Commission (Registration) Regulations 2009, and must maintain their registration throughout the duration of the Agreement.
- A.5.3.2 The Provider will maintain a quality assurance system that actively assesses and monitors all aspects of care delivery and Service operation. The activities will be encompassed in a clear plan of continuous improvement. Additionally:
- i. Providers may adopt national quality assurance or company standard processes.
 - ii. Providers will engage with the Council regarding the assessment and monitoring of services, and, where appropriate, Council requirements and recommendations which form part of the Provider's Improvement Plan.
 - iii. Providers are encouraged to share with the Council ideas on practices or initiatives that they believe can improve quality and outcomes for Service Users

These monitoring arrangements are set out in greater detail in Schedule B: Monitoring & Evaluation

A.5.4 CONTINUAL SERVICE IMPROVEMENT

- A.5.4.1 The Provider is expected to evidence continuous improvements to ensure the best possible outcomes for the service users. Evidence should be made available to the Council.
- A.5.4.2 The Council will continue to improve systems and processes during the Term of the Agreement. Providers will be expected to contribute and adapt to development within the Service, this may include:
- i. adoption of Electronic Monitoring Systems
 - ii. automation of service orders, invoicing and the payment process.
 - iii. market development initiatives to generate alternatives to traditional types of care
 - iv. the development of a quality mark to support Service Users exercising choice
- A.5.4.3 The Council will notify the Provider of any proposed changes in accordance with Clause 56 (Variation) and Clause 22 (Change Control)

Appendix 1

Activities to be undertaken by the Staff within the Service

Personal Care and Support

The tasks set out below are indicative of those that the Council expect to be able to request from Providers. The required tasks will be bespoke to the Service User and will be set out within the time and task schedule and Support Plan.

Meals

- Assist with the preparation of drinks as required
- Assist with the preparation and cooking of simple meals and snacks
- Assist with the preparation of a meal to cook later
- Assist with the preparation of food to be eaten later
- Ensure the safe re-heating of previously prepared food in line with current legislation and if available in line with the manufacturer's instructions.

Personal Care: Any care of an intimate and sensitive nature often impinging on personal dignity and worth including:-

- Assist Service User to wash, bathe or shower
- Assist Service User to shave (electric razor)
- Assist Service User to use a toilet or commode
- Change catheter bags, assist with stoma care
- Empty and clean commodes
- Change incontinence sheets and pads, bag for appropriate disposal
- Assist Service User with oral hygiene
- Assist with the application of non-prescribed creams in accordance with the manufacturer's instructions, if directed to do so by the Service User
- Assist Service User in moving and transferring as needed e.g.
 - moving to a sitting position in bed
 - transferring from bed to wheelchair
 - transferring from chair to bed
- Make and change beds
- Assist with brushing and combing hair
- Assist with hands and feet (file nails only)
- Assist with cleaning and wearing of spectacles
- Assist with the cleaning and use of contact lenses
- Listen and support social or emotional needs
- Provide agreed elements of the Service in order to provide respite to informal carer(s)
- Liaise with family/friends
- Liaise with other services/service Care & Support Providers
- Escort to GP/hospital

- Assist Service User to eat and drink as required
- Encourage practical skills and motivation
- Enablement with personal care activities that falls short of Department of Health definition but still could be seen as personally intrusive (e.g. supervising bathing, getting up, getting dressed, choosing food, preparing meals, washing up, opening post, planning meals)

Essential Laundry, including:

- Wash essential items for the Service User
- Take washing to the launderette as required
- Wash incontinence laundry
- Iron essential items for Service User
- Bag up items for laundry
- Take clothes to the dry cleaners
- Use of household laundry facilities
- Undertake essential minor sewing/repairs

Essential Cleaning (rooms used by the Service User, unless otherwise specified in the support plan) including:

- Clean surfaces
- Clean kitchen area in order to maintain a hygienic environment, which may include defrosting the fridge and cleaning the oven
- Clean floors e.g. vacuuming and washing
- Clean bathroom and toilet areas
- Clean inside windows
- Heavy cleaning e.g. shampooing carpets, stain removal
- Light cleaning e.g. dusting, polishing
- Change curtains

Household Management, these tasks may take place outside the home, but are necessary for the maintenance of independent living including:

- Assist with home-management tasks e.g. budgeting
- Check safety and security of Service User's home when attending/leaving
- Collect pensions and state benefits and post letters
- Collect dispensed prescriptions from a pharmacy
- Purchase household necessities e.g. food, cleaning materials
- Pay essential bills e.g. rent, council tax, water, gas, electricity etc.
- Bank paying-in transactions for essential bills related to household matters only

Domiciliary Care and Supporting People Services: Where a Provider is delivering a combined service which includes domiciliary care and supporting people services, in addition to the activities above, the following additional activities may be requested. As with domiciliary care, the tasks required will be in accordance with

those set out within the Support Plan. This combined service is most likely to be requested within extra care housing and supported living settings.

- Assist in the assessment of Service Users with a view to deciding whether to offer them a housing-related and/ or care support service
- Assist in the assessment of Service Users to resolve or prevent housing debts or other debts that impinge on their ability to pay for their housing
- Enable Service Users to claim appropriate benefits and maximise their income
- Advise and enable in relation to fulfilling licence / tenancy / mortgage conditions
- Advice to Service Users to ensure their connection to utilities
- Guidance to Service Users on how to use equipment in their own home
- Advise and enable Service Users in relation to the safety and security of their accommodation
- Provision of community alarm services
- Advise and enable Service Users in relation to organising repairs or improvements to their home (property or contents)
- Advise and enable Service Users to enable them to move to more appropriate accommodation
- Assist in the mediation in Service User neighbour disputes
- Advice and guidance on how to manage in independent accommodation including budgeting, catering and management of property
- Provision of information on community facilities and services available to Service Users
- Liaison with other agencies in relation to Service Users' welfare to ensure that Service Users receive the services necessary to maintain them in their accommodation
- Enable Service Users to help them overcome social isolation in their accommodation
- Shopping for Service User's or collection of pension etc. where a skills developing process is in place
- Transporting Service Users
- Enable Service Users to maintain their garden where this is the service user's responsibility
- Monitoring Service User's health
- Advocacy with health professionals over medication and related matters where part of skills development process
- Advice to Service Users on how to deal with substance misuse problems
- Support Service Users in taking up employment opportunities
- Mediation between Service Users and their family
- Advise and enable in relation to maintaining relationships
- Organisation, facilitation and accompanying of Service Users on outings
- Enable Service Users to take advantage of educational opportunities
- The storage and distribution of prescribed medication

Service Specification – (Children)

A.6 A1 Introduction

A.1.1 Aims

Telford & Wrekin Council would like to receive applications to deliver a support service for children and young people with disabilities and /or additional needs who live in Telford who have been referred by the Council following an assessment of need and accepted by the Provider as a referral.

All interested parties should read the accompanying Guidance Notes and Terms and Conditions before completing an Application Form.

Telford & Wrekin Council is committed to improving the services we provide for children and young people with disabilities and / or additional needs and their families. Such families may benefit from support in relation to their everyday caring tasks in the home and also in relation to the availability and variety of short breaks in order to offer greater choice and improved outcomes for children and young people, as well as providing families with a short break from their caring responsibilities.

These services may include personal care for children and young people with disabilities and / or additional needs, to enable and support them to live ordinary family lives and participate in activities or volunteering opportunities. Services may also include access to appropriate cultural activities so children and young people can strengthen their cultural identity.

The service may be delivered to the child/ young people in their own home to support the family, for example with a sitting service or bedtime routine etc, and in the community to support access to universal and specialist activities.

The resultant outcome of this service will deliver high quality outcomes and value for money. Furthermore the services will make a significant contribution to prevention, increased choice, control and independence as well as enhancing the quality of life for the whole family.

Service providers will be committed to reducing children, young people and families' dependency upon professional/paid for services and enhance self reliance, inclusion, and community/relationship connections as a demonstrable outcome of their work.

Short Breaks / support can enable children & young people to:

- a. Engage with their parents and siblings in positive and enjoyable ways (with them unencumbered by caring roles and responsibilities)
- b. Socialise with others and develop friendships and social skills
- c. Have opportunities for recreation, entertainment and enjoyable experiences
- d. Find and develop talents and interests, have achievements and recognition, and build relationships with those with similar passions and gifts
- e. Learn greater self-reliance and acquire self-esteem and confidence
- f. Develop and sustain personal relationship networks

- g. Receive skilled and general help over specific issues
- h. Have their care and support needs attentively met in ways that diminish dependence and promote competence and skills

Short breaks / support enable parental carers (and siblings) to:

- a. Take a break from caring responsibilities
- b. Give time to themselves and others
- c. Have quality time with their other children
- d. Pursue their own interests, gifts, and passions
- e. Catch up with other tasks and responsibilities and consequently 'de-stress'
- f. Have confidence that their child's care, development, and support needs are being attentively, safely and competently addressed

A.1.2 National Context

The Children Act 2004, and the Five Outcomes set out in '**Every Child Matters**' constitutes the backcloth to this agreement:

- Being Healthy
- Staying Safe
- Enjoying and Achieving
- Making a Positive Contribution
- Achieving Economic Well-being

Aiming High for Disabled Children

The vision behind *Aiming High for Disabled Children* is for all families with disabled children to have the support they need to live ordinary family lives, as a matter of course. *Aiming High for Disabled Children* has three priority areas:

- 1. Access and empowerment** – Children, young people and their families will be actively involved in the planning and delivery of services in their local area.
- 2. Responsive services and timely support** – All professionals responsible for planning services for children, both locally and nationally, will focus on the services disabled children and young people need, particularly at key life stages such as the early years and in transition to adulthood.
- 3. Improving quality and capacity** – Development of services and supports which families want and need, in their particular short break services which families have described as their key priority.

Special Educational Needs & Disability Reforms

The Government has recently introduced a major transformation of the way services for children and young people with special educational needs and/or disabilities (SEND) are delivered. Some of the key changes are outlined below.

Replacing Statements of SEN with Education, Health & Care Plans

Personal Budgets

Schedule B -	Services Working Together
Schedule C -	Birth to 25
Schedule D -	Local Offer
Schedule E -	Engaging Parents, Children and Young People
Schedule F -	Resolving Disputes

A.1.3 Local Context

It is estimated that there are between 1,132 and 2,037 children and young people experiencing some form of disability living within Telford & Wrekin.

Approximately 160 children and young people require some support and about a third of these currently choose an agency to supply the support. This equates to 88 support sessions per week and nearly 1000 hours per year.

The days of the week and the time of day that children and young people require the support varies and a summary follows below:

- Almost half of individuals require support on a Thursday and Saturday there appears to be a lesser need for support on a Sunday and Tuesday, otherwise all other support appears to be evenly spread across Monday, Wednesday and Friday.
- Over half of individuals require support in the day time; morning support needs are minimal with only a small number requiring this service. However those individuals equate to 21% of all support sessions.
- Sunday, Saturday and Tuesday show the least uptake of early morning support.
- There is a significant requirement for day time support on a Saturday; daytime support on other days is minimal and evenly spread.
- Support needs in the evenings are fairly evenly spread with the highest need being recorded on a Thursday with 26% requiring support, 20% require support on a Monday evening. The days where support is least required in the evenings are Saturday and Sunday with 6% and 3% respectively.
- As would be expected due to children attending school/college weekdays show that support requirements are minimal 50%+ of sessions are required in the evenings. This shifts at the weekends where day time support is preferred.

A.1.4 Values and Principles

The Purchaser and the Provider agree to adopt and promote values and principles which place children and young people, their parents or carers at the centre of their respective service provision. The welfare of the Child is paramount; this is the foremost principle and supersedes all others as a foundation for care planning and service delivery. The child/young person's experience should be that their individual best interests are the primary concern of the Parties to this Contract.

The delivery of strong and sustainable personal support networks, community connections and inclusion, and personal social capital for each child/young person are understood to be fundamental deliverables within this specification. Service Providers who seek to engage in this provision will demonstrate a track record of understanding and performance in these activities and/or be able to outline the steps they will be taking in order to develop their knowledge and capabilities. Performance against these core objectives will be assessed throughout the life of this contract and continuous improvement will be sought.

Telford & Wrekin Council has committed to making life better for disabled children, young people and their families by signing the Disabled Children's Charter for Health and Wellbeing Boards. It is expected that all Providers under this Spot Purchasing Agreement will work with The Council in promoting it's commitment to:

- Engage directly with local disabled children, young people and parent carers and embedding their participation in their work
- Set strategic outcomes for local partners to meet in relation to disabled children, young people and their families
- Promote early intervention and smooth transitions between children and local adult services

F.1 A2Service Overview

A.2.1 Service Profile

- Service Provision Name: Domiciliary Care and Support service
- Type of Service: To support children and young people with disabilities and / or additional needs and their families.

A.2.2 Scope

The primary purpose of providing the service is to fulfil the requirements and objectives set out in the Individual Support Agreement for each Service User. To achieve this, the Service Provider must use their best endeavours and constantly work in the best interests of children and young people to:-

1. Provide a high quality flexible service.

2. Ensure that the child/young person has an opportunity to participate in a range of social, recreational and leisure interests, consistent to the objectives within their Individual Care and Support Plan.
3. Service providers should encourage access to Telford & Wrekin Council's ican2 provision.
4. Ensure that the child/young person is offered stimulation and development opportunities where choices of activity include planned and assessed risk.
5. Provide adequate arrangements to meet the transport requirements of the child/young person.
6. Be attentive to the child/young person's individual needs and rights in relation to age, gender, sexual preference and disability and meet their specific cultural and/or religious needs.
7. Promote the independence and personal fulfilment of the child or young person who uses the Service and offers confidentiality, respect, dignity and privacy to each individual.
8. Maintain and develop the security, stability, sense of permanence and belonging, identity and self confidence of each child/young person according to their requirements.
9. Ensure that communication with parents/carers is effectively maintained.
10. Operate an accessible and easily interpreted formal complaints procedure and use the outcome of complaint investigation to inform changes to Service practice.
11. Ensure that a positive and proactive approach is taken to the child/young person's health and safety.
12. Committed to working alongside Telford & Wrekin Council staff to ensure services are monitored and delivered to a high standard to meet the needs of children and young people.
13. Committed to working alongside other agencies that have been identified within the care planning processes to ensure the meeting of individual need.
14. Promote inclusion and strongly challenge discriminatory attitudes or practice.

A.2.3 Targeted Groups

The service provider shall work with children and young people who have one or more of the following conditions:

- Communication, Behavioural, Emotional and Social Needs
- Learning Disabilities
- Autistic Spectrum Disorders (ASD)
- Challenging Behaviour
- Sensory Impairment
- Physical Disabilities
- Other long-term medical conditions
- Multiple Disabilities

The service must be accessible to children and young people who are most likely to be excluded from existing activities; this will include those with a wide range of disabilities, those who are from minority groups and those living in rural locations.

A.2.4 Accessibility / Acceptability

A child / young person shall be eligible to access the Service if they comply with each of the following criteria:

- Children or young people with a disability and / or additional needs.
- Aged 0- 19 years.
- Has had an assessment by the Council where the outcome is the requirement for support.
- Permanently or ordinarily a resident in Telford.

A.2.5 Service Description

Service Model

Domiciliary care and support services will operate within our Short Breaks duty and principles. These principles are built around enabling children and young people with special educational needs and disabilities to maximise their potential and improve the quality of life for them and their families.

Short Breaks is the term used for a range of services provided for families to give carers of disabled children and young people a break from caring and for children and young people to take part in fun activities and have new experiences away from home. This covers a wide range of provision including domiciliary care and support services which compliment our overall Short Breaks offer.

F.2 A3Contract Overview

This Specification forms part of a contract between The Council and The Provider. The Council has developed an Individual Support Agreement for care / support. Purchasing of care/support packages by the Council will be on the basis of the agreement. The process will involve the use of an Individual Support Agreement which will invoke the terms and conditions of the Service Contract including this Specification and associated schedule.

A.4 Service Requirements and Standards

Key Service Functions of the Provider

A.4.1 CQC Registration

Providers must comply with relevant registration and regulations CQC Domiciliary Care National Minimum Standards, as applicable and any other registrations and regulations and subsequent amendments which may be released from time to time. The proposed Service must safeguard and promote the welfare of children and young people in accordance with the Children Act 1989; the Children Act 2004; Working Together to Safeguard Children statutory guidance (DCSF, 2010); and the Telford & Wrekin Local Safeguarding Children's Board (T&W LSCB) Policies and Procedures.

A.4.2 Staff Availability

It is the Provider's responsibility to ensure that there is always a sufficient number of suitably qualified Staff available in order to meet the needs of the Service User as detailed in the Independent Support Agreement.

The needs of the Service User are determined within the social work assessment and will be recorded within the individual care and support plan.

The Provider will ensure that there is a consistent staff member/team allocated to the service user where possible to support the continuity of care to the service user and families.

A.4.3 Staff and Volunteer Training & Supervision

The provider will ensure that an induction and appropriate training programme for staff engaged in providing the various aspects of this service are operated. As a minimum the Service Provider will ensure that all staff receive training on diversity and equality, disability awareness, moving and handling, behaviour management, Makaton, safeguarding and Health & Safety, working with children & young people, challenging behaviours.

The provider will ensure that staff at all levels, including managers and supervisors, are appropriately skilled and equipped to carry out any duties assigned to them and statutory and mandatory training will be regularly refreshed as evidence of on going professional development.

The provider will ensure that each staff member has individual monthly one to one supervision session in order to obtain the necessary professional support and guidance and that this is appropriately recorded and documented.

A.4.4 Policies and Procedures Required

The Provider will ensure that Staff are fully conversant with and have access to copies and explanations/training of the following, which should not be considered an exhaustive list:

- Health & Safety
- Equal Opportunities
- Complaints Procedure
- Confidentiality
- Disciplinary & Grievance Procedure
- Recording Accidents and Emergencies
- Whistle blowing
- Lone Worker Policy
- Child Protection/safeguarding Policies
- Smoking

A.4.5 Complaints and Feedback

The Provider should have a complaints procedure which specifies how complaints may be made and who will deal with them. The complaints procedure should be simple, clear, written, effective, well publicised and accessible and should include stages and timescales for the process. Publicity should include advice for referring a complaint to Children's Specialist Services.

Where the Council is responsible for the original assessment of need that led to Care / Support and associated funding, then the complainant should, in most instances, have recourse to the Council's complaints procedure.

The Provider should give and / or explain the complaints procedure to each service user in an appropriate language / format, including information for referring a complaint to Children's Specialist Services at any stage however, access to Children's Specialist Services' statutory complaints procedure does not apply to people with private self-funding arrangements and their representatives.

The Provider should acknowledge all complaints promptly in an appropriate form and respond to all complaints within specified timescales.

The Provider should put in place systems for formally and fully recording all issues raised and all complaints received orally, in writing or electronically. This record should include details of any efforts to resolve the complaint, any investigation, any action taken and any outcomes. The Provider should provide any and all of these records to The Council on request.

The Provider should put in place a system to analyse and identify any recurring area or pattern of complaints and take timely and appropriate actions to address the issues. Anonymous complaints should be recorded and the provider should decide what action to take, including no action.

A.4.6 User Satisfaction

The Provider is expected to ensure that families accessing the Service are able to inform the Provider that the Service satisfactorily meets their individual needs. The Provider can use a range of methods to consult with families. The Provider will ensure that the child/young person and their families are consulted on a regular basis. A summary of findings are to be sent to the Council's Vulnerable People Commissioning Team.

A.4.7 Advocacy

The Provider should consider, where appropriate, what type of support is available to the Child/Young Person and family while their complaint is being processed. Some complainants may need confidential advice and support from a local, independent advocate and / or a local, independent interpreter / communication support worker to make their complaint, to pursue it, to understand the process and to cope with the outcome. This should be particularly important in relation to complainants whose first language is not English and those with communication difficulties.

A.5.1 Outcome Indicators and Monitoring

Children and young people with disabilities and / or additional needs in Telford and Wrekin are to be given the choice to access appropriate high quality Care and Support with individual outcomes that will maximise their potential and improve the quality of life for them and their families.

In particular the service will enable children and young people to:

- Be healthy
- Stay Safe
- Enjoy and achieve
- Make a positive contribution
- Achieve economic wellbeing

The Provider will ensure that the Service incorporates and works to the following outcomes and will be requested to evidence each child’s progress against each outcome.

Each of these sections includes expectations of support providers which are based upon the Every Child Matters Outcome areas.

Outcome Area 1:	Be Healthy
Service Outcomes	<ul style="list-style-type: none"> • The health and development needs of a child or young person are identified • There is an improvement in a child or young person’s emotional well-being • A child or young person with a disability achieves maximum independence

Outcomes Tracker
<p>Children and young people know how to stay healthy through good diet and regular exercise in line with government initiatives on healthy eating.</p> <p>Children and young people feel a sense of self-worth through the ability to make informed choices and autonomous decisions.</p> <p>Children and young people are achieving independence in a way that is meaningful to them.</p>

Service User Outcomes

- I want a service to be honest with me/my family about my support and how it will be provided.
- I want the option of receiving information by speaking to someone face to face or in other formats if I request this from you.
- Except when it is an emergency, if you need to give me information it needs to be at the right time for me.

- I want to be as independent as I possibly can.
- My privacy and dignity should be respected at all times.

Achieving Outcomes: Expectation of providers

The Service will focus on the development of the children and young people supported and each child/young person will have an individual care and support plan that is regularly updated and reviewed with the child, their family and advocates as necessary. This plan will be in a child friendly format, produced by The Council and any relevant information from this plan to be shared with the Provider at the commencement of support. All completed reviews to be shared with the Council in order that the plan can be kept up to date. Any changes made to the plan need to be communicated to The Council's Disabled Children's Team in order that the plan can be amended where necessary. The plan must be reviewed periodically to ensure all changes to the Service user's support have been recorded.

Outcome Area 2:	Stay Safe
Service outcomes	<ul style="list-style-type: none"> • The risks to the child or young person are known and protective factors are in place • The quality of family life is enhanced • The child or young person maintains a supportive relationship with significant other/s • Disabled children in Telford and Wrekin are to be given the choice to access appropriate high quality short breaks to maximise their potential and improve the quality of life for them and their families

Outcomes Tracker

Children and young people are safeguarded from bullying, self harm, absconding, accident, injury, death, discrimination, crime, anti-social behaviour and abuse, maltreatment, neglect, violence and sexual exploitation.

Service User Outcomes

- I want/my family want me to be protected from abuse and harm
- I want/my family want me to feel safe and secure
- I want/my family want me to be allowed to take risks

Achieving outcomes: Expectation of providers

Child protection – The support provider shall co-operate fully with the Council in relation to all aspects of the Child Protection Policy and shall ensure staff are fully aware of the policy and have received training in child protection.

Outcome Area 3:	Enjoy and Achieve
Service outcomes	<ul style="list-style-type: none"> • The child or young person HAS FUN. The child or young person has supportive friendships • The child or young person engages safely in leisure activities of their choice • The child or young person's ethnicity and heritage needs

	<p>are met</p> <ul style="list-style-type: none"> • The child or young person is able to express their ambitions for the future
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<p>Outcomes Tracker</p> <p>Children and young people are treated fairly and as an individual, taking full account of their abilities, special needs, disability, age, racial origin, sexual orientation, culture and language.</p> <p>Children and young people have increased independence and self reliance.</p> <p>Children and young people feel positive about their future and have ambition and aspiration with regard to where they want to be in life.</p>
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Service User Outcomes

- People who support me and non judgemental, non discriminatory and respectful in every way
- People who provide my support are aware they have very personal information about me and my family and they will treat this in confidence
- People who support me understand my cultural context.

Achieving Outcomes: Expectation of providers

The Provider must comply with the Equalities Act 2010 and demonstrate an active commitment to promoting and ensuring equality and diversity and preventing discrimination and unfair treatment in all of the Provider’s activities.

The Service should increase the access to children, young people and families who do not currently access ican2 activities.

Outcome Area 4:	Make a positive contribution
Service outcomes	<ul style="list-style-type: none"> • The child or young person’s views are sought, heard and contribute to decision-making • The child or young person makes informed choices • The child or young person’s social skills improve • The child or young person’s communication, skills, confidence and self esteem improve • The child or young person develops positive relationships and friendships

<p>Outcomes Tracker</p> <p>Children and young people develop personally and socially.</p> <p>Children and young people are happy and have pride in their achievements.</p> <p>Children and young people know what their support plan is and are actively involved in their care planning/transition processes and decision making.</p> <p>Children and young people have a range of age appropriate social life, independent living skills and an understanding of their rights and responsibilities.</p>
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Children and young people make a positive contribution to their community.

Service User Outcomes

- If you need to make changes in my support you need to let me/my family know in good time and make sure I am aware of the changes.
- I/my family want to be involved in the decisions about my support and would like to have some say in who provides my care and how.
- I want to be able to change my mind/my family's mind about how my support is provided and who provides it.
- I am/my family is confident about making complaints about my support.
- My cultural needs are understood and met.

Achieving Outcomes: Expectation of providers

The Provider is expected to ensure that children, young people and their families accessing the Service are able to inform the Provider that the Service satisfactorily meets their needs. The Provider will ensure that children, young people and their families are consulted and can use a range of methods to consult. A summary of findings are to be sent to the Council's Vulnerable People Commissioning Team annually.

Outcome Area 5:	Achieve Economic Well Being
Service outcomes	<ul style="list-style-type: none">• There is an improvement in the child or young person's practical life skills.

Outcomes Tracker

Children and young people are ready for transition and ready to move on.

Children and young people are equipped to successfully deal with significant changes.

Children and young people can manage their own finances safely and responsibly.

Service User Outcomes

- To feel positive about my future and have ambitions and aspiration.

Achieving Outcomes: Expectation of support providers

The Service will provide adequate arrangements to meet the transport requirements of the Service user. Transport arrangements will be detailed within the individual care and support plan and where relevant will be detailed in the service users Individual Service Agreement.

The Provider is to produce a report of the ongoing progress made against the Service user's desired outcomes to The Council's Vulnerable People Commissioning Team. This report will be shared with the relevant agencies as The Council considers relevant.

An individual summary outlining how the outcomes for each child or young person have been met has to be submitted for the review meeting/quality monitoring visit if requested. Timescales for submission of information will be agreed by the parties. Ongoing liaison and communication will be held between the Council and the Provider regarding the support required/provided.

A.5.2 Continual Service Improvement Plan

The Provider will be required to provide monitoring data reports as required to evidence their achievement of the required outcomes as outlined within the contract terms and conditions. Monitoring information must be provided to the Council by agreed deadline dates and in the agreed format. The Provider will be required to evaluate the Service throughout by gaining the views of children, young people and their parents and carers.

Performance Management Information	How this will be measured	Frequency
Outcomes	Monitoring report including missed calls information for both parties	As Required
	Monitoring meetings including a report on service provision and activities	Frequency will depend on volume of service delivery, e.g. less than 20 hours per week – yearly, more than 20 hours per week 6 monthly.
	Observation visits by T&W Council Officers	Ad hoc
	Evaluation Questionnaires with children and young people and parents and carers	Annually
	Feedback/Complaints received from children/young people, parents and carers	Throughout the period of the contract

Monitoring Quality and Performance – (Adults)

B.1 Principles

The Council will adopt a risk analysis approach to contract monitoring, alongside performance improvement requirements to ensure safe Services are delivered.

B.2 Process

B.2.1 INFORMATION PROVISION AND DESK TOP MONITORING

The Council's Quality Monitoring Officers will undertake the work relating to monitoring and evaluating delivery of the Service.

The Council will require Providers to complete a quarterly return (Annexe 1) setting out evidence of meeting the Service Quality Targets & Requirements described within the Specification.

The Council will validate this information using the data sources cited alongside each Service Quality Targets and Requirement and any additional data source that the Council feels can contribute to this validation work.

Service Quality Targets: Where Service Quality Targets are not met, an Improvement Plan will be developed to rectify the defaults.

Service Quality Requirements: Service Quality Requirements will be scored as follows:

- 1: Not met or high likelihood that the Service is not meeting this Service Quality Requirement.
- 2: Partly met or some likelihood that the Service is not meeting this Service Quality Requirement
- 3: Met or high likelihood that the Service is meeting this Service Quality Requirement.

Where the score falls below a threshold level the Council will undertake a monitoring visit and/ or additional monitoring activity.

B.2.2 MONITORING VISITS AND ADDITIONAL MONITORING ACTIVITY.

The Council activities included within a monitoring visit (announced or unannounced) or additional monitoring may included:

- Undertake a visit to the registered or local office
- Speaking to staff, carers, Service Users, or their friends and family
- Requesting addition information regarding any aspect of delivery of the service.

- Securing views or data from third parties who have involvement with the Service eg Healthwatch, NHS staff.
- Undertaking surveys or feedback events to focus on whether Service User Outcomes are being met. The Service User Outcomes will be selected from those listed in Annexe 2.

These activities will be used to, if required, further validate Service Quality Requirements and to determine whether the Provider is in default.

B.2.3 SECURING IMPROVEMENTS

The Improvement Plan will focus on remedying defaults:

Key features of the Improvement Plan will include:

- Agreeing the problem or problems to be addressed
- Agreeing what measures can be taken to resolve the problems
- Deciding who will undertake what actions, in what order, and by when
- Deciding how progress within the Improvement Plan will be monitored
- Determining how the effectiveness of the Improvement Plan can be measured
- Committing to communicating the wider learning outcomes from the Improvement Plan

Please return the completed above statistics quarterly to:
CommissioningAdults@telford.gov.uk

Please submit any additional information to support your quarterly return.

Any other electronic items being submitted with this quarterly return should be detailed below:

- 1
- 2
- 3
- 4
- 5

Any Other Comments you wish to add can be typed below, such as explanations for any of the results given.

Annex 2

<i>SU Outcome code</i>	<i>Service User Outcomes</i>	<i>Maintenance & Prevention</i>	<i>Change</i>	<i>Service Features</i>
SU1	I want you to be honest with me about my care and how it will be provided			X
SU2	I want to know what my care will cost me, and what the Council is paying for.			X
SU3	I want the option of receiving information by speaking to someone face to face.			X
SU4	Except when it is an emergency, if you give me information it needs to be at the right time for me.			X
SU5	Sometimes I want to share information and talk about with other people, especially if you want me to make a decision about something.			X
SU6	If you need to change the arrangements for providing my care, you need to let me know in good time to make sure I am aware of the changes	X		
SU7	I want to be involved in the decisions about my care – and would like to have some say in who provides my care and how.	X		
SU8	I want to be able to change my mind about my care and how it is provided or who provides it.			X
SU9	I want my paid care to work well with the things I can do for myself and care from my informal carers			X
SU10	I need to feel confident about making complaints about my care			X
SU11	I want my care to change if I make a complaint or suggestions that is valid.			X
SU12	I want help in a crisis or emergency	X		
SU13	I want to stay independent	X	X	
SU14	I want to stay in my own home as long as possible	X	X	
SU15	I want to maintain my friendships and be involved in what's going on	X		
SU16	My cultural needs should be understood and met			X
SU17	I don't want the care I receive to make me anxious or feel stressed			X
SU18	I want to be able to go to the toilet independently	X	X	
SU19	I want help staying as clean and	X	X	

	comfortable as a I choose to be			
SU20	My house and garden are as tidy as I want them to be	X		
SU21	I want to try and keep active	X		
SU22	I'm helped to manage my money safely	X		
SU Outcome code	Service User Outcomes (continued)	Maintenance & Prevention	Change	Service Features
SU23	I'm helped to make the most of my money and budget well	X		
SU24	I want my care to fit round my life			X
SU25	My risks of falling are explained to me	X	X	
SU26	I want my care to help me stay as independent as possible, but for you to understand I have good days and bad days	X	X	
SU27	My privacy and dignity must be respected at all times, even if I make light of my personal care as a way of coping			X
SU28	I want to be free from abuse			X
SU29	I want to feel safe and secure	X		
SU30	I want to know that I'm taking the right medication at the right time	X	X	
SU31	I am allowed to take risks	X		X
SU32	I feel safe getting out and about	X		
SU33	People who provide my care are non judgmental, don't discriminate and are respectful			X
SU34	People who provide my care respect my property and belongings			X
SU35	People who provide my care are aware that they have very personal information about me and they treat this in confidence.			X
SU36	People who provide my care treat me with kindness			X

Monitoring Quality and Performance – (Children)

- B1 The Provider is to ensure it complies with relevant registration and regulations and CQC Domiciliary Care National Minimum Standards, as applicable and any other registrations and regulations and subsequent amendments which may be released from time to time.
- B2 The Council shall undertake quality checks on the service being delivered through monitoring and evaluation or by whichever means it considers appropriate. This will also entail seeking assurance that there is involvement from stakeholders in service delivery and development.
- B3 The Service Provider must be able to demonstrate to the Council that it has a commitment to the quality of the Service and must allow the Council access to all records for the purpose of monitoring and complaint investigation at all times.
- B4 Confidentiality will be observed at all times however access to service user notes by officers of the Council should be made available by seeking permission from the Service User themselves or their relative/representative.
- B5 In order for the Council to monitor the quality and performance of the service, the Provider must have in place but are not limited to the following documents/ records and systems which enable it to:
- Check on whether it is delivering the Service in accordance with the Service Specification and their Outcomes.
 - Check whether it is doing this efficiently and effectively.
 - Check on whether Staff are provided with safe systems of work.
 - Check whether the Service is being delivered in a way which takes account of the Service User's needs and preferences and satisfaction.
 - Check to ensure that all records are up to date and relevant.
 - Check whether in the views of Service Users, Parents / Carers and the Council and other relevant agencies consider the quality of the Service or delivery can be improved.
 - To inform the Council of any notifications sent to CQC under RIDDOR.
- B6 In order to monitor the quality and performance of the service, the Council will arrange contract review meetings and/or quality monitoring visits in accordance

with Schedule C - Service specification Clause A.5.2 (Continual Service Improvement), the date time and venue to be agreed by the parties.

- B7 Providers will be required to submit information on service provision and outcomes for desktop analysis on request. It is expected that the provider will be pro-active in generating and utilising qualitative information to improve service outcomes and be pro-active in sharing this with the Council.
- B8 The Contract review meetings or quality monitoring visit will consider the following items:
- Details of service provision, including number of children and young people supported and support packages.
 - Service and service user outcomes.
 - Documented support plans with details of activities accessed and progression made.
 - Feedback from children and young people and their parents/carers on their evaluation of the service.
 - Evidence of liaison and engagement with health, education and social care.
 - Staffing, including recruitment, staff training, disciplinary issues etc.
 - Improvements or new initiatives to resolve difficulties or improve the service.
 - Providers own quality assurance systems.
 - Safeguarding issues or incident reporting.
 - Compliments and Complaints.
 - Outcomes of Regulatory Inspections resulting in notices of improvement and action planning (this should be reported to the Council within 24 hours of Inspection).
 - Copies of CQC Inspection Reports and Action Plans should be sent to the Council at cypcontracts@telford.gov.uk as soon as they are received by the provider.

(The above is not an exhaustive list of agenda items)

a. **Financial Provision**

Domiciliary Care for Adults:

C.1 Introduction

This schedule sets out the details relating to payment of Charges for the Services specific to Adult ISA's.

C.2 Brokerage

Purchasing of packages of domiciliary care will be made by the Brokerage Team.

Pricing will be requested by the Council on each Care Package on an individual basis via a mini-competition in accordance with Clause 18 (Mini-Competition Procedure). The mini competition procedure is part of the Brokerage Process (Appendix 1).

C.3 Mini-Competition Pricing

For avoidance of doubt: The tender bids for Care Packages as part of the Mini-Competition must include:

- Any travel expense that Provider Staff incur such as mileage or public transport relating to travel between care calls (see below)
- Costs associated with the specific durations of care that the Council has requested.
- Costs associated with the specific times that the Council has requested, reflecting where appropriate; weekdays, weekends, bank holidays and night times.
- All other costs associated with delivering the Service

Travel: The inclusive average hourly rates shall be inclusive of mileage undertaken by the Providers Staff in travelling between visits. Tenders submitted to the Council must be made on this basis. Where the Council requires travel to be undertaken for or on behalf of Service Users ("Socialisation Mileage"), as part of their Care & Support Plan, this will be set out separately and should be quoted for accordingly within the tender

Inclusive bids:

C.4 Invoicing and Payment

Invoicing and payment will be in accordance with the provisions of Clause 28 (Financial Arrangements) and Clause 29 (Payments and VAT)

Payment arrangements for each Provider will be either invoice based or non-invoice based. The Council will determine the most appropriate arrangement with the Provider following award of contract.

C.4.1. Invoice based payments

Invoices must be submitted 4 weekly in arrears (with weeks running Monday to Sunday), within 10 days of the end of the preceding 4 week period.

The Council will make payment within 30 days of receipt of invoice. Payments will be made by BACS transfer.

Prompt payment is only possible where invoices are submitted using the template attached at Appendix 2, and e-mailed to:

AdultSocialCare.PaymentsTeam@telford.gov.uk

C.4.2. Non-invoice based payments

The Council shall pay the Charges to the Provider monthly in arrears.

The Council shall pay the Charges by BACS transfer to the Provider's bank account.

The Council will indicate the Service Users to whom the Charges relate, and the associated hours of Service commissioned, by way of a schedule included with the remittance advice. The Provider shall amend the schedule to reflect actual hours delivered where these are different to those commissioned. The Council shall amend the payments in accordance with the amendments to the schedule.

C.4.3 Disputed invoices and payments

Where invoices do not match the Charges associated with the ISA via the mini-competition procedure the Adult Social Care Payments Team will contact the Provider and refer to the Care Package Request Form, Provider Response Section to clarify expectations.

Where the Provider believes that Charges paid do not reflect the Services delivered, or the amendments, the Provider may contact the Adult Social Care Payments Team to discuss the discrepancy.

If differences of opinion relating to payments and invoices cannot be resolved the matter will be referred to the Team Leader of the Adult Social Care Payments Team. If the invoice remains in dispute beyond this point, the provisions of Clause 80 Dispute Resolution will apply.

C.5 Review of ISA Charge

At the start of each Financial Year the monetary value of all ISA's will be reviewed in accordance with Clause 32 (Charges Review)

The arrangements set out in Brokerage Process: Awarding ISA's for Care Packages shall be followed where the following occur:

- Change in need (validated by a Review) of the Service User,
- Request by the Service User for a change of Provider,
- Request by the Provider for an increase in payment for an ISA
- Scheduled Review or Unscheduled Review of Service Users needs

ISA terminations and variations associated with the above will be in accordance with the provisions of the Terms and Conditions of the ISA and the Spot Purchasing Agreement.

Appendix 1: DRAFT

Brokerage Process: Role of Brokerage Team

The Brokerage Team are a specialist team whose brokerage role, with respect to this Spot Purchasing Agreement, is to purchase best price packages of care from the market.

The Brokerage Team will contact Providers regarding packages of care for:

- People who require long term care and support
- People who require short term care and support
- People who are being discharged from hospital and require Enablement Care
- People who are currently in receipt of short term Enablement Care from the Council's in-house Enablement Team
- Older People (aged over 65), Younger Adults (18-65)
- People who have Specialist Care needs including adults who have learning disabilities, physical disabilities, mental health care concerns, abuse substances, who have dementia, who need Palliative Care.

Brokerage Process: Awarding ISA's for Care Packages

The Brokerage Team will contact Providers via e-mail (in the majority of cases), attaching a Care Package Request Form (Schedule J). The Care Package Request Form will include a schedule setting out the tasks that are to be undertaken, the preferred times for this work, the duration of each visit, and the type of care required. The deadline for responses will also be set out. Providers are required to complete the response sheet and return this by e-mail: Where Providers are unable to undertake visits at exactly the times requested; the closest times that can be scheduled should be indicated.

All prices quoted should include mileage that Provider Staff undertake to travel between visits. Where mileage needs to be undertaken as part of a Care Package on behalf or with the Service User, the Care Package Request Form will indicate the mileage to be undertaken, and this cost should be set out separately.

The prices submitted will be used to support the decisions regarding funding and authorisation of the package. For this purpose the lowest priced tenders will be used. This work will take the value of the personal budget into account.

The Provider who can best meet the criteria in accordance with Clause 18 Mini-Competition Procedure will be awarded the ISA.

Following agreement and confirmation of the personal budget and funding, and the Care & Support Plan, the Brokerage Team will contact the Provider to whom the ISA is to be awarded to secure verbal agreement on the tendered price submitted and ensure availability of the Service. Following verbal agreement of Service the Care & Support Plan will be sent through to the Provider via the Councils secure system. The ISA will be completed and sent to the Provider. The ISA must be signed and

returned to the Council: Once authorised the Provider copy of the ISA will be sent back out to the Provider.

Financial assessment work will be triggered as part of the community care process and will be used to advise the Service User of any contributions they must make to the cost of their care.

The Provider will commence delivery of the Service from the date set out in the ISA.

Brokerage Process: ISA's

There are a number of circumstances that may result in further brokerage activity by the Brokerage Team:

- Request by the Service User for a change of Provider,
- Change in need (validated by a Review where necessary) of the Service User. This includes changes during any period of Enablement Care.
- Scheduled Review or Unscheduled Review of Service Users needs
- Request by the Provider for an increase in payment for an Existing Contract

Taking into consideration these circumstances:

Where:

- ***The Service User has requested a change in Provider:***
- ***Where the Service Users needs have changed, and the Service User is in agreement with a change to their Provider:***
- ***Where the Provider has requested an increase in payment for an ISA and the Service User is in agreement with a change of Provider:***

The Care Package will be brokered in accordance with the process set out above. If a lower price can be secured from another Provider the ISA will be terminated.

Where the Provider has requested an increase in payment for an ISA and the Service User wishes to retain their existing Provider: The Brokerage Team will secure a price via the brokerage process set out above for awarding ISA's for Care Packages. If a lower price is secured from an alternative Provider than that sought from the existing Provider, and the existing Provider is unable to match this price, and no additional funding can be obtained, the ISA may be terminated.

Where the Service Users needs have changed and the Service User wishes to retain their existing Provider:

Enablement Care and Palliative Care: The tendered price relating to the ISA will be used by the Brokerage Team to determine the price for the amended Service resulting from the change in need. If the Provider will not accept the price associated with the amended Service the Care Package will be brokered as set out above for awarding ISA's for Care Packages. If a lower price is secured from an

alternative Provider than that sought from the existing Provider the ISA may be terminated.

Non Specialist Care and Specialist Care excluding Enablement Care and Palliative Care: The Brokerage Team will secure a cost via the brokerage process set out above for awarding ISA's for Care Packages. If a lower price is secured from an alternative Provider than that sought from the existing Provider, and the existing Provider is unable to match this price, and no additional funding can be obtained, the ISA may be terminated.

Domiciliary Care and Support for Children:

C1 Introduction

- C.1.1 This schedule sets out the details relating to what the Council will pay for domiciliary care and support and how payments will be made.
- C.1.2 Additionally the payments to Providers will be made in accordance with relevant sections of the terms and conditions of this Agreement, namely Part 4: Charges & Payment.
- C.1.3 All costs associated with the provision of support will be those identified in the service users ISA and no other additional costs will be charged to the Purchaser and are deemed to be inclusive of all costs incurred in providing the Service. This cost will not include socialisation mileage; this will be paid as per clause (C4 Travel) below
- C.1.4 Where a change in the care and support package has been agreed by all parties the cost of this will be reflected in the ISA variation and submitted to the Provider.

C2 Brokerage

Purchasing of packages of Domiciliary Care/support will be made initially from the Council's Domiciliary Care Framework. However, there may be occasions when this process has been exhausted, or due to Service Users choice, to purchase Domiciliary Care on a spot contract basis. This Agreement covers the purchasing of care made on a spot contract basis.

Pricing will be requested by The Council on each brokered package of Domiciliary Care/support on an individual basis via a mini-competition via the Telford & Wrekin Brokerage function.

C3 Price

The price that the Council pays for each ISA (Individual Support Agreement) that it places will depend on the outcome of the Brokerage team.

C4 Travel

Tendered bids as part of the Mini-Competition process shall be inclusive of mileage undertaken by the Providers care workers in travelling between visits. Quotes provided to the Council must be made on this basis.

Where the Council requires travel to be undertaken for or on behalf of Service Users (often referred to as "socialisation mileage"), part of their Support Plan, this will be set at a separate rate £0.33p per mile

C5 Inclusive Price

For avoidance of doubt: The price bid for individual packages must include:

- Any travel expense that you will incur such as mileage or public transport relating to travel between care calls
- Costs associated with the specific durations of care/support that the Council has requested.
- Costs associated with the specific times that the Council has requested, reflecting where appropriate; weekends, bank holidays and night times.
- All other costs associated with delivering the Service.

C6 Invoicing and Payment

Arrangements for invoicing and payment are in accordance with Part 4 Charges and Payment, Clause 29 (Payment and VAT) of the terms and conditions of this Agreement. Summary information as follows;

Invoices will be submitted 4 weekly in arrears, within 10 days of the end of the preceding 4 week period.

The Council will make payment within 30 days of receipt of invoice. Payments will be made by BACS transfer.

Payment is only possible where invoices are submitted to the address below

Invoice to be submitted to:

Senior Business Support Officer
Disabled Children's Team
Telford & Wrekin Council
Darby House
2nd Floor B Wing
Lawn Central
Telford TF3 4JA

C7 Disputed Invoices

Where invoices do not match the service requirements associated with the ISA the Council will contact the provider and refer to the current and relevant contract to clarify expectations. If the matter cannot be resolved the matter will be referred to the Brokerage Team Leader.

If the invoice remains in dispute beyond this point, the dispute resolution process within the terms and conditions of this agreement will be followed Clause 80 (Dispute Resolution)

C8 Review of Contract Price

The price of Existing Care/ Support Packages will be reviewed in accordance with Part 4 Charges and Payments, Clause 32 (Charges Review).

The following occurrences;

- Change in need (validated by a Review) of the Service User,
- Request by the Service User for a change of Provider,
- Request by the Provider for an increase in payment for an Existing Contract
- Scheduled Review of Service Users needs

Schedule D Disclosure and Barring Service

The Disclosure and Barring Service (formerly Criminal Records Bureau) and Related Requirements

D.1 The Provider shall (at its own expense) comply with the following requirements of this clause which shall (unless otherwise agreed in writing by the Council) apply to all Staff who are engaged by the Provider in either, the management of the Services, or the face to face delivery of Services to any of the Service Users, or who otherwise have access to personal information about any of the Service Users pursuant to the operation of the Contract:

D.1.1 Within ten (10) Working Days of being requested to do so by the Council, the Provider shall supply the Council with a list detailing the full names and addresses of all Staff to whom this clause applies;

D.1.2 The Provider shall not permit any person to whom this clause applies to be engaged in the delivery of the Services at any time, unless the Provider has obtained the following disclosures in relation to each of the members of Staff in question (which in each case in relation to sub-clauses (a) and (b) respectively, must not either, have been undertaken more than six (6) months prior to commencement of their employment by the Provider, or have been undertaken more than three (3) years previously):

D.1.2.1 a clear Enhanced Disclosure from the DBS;

D.1.2.2 a disclosure from the DBS which confirms that the person in question is not included on the Protection of Vulnerable Adults (POVA) list;

D.1.2.3 a satisfactory certificate of good conduct (applicable to foreign nationals employed by the Provider).

D.1.3 Within (1) month of the date of the formation of this Contract (time being of the essence) the Provider shall also confirm in writing to the Council's Representative that those members of Staff to whom this clause applies have secured the clearances specified in sub-clause 0.

D.1.4 The Provider shall adhere to the 'Code of Practice and Explanatory Guide for Registered Persons and other recipients of Disclosure Information' which has been published by the DBS under Section 122 of the Police Act 1997.

D.1.5 The Provider shall immediately serve Notice on the Council's Representative in writing if, at any time during the Term, it comes to the attention of the Provider that any member of Staff has been convicted of any criminal offence which has not previously been notified to the Council by the Provider at any time during the Term.

D.2 The Council reserves the right to verify the existence and/or substance of any

DBS disclosure, or criminal record, or POVA list disclosure, or certificate of good conduct, in relation to any member of Staff (in order to confirm the Provider's compliance with clause 0) and the Provider shall co-operate fully and promptly with the Council in good faith, to enable the Council to do this.

- D.3 Where either, it is established that any member of Staff has either, a criminal conviction, or a DBS or other disclosure, which raises concerns, then the Provider shall seek authorisation from the member of Staff in question to allow the details of their conviction/disclosure/certificate (as applicable) to be shared with the appropriate officers of the Council, to enable the Council to determine whether or not it is appropriate for that member of Staff to be engaged by the Provider in the provision of the Services.
- D.4 The Council reserves the right to serve Notice on the Provider at any time during the Term in order to either refuse permission, or withhold permission, or revoke permission, for either the deployment, or the continued deployment, by the Provider of any member of Staff in relation to the provision of the Services, if in the opinion of the Council their deployment or continued deployment pursuant to this Contract would be undesirable (subject to clause 0).
- D.5 Any decision by the Council under clause 0 shall be final, conclusive and binding on the Provider and the Council shall not (unless it is willing to do so voluntarily, at its absolute discretion) be required, at any time, to disclose to the Provider the reasons for its decision (subject only to clause 0).
- D.5 The Council agrees not to act unreasonably or vexatiously in the application of clauses 0 and 0 respectively.
- D.6 The Provider shall pay and bear (upon demand) any costs which are incurred by the Council as a consequence of the Council issuing any Notice or instruction under this Schedule D (acting reasonably) or otherwise due to the making and implementation of any decision by the Council under this Schedule D.

c.

TUPE

E.1 If the Council has notified the Provider that it intends to tender or retender any Services, the Provider must within 20 Working Days following written request (unless otherwise agreed in writing) provide the Council with anonymised details of Staff engaged in the provision of the relevant Services (the Staff List) who may be subject to TUPE. The Council shall be permitted to use and disclose the Provider's Staff List for informing any Tenderer or other prospective Replacement Provider for any services which are substantially the same type of services (or any part thereof) as the Services. On reasonable request by the Council the Provider shall provide the Council or at the request of the Council, the Replacement Provider, with access (on reasonable notice and during normal working hours) to such employment records necessary (and provide copies) as the Council reasonably requests.

E.2 The Provider warrants that the Providers Staff List will be true and accurate in all material respects.

E.3 The Provider must indemnify and keep indemnified the relevant Commissioner and at the Co-ordinating Commissioner's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this clause.

E.4 During the 3 months immediately preceding the expiry of this Spot Purchasing Agreement or at any time following a notice of termination of this Spot Purchasing Agreement or of any 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 Services or the relevant 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 by more than 5% (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; and/or

(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.

E.5. The Provider shall indemnify and keep indemnified the Council and, at the Council's request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any Losses in respect of:

(a) the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any sub-contractor;

(b) claims brought by any other person employed or engaged by the Provider and/or any sub-contractor who is found to or is alleged to transfer to the Council or new provider under TUPE; and/or

(c) any failure by the Provider and/or any sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Council or new provider.

E.6. The Council must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Spot Purchasing Agreement or of any Service will indemnify and keep indemnified the Provider and/or any sub-contractor against any Losses in respect of:

(a) any failure by the new provider to comply with its obligations under TUPE in connection with any Relevant Transfer under TUPE to the new provider;

(b) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any Relevant Transfer under TUPE to the new provider on expiry or termination of this Spot Purchasing Agreement or of any Service; and/or

(c) any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any Relevant Transfer under TUPE to the new provider on expiry or termination of this Spot Purchasing Agreement or of any Service.

d. _____

ISA No.	
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Individual Service Agreement For Adult Domiciliary Care

This Individual Service Agreement (ISA) dated _____ is made between the **Borough of Telford & Wrekin**

[The Council] and _____ [The Provider].

In consideration for the payments outlined in this ISA, the Provider agrees to provide care to the Service User subject to the provisions of the applicable Agreement (as identified within Authorising Signature below).

The Service User's care needs as described in their Care and Support Plan and agreed by the Provider shall be met by the Provider and in accordance with the Individual Service Agreement, the applicable Agreement (detailed below) and associated schedules.

Service User Details

Name:		CareFirst No:	
Address:		Postcode:	

Assessment & Care Management Team Details

Care Manager:		Team/Budget Code:	
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Service Agreement Schedule and Payments

Service Start Date:				Completion Date (if known)	Ongoing	
Service Type:	Time:	Duration:	No. Carers:	Days / Week:	Unit Cost:	Total Weekly Cost £
					Total	

Authorising Signatures

The Provider and the Council agree to the support of the above named Service User in accordance with the details set out above, the terms and conditions overleaf and the terms, conditions and schedules of:
(please tick one)

The Telford & Wrekin Council's Domiciliary Care Preferred Provider Framework:

The Telford & Wrekin Council's Spot Purchase Agreement for Domiciliary Care:

Signed on behalf of Provider:		Print Name:	
Signed of behalf of the Council:		Print Name:	

Brokerage and contract queries to personalbudgetsupportteam@telford.gov.uk

Once you have accepted and signed your contract please return to:

SDS & Brokerage, Telford & Wrekin Council, 4A Darby House, Lawn Central, Telford, TF3 4NA

Terms & Conditions

1. The Parties shall act at all times in relation to the relevant Agreement (Provider Framework or Spot Purchase Agreement – as indicated overleaf) and each ISA in good faith in order to meet the needs of the each Service User. When an ISA is to be terminated, both parties shall support a smooth transition of care arrangement for Service Users. Spot Purchase Agreements are used when it is necessary for the Council to spot purchases from care agencies not on the Council's Framework Agreement. .

2. Termination of the ISA

This ISA will terminate on the date specified where a termination date is included in the ISA

This ISA may be terminated by the Council or the Provider on the following terms:

- On the giving of no less than 5 Working Days notice where the Provider holds no more than two ISAs for the provision of Non-Specialist Care and where there is no significant change in the level or type of Services set out in the ISA.
- On the giving of no less than 15 Working Days notice where between three and ten ISA's are being terminated within a 5 Working Day period
- On the giving of no less than 40 Working Days notice where between ten and twenty ISA's are being terminated within 5 Working Day period
- On the giving of no less than 60 Working Days notice where more than twenty ISA's are being terminated within a 5 Working Day period
- On the giving of no less than 2 Working Days notice where the ISA is for the provision of Enablement Care and where there is no significant change in the level or type of Services set out in the ISA
- On the giving of no less than 10 Working Days notice where the ISA is for the provision of Specialist Care where there is no significant change in the level or type of Services set out in the ISA

The ISA will be terminated by the Council with immediate effect on the death of a Service User.

The ISA will be terminated with immediate effect by the Council or the Provider as appropriate by either Party giving Notice to the other as follows

- Where the Provider is in Material Breach of the Framework Agreement
- By agreement of the Parties if a significant risk to the Service User cannot be adequately managed by the Provider.
- By agreement of the Parties if the Service Users needs cannot be met by the Provider.
- Where there is a significant change in the Service Users need such that the Services secured via this ISA no longer reflect the times, tasks and care type that will meet the Service Users needs

Payment shall cease at the end of the relevant notice period.

3. Variation

Any Variations to this ISA shall only be made if agreed by the Parties in writing and annexed to this ISA and dated and accept as otherwise provided shall take effect for such date. The provisions of Clause 56 Variation of the Framework Agreement shall apply.

4. Non delivery of Service

If for any reason the Provider is unable to provide Services to the Service User the Provider must inform the Council through the designated Council's Representative or such other person the Council elects (advised to the Provider) as soon as is reasonably practical, but in any event no later than 24 hours after having been unable to attend the Service User.

5. Access to Premises

Where agreed by the Parties the Provider will ensure that arrangements are made with the Service User for access to the Premises. If the Provider or any persons hold the key, or arrange any other form of access, to any Premises it must be with the Providers consent.

6 **Suspension**

The Council may suspend the Services under this ISA where Service Users cannot avail themselves of the Services for a period of time (for example hospital attendance, holidays, and respite service).

Where the Service Users is admitted to hospital the Service will be suspended from the time and date that the Service User is admitted to hospital.

Where the Service User is unable to avail themselves of the Services for a period of time for reasons other than admittance to hospital the Services will be suspended with immediate effect by the Council giving Notice to the Provider.

The Provider agrees to reinstatement of any suspended Service to commence at the Council's discretion (acting reasonably)

7 Entering into a Spot Purchase Agreement with the Council does not entitle the Provider to be included in the Provider Framework or any subsequent mini competition relating to the Provider Framework.

ISA Adults – 2014-15

Appendix 1 – ISA for Adults’ Domiciliary Care

Appendix 1(a) – Care Package Request Form



Care Package Request Form

Client ref: **Date:** **Time:**

Cut Off Date/Time:

Outline details of a package of care, for which a provider is being sought, are given below. If you are able to offer a service please respond before the cut off date and time stated. You should respond by completing the appropriate sections of the form and e-mail the completed form to PersonalBudgetSupportTeam.telford.gov.uk

If you are unable to offer a service, or are not able to meet the requested times please do not reply to this email.

SECTION	DETAIL	INDIVIDUAL DETAIL
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Requester Information	<i>PBS Worker Name</i>	
	<i>Contact telephone number</i>	

Client Information	<i>CareFirst number</i>	
	<i>Age range</i>	Under 65: <input type="checkbox"/> 65 or over: <input checked="" type="checkbox"/> X
	<i>Area</i>	
	<i>Postcode</i>	
	<i>Gender</i>	

Request Info	<i>Interim Service? (Yes / No)</i>	
	<i>Single / Double-Up / Mixed</i>	
	<i>Package start date</i>	
	<i>Package end date (if applicable)</i>	
	<i>Medication required?</i>	Prompt <input type="checkbox"/> Assist <input type="checkbox"/> Administer <input type="checkbox"/>

	<i>Carer gender required (if specified)</i>
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Provider Requirements: This section details what information the person or company providing your care might need to know.	
Specific Training areas e.g.: stoma care, epilepsy, catheter care etc	
Medication This information is only to be used for medication prompts. All medication information should be gained from GP.	
Equipment e.g. What has been supplied and what is still on order	
Moving and Handling requirements e.g. cannot use stairs, two to move and handle.	
Who lives in the property with you: e.g. Partner, siblings, other No names required	
What is most important to you about how your care is delivered? e.g. carers are on time, regular group of the same carers etc.	
Do you have any allergies?	
Do you have any likes or dislikes that a carer should know? e.g. <i>privacy issues in the shower, how you like your meals prepared etc</i>	
Is there anything we need to know about, capacity, behaviour or/and cultural issues?	
Are there any access requirements? e.g. <i>Key Box, wait for dog to be put in garden, use intercom, give plenty of time to answer door etc</i>	
Bariatric Needs e.g. <i>are there any specialist requirements in relation to bariatric needs</i>	
Specific/Other relevant information	

Care Package Detailed Requirements

DAY	Early Morning	Mid Morning	Lunch Time	Mid Afternoon	Tea Time	Evening	Night	Total Hours
Monday								
Tuesday								
Wednesday								
Thursday								
Friday								
Saturday								
Sunday								
Other Care Needs								
Total Weekly Hours								

Provider Response for reference

Provider information	Provider name	
	Contact name	
	Contact telephone no	

PER WEEK	hours/no	hourly rate £	£ total
Weekday hours			£
Weeknight hours			£
Weekend day hours			£
Weekend night hours			£
Weekday 3/4 hours			£
Weeknight 3/4 hours			£
Weekend day 3/4 hours			£
Weekend night 3/4 hours			£
Weekday 1/2 hours			£
Weeknight 1/2 hours			£
Weekend day 1/2 hours			£
Weekend night 1/2 hours			£
Weekday 1/4 hours			£
Weeknight 1/4 hours			£
Weekend day 1/4 hours			£
Weekend night 1/4 hours			£
Sleep in night rate weekday			£
Sleep in night rate weekend			£
Waking Night rate weekday			£
Waking Night rate Weekend			£
TOTAL WEEKLY COST OF CARE		£	

Provider Quote	Cost per week quote	
	Cost per year quote (inc. Bank Holidays)	
	Mileage cost per week	
	Mileage cost per year	
	Carer gender	
	Other relevant information	

Provider Declaration	We confirm that we can meet the call times as stated on the Request Form	YES/NO*
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	We confirm that we can meet the specialist needs stated on the Request Form	YES/NO*
	We can meet the package requirements as set out and can commence care on / /	

**please delete as appropriate*

Thank you for your interest. Please now return this completed form by e-mail to register your offer.

- The PBS worker will contact you if this offer is to be considered further.
- If you do not receive an initial contact from the broker within 24 hours of the cut-off date / time above, this means that your offer is not being considered further.
- A copy of the support plan will be sent to the successful candidate.

*Personal Budget Support Team,
Telford & Wrekin Council
Central tel no: 01952 388816,
Central email: PersonalBudgetSupportTeam@telford.gov.uk*

DRAFT INDIVIDUAL SUPPORT AGREEMENT (ISA) FOR SHORT BREAKS

Subject to the provisions of the Spot Purchasing Agreement the terms of which are expressly incorporated into this ISA by reference.

2. CHILD'S DETAILS

FAMILY NAME:							
FIRST NAME:							
KNOWN AS (IF APPLICABLE):							
CHILD PERSONAL IDENTITY NUMBER:							
CHILD UPRN (IF DIFFERENT):							
DATE OF BIRTH:		GENDER:	<table border="1" style="display: inline-table;"> <tr> <td>MALE</td> <td>FEMALE</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	MALE	FEMALE	<input type="checkbox"/>	<input type="checkbox"/>
MALE	FEMALE						
<input type="checkbox"/>	<input type="checkbox"/>						
DISABILITY:		SEN:					

3. Details of Support required

The named Child may not be moved to another support package changed by the Provider within or outside of the organisation without the prior written approval of the Purchaser.

3.1 Support Commencement Date:
(DD/MM/YYYY)

3.2 The Child will remain be resident at the following address.

Address :		
	Postcode:	
Telephone:		Fax:

Type And Level Of Provision:

<input type="checkbox"/> Support in home including personal care	<input type="checkbox"/> Specialist
<input type="checkbox"/> Support in the home without personal care	
<input type="checkbox"/> Support in the community including personal care	Specialist Care /Support will be categorised as:
<input type="checkbox"/> Support in the community without personal care	
<input type="checkbox"/> Overnight	<ul style="list-style-type: none"> • Children and Young People with complex disability with high risk factors • Children who have extreme challenging behaviour as a result of their disability/Health
<input type="checkbox"/> 2:1	
Please Provide Details Of:	
<ul style="list-style-type: none"> • The amount of support in hours • Pattern of support (I.E. Days/Periods When Provided) • Staff ratios agreed • Any transport arrangements (If any): 	

4. KEY CONTACTS FOR THE CHILD.

4.1 for the purpose of this ISA the named officers of the Purchasers are as follows:			
ALLOCATED SOCIAL WORKER / SOCIAL CARE CONTACT:			
Name:			
Team Name:			
Based At:	01952 567366		
Telephone:		Mobile:	
Fax:		E-Mail:	
ADVOCACY SERVICE CONTACT:			
Name:			
Based At:			
Telephone:		Mobile:	
Fax:		E-Mail:	
CONTRACTS OFFICER CONTACT:			
Name:	Darby House, Lawn Central, Telford. TF3 4JA		
Based At:	01952 381154		
Telephone:		Mobile:	None
Fax:			

4.2 For the purpose of this ISA the named officer (s) of the Provider are as follows:

PROVIDER CONTACT – CARE			
Name:			
Based At:			
Telephone:		Mobile:	
Fax:		E-Mail:	

PROVIDER CONTACT – FINANCE			
Name:			
Based At:			
Telephone:		Mobile:	
Fax:		E-Mail:	

5. The Expected Duration Of This Support And Outcomes For The Child :

The expected duration of this support is:	
---	--

5.1. Notwithstanding the requirements of the Contract Service Specification, the following specific outcomes are required to be achieved for the Child receiving the support service. Any additional resource / cost implications must be identified below in section 6.1.

Outcome:	Enjoy & Achieve <input type="checkbox"/>	Staying Safe <input type="checkbox"/>	Being Healthy <input type="checkbox"/>
	Economic Well Being <input type="checkbox"/>	Positive Contribution <input type="checkbox"/>	

6.1 THE CHARGES

£	Costs Per Hour
No other charges will be made in relation to this support agreement.	

Additional Services as detailed in Section 5.1, required to achieve Support Plan & Outcomes

Outcome / Description Of Service / Requirement:	
Review Date:	End Date:

6.2. Variations To This Individual Support Agreement

Variations to this ISA must be made in writing by the requesting Party and agreed by the Provider and the Purchaser in advance.

Any variations to costs must be signed by both Parties' Authorised Officers before additional costs will become payable under this Agreement.

7. Signatories To Agreement / Approval For Funding:

The Provider and Purchaser agree to the support of the named Child in accordance with the details set out above. For the purposes of this Individual Support Agreement, the Agreement Commencement Date is the date of actual start of the support. This condition and the Agreement in its entirety are not affected or altered in any way by the actual date of signature of this Agreement.

7.1	
TELFORD & WREKIN COUNCIL:	
Name:	
Position:	
Signature:	
Date:	

7.2		
PROVIDER:		WITNESS
NAME:		
POSITION:		
SIGNATURE:		
DATE:		

Terms & Conditions

- K.1 The Parties shall act at all times in relation to the Spot Purchasing Agreement and each ISA in good faith in order to meet the needs of each Service User. When an ISA is to be terminated, both Parties shall support a smooth transition of the care arrangements for each affected Service User.
- K.2 An ISA may end by the expiry of the period specified in the ISA or by termination on the following periods of notice in writing by either Party:
- one day if the Service User has been in receipt of the Service for seven days or less;
 - seven days if the Service User has been in receipt of the Service for more than seven days and less than twelve weeks; and
 - fourteen days if the Service User has been in receipt of the Service for more than twelve weeks and less than twelve calendar months.
 - twenty-eight days if the Service User has been in receipt of the Service for more than twelve calendar months.
- K.3 The Council may terminate the ISA by the giving of seven days' notice to the Provider, in the following circumstances:
- Following absence for a continuous period for seven days due to hospitalisation, unless the Provider and the Council agree otherwise;
 - Absence for a continuous period of seven days due to any other reason, unless the Provider and the Council agree otherwise.
- K.4 The ISA shall terminate automatically:
- if it is agreed in writing by the Parties that the Service User's needs, safety or welfare can no longer be met by the ISA and/or arrangements have irretrievably broken down;

- Immediately following death of the Service User;
- Fails to maintain Registration of service provision
- On termination of the Spot Purchasing Agreement unless otherwise agreed by the Parties.
- By agreement, or by reasonable notice from one Party (which is likely to be of immediate effect), the ISA shall terminate where both Parties agree or either Party reasonably believes that:
 - a risk assessment has concluded that significant risk cannot be adequately managed within the ISA;

Payment shall automatically cease at the end of the relevant notice period.

K.5 Call times and Missed Call

The Provider to ensure that the call times arranged for service user care and Support are recorded and executed.

If Service users are not at home or available for support hours then the provider must notify T&W Council to investigate and advise. Any undelivered hours which are not the fault of the provider **CAN NOT BE BANKED** by the service user if less than 24 hours notice has been given. Hours **CAN BE BANKED** where 24 hours notice is given to the provider.

If the provider has not attended then the provider must notify T&W Council with reasons for non attendance and may result in default.

Provider to suggest to Parent to contact T&W Council on advise on Direct payments (Personal budgets) whereby unused hours could be banked and used flexibly.

Service Users – If the Provider has not arrive to deliver arranged support hours or changed the call time then parents will notify T&W Council who will investigate and advise.

In these instances the ISA may be terminated at the discretion of The Council

K.6 Suspension

The Council reserves the right to suspend the Services under this ISA where Service Users can not avail themselves of the Services for a period of time (for example hospital attendance, holidays) by giving reasonable notice to the Provider and the Provider agrees to the reinstatement of any such suspended Services to commence at the Council's discretion (acting reasonably).

K.7 Variation of ISA

Variations of ISA agreements for services provided by the Provider shall be agreed and signed by both parties as a continuation of the ISA.

K.8 Transport

The Provider shall undertake all reasonable measures to ensure the safety of Children when being transported by the Provider's Staff.

The Provider shall ensure that account is taken of all risk assessments in respect of transporting the Children.

The Provider shall ensure that all drivers of Children have valid licences and current vehicle insurance appropriate to the type of transport being provided, have a current MOT certificate if appropriate and that the number of passengers shall never exceed the insured or licensed maximum.

Appendix 2 – ISA for Children’s Domiciliary Care

Appendix 2(a) – Referral Form



BROKERAGE NON ACCOMMODATION REFERRAL FORM

PART B – SERVICE REQUEST AND OUTCOMES TO BE ACHIEVED
(SEND THIS SECTION TO EXTERNAL PROVIDERS)

Child/Young Person Age		Gender	
Ethnicity		Religion	Culture
Language		Legal Status/Court Proceedings	

Date Placement Required		Projected Placement End Date	
Venue Required	Post Code:		
Reason for Service Request			
Service Type Required e.g. domiciliary care, therapy, counselling, parenting assessments, contact, escorts, family group conferencing, a day short break – in reach, outreach			
Essential Service Requirements and Desired Outcomes	1		
	2		
	3		
	4		
Support Requirements from Provider eg specific staff training, 1:1, 2:1			
Contact (please detail who the young person should and should not have contact with)			

PROFILE: RISKS & NEEDS	YES	NO	Please explain in more detail (indicate frequency, level, known triggers)	How will the provider address these needs (to be completed by provider)
Can the child/young person be placed with other children				
Can the child/young person be placed with animals?				
ATTACHMENT ISSUES				
BEHAVIOURS				
➤ Absconding				
➤ Verbal Aggression				
➤ Physical Aggression				
➤ Self Harm				
➤ Offending Behaviour				
➤ Alcohol & Substance Misuse				
➤ Fire Setting				
➤ Sexualised Behaviour				
➤ Vulnerability				
➤ Other				
SEXUAL EXPLOITATION				
TRAFFICKING				
PERSONALITY				
HEALTH ISSUES				
DISABILITY EQUIPMENT REQUIRED				
EDUCATION ATTENDANCE				
FAMILY INTERACTION				
CHILD/YOUNG PERSON'S WISHES				
BIRTH PARENTS' WISHES				
CHILD/YOUNG PERSON'S INTERESTS/HOBBIES				

Appendix 2(b) – Agreement to Vary ISA (Children)



AGREEMENT TO VARY THE INDIVIDUAL SUPPORT AGREEMENT (ISA)

THIS AGREEMENT is made between the **BOROUGH OF TELFORD & WREKIN** Family and Community Services, Darby House, Lawn Central, Telford, TF3 4JA and XXXXXXXXXXXX and is supplemental to the Contract Individual Support Agreement in respect of XXX XXXX dated XX XXXX, 2013 made between the parties to this Agreement.

The Council and the Service Provider agree that:

1. The Individual Support Agreement is varied as detailed below:

DETAILS OF VARIATION

2. The Individual Placement Agreement shall as from **XX XXXXX 2014** be deemed to have been varied to give effect to this Agreement and subject to such variation shall continue in full force and effect.

**SIGNED ON BEHALF OF
THE SERVICE PROVIDER**

**SIGNED ON BEHALF OF
BOROUGH OF TELFORD & WREKIN**

DATED: