



# **INSTRUCTIONS FOR BIDDING**

**EMC 008 – KEMPSFIELD RESIDENTIAL CARE  
FOR ADULTS WITH LEARNING DISABILITIES  
EXTERNALISATION**

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## **1.0 Invitation to Submit Outline Proposals**

- 1.1 You are invited to take part in a Competitive Dialogue Process for the provision of residential care services and future supported living services at Kempfield, Shrewsbury as detailed in the Invitation documents. It is envisaged that contract will be for an initial period of 5 years commencing on the 1 April 2015 with the option to extend up to the 31 March 2025.
- 1.2 Tenders are to be submitted in accordance with the Invitation to Submit Outline Proposals documents including contract documents and the instructions outlined within this document.
- 1.3 Bids must be submitted in accordance with the following instructions. Bids not complying in any particular way may be rejected by Shropshire Council (the Council) whose decision in the matter shall be final. Persons proposing to submit a Tender are advised to read the Invitation to Tender documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their Tender is accepted.
- 1.4 The Invitation to Submit Outline Proposal (ISOP) documents must be treated as private and confidential. Bidders should not disclose the fact that they have been invited to bid or release details of the ISOP documents other than on an "in confidence" basis to those who have a legitimate need to know or who they need to consult for the purpose of preparing the bid as further detailed in these Instructions for Bidding.
- 1.5 Bidders shall not at any time release information concerning the ISOP documents for publication in the press or on radio, television, screen or any other medium without the prior consent of the Council.
- 1.6 The fact that a Bidder has been invited to Bid does not necessarily mean that it has satisfied the Council regarding any matters raised in the pre-qualification questionnaire submitted. The Council makes no representations regarding the Bidder's financial stability, technical competence or ability in any way to carry out the required services. The right to return to any matter raised in any pre-qualification questionnaire submitted as part of the formal bid evaluation is hereby reserved by the Council.
- 1.7 The ISOP is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a bidder to submit a bid or enter into a Contract or any other contractual agreement.
- 1.8 Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council's involvement.

## **2.2 Terms and Conditions**

- 2.1 Every Bid received by the Council shall be deemed to have been made subject to the Contract Terms and Conditions provided and these Instructions for Bidding unless the Council shall previously have expressly agreed in writing to the contrary.

**2.2** The Bidder is advised that in the event of their Bid being accepted by the Council, they will be required to undertake the required services

### **3.0 Preparation of Bids**

#### **3.1 Completing the Response Document**

**3.1.1** Bids should be submitted using the Response Document provided following the instructions given at the front of the document. The Bidder's attention is specifically drawn to the date and time for receipt of Bids and that no submission received after the closing time will be considered.

**3.1.2** All documents requiring a signature must be signed;

- a) Where the Bidder is an individual, by that individual;
- b) Where the Bidder is a partnership, by two duly authorised partners;
- c) Where the Bidder is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.

**3.1.3** The ISOP Documents are and shall remain the property and copyright of the Council

#### **3.2 Bid Preparation and Costs**

**3.2.1** It shall be the responsibility of Bidders to obtain for themselves at their own expense all information necessary for the preparation of their Bid. No claim arising out of want of knowledge will be accepted. Any information supplied by the Council (whether in the ISOP Documentation or otherwise) is supplied only for general guidance in the preparation of Bids.

**3.2.2** Any Bidder considering making the decision to enter into a contractual relationship with the Council must make an independent assessment of the Bid opportunity after making such investigation and taking such professional advice as it deems necessary.

**3.2.3** Bidders will be deemed for all purposes connected with their Bid submission where appropriate to have visited and inspected the Council, its assets, all the locations in respect of the delivery of the services/works and to have satisfied themselves sufficiently as to the nature, extent and character of the services /works sought, and the human resources, materials, software, equipment, machinery, and other liabilities and other matters which will be required to perform the contract.

**3.2.4** The Council will not be liable for any costs incurred by Bidders in the preparation or presentation of their Bids.

**3.2.5** Bidders are required to complete all pricing schedules in the ISOP documents. The terms "Nil" and "included" are not to be used but a zero or figures must be inserted against each item. Unit rates and prices must be quoted in pounds sterling and whole new pence. All prices should be quoted net of VAT unless any element of VAT is unrecoverable from HMRC

- 3.2.6** It shall be the Bidder's responsibility to ensure that all calculations and prices in the Bid documentation are correct at the time of submission.
- 3.2.7** The Bidder is deemed to have made him/herself acquainted with the Council's requirements and bid accordingly. Should the Bidder be in any doubt regarding the true meaning and intent of any element of the specification he is invited to have these fully resolved before submitting his Bid. No extras will be allowed for any loss or expense involved through any misunderstanding arising from his/her failure to comply with this requirement.
- 3.2.8** Any Bid error or discrepancy identified by the Council shall be drawn to the attention of the Bidder who will be given the opportunity to correct, confirm or withdraw the Bid.
- 3.2.9** The ISOP Documents must be treated as private and confidential. Bidders should not disclose the fact that they have been invited to Bid or release details of the ISOP documents other than on an In Confidence basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the Bid.

### **3.3 Parent Company Guarantee**

It is a condition of contract that if the Bidding company is a subsidiary then its Ultimate Group/Holding Company must guarantee the performance of this contract and provide a letter to that effect signed by a duly authorised signatory of the Ultimate Group/Holding Company if requested to do so by the Council. Where the direct parent company cannot provide an adequate guarantee in the opinion of the Council, the Council will look to another group or associate company, with adequate assets, to be the guarantor. In cases where the contract is with a Joint Venture Company (JVC) or a Special Purpose Vehicle (SPV) company, which may have two or more parent companies and which may not be adequately capitalised or have sufficient financial strength on its own to support the risk and obligations it has under the contract, 'joint and several' guarantees / indemnities from the parent companies of the JVC or SPV may be sought.

### **3.4 Warranty**

The Bidder warrants that all the information given in their Bid and their Request to Participate Questionnaire is true and accurate. The information provided will be deemed to form part of any contract formed under this contract.

The Bidder warrants that none of their current Directors have been involved in liquidation or receivership or have any criminal convictions

### **4.0 Bid Submission**

- 4.1** Bids must be submitted strictly in accordance with the letter of instruction accompanying this ISOP using the label provided. Bids must be submitted by the deadline of **noon, Friday 29<sup>th</sup> August 2014. One hard copy and one CD copy of your Bid must be returned.**
- 4.2** No unauthorised alteration or addition should be made to the ISOP Documentation. If any such alteration is made, or if these instructions are not fully complied with, the Bid may be rejected.

- 4.3 Qualified Bids may be submitted, but the Council reserves the right not to accept any such Bid. The Council's decision on whether or not a Bid is acceptable will be final.
- 4.4 Bidders should note that their Bid must remain open and valid and capable of acceptance for a period of at least 90 days.
- 4.5 Bidders should note that Bids and supporting documents must be written in English and that any subsequent contract, which may or may not be entered into, its formation, interpretation and performance, shall be subject to and in accordance with the laws of England and subject to the jurisdiction of the Courts of England and Wales.
- 4.6 Where bid submissions are incomplete the Council reserves the right not to accept them.

## **TUPE**

- 5.1 Bidders should note that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') will apply to this contract. Also compliance with the provisions in relation to Local Authority Pensions will also be required. Bidders are advised to seek their own legal advice about the practicality of these regulations and should reflect the financial implications of such a transfer in their bid submissions.
- 5.2 Details of employees of the Council who are currently carrying out the work that is included in the Contract can be obtained from the Procurement Team on the production of a signed TUPE Undertaking form provided as part of the ISOP Documents.

## **6.0 Bid Evaluation**

- 6.1 The Bidders may be asked for clarification of their bid or additional or supplemental information in relation to their bid.
- 6.2 If the Council suspects that there has been an error in the pricing of a Bid, the Council reserves the right to seek such clarification, as it considers necessary from the bidder in question.

## **7.0 Clarifications**

- 7.1 Bidders are responsible for clarifying any aspects of the bidding process and/or the ISOP documents in the manner described below.
- 7.2 Any queries arising in relation to this ISOP should be raised in writing with the Procurement Team (email: [procurement@shropshire.gov.uk](mailto:procurement@shropshire.gov.uk)) quoting the contract reference and title.
- 7.3 Where appropriate, the Authorised Officer named above may direct the Bidder to other officers to deal with the matter.

**7.4** All queries should be raised as soon as possible (in writing), in any event not later than **Friday 22 August 2014**.

**7.5** All information or responses that clarify or enhance the Bidding process will be supplied to all Bidders on a uniform basis (unless expressly stated otherwise). These responses shall have the full force of this Instruction and where appropriate the Conditions of Contract. If a Bidder wishes the Council to treat a question as confidential this must be expressly stated. The Council will consider such requests and will seek to act fairly between the Bidders, whilst meeting its public law and procurement duties in making its decision.

**7.6** Except as directed in writing by the Authorised Officer, and confirmed in writing to a Bidder, no agent or officer or elected Member (Councillor) of the Council has any express or implied authority to make any representation or give any explanation to Bidders as to the meaning of any of the ISOP Documents, or as to anything to be done or not to be done by a Bidder or to give any warranties additional to those (if any) contained in the ISOP or as to any other matter or thing so as to bind the Council in any way howsoever.

## **8.0 Continuation of the Procurement Process**

**8.1** The Council shall not be committed to any course of action as a result of:

- i) issuing this ISOP;
- ii) communicating with a Bidder, a Bidder's representative or agent in respect of this procurement exercise;
- iii) any other communication between the Council (whether directly or through its agents or representatives) and any other party.

**8.2** The Council reserves the right at its absolute discretion to amend, add to or withdraw all, or any part of this ISOP at any time during this stage of this procurement exercise.

**8.3** At any time before the deadline for receipt of bid returns the Council may modify the ISOP by amendment. Any such amendment shall be numbered and dated and issued by the Council to all participating Bidders. In order to give prospective Bidders reasonable time in which to take the amendment into account in preparing its Bid return, the Council may in its sole discretion, extend the deadline for submission of the Bid returns. The Council reserves the right to amend, withdraw, terminate or suspend all or any part of this procurement process at any time at its sole discretion.

## **9.0 Confidentiality**

**9.1** All information supplied by the Council in connection with or in these ISOP Documents shall be regarded as confidential to the Council unless the information is already within the public domain or subject to the provisions of the Freedom of Information Act 2000.

**9.2** The Contract documents and publications are and shall remain the property of the

Council and must be returned upon demand.

- 9.3** Bidders shall ensure that each and every sub-contractor, consortium member and/or professional advisor to whom it discloses these papers complies with the terms and conditions of this ISOP.
- 9.4** The contents of this ISOP are being made available by the Council on condition that:
- 9.4.1** Bidders shall at all times treat the contents of the ISOP and any related documents as confidential, save in so far as they are already in the public domain and Bidders shall not, subject to the provisions relating to professional advisors, sub-contractors or other persons detailed below, disclose, copy, reproduce, distribute or pass any of the contents of the ISOP to any other person at any time or allow any of these things to happen;
- 9.4.2** Bidders shall not use any of the information contained in this ISOP for any purpose other than for the purposes of submitting (or deciding whether to submit) the Bid; and
- 9.4.3** Bidders shall not undertake any publicity activity within any section of the media.
- 9.5** Bidders may disclose, distribute or pass this ISOP to their professional advisors, sub-contractors or to another person provided that:
- 9.5.1** this is done for the sole purpose of enabling a bid to be submitted and the person receiving the Information undertakes in writing to keep the ISOP confidential on the same terms as if that person were the Bidder; or
- 9.5.2** the Bidder obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the ISOP; or
- 9.5.3** the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract(s) which may arise from it; or
- 9.5.4** the Bidder is legally required to make such a disclosure.
- 9.6** The Council may disclose detailed information relating to the ISOP to its officers, employees, agents, professional advisors or Governmental organisations and the Council may make any of the Contracts and procurement documents available for private inspection by its officers, employees, agents, professional advisors, contracting authorities or Governmental organisations.

**9.7** **Transparency of Expenditure**

Further to its obligations regarding transparency of expenditure, the Council may be required to publish information regarding Bids, contracts and expenditure to the general public, which could include the text of any such documentation, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act to be determined at the absolute discretion of the Council.

**10.0** **Freedom of Information**



- 10.1** Please note that from 1 January 2005 under the provisions of the Freedom of Information Act 2000, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. One of the consequences of those new statutory responsibilities is that information about your organisation, which Shropshire Council may receive from you during this process may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.
- 10.2** In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the Act, Shropshire Council may consider it appropriate to ask you for your views as to the release of any information before we make a decision as to how to respond to a request. In dealing with requests for information under the Act, Shropshire Council has to comply with a strict timetable and it would therefore expect a timely response to any such consultation within five working days.
- 10.3** If, at any stage of this process, you provide any information to Shropshire Council in the expectation that it will be held in confidence, then you must make it clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as “commercial in confidence” will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.
- 10.4** Shropshire Council will not be able to accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.
- 10.5** In certain circumstances where information has not been provided in confidence, Shropshire Council may still wish to consult with you as to the application of any other exemption such as that relating to disclosure that will prejudice the commercial interests of any party. However the decision as to what information will be disclosed will be reserved to Shropshire Council.

For guidance on this issue see: <http://www.ico.gov.uk>

## **11.0 Disqualification**

- 11.1** The Council reserves the right to reject or disqualify a bid submission where:
- 11.1.1** The bidder fails to comply fully with the requirements of this ISOP or is in breach of of the Council’s General Terms and Conditions relating to Bribery and Corruption or is guilty of a serious or intentional or reckless misrepresentation in supplying any information required; or
- 11.1.2** The bidder is guilty of serious or intentional or reckless misrepresentation in relation to its bid return and/or the procurement process.
- 11.1.3** The bidder directly or indirectly canvasses any member, official or agent of the Council concerning the award of the contract or who directly or indirectly obtains or attempts to obtain information from any such person concerning any other Bid or proposed Bid for the services. The Canvassing Certificate must be completed and returned as instructed.

#### **11.1.4 The Bidder :**

- a) Fixes or adjusts the amount of his bid by or in accordance with any agreement or arrangements with any other person; or
- b) Communicates to any person other than the Council the amount or approximate amount of his proposed Bid (except where such disclosure is made in confidence in order to obtain quotations necessary for preparation of the Bid for insurance purposes); or
- c) Enters into an agreement or arrangement with any other person that he shall refrain from bidding or as to the amount of any Bid to be submitted; or
- d) Offers or agrees to pay or give or does pay or gives any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any bid or proposed bid for the services any act or omission.

**11.2** Any disqualification will be without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Bidder may attract. The Non-Collusive Bidding Certificate must be completed and returned as instructed.

**11.3** The Council reserves the right to disqualify an Applicant from further participating in this procurement process where there is a change in the control or financial stability of the Bidder at any point in the process up to award of a contract and such change of control or financial stability has a materially adverse effect on the Bidder's financial viability or ability to otherwise meet the requirements of the procurement process.

#### **12.0 E-Procurement**

As part of its procurement strategy Shropshire Council is committed to the use of technology that can improve the efficiency of procurement. Successful Bidders may be required to send or receive documents electronically. This may include purchase orders, acknowledgements, invoices, payment advices, or other procurement documentation. These will normally be in the Council's standard formats, but may be varied under some circumstances so as not to disadvantage small and medium suppliers.

#### **13.0 Award of Contract**

##### **13.1 Award Criteria**

The Award Criteria has been set out within the ISOP Documentation. The Council is not bound to accept the lowest or any Tender.

##### **13.2 Award Notice**

The Council will publish the name and addresses of the successful Bidder in the Official Journal of the European Union (OJEU) where appropriate. The Contracting

Authority reserves the right to pass all information regarding the outcome of the Bidding process to the Office of Fair Trading to assist in the discharge of its duties. Additionally, the Council will adhere to the requirements of the Freedom of Information Act 2000 and Tenderers should note this statutory obligation.

### **13.3 Transparency of Expenditure**

Further to its obligations regarding transparency of expenditure, the Council may also be required to publish information regarding bids, contracts and expenditure to the general public, which could include the text of any such documentation, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act to be determined at the absolute discretion of the Council.

### **14.0 Value of Contract**

Shropshire Council cannot give any guarantee in relation to the value of this contract.

### **15.0 Acceptance**

**15.1** Bids must be submitted strictly in accordance with the terms of the Council's ISOP documentation and acceptance of a bid shall be conditional on compliance with this Condition.

**15.2** The Bidder shall be prepared to commence the provision of the supply and services on the start date of the contract arrangement being **1 April 2015**.

### **16.0 Payment Terms**

**Bidders should particularly note** that the principles governing public procurement require that, as far as is reasonably possible, payments for Goods, Works or Services are made after the provision. Therefore any indication of a pricing strategy within a Bid which provides for substantial payments at the outset of the Contract will be examined carefully to decide whether or not a Bid in such form can be accepted. If in the opinion of the Council such substantial payments appear excessive in relation to the requirements of the Contract the Council reserves, without prejudice to any other right to reject any Bid it may have, the right to require the Bidder to spread such proportion of the costs as are considered excessive over the duration of the Contract.

### **17.0 Liability of Council**

**17.1** The Council does not bind himself to accept the lowest or any bid.

**17.2** The Council does not accept any responsibility for any pre-bid representations made by or on its behalf or for any other assumptions that bidders may have drawn or will draw from any pre-bid discussions.

- 17.3** The Council shall not be liable to pay for any preparatory work or other work undertaken by the Bidder for the purposes of, in connection with or incidental to this ISOP, or submission of its Bid response or any other communication between the Council and any other party as a consequence of the issue of this ISOP.
  
- 17.4** The Council shall not be liable for any costs or expenses incurred by any Bidder in connection with the preparation of a Bid for this procurement exercise, its participation in this procurement whether this procurement is completed, abandoned or suspended.
  
- 17.5** Whilst the ISOP Documents have been prepared in good faith, they do not purport to be comprehensive nor to have been formally verified. Neither the Council nor any of its staff, agents, elected Members, or advisers accepts any liability or responsibility for the adequacy, accuracy or completeness of any information given, nor do they make any representation or given any warranty, express or implied, with respect to the ISOP Documents or any matter on which either of these is based (including, without limitation, any financial details contained within the ISOP Documentation). Any liability is hereby expressly disclaimed save in the event of fraud, or in the event of specific warranties provided within the Contract Documentation.

**18.0 Declaration**

We, as acknowledged by the signature of our authorised representative, accept these Instructions for Bidding as creating a contract between ourselves and the Council. We hereby acknowledge that any departure from the Instructions for Bidding may cause financial loss to the Council.

Signed (1) ..... Status.....

Signed (2) ..... Status.....

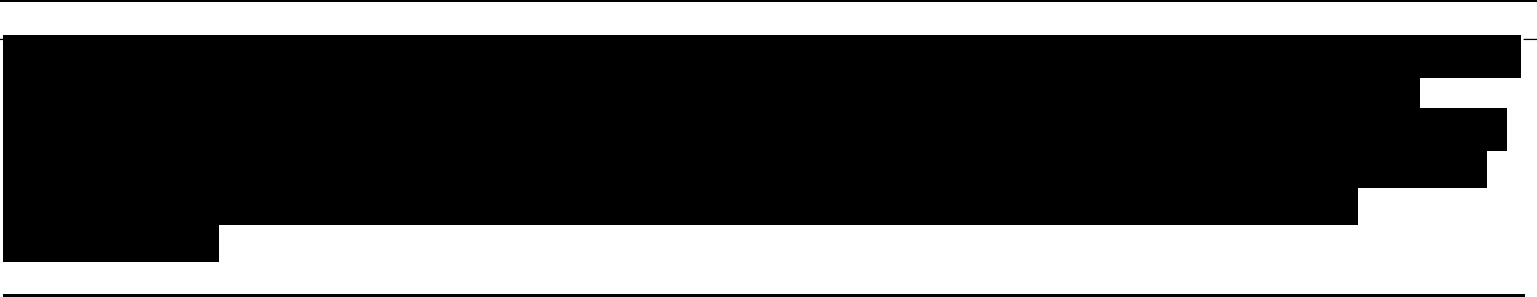

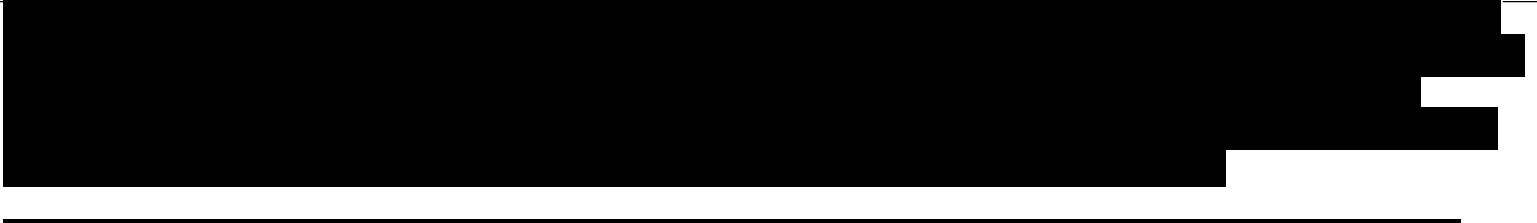

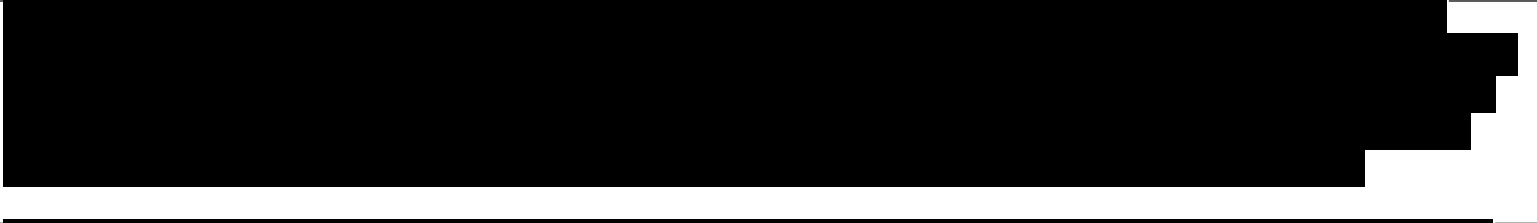

(For and on behalf of .....)

Date .....

### Pen Picture – Kempfield Residents

Person 1	
Person 2	
Person 3	
Person 4	

commercial info

Person 5	
Person 6	
Person 7	
Person 8	
Person 9	
Person 10	

commercial info

Person 11	
Person 12	





**EMC 008 – KEMPSFIELD DAY SERVICES  
EXTERNALISATION  
SHROPSHIRE COUNCIL**

**Confidentiality Undertaking Regarding TUPE**

[Date]            2014

[NAME]

Your ref: \*

Our ref: EMC 008

Dear Procurement Team,

We have taken legal advice in this matter and anticipate preparing a Bid on the basis that the Transfer of Undertakings Regulations (Protection of Employment) Regulations 2006 and the EC Acquired Rights Directive 23 of 2001 may apply to this Contract. We also understand that there is confidential information relating to employees which will be provided on receipt of this letter.

We now formally request from you full details of the current provider staff and conditions of employment.

We hereby acknowledge that this information is confidential. We undertake: -

1. To treat the information in the strictest confidence
2. That the information will be used solely for the purpose of preparing this Bid
3. That it will not be disclosed to any other party for any purpose whatsoever, except for the purpose of preparing this Bid and we will not make copies thereof

We acknowledge that all documents and other information received from the Council as detailed above shall remain the current provider's property and that we will hold them as bailee for the current provider, exercising reasonable care to keep them safe from access by unauthorised persons. We shall also return them to the Council forthwith on written request.

We acknowledge that we shall fully indemnify the current provider against all losses claims damages fines costs and other liabilities as a consequence of or arising from our failure to comply with our obligations to keep such information confidential.

**DATED THIS DAY OF**

**Signature**

**Duly authorised to sign for and on behalf of the Bidder (print full name and address of Bidder)**

Please return to: [procurement@shropshire.gov.uk](mailto:procurement@shropshire.gov.uk).

Dated

2015

BETWEEN

SHROPSHIRE COUNCIL

and

**XXXXX**

**BLOCK CONTRACT**

And

**PRESERVICE CONTRACT FOR ADDITIONAL PLACEMENTS IN ADDITION TO**

**THE BLOCK CONTRACT**

**for the provision of Residential Care  
for Adults with Learning Disabilities**

at

**KEMPSFIELD**

**Primrose Drive Shrewsbury SY3 7TP**

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THIS CONTRACT is made the \_\_\_\_\_ day of

between

(1) SHROPSHIRE COUNCIL of Shirehall Abbey Foregate Shrewsbury SY2 6ND (“the Council”) and

(2) xxxxxx (the “Service Provider”) (Company Number)

NOW IT IS AGREED as follows:

#### DEFINITIONS

For the purpose of this contract the following words shall have the following meanings:

Assessment of Needs	a written plan drawn up by the Care Manager detailing the Resident’s needs and how these are able to be met within the terms of the NHS and Community Care Act 1990
Associated Person	in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest.
Authorised Representative	means an individual suitably trained qualified and experienced and authorised by the Healthwatch in accordance with their procedures to enter, view and observe the carrying-on of activities on premises owned or controlled by a person providing, or assisting in providing services further to arrangements made by the Local Authority under its social services function.
BACS	Banks Automated Clearing System
Best Value	the requirement under section 3 of the Local Government Act 1999 for local authorities to secure continuous improvement
Care Manager	an Officer of the Council responsible for assessing the social care needs of the Resident
Commencement Date	01.04.15
Commission for Local Administration	The Commission for Local Administration is the official title of the body that runs the Local Government Ombudsman service.
Confidential Information	all information as defined by Clause 31 and paragraphs 5 and 19 of Schedule 3– Service Standards

Contract	this Contract including the Specification and Schedules
Contracts Manager	the Procurement Manager or other nominated officer of the Council authorised to oversee contractual arrangements in respect of the Service
Council Data	<p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(a) supplied to the Contractor by or on behalf of the Council; or</p> <p>which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Council is the Data Controller.</p>
Data Subject	shall have the same meaning as set out in the Data Protection Act 1998.
Data Controller	shall have the same meaning as set out in the Data Protection Act 1998.
Data Processor	shall have the same meaning as set out in the Data Protection Act 1998.
Data Protection Legislation	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner
Deferred Payment Agreement	the agreement in respect of Deferred Payments for care costs made between the Council and the Resident pursuant to the Health and Social Care Act 2008
Duty Officer	an officer of the Council who is undertaking duty for the Social Care Duty Team
EIR	the Environmental Information Regulations 2004 (as may be

	amended from time to time)
Employment Checks	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, Disclosure and Barring Service (DBS) checks
Excluded Activities	means any activities provided further to a Local Authority's social services functions relating to a person aged under 18, or under the Children Act 1989, the Adoption (Intercountry Aspects) Act 1999, the Adoption and Children Act 1976 or the Adoption Act 1976
Excluded Premises	means parts of a care home which are not communal areas; or premises or parts of premises used as residential accommodation for employees of the Service Provider; or premises which are occupied by one or more persons as their home and which at least one of those persons occupies under a tenancy or licence.
Exempt Information	any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to the parties to this Contract which potentially falls within an exemption to FOIA (as set out therein)
Expiry Date	31.03.18
Financial Year	the period of 12 months from and including 1 <sup>st</sup> April in one year to the 31 <sup>st</sup> March in the next
FOIA	The Freedom of Information Act 2000 and all regulations made thereunder from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this clause
FOIA notice	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner
Home	Kempsfield Primrose Drive Shrewsbury SY3 7TP
Home Manager	The manager of the Home who must be registered with the Registration Body
Healthwatch	means Healthwatch or any successor body for the administrative area of Shropshire Council established under

	The Health and Social Care Act 2012.
IPC	means an Individual Placement Contract between the Service Provider and the Council for the provision of Services to an individual Resident admitted to the Home after the Commencement Date which is in addition to the 12 existing residents transferring at the Commencement Date
Individual Support Plan	a written plan (related to the Assessment of Needs) drawn up by the Service Provider in respect of the Resident (to show the person centred care objectives and provision of Service and where appropriate nursing care).
Intellectual Property Rights	means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable
the Legislation	National Assistance Act 1948 and the Health and Social Care Act 2008
Malicious Software	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
Notice	a written communication issued in accordance with Clause 9 of this Contract
Officer(s)	those officers of the Council who are authorised by the Council to perform functions in connection with this Contract
Party	means either the Council or the Service Provider
Parties	means the Council and the Service Provider together
Payment Review	the review of Payment as detailed in Clause 4
Payments	the Council's contribution to the payment for the Service as specified in Clause 2 (PAYMENTS)
Performance Indicators	the performance indicators relating to this Contract as issued by the Council from time to time
Personal Allowance	the sum of the Resident's weekly income to be retained by the Resident being equal to the amount set each year by the Department of Health
Personal Data	shall have the same meaning as set out in the Data Protection Act 1998



Prohibited Act	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or</p> <p>(d) defrauding, attempting to defraud or conspiring to defraud the Council.</p>
Public Body	as defined in the FOIA 2000
Receiving Party	a party to this Contract to whom a Request for Information is made under the FOIA, and who thereafter has overall conduct of the request and any response
Registration Body	means the Care Quality Commission (or any other body which supersedes it) area office for the area where the Service is located and any other body which has regulatory powers or responsibilities in respect of the Service Provider
Regulatory Body or Bodies	those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Council and "Regulatory Body" shall be construed accordingly
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 adults at risk, 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
Regulated Provider	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
Request for Information	a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
Resident	the person nominated by the Council to receive the Service at the Home who is assessed by the Council to be part or wholly funded by the Council in respect of the Service
Resident's Contribution	The sum contributed by the Resident towards the cost of care following a means tested financial assessment by the Council in accordance with Charging for Residential Accommodation Guidelines issued by the Department of Health, or any amending or superseding Guidelines or enactment
Respite Bed	The single respite care bed at the Home which is in addition to the 12 permanent residential care beds
Service Provider Software	software which is proprietary to the Service Provider including software which is or will be used by the Service Provider for the purposes of providing the Services
Skills For Care	The organisation that sets the training standards of the Training Organisation for Personal Social Services
Speaking up about Wrongdoing Policy	The Council's policy for its employees and elected members that advises specifically on blowing the whistle on wrongdoing. The policy is available in a leaflet form to business partners, contractors, voluntary agencies, partnerships, and any others with whom the Council has dealings with for distribution to their employees.
Specification SPIC	the Specification contained in the Schedules to this Contract Shropshire Partners in Care (the representative body of Service Providers in Shropshire)
Staff	those persons paid or unpaid who deliver the Service on behalf of the Service Provider including a Subcontractor
Subcontractors	Any person(s) that the Service Provider contracts with to provide the Service either directly or indirectly for which the Service Provider is responsible under this Contract

Support Plan	a written plan related to the Assessment of Needs drawn up the Service Provider in respect of the Resident
Third Party	a person (other than the Resident or the Council) who agrees to make a contribution to the cost of the Service
Third Party Software	software which is proprietary to any third party which is or will be used by the Service Provider for the purposes of providing the Services
Working Days	Monday to Friday inclusive (not including national bank holidays)

## **INTERPRETATIONS**

- 1 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 2 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 4 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:
  - i references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
  - ii the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 5 Words in the singular shall include the plural and vice versa.
- 6 A reference to one gender shall include a reference to the other genders.
- 7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 8 Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 9 References to clauses are to the clauses of these terms and conditions.

- 10 Where any statement is qualified by the expression so far as the Service Provider is aware or to the Service Provider's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 11 Where there is any conflict or inconsistency between the provisions of these terms and conditions or any other document forming part of the agreement with the Council, such conflict or inconsistency shall be resolved in a manner at the Council's sole discretion.

#### WHEREAS

- (A) The Council in the exercise of performing its obligations under the Legislation is desirous of making provision within its area for adults with learning disabilities (the Residents)
- (B) The Council has caused to be prepared a detailed Specification in respect of the Service
- (C) The Parties have agreed that in the provision of the Services it is necessary for the Service Provider to satisfy the requirements for registration under the Health and Social Care Act 2008
- (D) The Service Provider is willing to provide the Service in accordance with this Contract, the Service specification.

#### 1 CONTRACT AND TERM

- 1(a) In consideration of the Payments the Service Provider will provide to the Resident(s) as set out in Schedule 3 the Service set out in the Specification and this Contract must be read in association with the Assessment of Needs and where there is a conflict this Contract takes precedence.
- 1(b) In the event of the admission of any Resident to the Home in addition to the block contract for 12 residential care beds an IPC will be agreed between the Parties for the Resident.
- 1(c) This Contract shall commence on the Commencement Date and shall continue until the 31<sup>st</sup> March 2018 (the "Expiry Date") subject to Clauses 10 (Breach) and 14 (Extension and Termination) in accordance with the terms of this Contract.
- 1(d) Payments made under this Contract shall be determined in respect of each Resident and shall be specified in Clause 2 (Payment). The sum payable by the Council is to cover the provision of the Service. The Resident's Contribution is a separate arrangement between the Council and the Resident. The Personal Allowance is for the sole use of the Resident to spend as they choose.

- 1(e) The Resident's accommodation at the Home will be agreed by the Service Provider and the Care Manager in consultation (where appropriate) with the Resident and their family and carers and the Care Manager will record the details on the Care Plan.

## 2 PAYMENT

- 2(a) In the first Financial Year of the Term the sum of £xx shall be payable by the Council to the Service Provider for 12 permanent and 1 respite residential care beds in single rooms. The annual payment sum of £xx is set for three years from the commencement date.
- 2(b) Payment will be made two weeks in advance and two weeks in arrears.
- 2(c) Payments to the Service Provider will be made through the BACS.
- 2(d) The Service Provider shall not make a charge to the Resident or any third party for the Service provided.
- 2(e) For the avoidance of doubt the Payment is inclusive of any quality award premium that the Home may qualify for and no additional payment shall be sought by the Service Provider (such as a Third Party contribution)
- 2(f) The Council reserves the right to set off against the price of the goods or services any sums owed or becoming due to the Council from the Service Provider.
- 2(g) If the Council fails to make any payment due to the Service Provider under this agreement by the due date for payment of an undisputed amount, then the Council shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 2(h) The Resident's Contribution is collected by the Council.

## 3 COMPLIANCE

- 3(a) The Council undertakes to:
- 3(a)(i) make the Payments to the Service Provider in accordance with Clause 2
  - 3(a)(ii) liaise with the Service Provider regarding the provision of the Service where appropriate.
- 3(b) The Service Provider undertakes to comply with the following in the provision of the Service:
- 3(b)(i) provide the Service in accordance with the Specification and with all due diligence care and skill expected of a suitable and experienced provider of such services

- 3(b)(ii) ensure that no aspect of the Service funded by the Payment is or appears to be party political in intention use or presentation
  - 3(b)(iii) acknowledge in all publicity wherever reasonably practicable the Council's funding of the Service
  - 3(b)(iv) the Council's Multi Agency Adult Protection Policy and Procedures
  - 3(b)(v) all standards required by the Health and Social Care Act 2008 in order to maintain registration thereunder
  - 3(b)(vi) all equal opportunities legislation and anti-discriminatory practices including those identified in Clause 29 Equalities
  - 3(b)(vii) ensure that Staff and Subcontractors are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request
  - 3(b)(viii) the Data Protection Act 1998
  - 3(b)(ix) the standard required of a local authority under the Human Rights Act 1998. The Service Provider shall protect and shall not do anything in breach of Residents' rights under the Act.
  - 3(b)(x) the principles of Best Value
  - 3(b)(xi) the Health and Safety at Work Act 1974 and any relevant health and safety regulations approved codes of practice and HSE guidance
  - 3(b)(xii) declare to the Council at the end of each Financial Year any amount of underspend of the Payment and return the underspend to the Council if requested to do so by the Council.
- 3(c) Should the Service Provider provide the Service to Residents who lack the mental capacity to make particular decisions it must familiarise itself with and adhere to the Council's Mental Capacity Act Deprivation of Liberty Safeguards Multi-Agency Guidance and Procedure.
- 3(d) If for any reason the Service Provider is unable to comply with any of its obligations under this Contract it shall notify the Council's Contracts Manager forthwith in Writing of its failure and the reasons. Compliance with this clause shall not prejudice the Council's rights under clauses 10 (Breach) and 13 (Extension and Termination).
- 3(e) The Service Provider warrants that the signing [execution] of this Agreement on its behalf has been validly authorised and the obligations expressed as being assumed by the Service Provider under this Agreement constitute valid legal and binding obligations of the Service Provider enforceable against the Service Provider in accordance with their terms.

#### 4 VARIATION

- 4(a) This Contract may only be varied by consent of both of the parties and any such variation must be in writing and signed by an authorised officer from the Service Provider and an appropriately authorised officer of the Council authorised under the Council's Constitution and it must be annexed to this Contract and shall record the date from which the agreed variation shall have effect.
- 4(b) The Service Provider will not enter into any negotiations either directly or indirectly with any Resident or Third Party the effect of which would be to vary or amend the terms of this Contract without the prior written agreement of the Council.

#### 5 PAYMENT REVIEW (NOT USED)

#### 6 VAT

The Payment does not include VAT and if VAT is payable then the Council will pay this in addition to the Payment provided that the Service Provider supplies the Council with an appropriate VAT notice.

#### 7 AGENCY

- 7(a) The Service Provider is an independent contractor and nothing in this Contract shall render it an agent of the Council and the Service Provider shall not hold itself out as the Council's agent nor shall it have the power or the right to bind the Council to any obligation.
- 7(b) Under the terms of this Contract the Service Provider shall not have and shall in no way represent itself as having the power to make vary discharge or waive any by-law or regulation of any kind.

#### 8 ACCOUNTING

- 8(a) The Service Provider shall ensure that all necessary accounting arrangements exist to distinguish between the Payment and any funds held on behalf of the Resident or any other funds held by the Service Provider.
- 8(b) All bank building society post office or other account statements together with all other supporting documentation pertaining to Residents monies held by the Service Provider shall be retained by the Service Provider and made available for inspection by the Council.
- 8(c) The Service Provider will (upon the Council's request) produce records of any funding held on behalf of Residents which shall clearly identify the balance held and the date funds are paid in and withdrawn.
- 8(d) The Service Provider will facilitate the inspection of all financial records held in connection with the Service and shall produce a copy of its annual audited accounts as soon as is reasonably practicable if requested to do so by the Council.

- 8(e) The Service Provider shall provide such financial information as the Council may reasonably require from time to time to assess the financial viability and monitor the performance of the Service Provider.
- 8(f) The Service Provider shall compile maintain and keep the information and records as required in the Specification and such information as the Council may from time to time reasonably require to enable the Council to submit any information or data required for the purposes of the Performance Indicators.
- 8(g) The Council may by Notice in Writing to the Service Provider authorise the statutory auditors of the Council or any regulatory body to which the Council is subject including but without limitation the Commissioner for Local Administration to exercise any of the rights exercisable under this clause by the Council. For these purposes the “statutory auditors of the Council” shall include any body appointed by the Audit Commission or authorised by statute to perform similar functions to those of the Audit Commission.

## 9 NOTICES

- 9(a) The Service Provider shall comply with and give any Notices required under the Contract or required by any Act of Parliament any instrument rule or order made under any Act of Parliament or any regulation or by-law of any local authority which may have jurisdiction in respect of the Service Provider.
- 9(b) Any Notice under this Contract must be in Writing and can only be sent by:
- 9(b)(i) recorded delivery post or
  - 9(b)(ii) personal delivery
- 9(c) The Service Provider’s address for the purpose of delivery of a Notice is as set out above and all Notices sent to the Service Provider under this Contract must be sent to the Service Provider’s **[add in Job Title]**.
- 9(d) The Council’s address for the purpose of delivery of a Notice is Head of Adult Care Shirehall Abbey Foregate Shrewsbury SY2 6ND and a separate copy must also be sent to the Council’s Procurement Manager Shirehall Abbey Foregate Shrewsbury SY2 6ND.
- 9(e) All such Notices if delivered by hand shall be deemed to be served immediately and if posted shall be deemed to have been served two days after the date when posted unless the party upon whom the Notice was purported to be served has informed the serving party within 24 hours of partial receipt that the Notice was not received in full.

## 10 BREACH

- 10(a) In the event that the Service Provider is in breach of his obligations under this Contract then the Council shall serve a Notice requiring the Service Provider to



take such action as the Council deems necessary to remedy the breach upon the terms and within the time stipulated in the Notice.

10(b) The following obligations are conditions of this Contract and any breach of them shall be deemed a fundamental breach which shall determine this Contract immediately by the giving of a written Notice:

10(b)(i) Failure to comply with a Notice to remedy a breach 10(a)

10(b)(ii) Assignment by the Service Provider of any of his obligations under this Contract without the prior written consent of the Council

10(b)(iii) If the Service Provider was convicted of any offence the effect of which under the provisions of any legislation would prevent the Council from contracting with him or maintaining any existing contractual relationship

10(b)(iv) If the Service Provider is issued with a Notice from the Health and Safety Executive or Registration Body prohibiting it from operating.

## **11 PREVENTION OF BRIBERY**

11(a) The Service Provider:

11(a)(i) shall not, and shall procure that all Service Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;

11(a)(ii) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

11(b) The Service Provider shall:

11(b)(i) if requested, provide the Council with any reasonable assistance, at the Council's reasonable 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 the Bribery Act;

11(b)(ii) the Service Provider shall, within 10 Working Days of a request from the Council, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) the Service Provider's compliance with this clause 15 and provide such supporting evidence of compliance with this clause 15 by the Service Provider as the Council may reasonably request.

11(c) If any breach of clause 11 is suspected or known, the Service Provider must notify the Council immediately.

- 11(d) If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 11(a), the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Agreement.
- 11(e) The Council may terminate this Agreement by written notice with immediate effect, and recover from the Service Provider the amount of any loss directly resulting from the cancellation, if the Service Provider or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 11(a). At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 11(e), the Council shall give consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:
- 11(e)(i) with the authority; or,
- 11(e)(ii) with the actual knowledge;  
of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or
- 11(e)(iii) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.
- 11(f) Any notice of termination under clause 11(e) must specify:
- 11(f)(i) the nature of the Prohibited Act;
- 11(f)(ii) the identity of the party whom the Council believes has committed the Prohibited Act; and
- 11(f)(iii) the date on which this Agreement will terminate.
- 11(g) Despite clause 14 (Disputes), any dispute relating to:
- 11(g)(i) the interpretation of clause 11; or
- 11(g)(ii) the amount or value of any gift, consideration or commission,  
shall be determined by the Council and its decision shall be final and conclusive.
- 11(h) Any termination under clause 11(e) will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## 12 **INSURANCE**

- 12(a) The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum of £5,000,000 (FIVE MILLION POUNDS) cover. In respect of death or personal injury due to negligence will be unlimited.
- 12(b) The Service Provider warrants that it has complied with this clause 12 and shall provide the Council with certified copies of the relevant policies upon request together with receipts or other evidence of payment of the latest premiums due under those policies.
- 12(c) If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

### 13 EXTENSION AND TERMINATION

- 13(a) Unless terminated in accordance with this Clause or Clause 10 or 11 this Contract will remain in force from the Commencement Date until the Expiry Date. The Council may in its absolute discretion extend the duration of this Contract by a further period of one year commencing from the Expiry Date and must inform the Service Provider in Writing of its intention to extend the Contract at least 3 months before the Expiry Date and any extension must comply with the requirements of Clause 6.
- 13(b) This Contract may be terminated prior to the Expiry Date in the following circumstances:-
- 13(b)(i) by either the Council or the Service Provider by giving **6 months'** Notice in Writing to the other party
  - 13(b)(ii) if in the reasonable opinion of the Council it is no longer practicable to maintain a satisfactory or viable relationship with the Service Provider because the Service Provider or its Staff have acted unlawfully or fraudulently or there has been a serious breakdown of mutual trust between the parties
  - 13(b)(iii) if the Service Provider becomes the subject of a voluntary arrangement under section 1 Insolvency Act 1986 or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986;

has a receiver manager administrator or administrative receiver appointed over all or any parts of its undertaking assets or income; has passed a resolution for its winding up; has a petition presented to any court for its winding up or for an administration order; or if any distraint execution or other process is levied or enforced on any property of the other and is not paid out withdrawn or discharged within 14 days.

- 13(c) In the event of this Contract being terminated at any time prior to the Expiry Date for any reason then the Council's obligations under Clause 2 (Payment) will cease no further Payment will be made and the Service Provider shall repay to the Council all (if any) of the Payment already received (after the liabilities of the Service Provider in the provision of the Service in accordance with this Contract have been met).
- 13(d) Without prejudice to the generality of the foregoing the Council reserves the right to suspend referrals to the Service where in the reasonable opinion of the Council there is any improper conduct on the part of the Service Provider its Staff and Subcontractors and this will be considered a breach of this Contract which may result in the suspension of referrals and or reduction / clawback of part of the Payment consistent with the reduction in Service. Improper conduct includes any action which the Council may reasonably consider to be to the detriment or the welfare of Residents either by action or neglect including but not limited to:
- 13(d)(i) Fraud or theft from Residents
  - 13(d)(ii) Neglect of Residents
  - 13(d)(iii) Cruelty and assault to or upon Residents including verbal and any other forms of psychological abuse
  - 13(d)(iv) Financial malpractice
  - 13(d)(v) Sexual relationships between Staff and Residents
  - 13(d)(vi) Racial harassment
  - 13(d)(vii) Loss of registration with Registration Body
  - 13(d)(viii) Under investigation by the Council.
- 13(e) If the Contract is terminated as provided by Clause 10 (Breach) or 11 (Anti-bribery and Corruption) or 13 (Extension and Termination) above the Council shall:
- 13(e) (i) cease to be under any obligation to make further Payment until the cost loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Service Provider;

- 13(e) (ii) be entitled to make other arrangements and if necessary pay other persons to provide the Services
- 13(e) (iii) be entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under this Contract or be entitled to recover the same from the Service Provider as a debt any loss or damage to the Council resulting from or arising out of the termination of this Contract and further such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating this Contract and in making alternative arrangements for the provision of the Services provided that the Council will be under a duty to take all reasonable action to mitigate the loss or damage pursuant to this clause.
- 13(f) Whilst this Contract affords the Council and the Service Provider reciprocal rights to terminate as per the terms of Clause 13(b)(i) the Parties acknowledge that the expectation of most Residents is that the Parties will not act unreasonably or to the prejudice of the Residents so far as is reasonably practicable.

#### Termination of IPCs and Respite Placements

- 13(g) In the event of termination of this Contract all associated IPCs shall terminate no later than the termination date of this Contract
- 13(h) In the event of termination of this Contract in accordance with clause 13(b), uptake of a placement by a Service User in an alternative Home shall result in the IPC terminating on the date that the Service User leaves the Home
- 13(i) An IPC or Respite Bed may be terminated by either Party giving 4 weeks' written notice to the other at any time (unless otherwise terminated in accordance with sub-clauses 13 (j), (k) (l) (m)
- 13(j) An IPC or Respite Bed can be terminated by the Council giving seven days' notice in writing to the Service Provider where:
- 18(j)(i) the Service User is admitted to hospital which results in the service under the IPC being inappropriate to the Service User's needs
- 1e(j)(ii) there has been a reassessment of the Service User's needs which results in the Service under the IPC being inappropriate to the Service User's needs
- 1e(j)(iii) referrals to the Home have been Suspended by the Council as detailed in Clause 13(d)
- 13(k) An IPC or Respite Bed may be terminated by the Council upon written notice with immediate effect upon notification of a Service User becoming self-funding.

- 13(l) Where an IPC has been made for a fixed period, it shall terminate immediately at the end of the fixed period
- 13(m) An IPC or Respite Bed shall terminate immediately upon the death of a Service User. On the death of a Service User the Council will pay a maximum of 2 nights at the rate set out in the IPC.
- 13(n) Where the Service User is admitted to hospital or other residential health care provision whereby they temporarily cease to reside at the Home, the Council will pay the Service Provider the Payment as a retainer for up to four weeks and thereafter shall reduce the Payment to 80% of the agreed weekly charge until the Service User returns to the Home or the IPC is terminated by the Council in accordance with clause 18 (d). Should the absence from the Home continue beyond a four week period the situation will be reviewed by the Care Manager in conjunction with the Service User's relative, carer or friend as appropriate. The views of the Service Provider will be sought and taken into account. The final decision on the continuance of a retainer payment or termination of the IPC will rest with the Care Manager.
- 13(o) Where the Service User elects to transfer from the Home to another care home the Council will not enter into an IPC in respect of the second home until the notice period in respect of the Home has expired or unless alternative funding has been secured until the commencement date of the new IPC. The Council will not pay for accommodation or Services at two care homes for the same period except where authorised by the Contracts Manager at his/her own discretion.
- 13(p) On the death of a Service User at the Home the Service Provider should notify the Council and (where appropriate) contact the relatives or carers or the Council (in its capacity as the responsible Local Authority under section 46 (1) of the Public Health (Control of Diseases) Act 1984) to make the necessary funeral arrangements.

#### 14 DISPUTES

- 14(a) If any dispute or difference shall arise between the parties as to the construction of this Contract or any matter or thing of whatever nature arising under this Contract or in connection with it then the same shall be dealt with as follows:-
- 14(a)(i) in the first instance a special meeting of both the parties shall be arranged on 14 days written Notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute

- 14(b) If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the parties may serve the Council's Director of Adult Care and the Service Provider's **(Job Title)** with Notice of the dispute and they shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such Notice
- 14(c) If the dispute cannot be resolved in accordance with the preceding sub-clause then it shall be referred to a single arbitrator to be agreed between the parties and failing such agreement within 14 days of the request of one party to the others in Writing that the matter be referred to arbitration such reference shall be to a single arbitrator appointed for that purpose on the written request of either party by the President for the time being of the Law Society of England and Wales and any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the relevant Arbitration Acts and it is further agreed that if any matter is referred to arbitration then each party will bear its own costs of such referral.

#### 15 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

- 15(a) The Council may, subject to clause 15(b):
- 15(a)(i) assign any of its rights under the Agreement; or
  - 15(a)(ii) transfer all of its rights or obligations by novation to another person.
- 15(b) The consent of the Service Provider is required for an assignment or transfer by the Council unless:
- 15(b)(i) the assignment or transfer is to an Associated Person of the Council;  
or
  - 15(b)(i) either the Council or the Service Provider have committed a breach of this Agreement which gives the other party the right under the terms of this Agreement to terminate the Agreement. Any such consent must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.
- 15(c) The Service Provider may not assign any of its rights, or transfer any of its rights or obligations under the Agreement.
- 15(d) The Service Provider will not, without the written consent of the Council sub-contract its right or obligations under this Agreement nor allow Services to be provided other than through his own employees and using his own equipment.
- 15(e) In the event that the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract and order shall be sent by the Service Provider to the Council immediately it is issued.
- 15(f) Notwithstanding the Service Provider's right to sub-contract pursuant to this clause 15, the Service Provider shall remain responsible for all acts and

omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Service Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Service Provider to procure that its employees, Staff, agents and Sub-Contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

#### 16 FORCE MAJEURE

16(a) Subject to the provisions of clause 16(b) neither the Service Provider nor the Council shall be liable for any delay or failure in performing its obligations hereunder for any circumstances beyond its reasonable control such as (but not restricted to) flood fire and civil unrest but the Council shall in such circumstances be entitled to take such action as is reasonable and necessary to protect the interest of the Residents.

16(b) Save where such delay or failure is caused by the act or omission of the other party (in which event the rights remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Contract and by Law):-

16(b)(i) any charges arising from such delay or failure shall be borne by the party incurring the same

16(b)(ii) either party may if such delay or failure continues for more than 90 (ninety) days terminate this Contract forthwith on giving Notice (as determined by Clause 9) to the other party in which event neither party shall be liable to the other by reason of such termination.

16(c) For the avoidance of doubt "force majeure" shall not include any labour dispute between the Service Provider and its Staff or the failure to provide the Service by any of the Service Provider's Subcontractors.

#### 17 WAIVER

Failure at any time by either party to enforce any of the provisions hereof shall not be construed as a waiver of any such provisions and shall not affect the validity or any part of it or the right of the Council to enforce any provision of this Agreement in accordance with its terms.

#### 18 SEVERANCE

If any of the provisions of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

#### 19 STATUTORY DUTIES



- 19(a) The Council has various statutory duties in relation to this Agreement including (but not exclusively) under Part 1 of the Local Government Act 1999 (Best Value) to carry out a regular review of the Service.
- 19(b) The Service Provider and its Staff must fully co-operate with the Council in complying with any such statutory duty and subject to the provision of the Data Protection Act 1998 the Service Provider must provide to the Council any information facilities and assistance that the Council may reasonably request provided the Council has given the Service Provider reasonable notice and also provided that this does not put the Service Provider to unnecessary cost.

## 20 LAW

- 20(a) This Agreement shall be governed and construed in accordance with the laws of England and the parties agree to submit to the jurisdiction of the English Courts.
- 20(b) Where the Service Provider consists of 2 or more persons all the obligations of the Service Provider shall be deemed to be complied with by such persons jointly and severally and any reference to the masculine gender shall include reference to the female and any reference to the singular shall include referral to the plural.
- 20(c) Any reference to an act includes reference to any statutory re-enactment or modification thereof.

## 21 THIRD PARTY RIGHTS

Unless the right of enforcement is expressly provided it is not intended that a third party should have the right to enforce a provision of this Contract under the Contracts (Rights of Third Parties) Act 1999.

## 22 REMEDIES CUMULATIVE

Any remedy or right which the Council may exercise in relation to a breach committed by the Service Provider shall be in addition to and shall be capable of being exercised without prejudice to all other rights and remedies available to the Council.

## 23 COUNCIL'S FUNCTION AS A LOCAL AUTHORITY

Nothing in this Agreement shall prejudice or affect the Council's right powers duties and obligations to the exercise of its functions as a local authority.

## 24 CONCLUSION OF CONTRACT

- 24(a) Upon the expiry or termination of this Agreement and upon the Council's request the Service Provider must give an officer of the Council or any person the Council specifies copies of all data information files records documents and the like (in whatever form that they may be held) which the Council earlier supplied to the Service Provider for the purposes of this Agreement or which were produced or augmented by the Service Provider in connection with the

carrying out of obligations under this Agreement and the Service Provider must retain Resident records for a minimum of 6 years after the expiry of an ICA.

24(b) Clause 24(a) is subject to the provisions of Paragraph 5 of Schedule 2.

## 25 SUSTAINABILITY

The Service Provider will at all times use its best endeavours to source all materials used to provide the Service from sustainable and renewable sources.

## 26 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

26(a) The Service 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 to enable the Council to comply with its Information disclosure obligations.

26(b) The Service Provider shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Service Provider acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.

26(c) The Service Provider shall:

26(c)(i) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

26(c)(ii) provide the Council, at the Service Provider's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and

26(c)(iii) provide, at the Service Provider's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

26(d) The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and in considering any response to a Request for Information the Council may consult with the Service Provider prior to making any decision or considering any exemption.

- 26(e) In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 26(f) The Service Provider acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the EIR to disclose information concerning the Service Provider or the Services:
- 26(f)(i) in certain circumstances without consulting the Service Provider; or
- 26(f)(ii) following consultation with the Service Provider and having taken their views into account; provided always that where sub-clause 26(f)(i) above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 26(g) The Service Provider shall ensure that all Information required to be produced or maintained under the terms of this Agreement, or by law or professional practice or in relation to the Agreement is retained for disclosure for at least the duration of the Agreement plus one year together with such other time period as required by the Agreement, law or practice and shall permit the Council to inspect such records as requested from time to time.
- 26(h) The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other law, of any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party.

## 27 TUPE

- 27(a) The Service Provider shall provide to the Council any information reasonably required in connection with TUPE when requested to do so and the Council undertakes to use such information only for purposes in connection with TUPE and to ensure that any third party who requests the TUPE information has undertaken to use it only in connection with a tender for Service and for TUPE purposes and in the event of non compliance by the Service Provider with this Clause 27(a) then:
- 27(a)(i) the parties acknowledge that the Council shall be entitled to an injunction of an order for specific performance in order to obtain the required TUPE information; and

- 27(a)(ii) the Service Provider shall reimburse all expenses incurred by the Council in enforcing the Service Provider's compliance with this clause and for the avoidance of doubt this shall include the cost of the Council officer time.
- 27(b) At any time during the period of 9 (nine) months before the Expiry Date or in the event that this Agreement is terminated in accordance with clauses 10 Breach or 13 Extension & Termination of this Agreement within 28 days of giving or receiving notice of such termination or where the Agreement is terminated forthwith the Service Provider shall on the written request of the Council collate whatever information is required for the purposes of the Transfer of Undertaking (Protection of Employment) Regulations 1981 as amended and the Acquired Rights Directive 1977 (the "TUPE Information") which may include but shall not be limited to:-
- 27(b)(i) the number of Staff including supervisory and administrative Staff employed by the Service Provider and any Sub-Contractor employed in the Service
- 27(b)(ii) the terms and conditions of employment of those Staff and
- 27(b)(iii) any information relating to those Staff as properly may be required by the Council under this clause.
- 27(c) In the event that the Council commences procedures for inviting tenders to provide the Service the Service Provider shall make the TUPE information available on request to any person who wishes to submit a tender (a "Tenderer") provided that such Tenderer shall undertake to use the TUPE Information for the purposes of submitting a tender to the Council and for no other purposes.
- 27(d) Throughout the period specified in Clause 27(b) the Service Provider shall maintain and amend the TUPE information to the extent necessary to ensure that it is completely accurate and up to date and in the event that such amendments are made the Service Provider shall inform any person to whom it has made the TUPE information available in accordance with this clause of the nature extent and content of those amendments and the reasons why they have been made.
- 27(e) The Service Provider shall if requested by the Council provide the same information relating to employees or its contractors Sub-Contractors and agents where relevant to the provision of the Service and shall use its reasonable endeavours to procure co-operation from such Sub-Contractors.
- 27(f) In the event that there is a transfer of employees pursuant to TUPE the Service Provider shall co-operate and where relevant use its reasonable

endeavours to procure the co-operation of its Sub-Contractors and agents in the orderly transfer of any relevant personnel.

- 27(g) The Service Provider shall indemnify the Council against any and all losses costs expenses awards or liabilities incurred by the Service Provider in connection with or as a result of any claims demands or proceedings of whatever nature by any employee or former employee of the Service Provider or its Sub-Contractors or agents arising out of any non-compliance with TUPE except any such losses cost expenses awards or liabilities incurred due to any fault on the part of the Council.
- 27(h) The Council gives no express indemnity nor should it be taken as an implied indemnity whether particular to the Sub-Contractor or jointly for any matter connected with or arising out of the compliance or non-compliance with the requirements of TUPE.
- 27(i) The Service Provider shall not in any circumstances make any claim against the Council in connection with the effect on the Agreement of TUPE
- 27(j) The Service Provider undertakes:
- 27(j)(i) not to change the Staff structure grade hours or scales of pay or Service delivery structure without the prior written consent of the Council (such consent not to be unreasonably withheld) but not limited to changes to preclude or promote application of TUPE upon termination or expiry of the Agreement
- 27(j)(ii) to consult with Staff and trade unions during the whole process of TUPE.
- 27(k) If requested to do so by the Council the Service Provider shall supply to the Council any and all relevant information and data to permit the Council to prepare the necessary documentation in respect of any subsequent review or possible invitation for tenders for the Service or including information sufficient to enable the Council to meet its legal obligations and to obtain Best Value.

## 28 RESTRICTION ON EMPLOYMENT

- 28(a) Section 21 of the Immigration Asylum and Nationality Act 2006 ("the Act") provides that an employer commits an offence if he employs a person subject to immigration control who has attained the age of 16, if the employee has not been granted leave to enter, or remain in, the United Kingdom, or if his leave is not valid and subsisting or is subject to a condition precluding him from taking up employment.
- 28(b) The Service Provider warrants that it has fully complied with its obligations under the Act with regard to checks on its Staff being provided under this Contract and in so doing has taken account of the requirements of the Act and

of the requirements of the Immigration (Restriction on Employment) Order 2007 “the Order” or in any future statutory re-enactment or modification thereof.

- 28(c) In complying with the requirements of the Act and with the Order the Service Provider confirms that it has not infringed any equal opportunity legislation in particular the Equalities Act 2010 with regard to the appearance or perceived nationality of their Staff.
- 28(d) Notwithstanding the above the Service Provider agrees to indemnify the Council for any expense liability loss claim or proceedings whatever arising due to the Service Provider’s failure to comply with the requirements of the Act and the Order where a court or tribunal may subsequently find in law that the Service Provider’s Staff provided under this Contract is an employee of the Council.

## 29 EQUALITIES

- 29(a) The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Goods, Services or Works under this Agreement, or in its employment practices.
- 29(b) Without prejudice to the generality of the foregoing, the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 29(c) In addition, the Service Provider in providing services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it .
- 29(d) The Service Provider will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.
- 29(e) In the event of any finding of unlawful discrimination being made against the Service Provider during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the Service Provider shall

inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

- 29(f) The Service Provider will provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Service Provider's compliance with the above conditions.

30 CONFIDENTIAL INFORMATION

- 30(a) The Service Provider will keep confidential any information it becomes aware of by reason of the operation of this Contract and any other information which the Council may from time to time determine as relevant to this Contract and shall not use divulge or communicate the same to any third party without the consent in writing of the Council.
- 30(b) The Service Provider shall at all times keep confidential all information held or known in respect of its past or present Residents.
- 30(c) Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 30(c)(i) treat the other Party's Confidential Information as confidential; and
  - 30(c)(ii) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent
- 30(d) Clause 30(e) shall not apply to the extent that:
- 30(d)(i) such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information
  - 30(d)(ii) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner
  - 30(d)(iii) such information was obtained from a third party without obligation of confidentiality
  - 30(d)(iv) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement
  - 30(d)(v) it is independently developed without access to the other party's Confidential Information.
- 30(e) The Service Provider may only disclose the Council's Confidential Information to the Service Provider's Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such

Service Provider's Staff are aware of and shall comply with these obligations as to confidentiality.

- 30(f) The Service Provider shall not, and shall procure that the Service Provider's Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
  - 30(g) The Service Provider shall ensure that its employees and agents are aware of and comply with Clause 30 and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by the Service Provider, its employees or agents.
  - 30(h) The Service Provider shall ensure that its employees and agents are aware of and comply with paragraphs 5.4 and 5.5 Schedule 2 Service Standards and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by such persons mentioned above.
  - 30(i) The Service Provider its Staff and any person employed or engaged by the Service Provider in connection with this Contract shall:
    - 30(i)(i) only use the Confidential Information for the purposes of this Contract
    - 30(i)(ii) not disclose any of the Confidential Information to any third party without the prior written consent of the Council which consent the Council shall be absolutely entitled to refuse
    - 30(i)(iii) not use the Confidential Information for the solicitation of business from the Council
  - 30(j) Nothing in this Contract shall prevent the Council from disclosing the Service Provider's Confidential Information:
    - 30(j)(i) to any consultant, contractor or other person engaged by the Council
    - 30(j)(ii) for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council.
  - 30(k) The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to this Contract is made aware of the Council's obligations of confidentiality.
  - 30(k) The provisions of this Clause shall survive the expiration or termination of this Agreement.
- 31 COUNCIL DATA**
- 31(a) The Service Provider shall not delete or remove any copyright or proprietary notices contained within or relating to the Council Data.



- 31(b) The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Council and in particular the Service Provider shall not store any Council Data, which the Council has notified the Service Provider requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
- 31(c) To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council in any format specified reasonably requested by the Council.
- 31(d) The Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data and shall take such back up copies of the Council Data at regular intervals appropriate to the frequency of the revision of the Council Data.
- 31(e) The Service Provider shall ensure that any system on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council's security policy to include, but not limited to, the following requirements:
- 31(e)(i) Access to the system is restricted to Service Provider Staff with a legitimate need to access the Council Data
  - 31(e)(ii) The system is kept up to date with the latest versions of operating system and anti-virus updates
  - 31(e)(iii) Transfer of data to and from the system is conducted in a secure manner.
- 31(f) If the Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's default so as to be unusable, the Council may:
- 31(f)(i) require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Council Data as soon as practicable; and/or
  - 31(f)(ii) itself restore or procure the restoration of Council Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so including the restoration of the Council Data
- 31(g) If at any time the Service Provider suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Council via the Council's ICT Helpdesk immediately and inform the Council of the remedial action the Service Provider proposes to take.

- 31(h) The Service Provider shall check for and delete Malicious Software and if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 31(i) Any cost arising out of the actions of the parties taken in compliance with the provisions of sub-clause 31(h) above shall be borne by the Parties as follows:
- 31(i)(i) by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software or the Council Data (whilst the Council Data was under the control of the Service Provider); and
- 31(i)(ii) by the Council if the Malicious Software originates from the Council Software or the Council Data (whilst the Council Data was under the control of the Council).

## 32 DATA PROTECTION

- 32(a) The Service Provider shall (and shall procure that any of its Staff involved in the provision of this Agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.
- 35(b) Notwithstanding the general obligation in clause 32(a) where the Service Provider is processing Personal Data as a Data Processor for the Council, the Service 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 to the Data Protection Act 1998; and
- 32(b)(i) provide the Council with such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the Data Protection Legislation;
- 32(b)(ii) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 32(b); and
- 32(b)(iii) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.

- 32(c) The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Agreement or as otherwise expressly authorised in Writing by the Council and in particular the Service Provider shall not store any Council Data, which the Council has notified the Service Provider requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
- 32(d) To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council in any format specified reasonably requested by the Council.
- 32(e) The Service Provider shall ensure that any system on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council's security policy to include, but not limited to, the following requirements:
- 32(e)(i) Access to the system is restricted to Service Provider Staff with a legitimate need to access the Council Data
  - 32(e)(ii) The system is kept up to date with the latest versions of operating system and anti-virus updates
  - 32(e)(iii) Transfer of data to and from the system is conducted in a secure manner.
- 32(f) The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

### 33 PROTECTION OF PERSONAL DATA

- 33(a) With respect to the Parties' rights and obligations under this Agreement, the parties agree that the Council is the Data Controller and that the Service Provider is the Data Processor.
- 33(b) The Service Provider shall:
- 33(b)(i) Process the Personal Data only in accordance with the Data Protection Act 1998
  - 33(b)(ii) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body
  - 33(b)(iii) Implement appropriate technical and organisational measures, including but not limited to ensuring that Personal Data is not stored on any portable equipment or storage device or media unless encrypted, to protect the Personal Data against unauthorised or unlawful processing and against accidental loss,

destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected

- 33(b)(iv) Take reasonable steps to ensure the reliability of any Service Provider Staff who have access to the Personal Data
- 33(b)(v) Obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors or agents for the provision of the Services.
- 33(b)(vi) Ensure that all Service Provider Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Protection of Personal Data clause.
- 33(b)(vii) The sharing of individual identifiable information between organisations for the provision of coordinated and seamless care must comply with the necessary statutory legal requirement and satisfy the Caldicott principles of safeguarding confidential information.
- 33(b)(viii) Notify the Council (within five Working Days) if it receives:
  - a) a request from a Data Subject to have access to that person's Personal Data; or
  - b) a complaint or request relating to the Council's obligations under the Data Protection Legislation.
- 33(b)(ix) Provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
  - a) providing the Council with full details of the complaint or request
  - b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions
  - c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council)
  - d) providing the Council with any information requested by the Council
- 33(b)(x) Permit the Council (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Service Provider's data processing activities (and/or those of its agents,

subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Service Provider is in full compliance with its obligations under this Agreement.

- 33(b)(xi) Provide a written description of the technical and organisational methods employed by the Service Provider for processing Personal Data (within the timescales required by the Council).
- 33(b)(xii) Not process Personal Data outside the United Kingdom without the prior written consent of the Council and, where the Council consents to a transfer, to comply with:
  - a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
  - b) any reasonable instructions notified to it by the Council
- 33(c) The Service Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 33(d) The Service Provider shall ensure that its Staff, employees and agents are aware of and comply with this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of this clause.

#### 34 COUNCIL DATA AND PERSONAL INFORMATION AUDITS

- 34(a) Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:
  - 34(a)(i) to review the integrity, confidentiality and security of the Council Data
  - 34(a)(ii) to review the Service Provider's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services
- 34(b) The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.

- 34(c) Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 34(c)(i) all information requested by the Council within the permitted scope of the audit
  - 34(c)(ii) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services
  - 34(c)(iii) access to Service Provider's Staff
- 34(d) The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Service.
- 34(e) The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days' notice of its intention to conduct an audit.
- 34(f) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 34(g) This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement.

### 35 EMERGENCY PLANNING

The Service Provider will ensure that it has business continuity plans in place for a range of emergency situations should they arise i.e. Pandemic influenza, powers cuts etc. and a copy must be sent to the Council upon request.

### 36 AGREEMENT STATUS AND TRANSPARENCY

- 36(a) 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 Agreement and any associated tender documentation provided by the Service Provider (the Tender Submission) is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.
- 36(b) Notwithstanding any other term of this Agreement, the Service Provider hereby gives his consent for the Council to publish this Agreement and the Tender Submission in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 36(c) The Council may consult with the Service Provider to inform its decision regarding any exemptions but the Council shall have the final decision in its

absolute discretion.

- 36(d) The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Agreement and the Tender Submission.

### 37 DEPRIVATION OF LIBERTIES SAFEGUARDS

- 37(a) The Service Provider must always apply the principles of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards. The Service Provider should always consult the relevant codes of practice for further detailed guidance. The Service Provider Manager is the managing authority for the purpose of the Mental Capacity Act: Deprivation of Liberty Safeguards (DOLS).

- 37(b) The Service Provider will comply with the conditions set as a result of DOLS Authorisation being given.

### 38 COMPLAINTS

- 38(a) The Service Provider shall operate a complaints procedure in respect of the Services which shall comply with basic principles of effective complaints systems such as being:

38(a)(i) easy to access and understand

38(a)(ii) speedy – with fixed time limits for action and keeping people informed of progress

38(a)(iii) confidential to protect Staff and the complainant

38(a)(iv) informative – providing information to management so that services can be improved

38(a)(v) fair – with a full procedure for investigations

38(a)(vi) effective – dealing with all points raised and providing suitable remedies

38(a)(vii) regularly monitored and audited – to make sure that it is effective and improved

- 38(b) Where the Service Provider is subject to the supervision of a Registration Body or Association which has made rules or issued instructions concerning the content or form of the Service Provider's complaints procedure in compliance with any and all such rules or instructions of that Registration Body.

- 38(c) whichever complaint system is used the Service Provider shall ensure that:

38(c)i under no circumstances is a complaint investigated by a member of Staff who may be part of the complaint. The Service Provider will ensure that someone who is independent of the matter complained of carries out the investigation

38(c)ii the complainant is made aware that they are entitled to have the

complaint investigated by the Council if they are not satisfied with either the process of investigation or finding of the Service Provider's investigations

- 38(c)iii the Service Provider will ensure that it responds to the complainant within a max of 20 days of receiving the complaint.
- 38(d) Each party shall make its complaints procedure available to the other party on request.
- 38(e) The Service Provider shall ensure that all Staff are made aware of the procedure referred to in the preceding sub-clause and shall designate one employee to act as a complaints manager to whom a complaint may be referred should the complainant not be satisfied with the initial response to his complaint.
- 38(f) The Service Provider shall keep accurate and complete written records of all complaints received and the responses to them and if required to do so by a Council Officer shall make such records available to the Council.
- 38(g) A record of complaints made and action taken should be kept in accordance with the above in format as required by the Council and all such records shall be made available to the Council's Contract Unit or Service Manager upon request.
- 38(h) Where the Council is investigating a complaint by a Resident the Service Provider is required to participate in all complaint investigations within the timescales requested by the Council.
- 38(i) Any complaint regarding possible physical, psychological, financial, sexual or discriminatory abuse or neglect should be reported immediately to the appropriate Council's Adults and Carers team by telephone and confirmed in writing as soon as reasonably practical but no later than five Working Days.
- 38(j) Where a complaint is made against a member of Staff this shall be investigated in accordance with the documented complaints procedure of the Service Provider. The Council's Multi Agency Adult Protection Policies and Procedures should be followed and strictly adhered to in any case of actual or suspected abuse. In all such cases the Service Provider shall notify the Council's Contracts Unit of any complaints and actions taken in individual cases and the nature of the complaint if it is from a Resident.

### 39 NOTIFICATION

- 39(a) The Service Provider will inform the Council's First Point of Contact immediately (normally the first working day) and confirm by email within 3 working days if any of the following occur:
- 39(a)(i) hospital admission of a Resident



- 39(a)(ii) the death of a Resident receiving the Service
  - 39(a)(iii) a formal written complaint received from the Resident
  - 39(a)(iv) allegation of or actual abuse to a Resident
  - 39(a)(v) disappearance of a Resident
  - 39(a)(vi) any circumstances where a Resident has refused provision of the Service
  - 39(a)(vii) significant change to the physical or mental condition of the Resident
  - 39(a)(viii) major injury to a Resident as defined in the “Reporting of Injuries Diseases and Dangerous Occurrences” Regulations 1995
  - 39(a)(ix) allegation of or actual racial harassment or discrimination
  - 39(a)(x) any other serious issues causing concern about the well being of a Resident.
- 39(b) The Service Provider will notify the Council’s Contracts Manager by email of inspection reports carried out by the Registration Body within 3 weeks of the final report being received by the Service Provider.

#### 40 SAFEGUARDING

- 40(a) The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006. The Service Provider shall:
- 40(a)(i) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, 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
  - 40(a)(ii) monitor the level and validity of the checks under this clause 34(a) for each member of the Service Provider’s Personnel.
- 40(b) The Service Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of a Service or activity that is a Regulated Activity 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.
- 40(c) The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 34 have been met.

- 40(d) The Service Provider shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Residents, children or adults at risk.
- 40(e) The Service 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 Regulated Activity or who may otherwise present a risk to Residents.
- 40(f) Where the service requirement, specification or Purchase Order specifies that the Service or activity to be provided under this Agreement involves a Regulated Activity, or the Council otherwise notifies the Service Provider, acting reasonably, that the Service Provider's Personnel are required to be subject to a Disclosure and Barring Service check, the Contractor shall comply with clause 34(a) above.

## **THE SPECIFICATION**

### **SCHEDULE 1**

#### **THE SERVICE: RESIDENTIAL**

##### **1.0 DESCRIPTION OF THE SERVICE**

- 1.0 The Home is a residential care home and provides care and support to Residents with a learning disability.
- 1.2 The Service will support the Residents to develop independence skills as far as possible acknowledging that learning is a lifelong process.
- 1.3 Where appropriate the Service will support and enable the Residents to manage daily living tasks and maximise the Resident's independence.
- 1.4 The Service Provider will support the Residents to
- develop meaningful community connections and daily activities.
  - maintain and develop family and friendship ties
- 1.5 The Service may need to:
- be able to support the needs of Residents with autism
  - develop and implement strategies to reduce challenging behaviour
  - develop strategies for improving communication
  - meet the needs of people with complex personal care needs
  - develop and implement a framework to promote person centred planning

and opportunities for social, leisure and vocational activity within the local community

- 1.6 Continued review and evaluation of interventions implemented may include:
- reactive management strategies in accordance with MAPA (Management of Actual and Potential Aggression)
  - preventive strategies
  - positive programmes to develop alternative behaviour
  - treatment strategies under the direction of clinical support

## **2.0 SERVICE PROVISION**

- 2.1 The following are the principles that apply to the Service at the Home:
- 2.1.1 it provides a warm caring environment that stimulates and supports people with learning disabilities.
- 2.1.2 it endeavours to improve the Resident's quality of life by exploring day to day living experiences in a positive and meaningful way.
- 2.1.3 it seeks to ensure that each Resident is able to achieve as much independence as possible and builds on strengths and skills, through experience enabling the Resident and encouraging his or her participation in and contribution in the community.
- 2.1.4 it provides a Service where practices are innovative, non-institutional, non-oppressive and non-discriminatory.
- 2.2 The Service Provider is responsible for:
- 2.2.1 ensuring that the Service is provided in an environment where Residents can be supported in their daily lives (taking into account any condition, illness and/or disability) whilst being enabled to access non-segregated community resources whenever appropriate.
- 2.2.2 all the costs associated with supporting the Residents in daily living.
- 2.3 The Service is twenty four hours per day, seven days per week, and 52 weeks per year including bank holidays.
- 2.4 The staffing levels will:
- 2.4.1 be appropriate to the needs of the Residents' Individual Support Plans as negotiated between the Service Provider and the Council.
- 2.4.2 comply with any minimum staffing levels that may in future be imposed by the Regulatory Body.
- 2.5 The Service Provider will ensure that the Service is matched to the requirements of each individual Resident in order that he or she may live a fulfilling and meaningful life.
- 2.6 The Service Provider will ensure that the Service offers choice and independence incorporated into everyday living experiences where the individual

is supported with dignity and respect at all times.

- 2.7 The Service Provider will ensure that Residents are involved in decision making related to all issues that may directly or indirectly affect them. This may necessitate the involvement of an advocate or family carer.

### **3.0 ASSESSMENT AND REFERRAL TO THE SERVICE**

- 3.1 Assessment and referral to the Service will be undertaken between the Council's nominated representative.
- 3.2 The involvement and wishes of the Resident will be taken into account.
- 3.3 It is recognised that pre-placement assessment is a collaborative process and will include a multi-disciplinary approach in consultation with next of kin and any other party important to the Resident.
- 3.4 The Service Provider will operate an admissions procedure that will allow for prospective Residents to visit the Home prior to admission.
- 3.5 The Service Provider will work in collaboration with the Council's staff or nominated representative to support Residents through any crisis and provide a pro-active management plan.
- 3.6 The assessment process will take into account the compatibility of the prospective Resident with that of Residents and others already in residence.
- 3.7 In providing the Service the Service Provider undertakes to explore and implement appropriate and responsive Support Plans in agreement with the Council's staff or nominated representative which will meet the Resident's individual spiritual, physical, educational, psychosocial and emotional needs and at all times promote and maximise independence.
- 3.8 Written information on the Service Provider and Home must be available for prospective Residents.

### **4.0 REVIEW OF SERVICE TO AN INDIVIDUAL RESIDENT**

- 4.1 Formal reviews will usually be held after three months initially and thereafter every six months.
- 4.2 The review process will involve the Resident and all other relevant professionals and representatives.
- 4.3 The outcomes of reviews undertaken by the Service Provider will be communicated to the Council or its nominated representative.

### **5.0 RIGHTS OF RESIDENTS**

- 5.1 Residents will:
- 5.1.1 Be treated as an individual with unique needs.
  - 5.1.2 Be encouraged to have personal independence and choice.
  - 5.1.3 Have their personal dignity respected.
  - 5.1.4 Have their cultural social religious and emotional needs respected.

- 5.1.5 Have access to all personal information held on them by the Service Provider.
- 5.1.6 Participate in formulating their own Assessment of Needs.
- 5.1.7 Participate in any reviews or re-assessment of their needs.
- 5.1.8 Receive a non-discriminatory service.
- 5.1.9 Receive assistance to maintain personal skills.
- 5.1.10 Have access to representation advice and advocacy as appropriate.
- 5.1.11 Have access to a formal complaints procedure.
- 5.1.12 Be involved in any decision-making process as it affects them and to comment on the Service under this Contract by means of an independent advocate if necessary without fear of reprisal
- 5.1.13 Have the right to be left alone or undisturbed and free from intrusion or public attention in their affairs other than in circumstances where this puts the Resident or others at risk.
- 5.1.14 Be made aware of and have access to their personal records including medical records and the procedures for maintaining confidentiality.
- 5.1.15 Have private access to various forms of communication and be able to receive visitors in private.

## 5.2 **Dignity**

The gender and ability of the Staff assisting in intimate care tasks must be considered to avoid embarrassment and discomfort of both the Staff and the Resident.

## 5.3 **Independence**

- 5.3.1 Residents will be supported to act and think without reference to another person and this will involve being enabled to take considered risks.
- 5.3.2 The Service Provider must ensure that Residents are enabled to exercise their democratic right to vote in governmental elections and referenda nationally and locally and to receive electoral communications and personal calls by canvassers.
- 5.3.3 All Residents will be supported to appropriately express their sexuality although the Service Provider will also recognise the vulnerability of Residents to sexual exploitation. The Service Provider will raise Staff awareness and provide support and training to Staff when they are dealing directly with issues of sexuality with Residents.

## 5.4 **Choice**

- 5.4.1 The Residents will be supported to make their own choices in respect of their care where appropriate and will have access to services provided flexibly for their benefit in the least restrictive way possible.

5.4.2 Residents should be free to administer their own medication in accordance with guidelines issued by the Regulatory Body from time to time.

## 5.5 **Fulfilment**

5.5.1 Residents will be supported to realise their personal aspirations and abilities in all aspects of daily life and should be encouraged and enabled to maintain links with family, friends, carers and communities and enter into activities and relationships in the wider community.

5.5.2 The Service Provider should ensure that the Resident's cultural emotional spiritual and sexual needs are met with understanding and support as necessary.

## 5.6 **Security**

5.6.1 Residents have the right to an environment The Service will be provided in an environment which affords them protection and security.

5.6.2 During holiday periods or in the event of admission to hospital the Resident's room and/or bed must not be used for another Resident including short-term Residents.

## 5.7 **Accommodation and Facilities**

5.7.1 The accommodation should be a single room or as agreed with the Service Provider and appropriately furnished. Resident's views on how their rooms should be decorated furnished and managed should be encouraged and respected.

5.7.2 There will be full bathing washing and toilet facilities.

5.7.3 The Home will be fitted with all necessary and appropriate furnishings

5.7.4 Domestic services such as regular cleaning of Resident's rooms and bed making will be carried out daily. Residents should be encouraged to dust and tidy rooms where possible.

5.7.5 Linen and bedding should be provided for each Resident. Residents should have access to a constant supply of clean towels and flannels for their individual use.

5.7.6 Residents will have access to television radio newspapers and private access to a telephone

## 5.8 **Meals and Beverages**

5.8.1 Food meals snacks and non-alcoholic beverages are inclusive in the Payment and will include breakfast lunch tea and supper with snacks and drinks available where appropriate on request.

5.8.2 The Service Provider should ensure there is a healthy balanced varied menu offered which reflects the views and preferences of the Residents

which could include special diets such as vegetarian gluten free and those reflecting a cultural preference.

5.8.3 Residents should be encouraged to prepare drinks and snacks for themselves where appropriate.

## 5.9 **Personal Care**

5.9.1 Personal care should be of a high standard. It should be offered to a level the Resident considers acceptable and as defined in the Assessment of Needs. This may include assistance with:

- Dressing.
- Washing (including hair).
- Bathing.
- Oral Hygiene.
- Taking to the toilet (including the management of catheters and the provision and changing of incontinence pads and menstruation management).
- Shaving and facial hair management.
- Nail care to hands and feet
- Help with eating.

5.9.2 Basic toiletry provision (shampoo conditioner soap toothpaste) and minor repairs to clothing are inclusive in the Payment. Additional charges to the Resident may be levied, for example hairdressing, dry cleaning, non-basic toiletries and may be met by way of Resident's personal allowances.

5.9.3 Personal Care should include access to incontinence services and aids provided by other agencies.

## 5.10 **Health Care**

5.10.1 Residents will be registered with a GP of their own choice.

5.10.2 There will be the opportunity for regular appointments with a GP and appointments to check eye, teeth and hearing needs. Residents should be encouraged to keep all such appointments.

5.10.3 The Service Provider should ensure that if the Resident wishes they are accompanied to these appointments by the Service Provider or a family member or friend.

5.10.4 Where the practice of self-administration of medicines is established or forms part of a planned preparation of a Residents move towards greater independence adequate steps must be taken to monitor compliance by Staff within legal requirements following an assessment and with the

agreement of the Resident and family or Care Manager where appropriate and in accordance with guidelines issued by the Regulatory Body from time to time

5.10.5 The Service Provider is responsible for the collection and dispensation of prescribed drugs and medicines in accordance with the Individual Support Plan.

#### 5.11 **Social Care**

5.11.1 Residents should be encouraged to follow where possible their chosen life style which should include leisure and social pursuits. Residents should have the opportunity to meet their spiritual needs.

5.11.2 Residents will be supported to choose and wear their own clothes which should be clean and in good repair at all times. Minor repairs are the responsibility of the Service Provider.

5.11.3 Residents should be encouraged to go on shopping trips to purchase personal items.

5.11.4 Resident's visitors should be welcome at all reasonable times. There should be access to facilities for Residents and visitors to have access to or make drinks.

5.11.5 The Service Provider should make arrangements for appropriate safe transport and escort as necessary to enable the Resident to access health and social care services shops and social activities. Care will be taken to ensure that if a Resident uses a wheelchair that this is approved for use in a vehicle and is secured safely and appropriately in accordance with any relevant guidance.

5.11.6 Access to the provision of aids and equipment which may enhance the quality of life of the Resident

#### 5.12 **Privacy**

Residents have the right to be left alone or undisturbed and free from intrusion or public attention in their affairs to be aware of and have access to their personal records including medical records and the procedures for maintaining confidentiality have private access to a telephone and to receive visitors in private.

### **6.0 THE SERVICE PROVIDER'S INDIVIDUAL SUPPORT PLAN**

6.1 The Service Provider will produce a Support Plan related to the Resident's assessment needs which will describe the specific care objectives and Service arrangements including written risk assessments and will take into account the Resident's physical emotional social cultural and intellectual needs This will be discussed with the Resident or the Resident's representative where



appropriate.

- 6.2 The Service Provider shall keep the Care Manager informed of any change of circumstances that are pertinent to the Resident's Individual Support Plan.

## **7.0 EQUAL OPPORTUNITIES**

- 7.1 The spiritual and cultural needs of Residents must be provided for and the Service Provider must ensure Residents are in contact with an appropriate representative of the religion of their choice if requested. This should include participation by the Resident in religious and cultural festivals as appropriate.
- 7.2 Service Providers will ensure compliance with any special customs and services associated with the death of a Resident.

## **8. TRANSFER OF RESIDENTS**

- 8.1 Allocation of a room to a Resident implies exclusive use of that room and would normally be for the life time of that Resident. If a Resident requests a change of room the Service Provider must notify the Care Manager.
- 8.2 In the event of redecoration the Service Provider reserves the right to move the Resident on a temporary basis to facilitate the completion of the work.
- 8.3 The Service Provider may move a Resident to an alternative room if the needs and requirements of the Resident change ensuring compliance with the Mental Capacity Act.

## **9.0 RISK MANAGEMENT**

- 9.1 The Service Provider will have a risk management policy in respect of Residents. Steps taken to minimise risk will be discussed with the Resident family member or advocate, or with Council staff, where appropriate.
- 9.2 The policy will recognise the Resident's right to take risks as an expression of independence but will take into account the effect on other Residents and Staff.
- 9.3 This policy should be communicated to all Staff, Residents and their family and Care Manager

## **10.0 CHALLENGING BEHAVIOUR**

- 10.1 Where the Service Provider is concerned that a Resident's behaviour is adversely affecting the health safety comfort and quality of life of other Residents the Service Provider must bring the matter to the attention of the Care Manager and both parties will take immediate action with the Service Provider to resolve the situation as soon as possible and may:
- 10.1.1 Discuss the matter with the Resident
  - 10.1.2 Discreetly, sensitively and with regard to confidentiality gauge the response of those affected by the behaviour
  - 10.1.3 Discuss the matter with the Resident's family if appropriate
  - 10.1.4 Involve other specialist professionals

- 10.2 The Service Provider will work to the Council's Management of Actual and Potential Aggression Policy and ensure that all care Staff are trained in the Management of Actual and Potential Aggression and this training is refreshed and updated in line with recommendations or every two years.

### **11.0 OUTCOMES OF THE SERVICE**

- 11.1 The encouragement of the Resident's independence through therapeutic approaches and the utilization of his or her practical skills.
- 11.2 The enabling of Resident choice in relation to the day to day routine of the Home and in choice of food and personal control of money.
- 11.3 The recognition of the symptoms of institutionalisation within Residents and implementing strategies to build on his or her self-esteem and self-determination.
- 11.4 A full and on-going assessment of social, educational, physical, spiritual and emotional needs of the Resident, working in collaboration with other relevant agencies to achieve best outcomes.
- 11.5 An immediate response to changing needs of the Resident through the provision of an ongoing and immediate review system.
- 11.6 The implementation of coping strategies, assessment and intervention during difficulties through the provision of 24 hour supervision which will provide mechanisms for on-going surveillance and monitoring of the Resident.
- 11.7 The reporting of any significant changes in a Resident's psychosocial and emotional well-being to relevant professionals and every effort made to achieve a positive outcome.
- 11.8 Full and accurate recording of events including all phenomena in order that evaluative processes may be fully exploited.
- 11.9 Increased availability of apprenticeships and training opportunities generally and for 16-18 year old (NEETs) in particular.
- 11.10 Support for the local supply chain both during the redevelopment phase and in the normal operation of the service.

### **12.0 INFORMATION FOR RESIDENTS**

- 12.1 A written statement or brochure must be given and explained to Residents when they take up residence at a Home and this should include the following information:
- details of the Service, the philosophy and operation of the Service
  - a statement about how the Resident can complain. This should include details of who will deal with the complaint and the time limit within which a response will be made.
  - a statement concerning the Service Provider's policy on equal

opportunities/non-discrimination.

- a statement concerning confidentiality and when confidentiality will be breached.
- the right of the Resident to have access to any personal information held on them by the Service Provider.

### **13.0 SENSORY AND MOBILITY LOSS AND IMPAIRMENT**

- 13.1 Staff must observe any indications of changes in sensory abilities or physical mobility of Residents and report them to the Service Provider. These will be recorded in the Resident's Individual Support Plan and in consultation with the Resident a referral may be made for medical advice or treatment.
- 13.2 The Service Provider will ensure that prescribed aids and equipment are being obtained for the Resident without delay. The Service Provider will be aware of and encourage the Resident to use any other aids and equipment which enhances the Resident's life (e.g. Talking Books magnifying glasses). The Service Provider will ensure that all aids and equipment will be kept clean and maintained in good working order and in accord with manufacturing instructions. Under no circumstances will defective equipment aids be used. The Service Provider will ensure that Staff are trained in assisting Residents in the proper use of the aids and it is the responsibility of the Service Provider to secure this training.
- 13.3 The Service Provider will ensure that Staff can communicate with Residents with sensory impairments.
- 13.4 The Service Provider will ensure that Staff are trained in the skills required for assisting Residents who have impaired mobility and the Service Provider will endeavour to promote the independence of the Resident wherever possible.
- 13.5 The Service Provider will ensure Staff are aware of the social isolation which may arise from sensory impairment and physical mobility and will seek ways of addressing such isolation in consultation with the Resident.

### **14.0 OUTPUTS**

- 14.1 The Service Provider will report on the following:
- The number of new apprenticeships created in Shropshire
  - The number of new training opportunities created through this Service
- 14.2 Within the report the Service Provider will identify how many of the above are 16-18 year olds who are not in education, training or employment

## **SCHEDULE 2 SERVICE STANDARDS**

## **1.0 GUIDING PRINCIPLES**

- 1.1 The parties will seek to provide a Service that:
- 1.1.1 encourages Residents to make decisions about their own lives.
  - 1.1.2 acknowledges and seeks to address and avoid the ways in which people with learning disabilities are marginalised and subjected to discrimination
  - 1.1.3 ensures that members of Staff are committed to anti-discriminatory and anti – oppressive practice and seek to examine their own attitudes.
  - 1.1.4 ensures that the dignity, privacy and individuality of all Residents are respected.
  - 1.1.5 respects the cultural, social, religious and emotional needs of Residents.
  - 1.1.6 respects the confidentiality of any information gained about Residents whilst ensuring that Staff are clear that they have a duty to share any concerns about Resident’s mental and physical welfare with their managers and other professionals involved in the Resident’s support fosters independence and enables Residents to reach their full potential
  - 1.1.7 provides appropriate protection to Residents whose level of vulnerability is prone to fluctuation and particularly in circumstances where this vulnerability may compromise the security of their tenancy.
- 1.2 The Service Provider must provide the Service in accordance with the terms of this Contract and with all the skill, care and diligence to be expected of a competent Service Provider of services of a similar kind to the Service.
- 1.3 In providing the Service the Service Provider must also comply with any of the practices performance ratings and quality standards that are set out or referred to in this Contract and all statutory provisions and guidance which apply to the Service and are issued from time to time by a Regulatory Body.
- 1.4 The Service Provider is directed towards the Government White Paper “Valuing People” and Schedule 4 Rights Charter which mirrors many of the aims and objectives in the Service Specification.

## **2.0 COMPLAINTS**

- 2.1 The Service Provider will operate a complaints procedure which will comply with basic principles of effective complaints systems such as being:
- 2.1.1 easy to access and understand
  - 2.1.2 speedy – with fixed time limits for action and keeping people

- informed of progress.
- 2.1.3 confidential to protect Staff and the complainant
- 2.1.4 informative – providing information to management so that services can be improved
- 2.1.5 fair – with a full procedure for investigations
- 2.1.6 effective – dealing with all points raised and providing suitable remedies
- 2.1.7 regularly monitored and audited – to make sure that it is effective and improved
- 2.2 Where the Service Provider is subject to regulations concerning the content or form of the complaints procedure compliance the Service Provider shall comply with any and all such rules or instructions of the Regulatory Body
- 2.3 The Service Provider shall ensure that:
  - 2.3.1 under no circumstances is a complaint investigated by a member of Staff who may be part of the complaint. The Service Provider will ensure that someone who is independent of the matter complained of carries out the investigation
  - 2.3.2 the complainant is made aware that they are entitled to have the complaint investigated by the Council if they are not satisfied with either the process of investigation or finding of the Service Provider's investigations
  - 2.3.3 it responds to the complainant within a maximum of 20 days of receiving the complaint
- 2.4 Each party shall make its complaints procedure available to the other party on request
- 2.5 The Service Provider shall ensure that all Staff are made aware of the procedure referred to under 2.3 above and shall designate one employee to act as a complaints manager to whom a complaint may be referred should the complainant not be satisfied with the initial response to his complaint
- 2.6 The Service Provider shall keep accurate and complete written records of all complaints received with any actions taken and the responses to them and shall make such records available to the Council upon request.
- 2.7 Where the Council is investigating a complaint by a Resident the Service Provider is required to participate in all complaint investigations within the timescales requested by the Council.
- 2.8 Any complaint regarding possible physical, psychological, financial, sexual or discriminatory abuse or neglect should be reported immediately to the Care Manager by telephone and confirmed in writing as soon as reasonably

practical but no later than five working days

- 2.9 Where a complaint is made against a member of the Staff this shall be investigated in accordance with the documented complaints procedure of the Service Provider. The Council's Multi Agency Safeguarding Adults Policies and Procedures should be followed and strictly adhered to in any case of actual or suspected abuse

### **3.0 ADMINISTRATION**

- 3.1 The Service Provider will provide information to the Council as requested from time to time to meet Department of Health or the Department for Communities and Local Government requirements.

### **4.0 FINANCE AND ALLOWANCES**

- 4.1 The Service Provider must ensure that when collecting State benefit entitlement on behalf of a Resident either

- the Resident receives the Personal Allowance or
- proper arrangements have been made in agreement with the Resident or their nominated representative for the safe-keeping of such Personal Allowance or
- where the Resident is unable to make decisions and has no family that arrangements have been made to manage the money which are satisfactory to the Care Manager in accordance with the Assessment of Needs

- 4.2 All transactions and personal accounts for Resident's should be recorded separately and held in a day book which shall be made available for inspection by the Council.

- 4.3 The Service Provider will ensure that the Resident's Personal Allowance is not used for the purchase of or contribution towards any part of the Service required to be provided under this Contract and that the Resident's Personal Allowance is available to the Resident to spend as they choose.

- 4.4 Residents should be free to take responsibility for their Personal Allowances and manage their own finances if able to do so. Any additional charges should be clarified and agreed with the Care Manager when admission is being considered. No additional charges should be made to the Resident or their relatives without prior agreement from the Care Manager.

### **5.0 RECORD KEEPING AND CONFIDENTIALITY**

- 5.1 The Service Provider's facilities for storing records such as filing cabinets must be lockable and in a secure environment. Evidence must be available that any statutory requirements relating to the premises have been complied with.

- 5.2 The following information should be recorded in respect of each Resident:

- 5.2.1 name, address, date of birth
  - 5.2.2 gender, ethnic origin and significant, relevant items of personal/medical history and critical incidents
  - 5.2.3 next of kin - name, address and telephone number
  - 5.2.4 GP - name, address and telephone number
  - 5.2.5 date of referral, Service commencement and termination
  - 5.2.6 current Care Plan details
  - 5.2.7 current risk assessment
  - 5.2.8 personal accounts
- 5.3 A register of Staff must be maintained which should include the following information
- 5.3.1 name, address and telephone number
  - 5.3.2 position held and hours worked
  - 5.3.3 next of kin - name, address and telephone number
  - 5.3.4 GP - name, address and telephone number
  - 5.3.5 Date of issue of identification and retrieval if appropriate
  - 5.3.6 Recruitment details including references, evidence of DBS disclosure and interview
  - 5.3.7 Induction and training records
  - 5.3.8 Copies of training certificates and qualifications
- 5.4 The Service Provider will ensure that each member of Staff is made aware that their files may be inspected by Officers of the Council for the purpose of monitoring.
- 5.5 In accordance with Caldicott recommendations and confidentiality requirements the Service Provider will ensure that:
- 5.5.1 Residents are able to find out how the Service Provider deals with confidential and sensitive information about them and should be given a leaflet (or other communication relevant to their level of understanding) that clearly explains what information is kept on them and how they can access this.
  - 5.5.2 Residents and Staff have access to their personal records in private and as quickly as possible if requested and no later than 21 days whilst considering the interest of any third party information which can only be given with the third party's permission.
  - 5.5.3 when the Resident has examined the records they are signed and dated by a member of Staff to show they have been examined and by the Resident when possible.

- 5.5.4 Staff are required to sign and date an acknowledgement that they have examined records pertaining to them upon the fulfilment of their request.
- 5.5.5 It has a policy document that details Staff Code of Conduct in relation to confidentiality. This document must be shared with and understood by Staff used to provide the Service and regularly updated.
- 5.5.6 Staff induction contains training on confidentiality procedures. Staff files should evidence the date and nature of the induction on confidentiality that was given to new Staff.
- 5.5.7 confidential and security training needs should be assessed on an ongoing basis taking into account the role of each member of Staff used to provide the Service and this should be done annually
- 5.5.8 Staff contracts explicitly mention confidentiality and disclosure issues  
the flows of Resident information are reviewed
- 5.5.9 information collections have a named owner (member of Staff) who is responsible for protecting access
- 5.5.10 confidential information on Residents is safeguarded so that unauthorised people do not gain access to it.
- 5.5.11 protocols governing the sharing of Resident information with other organisations is agreed and understood
- 5.5.12 a named individual is appointed who will have responsibility for data security
- 5.5.13 it has a programme to review typical risks regarding Residents identifiable information
- 5.5.14 incidents involving security breaches are anticipated and dealt with appropriately
- 5.5.15 security issues are monitored and reported
- 5.5.17 passwords are used to safeguard information held on computer regarding the Service
- 5.5.18 only authorised persons have access to information and only if they need it to carry out their roles.
- 5.5.19 if it is uncertain about the application of the above to the provision of the Service it will immediately contact the Council for clarification

## **6.0 POLICIES, PROCEDURES AND GUIDANCE**



6.1 The Service Provider should have the following policies, procedures and/or guidance in place:

- 6.1.1 Operational policies including recruitment, supervision and retention of Staff
- 6.1.2 Grievance and disciplinary procedures
- 6.1.3 Health and Safety Policy in line with the Health & Safety at Work Act 1974 and the Health & Safety at Work Regulations 1992 and any amendments thereof
- 6.1.4 Confidentiality, record keeping, security and access to records policy
- 6.1.5 Lone/out of hours working policy
- 6.1.6 Dealing with Violence, Aggression and Disruptive Behaviour in line with the Council's Management of Actual and Potential Aggression Policy
- 6.1.7 Staff training policy
- 6.1.8 Recording of incidents
- 6.1.9 Supporting Residents who take prescribed and un-prescribed medication
- 6.1.10 Risk Management policy and procedure
- 6.1.11 Resident Rights and Responsibilities
- 6.1.12 Staff Code of Conduct and Responsibilities
- 6.1.13 Whistle blowing Policy
- 6.1.14 Equal Opportunities Policy
- 6.1.15 The Freedom of Information Act
- 6.1.16 The Council's Multi Agency Safeguarding Adults Policy and Procedure
- 6.1.17 Fire Safety Policy
- 6.1.18 Missing Persons Policy
- 6.1.19 Smoking Policy
- 6.1.20 Infection Control Policy
- 6.1.21 Mental Capacity Act 2008 Policy
- 6.1.22 Mental Capacity Act: Deprivation of Liberties Safeguard Policy and procedure

- 6.2 The Service Provider will ensure that all Staff have access to copies of all the policies and procedures listed above and that Staff sign to indicate that they have received read and understood each one and such documentation will be retained for management and inspection purposes.

## **7.0 STAFFING**

### **7.1 General Standards**

7.1.1 The Service Provider will ensure that there are enough trained and qualified, care Staff and ancillary Staff on duty at the Home at all times to deliver care which is of a high standard.

7.1.2 The Service Provider will have evidence on how they have made the assessment of how many of any type of Staff such as Nurses (where required); carers and ancillary Staff are needed to deliver the Service. This methodology will take into account the needs of all the Residents; the layout of the Home; the abilities and experience of the Staff at the Home and current Best practice and guidance. This assessment will be updated frequently and whenever there are changes within the Home which would affect the Service to the Residents.

### **7.2 The Home Manager**

7.2.1 The Home Manager is to be registered with the Registration Body. Where a new manager is appointed at the Home they will apply for registration with the Registration Body within six weeks of commencing the post.

7.2.2 The Council's Contracts Team are to be notified, within twenty eight (28) working days, if a manager ends their employment at the Home and when a new manager is appointed into the role.

7.2.3 There is an expectation that a manager is appointed to manage the Home. If the manager is expected to manage another home, or any other business, concurrently or is moved to cover another home the Council's Contracts Team are to be notified, within twenty eight (28) working days.

7.2.4 The Home Manager must be sufficiently experienced and qualified. It is expected that the manager would hold NVQ level 4 or equivalent or be actively working towards it when taking on the role.

7.2.5 The Home Manager will have sufficient supernumerary time to carry out the managerial tasks associated with the role such as staff supervisions; staff meetings; auditing of care plans and associated documentation; etc.

7.2.6 The Home Manager will have daily access to a computer at the Home

including a secure email address. This email address is to be made available to the Council.

7.3 **STAFFING - Recruitment and Selection**

- 7.3.1 The Service Provider must inform Staff that the Council reserves the right to view their Staff records
- 7.3.2 The Service Provider shall at all times during the period of this Contract engage sufficient Staff of sufficient ability skill knowledge training and experience for the proper performance of the Service and shall continuously supervise the performance of Staff and ensure that there is a sufficient reserve available to provide the Service at all times
- 7.3.3 The Service Provider shall be entirely responsible for the employment and conditions of service of its own employees and shall at all times be fully responsible for the payment of all salaries and wages income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any persons employed by the Service Provider and shall fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof
- 7.3.4 The Service Provider shall provide a means of identification to all its Staff and shall require them to produce such identification on request
- 7.3.5 There must be a clear written job description and employee specification for all Staff
- 7.3.6 Job applications must be in writing and describe previous experience, training, full employment history since leaving school and explain the reason for leaving and any gaps in employment.
- 7.3.7 Candidates selected for possible appointment must be interviewed.
- 7.3.8 Two satisfactory written references must be obtained before employment commences, and the authenticity of the reference should be verified. One reference must be from the applicant's current or last employer, and should be obtained from a previous employer in the care sector where applicable. Provision must be made for references to be taken from all previous employers if required. References should ask reasons for leaving, whether the employer providing the reference would offer re-employment and whether any disciplinary investigations have been undertaken and why.
- 7.3.9 Applicants must make a written declaration of previous convictions and disqualifying conditions and provide information about any other name by which they have been known.

- 7.3.10 Before the Service Provider engages or employs any person in the provision of the Service, or in any activity related to, or connected with, the provision of the Service, the Service Provider must without limitation, complete the Employment Checks and any other checks required by the Disclosure and Barring Service
- 7.3.11 The identity of all Staff should be verified prior to employment using an official document.
- 7.3.12 The authenticity of qualifications should be checked prior to employment.
- 7.3.13 Staff should be provided with information about their conditions of employment.
- 7.3.14 All Staff make a written undertaking in respect of confidentiality.
- 7.3.15 In the event of agency Staff being used the Service Provider must ensure that the agency has carried out thorough checks including references and hold a valid certificate of clearance issued by DBS and that selection processes have been rigorous.
- 7.3.16 All new Staff must be appointed on a probationary contract, renewal of which must be dependent upon satisfactory performance and completion of the Induction Programme. This provision must also apply to internal transfers.
- 7.3.17 Where any concerns have been raised about a potential member of Staff by a referee or through the DBS check and the person is nevertheless deemed to be suitable for support work appropriate and sufficient monitoring is undertaken by the Service Provider in respect of the concerns raised. The Service Provider must be able to demonstrate that such monitoring has been carried out.
- 7.3.18 Where an allegation of abuse occurs against a member of Staff the Service Provider the Council's Multi Agency Safeguarding Adults Policy and Procedures must be followed forthwith.
- 7.3.19 Staff must be trained in and understand the relevant parts of the Mental Capacity Act 2008 and Mental Capacity Act: Deprivation of Liberties Safeguard Policy and procedure.

## **8.0 STAFFING - Qualifications & Experience**

- 8.1 It is essential that Home Managers should have a qualification in Social Care or Nursing and must have a minimum of 5 years' experience of social care. Home Managers must work towards or possess the Registered Managers (MCI) Level 4 award.
- 8.2 It is desirable that Deputy Managers have a qualification in Social Care or Nursing and essential that they have had 3 to 5 years' experience in Social

Care. It is desirable that Deputy Managers have a qualification in Management if not they must work towards the achievement of MCI Level 4 or equivalent.

- 8.3 It is desirable that Senior Care Staff have a qualification in Social Care or Nursing and essential that they have had previous experience in Social Care. It is desirable that Senior Care Staff have a qualification in Management if not they must work towards the achievement of NVQ4 or equivalent.
- 8.4 Home Managers should provide evidence of the ability to manage Staff and systems effectively and to establish positive relationships with other professionals.
- 8.5 Care Staff must have previous relevant experience or training to enable them to provide the Service to the Residents at the Home and should hold or work towards achieving an appropriate National Vocational Qualification Level 2 and/or the certificate in Community Health Care and/or Learning Disability Awards.
- 8.6 Staff must be able to demonstrate their ability to follow policies and procedures.
- 8.7 All Staff must be committed to meeting the needs of the Residents and maximising their capacity for independence and self-determination.

## **9.0 STAFFING – Induction**

- 9.1 The Service Provider will provide a structured induction programme the standards of which will meet National Care Standards and the Common Induction Standards in every area and will cover as a minimum:
- an introduction to the policies procedures and codes of conduct of the Service Provider which Staff will be expected to follow
  - an introduction to the “Principles of Care” and “Valuing People”
  - instruction in safe moving and handling
  - administration of medication including administration of stesolid if required
  - breakaway and restraint techniques in line with the Council’s Management of Actual and Potential Aggression Policy
  - familiarisation with the individual Resident Care Plans and risk assessments
  - Health and Safety
  - basic First Aid
  - non-aversive intervention
  - the Council’s Multi-Agency Safeguarding Adults Policy and Procedures

- The Mental Capacity Act 2008 and The Mental Capacity Act: Deprivation of Liberties Safeguard Policy and procedure

- 9.2 New members of Staff who provide care directly and have no qualification will be required to show they have met the induction standards within the first six weeks of starting work
- 9.3 Staff will not be allowed to work unsupervised (out of sight of another appropriately trained member of Staff) until they have met the induction standards and had the appropriate training required and evidenced to provide the Service to the Residents.
- 9.4 Induction standards will lead to Foundation Standards followed by NVQ II
- 9.5 The Service Provider will provide Staff training opportunities both in- house and in conjunction with other agencies.

#### **10.0 STAFFING – Training**

- 10.1 An ongoing Programme of training which underpins knowledge for NVQ's and enables Staff to continually improve their performance should be available.
- 10.2 The Home Manager should undertake regular appraisals of Staff performance and training needs. Targets should be set to ensure all Staff achieve an appropriate NVQ Level 3 Award or recognised equivalent.
- 10.3 The Service Provider will ensure that there is an up to date electronic training matrix in place for all members of Staff which documents the name of the member of Staff; their role in the Home; the training they have had such as Infection Control; Dementia Awareness etc and the date the training was carried out and the date the training is to be refreshed or renewed. This information must be held locally.

#### **11.0 STAFFING – Supervision**

- 11.1 Supervision will take place between all Staff and their line manager in accordance with the requirements of the Regulatory Body and as a minimum on a three (3) monthly basis and written records will be kept on the content and outcome of each meeting and these will be held locally.

#### **12.0 STAFFING – Use of Agency Staff and Volunteers**

- 12.1 The Service Provider may use volunteers and agency Staff to deliver some of the activities provided as part of the Service.
- 12.2 In all cases volunteers and agency Staff must be recruited in line with the Guidance of the DBS and as a minimum must provide 2 (two) references which must be taken up by the Service Provider prior to any voluntary or agency work being undertaken.
- 12.3 Volunteers and agency Staff must receive adequate training for any duties they are to undertake. In particular if volunteers or agency Staff are to be used in

any instances for care duties they must receive and comply with the training and skills expected of care Staff.

- 12.4 The Service Provider will ensure that all Staff know that:
- they are exempt from the Provisions of Rehabilitation of Offenders Act 1974
  - they must sign a declaration of all previous criminal convictions
  - it is a disciplinary offence to make a false declaration.
- 12.5 In circumstances where the Council has a concern in relation to a member of Staff a meeting will be arranged within 24 hours or within other such time as shall be agreed to discuss any action required to address the concerns of the Council.
- 12.6 Staff are employed in accordance with the code of conduct and practice set by the general social care council and all Staff must be given copies of the code by the Service Provider.
- 12.7 The Service Provider will keep current and accurate records of all Staff including training records. Such records will be available to the Council on request in accordance with the Data Protection Act 1998
- 12.8 The Service Provider will ensure that Staff are suitable and competent to perform the tasks required of them in accordance with the requirements of the Regulatory Body. The Service Provider will ensure that the minimum qualification and experience criteria of the Health and Social Care Act 2008 standard 31 are met and that Staff are suitably qualified and trained in accordance with TOPPS National Standards.
- The Council has an approved list of training providers from which the Service Provider may wish to select. Any Provider using a training organisation which is not approved by the Council must if requested by the Council be able to demonstrate to the satisfaction of the Council that the training provided meets both National Minimum Standards and any additional requirements detailed in the Service Specification.
- 12.9 In addition the Service Provider will ensure that all Staff know that it is not acceptable for there to be a non-professional relationship between Staff and Residents either physical or financial and this should be seen as a disciplinary matter. This position also applies to any relationship between Staff and Residents that could be perceived as being of an exploitative nature.

### **13.0 TRANSPORT**

- 13.1 Risk Assessments in respect of each Resident, including any wheelchair they may use during transport, should be carried out in respect of transfers from the Home to day activities and Risk Assessments must be made available for

inspection and kept locally.

- 13.2 Staff must monitor the escort arrangements as required by each Individual Support Plan.
- 13.3 Vehicles used by Staff to transport the Residents must have a current MOT certificate if over 3 years old and have adequate third party and passenger liability insurance and must provide appropriate and safe transport for the Resident including an assessment of any wheelchair used by the Resident during transport. Care must be taken to assess the safe transport of wheelchairs and Staff must adhere to any guidance regarding this.
- 13.4 Vehicles used to transport the Residents should be regularly serviced and any concerns about road worthiness and safety reported to the Home Manager.
- 13.5 Any driver used by the Service Provider to transport the Residents MUST:
- be authorised by management for inspection.
  - hold a current driving license suitable for the vehicle being driven.
  - make a declaration of any license endorsements or penalty points.
- 13.6 Staff may not use their cars for work purposes unless they have appropriate business class insurance.

#### **14.0 HEALTH & SAFETY**

- 14.1 The Service Provider must have a Health and Safety Policy in line with the Health & Safety at Work Act 1974 and of the Health & Safety at Work Regulations 1992 and any amendments thereof and Management must make Staff aware of its contents.
- 14.2 Staff should be required to follow good practice in moving and handling and be provided with appropriate training and refresher training.
- 14.3 Records of all Health & Safety training, including refresher training must be kept and held locally.
- 14.4 A full written risk assessment should be undertaken on both the Service at the Home and in respect of each Resident when he/she is first admitted and when any changes to his/her care needs arise.
- 14.5 All accidents, incidents including violent incidents and 'near misses' at the Home and on trips involving Staff and Residents outside the Home must be recorded. This record should include any steps taken to prevent a recurrence. Accidents must also be recorded in an Accident Book.
- 14.6 The Service Provider must adhere to the multi-agency policy for dealing with violence, aggression and challenging behaviour.

#### **15.0 QUALITY ASSURANCE**

- 15.1 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 officers of the Council



access to all records for the purpose of monitoring and complaint investigation at all times. Confidentiality will be observed at all times

- 15.2 The Service Provider must have documented systems which enable it to:
- 15.2.1 check on whether it is delivering the Service in accordance with the Service Specification of each Schedule and their Outcomes and Outputs
  - 15.2.2 check whether it is doing this efficiently and effectively
  - 15.2.3 check on whether Staff are provided with safe systems of work
  - 15.2.4 check whether the Service is being delivered in a way which takes account of Resident's needs, preferences and satisfaction
  - 15.2.5 check to ensure that all records are up to date
  - 15.2.6 check whether Residents the Council and other relevant agencies consider the quality of the Service can be improved
  - 15.2.7 provide information to the Council evidencing that the systems are in place and being used and hold all records which demonstrate this locally.

## **16.0 MONITORING**

- 16.1 The Contracts Manager is responsible for monitoring the Service Provider's compliance with the terms of this Contract. Officers of the Council may seek to monitor this Contract by:
- 16.1.1 visiting the Home (announced or unannounced from time to time) to undertake a review on any or all aspects of the operation of the Service and compliance by the Service Provider with the terms set out in this Contract. The Council will have careful regard to the nature of the Service provided and shall when on premises controlled by the Service Provider respect Service Provider's rules as to security health and safety.
  - 16.1.2 carrying out a quality assurance exercise which may involve contacting Residents and/or their families and friends and ascertaining their views on the provision of the Service at the Home
- 16.2 The Service Provider will:
- 16.2.1 allow Officers of the Council access to the Home (upon the production by Council Officers of an identity badge) to carry out a monitoring visit. This may include viewing the Home and areas used at the Home for the provision of the Service such as Resident's bedrooms (Officers shall have regard to Resident's privacy whilst at the Home) communal areas, kitchen, bathrooms, halls (and any areas that a Resident can gain access to) to monitor and observe

- the provision of the Service to Residents as required under the terms of this Contract.
- 16.2.2 give assistance to Officers and prompt access to at any file information or record it holds in respect of the Resident or the provision of Service to the Residents as required by this Contract (which may include but is not limited to Resident's care files (including care plan, reviews, Assessment of Needs, risk assessments, daily notes), the recruitment and selection of Staff, policies and procedures, documentation relating to the Personal Allowance (if applicable) (and how these are put into practice at the Home)
- 16.2.3 allow Officers of the Council to speak to Resident's and Staff in private (the Council shall have regard to the Resident's needs and Staff needed on duty to provide the Service)
- 16.2.4 access to all records or information on Residents or the provision of the Service (this may include informal records such as staff handover book, staff rota)
- 16.2.5 upon request provide photocopies of documentation (subject to the Council contributing to the Service Provider's reasonable photocopy costs)
- 16.2.6 supplying to the Council upon request the names of Residents resident at the Home (at any one time) and or any contact details the Service Provider holds for next of kin or family / friends that visit the Home for the purpose of contacting them to ascertain their views of the Service provided at the Home
- 16.2.7 meet reasonable requests by Officers for information in order to investigate complaints made by Residents; or to assess the financial viability of the Service Provider, the reliability and quality of care provision throughout this Contract period, consistency and standards of care, the Resident's and/or their representative's views of the care provided.
- 16.2.8 shall keep an accurate record, usually called the staff rota, of all Staff on duty at the Home at any time including a note if the Home Manager or any member of staff leaves the Home for a period of time during their shift and make these available to Council Officers on request.
- 16.2.9 shall keep a record of all audits of records carried out at the Home and hold these records locally and make these available to Council

Officers on request

- 16.2.10 Within 4 months of the end of the financial year the Service Provider will provide the Council with an audited set of Financial Accounts.
- 16.2.11 The Service Provider shall maintain detailed and sufficient accounts including management accounts in relation to the Contract separate from those of any other business carried on by the Service Provider and the Council shall be entitled to full access to these accounts and any related documents or records.
- 16.3 The Care Manager is responsible for monitoring the provision of Service to the Resident as detailed in the Assessment of Need, the Care Plan and:
- 16.3.1 may seek to monitor the Service Provider's in-house systems of monitoring and review in respect of the provision of the Service to the Resident and evidence that the systems are being used effectively and that Individual Support Plans are being implemented and monitored and that needs identified within a Resident's Assessment of Needs are being met effectively.
- 16.3.2 inform the Service Provider if it fails to meet the requirements of the Contract and serve a Notice in accordance with Clause 10 (Breach) specifying what improvements should be made detailing the time scales and monitoring processes.
- 16.3.3 inform the Contracts Manager of any failings of the Service Provider and the outcome of the monitoring process. If in the opinion of the Care Manager there continues to be concerns the Care Manager will inform the Contracts Manager. The Council reserves the right in these circumstances to suspend or terminate the Contract in accordance with Clauses 11 (Suspension) and 14 (Extension and Termination).
- 16.4 The Service Provider will ensure that it obtains any necessary consent from Staff and/ or Residents to allow access to files to monitor the provision of the Service.
- 16.5 Monitoring will also be achieved by:  
SPIC periodically being consulted by the Council about the quality of Service provision.
- HEALTHWATCH**
- 16.6 The Service Provider will allow an Authorised Representative of Healthwatch to access the Home to enter and view the Home and observe the carrying on of activities and the Services at the Home.
- 16.7 The duty on the Service Provider to allow the Authorised Representative access in accordance with paragraph 16.6 above shall not apply where:

- 16.7.1 the presence of the Authorised Representative at the Home or in a part of the Home would compromise either the effective provision of the Services or the privacy or dignity of any person;
- 16.7.2 the Authorised Representative does not comply with the following:
  - a. any viewing or observation carried out by the Authorised Representative is to be carried out for the purposes of Healthwatch and;
  - b. whilst at the Home pursuant to paragraph 16.4 above the Authorised Representative does not act in any way that compromises the effective provision of the Services or the privacy or dignity of any person;
- 16.7.3 access is requested to Excluded Premises;
- 16.7.4 the Authorised Representative wishes to observe the carrying-on of Excluded Activities;
- 16.7.5 the Authorised Representative requests to enter and view the Home or part of the Home for the purpose of observing the carrying-on of Excluded Activities;
- 16.7.6 access is requested to the Home or part of the Home at any time when the Services are not being provided at the Home or any part of the Home;
- 16.7.7 in the opinion of the Service Provider the Authorised Representative is not acting reasonably and proportionately in seeking to enter and view and observe the carrying-on of activities at the Home; or
- 16.7.8 the Authorised Representative does not provide the Service Provider with written evidence that he or she is authorised by Healthwatch

#### **HEALTHWATCH'S REQUESTS FOR INFORMATION**

- 16.8 Upon receipt from Healthwatch of a request in writing for information which in the opinion of Healthwatch representative making the request is necessary for the effective carrying on of Healthwatch's activities the Service Provider will respond as follows:
  - 16.8.1 where the information requested is held by the Service Provider and is not exempt information in accordance with paragraph 16.7 below, the Service Provider must provide the information to Healthwatch within 20 Working Days following the date of receipt of the request for information by the Service Provider;

- 16.8.2 where the Service Provider holds the information and it is exempt information in accordance with paragraph 16.8 the Service Provider must:
- 16.8.3
  - a. if paragraph 16.8 applies provide the information to Healthwatch in a form in which the identity of the individual cannot be ascertained, within 20 Working Days following the date of receipt of the request for information by the Service Provider; or
  - b. in any other case, within 20 Working Days following the date of receipt of the request for information by the Service Provider notify Healthwatch that the Service Provider is not required to disclose the information requested;
- 16.8.4 where the Service Provider does not hold the information, notify Healthwatch of this within 20 Working Days following the date of receipt of the request for information by the Service Provider;
- 16.9 For the purposes of paragraph 16.6 information is exempt if it is:
  - 16.9.1 confidential and relates to a living individual, unless the individual consents to the information being disclosed;
  - 16.9.2 prohibited from disclosure by any enactment or order of court; or
  - 16.9.3 prohibited or restricted from disclosure by any rule of common law.
- 16.10 This paragraph shall apply where information requested under paragraph 16.6 is exempt by virtue of:
  - 16.10.1 the application of sub-paragraph 16.7.1; or
  - 16.10.2 the application of sub-paragraph 16.7.2 or 16.7.3 because the information is capable of identifying an individual; and which can be disclosed in a form from which the identity of the individual to whom that information relates or is capable of identifying cannot be ascertained.

## **17 ACCESS TO RESIDENT'S FILES**

- 17.1 The Service Provider will allow the Head of Contracts and Care Manager prompt access to any file information or record held by the Service Provider in respect of the Resident excluding nursing and medical records.

## **19 CONFIDENTIAL INFORMATION AND RECORD KEEPING**

The Service Provider's facilities for storing records such as filing cabinets must be lockable and in a secure environment. Evidence must be available that any statutory requirements relating to the premises have been complied with.

The following information should be recorded in respect of each Resident:

- 19.2.1 name, address, date of birth (and a recent photograph)
  - 19.2.2 gender, ethnic origin, spiritual preference and significant, relevant items of personal/medical history and critical incidents
  - 19.2.3 next of kin - name, address and telephone number
  - 19.2.4 GP - name, address and telephone number
  - 19.2.5 Social Worker details
  - 19.2.6 current Care Plan details
  - 19.2.7 current risk assessment
  - 19.2.8 personal accounts
  - 19.2.9 death wishes (i.e. funeral/cremation/undertakers)
  - 19.2.10 inventory of belongings
- 19.3 A register of Staff must be maintained and held locally which should include the following information:
- 19.3.1 name, address and telephone number
  - 19.3.2 position held (including the date started) and hours worked
  - 19.3.3 next of kin - name, address and telephone number
  - 19.3.4 GP - name, address and telephone number
  - 19.3.5 Date of issue of identification and retrieval if appropriate
  - 19.3.6 Recruitment details including a minimum of two references from previous employers, evidence of DBS checks and interview questions and responses.
  - 19.3.7 Induction and training records
  - 19.3.8 Copies of identification, training certificates and qualifications

## **20 SAFEGUARDING**

- 20.1 The Service Provider must fulfil its commitment to safeguard and promote the welfare of Residents and adults at risk and shall have the following in place:
  - 20.1.1 Clear priorities for safeguarding and protecting adults at risk explicitly stated in strategic policy documents.
  - 20.1.2 A clear commitment by senior management of the organisation to the importance of safeguarding and protecting adults at risk.
  - 20.1.3 A clear line of accountability within the organisation for overseeing safeguarding and protecting adults at risk and that roles and accountability for taking action and reporting internally and in accordance with the Safeguarding adults: multi-agency policy and

procedures for the West Midlands are properly defined and understood by those involved. The policy can be found on the Council's website at [www.shropshire.gov.uk](http://www.shropshire.gov.uk).

- 20.1.4 Procedures for instigating the Safeguarding adults: multi-agency policy and procedures for the West Midlands and for dealing with allegations of abuse against members of Staff and volunteers.
- 20.1.5 Arrangements to ensure that all Staff receive supervision and undertake safeguarding and protection of vulnerable adult training in order to equip them to carry out their safeguarding responsibilities effectively. Refresher training must be provided at regular intervals and all Staff including temporary Staff and volunteers who work with adults at risk must be made aware of the organisations arrangements for protecting adults at risk.
- 20.1.6 Policies to safeguard and protect adults at risk and procedures that are in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands.
- 20.1.7 Arrangements to work effectively with other organisations involved in the delivery of services to adults at risk in order to protect adults at risk including arrangements for sharing information in accordance with section 4.19.1 of Safeguarding adults: multi-agency policy and procedures for the West Midlands.
- 20.1.8 A culture of listening to and engaging in dialogue with adults at risk and seeking their views and taking account of those views both in individual decisions and the establishment or development of services.
- 20.1.9 Whistle blowing procedures and a culture that enables issues about safeguarding and protecting adults at risk to be raised.

### **SCHEDULE 3 –List of Current Residents at the Homes**

To be completed at transfer

### **SCHEDULE 3 –List of Current Staff Transferring**

To be completed at transfer





**NOTIFICATION TO SHROPSHIRE COUNCIL** (As required by Clause 39 of the Contract)

DATE: .....

FAXED TO: Duty Officer

1. NAME AND ADDRESS OF HOME:		2. RESIDENT DETAILS:	
		Surname:	First Name:
Post Code:	Telephone Number:	Date of Birth:	
<p>3. NOTIFICATION regarding: (Please tick appropriate box and detail below)</p> <p><input type="checkbox"/> hospital admission of a Resident:..... Date:.....</p> <p><input type="checkbox"/> hospital Discharge of a Resident to the Service Provider:..... Date:.....</p> <p><input type="checkbox"/> the death of a Resident:..... Date:.....</p> <p><input type="checkbox"/> written complaints received from the Resident;</p> <p><input type="checkbox"/> allegation of or actual abuse to a Resident;</p> <p><input type="checkbox"/> serious accident to the Resident</p> <p><input type="checkbox"/> disappearance of the Resident</p> <p><input type="checkbox"/> any circumstances where a Resident has refused provision of the Services e.g. where a Resident has failed to take up their place</p> <p><input type="checkbox"/> significant change to physical or mental condition of the Resident;</p> <p><input type="checkbox"/> major injury to a Resident as defined in the “Reporting of Injuries Diseases and Dangerous Occurrences” Regulations 1995;</p> <p><input type="checkbox"/> voluntary discharge by a Resident and/or their representative;</p> <p><input type="checkbox"/> holiday periods of the Resident;</p> <p><input type="checkbox"/> unplanned over-night absence even if the Resident subsequently returns</p> <p><input type="checkbox"/> allegation of or actual racial harassment abuse or discrimination</p> <p><input type="checkbox"/> the Resident being absent from the Home overnight for any reason</p> <p><input type="checkbox"/> any other issues causing concern about the well being of a Resident</p> <p>DETAILS: .....</p> <p>.....</p>			

**For SC Use: Notified Payments Team (if applicable) of above DATE on:** \_\_\_\_\_

**Action:** \_\_\_\_\_

IN THE WITNESS of which the Parties hereto have executed this document on the above date by their duly authorised officers

SIGNED by an authorised signatory on Signature:.....  
behalf of SHROPSHIRE COUNCIL

Print Name:.....

Position: Head of Legal and Democratic  
Services

SIGNED by an authorised signatory on Signature:.....  
behalf of SHROPSHIRE COUNCIL

Print Name:.....

Position: Legal Services Manager

SIGNED by an authorised  
signatory on behalf of the  
SERVICE PROVIDER

Signature:.....

Print Name:.....

Position:.....

**Dated**

**2013**

**PRE-SERVICE CONTRACT FOR SUPPORTED LIVING SERVICES TO PEOPLE WITH A  
LEARNING DISABILITY**

**BETWEEN**

**SHROPSHIRE COUNCIL**

**And**

**XXXXXXX**

<b><u>Heading</u></b>	<b><u>Paragraph</u></b>
Definitions	
Contract and Term	1
Payment	2
Compliance	3
Variation	4
Payment Review	5
VAT	6
Agency	7
Accounting	8
Notices	9
Breach	10
Anti-bribery and Corruption	11
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Conclusion of Contract	24
Sustainability	25
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Equalities	29
Confidential Information	30
Public Interest Disclosure	31
Notification	32
Emergency Planning	33
Safeguarding	34
Data Protection	35



Council Data	<p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(a) supplied to the Service Provider by or on behalf of the Council; or which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Council is the Data Controller</p>
Data Subject	shall have the same meaning as set out in the Data Protection Act 1998
Data Controller	shall have the same meaning as set out in the Data Protection Act 1998
Data Protection Legislation	<p>the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner</p>
Data Processor	shall have the same meaning as set out in the Data Protection Act 1998
EIR	means the Environmental Information Regulations 2004 (as may be amended from time to time.)
Employment Checks	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks and occupational health checks

Exempt Information	any information or class of information (including but not limited to any document, report, agreement or other material containing information) relating to this Contract or otherwise relating to the parties to this Contract which potentially falls within an exemption to FOIA (as set out therein)
Expiry date	31.07.17
First Point of Contact	the Council's office which the Council will ensure that the Service Provider has up to date telephone and email contact details for
FOIA	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this Contract
FOIA Notice	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner
Individual Care Contract (ICC)	the order for the Service to be provided detailing the commencement date costs of the service and the Property
the Legislation	The National Health and Community Care Act 1990 and the Health and Social Care Act 2008 and the Chronically Sick and Disabled Persons Act 1972
Malicious Software	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence
Notice	a written communication issued in accordance with clause 9 of the Contract
Prohibited Act	the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a

financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or

(d) defrauding, attempting to defraud or conspiring to defraud the Council.

Receiving Party	means a party to this Contract to whom a Request for Information is made under the FOIA, and who thereafter has overall conduct of the request and any response
Registration Body	a body which has regulatory powers or responsibilities in respect of the Service Provider
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
Regulated Provider	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
the Service	the service described in the Specification



Staff	those persons paid or unpaid who deliver the Service on behalf of the Service Provider including a Sub-Contractor
the Specification	the specification contained in the Schedules to this Contract
Sub-Contract	any contract or Contract, or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Goods, Works or Services or any part thereof, or facilities or services necessary for the provision of the Goods, Works or Services or any part of the Goods, Works or Services, or necessary for the management, direction or control of the Goods, Works or Services or any part of thereof
Sub-Contractor	the third parties that enter into a Sub-Contract with the Service Provider
Working Days	Monday to Friday inclusive (not including national bank holidays)
Writing	With the exception of Notices issued in accordance with clauses 10, 11(e) and 13(b) of this Contract includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received

## **INTERPRETATIONS**

- 1 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 2 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 4 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:

- i references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
  - ii the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 5 Words in the singular shall include the plural and vice versa.
- 6 A reference to one gender shall include a reference to the other genders.
- 7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 8 Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 9 References to clauses are to the clauses of these terms and conditions.
- 10 Where any statement is qualified by the expression so far as the Service Provider is aware or to the Service Provider's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 11 Where there is any conflict or inconsistency between the provisions of these terms and conditions or any other document forming part of the agreement with the Council, such conflict or inconsistency shall be resolved in a manner at the Council's sole discretion.

#### WHEREAS

- (A) The Council in the exercise of performing its obligations under the Legislation is desirous of making provision within its area for the support and community care of the Service Users
- (B) The Council has caused to be prepared a detailed Specification in respect of support and community care services for Service Users
- (C) This Contract shall be to provide the Service in accordance with the Service Specification and the requirements of the ICC

#### 1 CONTRACT AND TERM

- 1(a) In consideration of the Payments the Service Provider will provide to the Service Users the Service in accordance with the terms of this Contract.
- 1(b) This Contract shall commence on the Commencement Date for the period up to the Expiry Date subject to Clauses 10 Breach and 13 Extension and Termination and in

accordance with the terms of this Contract.

## 2 PAYMENT

- 2(a) The payment for the Service provided at a Property will be detailed in the ICC.
- 2(b) Payments will be made in accordance with the Council's four weekly schedule of payments which the Service Provider will be notified of at the commencement of payment and which shall be two weekly in advance and two weekly in arrears. If the Council fails to make any payment due to the Service Provider under this Contract within 30 days following the due date for payment of an undisputed amount, then the Council shall pay interest on the overdue amount from the 31st day following the due date at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 2(c) In the event of a new Service User being referred to the Service by the Council in agreement with the Service Provider or in the case of a significant change in need of an existing Service User the Council and the Service Provider shall negotiate any adjustment either in respect of an increase or decrease in funding and a variation to the ICC will be carried out in accordance with clause 4.
- 2(d) On the occasions when Service Users are temporarily absent with reasonable notice from the Property and there is no requirement for Staff to provide support the Service Provider shall for the duration of their absence bank the hours which were scheduled and utilise such hours at a later date for occasions when Service Users require one to one staff support for any of the following reasons:
- 2(d)(i) cancellation of day care
  - 2(d)(ii) upon reasonable request from the day service for support to return home
  - 2(d)(iii) sickness of the Service User who needs to remain at home
  - 2(d)(iv) the Service User requires hospital or medical visit support
  - 2(d)(v) a leisure activity
  - 2(d)(vi) a holiday away from the Property for up to a maximum of one week per year per Service User and the costs of travel accommodation and activities undertaken on the holiday shall be funded by the Service User
  - 2(d)(vii) where a member of staff is required to be present at the Property for essential maintenance or repairs.
- 2(e) The Service Provider will inform the Council of the up to date number of banked hours upon request.
- 2(f) In the event of the absence of a Service User from the Property due to hospitalisation or some other circumstance or in the event of a Service User remaining at the Property due to sickness during periods when they would normally

be at a day centre or elsewhere and where there are no banked hours available the Service Provider shall immediately notify the Care Manager and an adjustment to the Payments may be negotiated either by way of an increase or a decrease in order to offset either of the party's costs.

- 2(g) Where a Service User is required to attend hospital and becomes an in-patient the Service Provider should inform the Care Manager immediately and the Service Provider may be required to provide Staff to cover the period of hospitalisation to attend to the day to day needs of the Service User PROVIDED that this will not in any way derogate from the hospital's duty of care in respect of the Service User.
- 2(h) The Service Provider shall unless otherwise agreed with the Council at the commencement of an ICC arrange for each of the Service Users to take 7 days of holiday away from the Property in each calendar year and the costs shall be included in the Payments unless otherwise agreed between the parties and the costs of travel accommodation and activities undertaken on the holiday shall be funded by the Service User.
- 2(i) If the Council fails to make any payment due to the Service Provider under this Contract by 21 days following the due date for payment of an undisputed amount, then the Council shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

### 3 COMPLIANCE

- 3(a) The Council undertakes to:
  - 3(a)(i) make the Payments to the Service Provider in accordance with clause 2
  - 3(a)(ii) liaise with the Service Provider regarding the provision of the Service where requested to do so by the Service Provider.
- 3(b) The Service Provider undertakes to comply with the following in the provision of the Service:
  - 3(b)(i) provide the Service in accordance with this Contract and use the Payment only for the provision of the Service to the Service Users
  - 3(b)(ii) ensure that no aspect of the Service funded by the Payment is or appears to be party political in intention use or presentation
  - 3(b)(iii) the Safeguarding adults: multi-agency policy and procedures for the West Midlands or the Council's Area Child Protection Procedures
  - 3(b)(iv) all standards required by the Health and Social Care Act 2008 in order to maintain registration thereunder

- 3(b)(vi) all equal opportunities legislation and anti-discriminatory practices including the general duty required of a local authority in accordance with the Equality Act 2010
  - 3(b)(v) the Council's policy "Speaking up About Wrongdoing"
  - 3(b)(vi) the Data Protection Act 1998
  - 3(b)(vii) the standard required of a local authority under the Human Rights Act 1998. The Service Provider shall not do anything in breach of the Service User's rights under the Act
  - 3(b)(viii) the principles of Best Value
  - 3(b)(ix) the Health and Safety at Work Act 1974 and any relevant health and safety regulations approved codes of practice and HSE guidance.
  - 3(b)(x) before the Contractor engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Contractor must without limitation, complete the Employment Checks and any other checks required by the Disclosure and Barring Service.
- 3 (c) The Service Provider shall appoint a Service Provider Representative(s) to act in the name of the Service Provider for the purposes of this Contract and:-
- 3(c)(i) The Service Provider shall notify the Council in writing of the names and job titles of the authorised Service Provider Representative(s) and shall also notify the Council of any replacement Service Provider Representative(s) or if any person ceases to be the Service Provider Representative(s) within seven days of such replacement or cessation.
- 3(d) If for any reason the Service Provider is unable to comply with any of its obligations under this Contract it shall notify the Council's Contracts Manager forthwith in Writing of its failure and the reasons. Compliance with this clause shall not prejudice the Council's rights under clauses 10 Breach and 13 Extension and Termination.
- 3(e) The Service Provider warrants that the signing of this Contract and any ICC on its behalf has been validly authorised and the obligations expressed as being assumed by the Service Provider under this Contract and any ICC constitute valid legal and binding obligations of the Service Provider enforceable against the Service Provider in accordance with their terms.

#### 4 VARIATION

- 4(a) This Contract and any ICC may only be varied by consent of both of the parties and any such variation must be in writing and signed by an authorised representative of each of the parties and annexed to this Contract or the ICC and shall record the date from which the agreed variation shall have effect

- 4(b) The Service Provider will not enter into any negotiations either directly or indirectly with the Service User or any third party the effect of which would be to vary or amend the terms of this Contract without the agreement of the Council

#### 5 PAYMENT REVIEW

- 5(a) The Payment shall be reviewed by the Council in consultation with SPIC annually.
- 5(b) Following such review the Council may increase the fee payable to the Service Provider to take effect from the first Monday in April each year and such reviewed charge shall be notified to the Service Provider and shall be deemed to vary the agreed rate for the ICC accordingly.
- 5(c) Should any payment review not be concluded by the first Monday in April then the Payment for the preceding Financial Year shall remain in full force until such time as any revised Payment is agreed.
- 5(d) An agreed revised Payment submitted in accordance with 5(b) above shall be back-dated to that date.

#### 6 VAT

The Payment does not include VAT and if VAT is payable then the Council will pay this in addition to the Payment provided that the Service Provider supplies the Council with an appropriate VAT notice.

#### 7 AGENCY

- 7(a) The Service Provider is an independent contractor and nothing in this Contract shall render it an agent of the Council and the Service Provider shall not hold itself out as the Council's agent nor shall it have the power or the right to bind the Council to any obligation.
- 7(b) Under the terms of this Contract the Service Provider shall not have and shall in no way represent itself as having the power to make vary discharge or waive any by-law or regulation of any kind.

#### 8 ACCOUNTING

- 8(a) The Service Provider shall ensure that all necessary accounting arrangements exist to distinguish between the Payment and any funds held on behalf of the Service User or any other funds held by the Provider.
- 8(b) The Service Provider will (upon the Council's request) produce records of any funding held on behalf of Service Users which shall clearly identify the balance held and the date funds are paid in and withdrawn.
- 8(c) The Service Provider will facilitate the inspection of all financial records held in connection with the Service and shall produce a copy of its annual audited accounts as soon as is reasonably practicable if requested to do so by the Council.
- 8(d) The Service Provider shall provide such financial information as the Council may

reasonably require from time to time to assess the financial viability and monitor the performance of the Service Provider.

- 8(e) The Service Provider shall compile maintain and keep the information and records included in the Specification and such information as the Council may from time to time require to enable the Council to submit any information or data required for the purposes of the performance indicators.
- 8(f) The Council may by notice in writing to the Service Provider authorise the statutory auditors of the Council or any Regulatory Body to which the Council is subject including but without limitation the Commissioner for Local Administration to exercise any of the rights exercisable under this clause 8 by the Council. For these purposes the "statutory auditors of the Council" shall include any body appointed by the Audit Commission or authorised by statute to perform similar functions to those of the Audit Commission.

## 9 NOTICES

- 9(a) The Service Provider shall comply with and give any notices required under the Contract or required by any Act of Parliament any instrument rule or order made under any Act of Parliament or any regulation or by-law of any local authority which may have jurisdiction in respect of the Service Provider.
- 9(b) Any Notice under this Contract (with the exception of Notices issued in accordance with clauses 10, 11(e) and 13(b) of this Contract) must be in Writing. Notices issued pursuant to clauses 10, 11(e) and 13 (b) may only be sent by either party to the other by:
- 9(b)(i) recorded delivery post or
  - 9(b)(ii) personal delivery
- Notices issued in respect of clauses 10, 11 and 13 will not be validly delivered if sent by facsimile or e-mail
- 9(c) The Service Provider's address for the purpose of delivery of a Notice is as set out above and all Notices sent to the Service Provider under this Contract must be sent to the Service Provider's Registered Manager.
- 9(d) The Council's address for the purpose of delivery of a Notice is the Contracts Manager at the Contracts Unit, Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND.
- 9(e) All such notices if delivered by hand shall be deemed to be served immediately and if posted shall be deemed to have been served two days after the date when posted unless the party upon whom the Notice was purported to be served has informed the serving party within 24 hours of partial receipt that the notice was not received in full.

## 10 BREACH

- 10(a) In the event that the Service Provider is in breach of his obligations under this

Contract then the Council shall serve a Notice requiring the Service Provider to take such action as the Council deems necessary to remedy the breach upon the terms and within the time stipulated in the Notice

- 10(b) The following obligations are conditions of this Contract and any breach of them shall be deemed a fundamental breach which shall determine this Contract immediately by the giving of a written notice:
- 10(b)(i) Failure to comply with a Notice to remedy a breach 10(a)
  - 10(b)(ii) Assignment by the Service Provider of any of his obligations under this Contract without the prior written consent of the Council
  - 10(b)(iii) If the Service Provider was convicted of any offence the effect of which under the provisions of any legislation would prevent the Council from contracting with him or maintaining any existing contractual relationship
  - 10(b)(iv) If the Service Provider is issued with a notice from the Health and Safety Executive or Registration Body prohibiting it from operating

#### 11 PREVENTION OF BRIBERY

- 11(a) The Service Provider:
- 11(a)(i) shall not, and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;
  - 11(a)(ii) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in Writing to the Council before execution of this Contract.
- 11(b) The Service Provider shall:
- 11(b)(i) if requested, provide the Council with any reasonable assistance, at the Council's reasonable 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 the Bribery Act;
  - 11(b)(ii) the Service Provider shall, within 10 Working Days of a request from the Council, certify to the Council in Writing (such certification to be signed by an officer of the Service Provider) the Service Provider's compliance with this clause 11 and provide such supporting evidence of compliance with this clause 11 by the Service Provider as the Council may reasonably request.
- 11(c) If any breach of clause 11 is suspected or known, the Service Provider must notify the Council immediately.



- 11(d) If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 11(a), the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Contract.
- 11(e) The Council may terminate this Contract by written notice with immediate effect, and recover from the Service Provider the amount of any loss directly resulting from the cancellation, if the Service Provider or Staff (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 11(a). At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 11(e), the Council shall give consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:
- 11(e)(i) with the authority; or,
- 11(e)(ii) with the actual knowledge;  
of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or
- 11(e)(iii) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.
- 11(f) Any notice of termination under clause 11(e) must specify:
- 11(f)(i) the nature of the Prohibited Act;
- 11(f)(ii) the identity of the party whom the Council believes has committed the Prohibited Act; and
- 11(f)(iii) the date on which this Contract will terminate.
- 11(g) Despite clause 14 (Disputes), any dispute relating to:
- 11(g)(i) the interpretation of clause 11; or
- 11(g)(ii) the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.
- 11(h) Any termination under clause 11(e) will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## 12 INSURANCE

- 12(a) The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all risks which

may be incurred by the Service Provider, arising out of the Service Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum of £5,000,000 (FIVE MILLION POUNDS) cover. In respect of death or personal injury due to negligence liability will be unlimited.

- 12(b) The Service Provider warrants that it has complied with this clause 12 and shall provide the Council with certified copies of the relevant policies upon request together with receipts or other evidence of payment of the latest premiums due under those policies.
- 12(c) If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

### 13 EXTENSION AND TERMINATION

- 13(a) The Council may in its absolute discretion extend the duration of this Contract by a further period of up to two years commencing from the Expiry Date and must inform the Service Provider in writing of its intention to extend the Contract at least 3 months before the Expiry Date and any extension must be agreed in writing by both parties signed by an authorised officer and record the date from when it was agreed and annexed to the Contract.
- 13(b) This Contract or an ICC may be terminated prior to the Expiry Date in the following circumstances:-
- 13(a)(i) by either the Council or the Service Provider upon giving 3 months' Notice in Writing to the other Party. The Council may give one week's notice to the Service Provider to reduce an ICC by a maximum of 10% of the hours and cost of the ICC but the Council will not reduce the hours and cost of an ICC by more than 20% in any one four week period and by more than 50% in any one eight week period.
- 13(a)(ii) by the Council giving the Service Provider written notice to terminate if, in the reasonable opinion of the Council as a result of any investigations undertaken in accordance with its safeguarding procedures, it considers there is or has been any improper conduct on the part of the Service Provider or its Staff to the effect that it is no longer practicable for the Council to maintain a satisfactory or viable relationship with the Service Provider. Improper conduct includes any unlawful or fraudulent act or any

action which the Council considers to be to the detriment of the welfare of any Service User either by action or neglect.

- 13(a)(iii) in accordance with clause 10 (Breach) or Clause 11 (Prevention of Bribery)
  - 13(a)(iv) if the Service Provider becomes the subject of a voluntary arrangement under section 1 Insolvency Act 1986 or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; has a receiver manager administrator or administrative receiver appointed over all or any parts of its undertaking assets or income; has passed a resolution for its winding up; has a petition presented to any court for its winding up or for an administration order; or if any distraint execution or other process is levied or enforced on any property of the other and is not paid out withdrawn or discharged within 14 days
  - 13(a)(v) the Service Provider ceases to carry on its business or substantially the whole of its business
  - 13(a)(vi) either Party commits a material breach of this Contract which cannot be remedied under any circumstances.
- 13(c) In the event of this Contract or an ICC being terminated at any time prior to the Expiry Date for any reason then the Council's obligations under Clause 2 Payments will cease no further Payments will be made and the Service Provider shall repay to the Council all (if any) of the Payments already received (after the liabilities of the Service Provider in the provision of the Service in accordance with this Contract have been met).
- 13(d) Without prejudice to the generality of the foregoing the Council reserves the right to suspend referrals to the Service where in the reasonable opinion of the Council there is any improper conduct on the part of the Service Provider its Staff and this will be considered a breach of this Contract which may result in the suspension of referrals and or reduction / clawback of part of the Payment consistent with the reduction in Service. Improper conduct includes any action which the Council may reasonably consider to be to the detriment or the welfare of Service Users either by action or neglect including but not limited to:
- 13(d)(i) Fraud or theft from Service Users
  - 13(d)(ii) Neglect of Service Users
  - 13(d)(iii) Cruelty and assault to or upon Service Users including verbal and any other forms of psychological abuse
  - 13(d)(iv) Financial malpractice
  - 13(d)(v) Sexual relationships between Staff and Service Users

13(d)(vi) Racial harassment

13(d)(vii) Loss of registration with Registration Body

13(d)(viii) Under investigation by the Council

13(d) In the event that the Contract is terminated pursuant to Clause 10(Breach) or 11 (Prevention of Bribery) above or this Clause 13 (Termination) the Council shall:

13(d) (i) cease to be under any obligation to make further Payment until the cost loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Service Provider;

13(d) (ii) be entitled to make other arrangements and if necessary pay other persons to provide the Service

13(d) (iii) be entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under this Contract or be entitled to recover the same from the Service Provider as a debt any loss or damage to the Council resulting from or arising out of the termination of this Contract and further such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating this Contract and in making alternative arrangements for the provision of the Service provided that the Council will be under a duty to take all reasonable action to mitigate the loss or damage pursuant to this clause.

13(e) Whilst this Contract affords the Council and the Service Provider reciprocal rights to terminate as per the terms of Clause 13(a)(i) the Parties acknowledge that the expectation of most Service Users is that the Parties will not act unreasonably or to the prejudice of the Service Users so far as is reasonably practicable

13(f) Where notice to terminate is given pursuant to this clause 13, this Contract shall terminate with effect on the date specified in the notice

#### 14 DISPUTES

14(a) If any dispute or difference shall arise between the parties as to the construction of this Contract or any matter or thing of whatever nature arising under this Contract or in connection with it then the same shall be dealt with as follows:-

14(a)(i) in the first instance a special meeting of both the parties shall be arranged on 14 days' written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute.

14(b) If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the parties may serve the Council's Director of Adult Services and the Service Provider's Registered Manager with notice of the dispute and they shall then

appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice.

- 14(c) If the dispute cannot be resolved in accordance with the preceding sub-clause then it shall be referred to a single arbitrator to be agreed between the parties and failing such agreement within 14 days of the request of one party to the others in Writing that the matter be referred to arbitration such reference shall be to a single arbitrator appointed for that purpose on the written request of either party by the President for the time being of the Law Society of England and Wales and any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the relevant Arbitration Acts and it is further agreed that if any matter is referred to arbitration then each party will bear its own costs of such referral.

#### 15 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

- 15(a) Neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other Party PROVIDED that the Council may,
- 15(a)(i) assign any of its rights under this Contract; or
- 15(a)(ii) transfer all of its rights or obligations by novation, to another person.
- without the Service Provider's consent where such assignment, transfer or novation is to an Associated Person of the Council;
- 15(b) Any consent required under Clause 15(a) must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.
- 15(c) The Service Provider will not, without the written consent of the Council, sub-contract its right or obligations under this Contract nor allow Services to be provided other than through the Service Provider Staff and using its own equipment.
- 15(d) In the event that consent is given by either Party to the other Party to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the sub-contracting Party to the consenting Party immediately it is issued
- 15(e) Subject to clause 15(a), in the event that either Party wishes to assign its rights and obligations under this Contract, the assignor must obtain a written undertaking from the assignee to the consenting Party that it will be bound by the obligations of the assignor under this Contract.
- 15(f) Notwithstanding the Service Provider's right to sub-contract pursuant to this clause 15, the Service Provider shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own and shall be responsible for the work of the Sub-Contractor whose work shall be undertaken to the same standard as stated in

the Schedule - Service Standards.

#### 16 FORCE MAJEURE

- 16(a) Subject to the provisions of clause 16(b) neither the Service Provider nor the Council shall be liable for any delay or failure in performing its obligations hereunder for any circumstances beyond its reasonable control such as (but not restricted to) flood fire and civil unrest but the Council shall in such circumstances be entitled to take such action as is reasonable and necessary to protect the interest of the Service Users.
- 16(b) Save where such delay or failure is caused by the act or omission of the other party (in which event the rights remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Contract and by Law):-
- 16(b)(i) any charges arising from such delay or failure shall be borne by the party incurring the same
- 16(b)(ii) either party may if such delay or failure continues for more than 90 (ninety) days terminate this Contract forthwith on giving Notice (as determined by Clause 9) to the other party in which event neither party shall be liable to the other by reason of such termination.
- 16(c) For the avoidance of doubt "force majeure" shall not include any labour dispute between the Service Provider and its Staff or the failure to provide the Service by any of the Service Provider's Sub-Contractors.

#### 17 WAIVER

Failure at any time by either party to enforce any of the provisions hereof shall not be construed as a waiver of any such provisions and shall not affect the validity or any part of it or the right of the Council to enforce any provision of this Contract in accordance with its terms.

#### 18 SEVERANCE

If any of the provisions of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

#### 19 STATUTORY DUTIES

- 19(a) The Council has various statutory duties in relation to this Contract including (but not exclusively) under Part 1 of the Local Government Act 1999 (Best Value) to carry out a regular review of the Service.
- 19(b) The Service Provider and its Staff must fully co-operate with the Council in complying with any such statutory duty and subject to the provision of the Data Protection Act 1998 the Service Provider must provide to the Council any information facilities and assistance that the Council may reasonably request

provided the Council has given the Service Provider reasonable notice and also provided that this does not put the Service Provider to unnecessary cost.

## 20 LAW

20(a) This Contract shall be governed and construed in accordance with the laws of England and the parties agree to submit to the jurisdiction of the English Courts.

20(b) Where the Service Provider consists of 2 or more persons all the obligations of the Service Provider shall be deemed to be complied with by such persons jointly and severally and any reference to the masculine gender shall include reference to the female and any reference to the singular shall include referral to the plural.

20(c) Any reference to an act includes reference to any statutory re-enactment or modification thereof.

## 21 THIRD PARTY RIGHTS

Unless the right of enforcement is expressly provided it is not intended that a third party should have the right to enforce a provision of this Contract under the Contracts (Rights of Third Parties) Act 1999.

## 22 REMEDIES CUMULATIVE

Any remedy or right which the Council may exercise in relation to a breach committed by the Service Provider shall be in addition to and shall be capable of being exercised without prejudice to all other rights and remedies available to the Council.

## 23 COUNCIL'S FUNCTION AS A LOCAL AUTHORITY

Nothing in this Contract shall prejudice or affect the Council's rights powers duties and obligations to the exercise of its functions as a local authority.

## 24 CONCLUSION OF CONTRACT

24(a) Upon the expiry or termination of this Contract and upon the Council's request the Service Provider must give an officer of the Council or any person the Council specifies copies of all data information files records documents and the like (in whatever form that they may be held) which the Council earlier supplied to the Service Provider for the purposes of this Contract or which were produced or augmented by the Service Provider in connection with the carrying out of obligations under this Contract and the Service Provider must retain Service User records for a minimum of 6 years after the expiry of an ICC.

24(b) Clause 24(a) is subject to the provisions of Paragraph 5 of Schedule 2.

## 25 SUSTAINABILITY

The Service Provider will at all times use its best endeavours to source all materials used to provide the Service from sustainable and renewable sources.

## 26 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

- 26(a) The Service 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 to enable the Council to comply with its Information disclosure obligations.
- 26(b) The Service Provider shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Service Provider acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.
- 26(c) The Service Provider shall:
- 26(c)(i) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 26(c)(ii) provide the Council, at the Service Provider's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
  - 26(c)(iii) provide, at the Service Provider's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 26(d) The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and in considering any response to a Request for Information the Council may consult with the Service Provider prior to making any decision or considering any exemption.
- 26(e) In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 26(f) The Service Provider acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the EIR to disclose information concerning the Service Provider or the Services:
- 26(f)(i) in certain circumstances without consulting the Service Provider; or
  - 26(f)(ii) following consultation with the Service Provider and having taken their



views into account; provided always that where sub-clause 26(f)(i) above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

- 26(g) The Service Provider shall ensure that all Information required to be produced or maintained under the terms of this Contract, or by law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required by the Contract, law or practice and shall permit the Council to inspect such records as requested from time to time.
- 26(h) The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other law, of any information (including Exempt Information) whether relating to this Contract or otherwise relating to any other party.

## 27 TUPE

- 27(a) The Service Provider shall provide to the Council any information reasonably required in connection with TUPE when requested to do so and the Council undertakes to use such information only for purposes in connection with TUPE and to ensure that any third party who requests the TUPE information has undertaken to use it only in connection with a tender for Service and for TUPE purposes and in the event of non compliance by the Service Provider with this Clause 27(a) then:
- 27(a)(i) the parties acknowledge that the Council shall be entitled to an injunction of an order for specific performance in order to obtain the required TUPE information; and
- 27(a)(ii) the Service Provider shall reimburse all expenses incurred by the Council in enforcing the Service Provider's compliance with this clause and for the avoidance of doubt this shall include the cost of the Council officer time.
- 27(b) At any time during the period of 9 (nine) months before the Expiry Date or in the event that this Contract is terminated in accordance with clauses 10 Breach or 13 Extension & Termination of this Contract within 28 days of giving or receiving notice of such termination or where the Contract is terminated forthwith the Service Provider shall on the written request of the Council collate whatever information is required for the purposes of the Transfer of Undertaking (Protection of Employment) Regulations 1981 as amended and the Acquired Rights Directive 1977 (the "TUPE Information") which may include but shall not be limited to:-

- 27(b)(i) the number of Staff including supervisory and administrative Staff employed by the Service Provider and any Sub-Contractor employed in the Service
- 27(b)(ii) the terms and conditions of employment of those Staff and
- 27(b)(iii) any information relating to those Staff as properly may be required by the Council under this clause.
- 27(c) In the event that the Council commences procedures for inviting tenders to provide the Service the Service Provider shall make the TUPE information available on request to any person who wishes to submit a tender (a "Tenderer") provided that such Tenderer shall undertake to use the TUPE Information for the purposes of submitting a tender to the Council and for no other purposes.
- 27(d) Throughout the period specified in Clause 27(b) the Service Provider shall maintain and amend the TUPE information to the extent necessary to ensure that it is completely accurate and up to date and in the event that such amendments are made the Service Provider shall inform any person to whom it has made the TUPE information available in accordance with this clause of the nature extent and content of those amendments and the reasons why they have been made.
- 27(e) The Service Provider shall if requested by the Council provide the same information relating to employees or its contractors Sub-Contractors and agents where relevant to the provision of the Service and shall use its reasonable endeavours to procure co-operation from such Sub-Contractors.
- 27(f) In the event that there is a transfer of employees pursuant to TUPE the Service Provider shall co-operate and where relevant use its reasonable endeavours to procure the co-operation of its Sub-Contractors and agents in the orderly transfer of any relevant personnel.
- 27(g) The Service Provider shall indemnify the Council against any and all losses costs expenses awards or liabilities incurred by the Service Provider in connection with or as a result of any claims demands or proceedings of whatever nature by any employee or former employee of the Service Provider or its Sub-Contractors or agents arising out of any non-compliance with TUPE except any such losses cost expenses awards or liabilities incurred due to any fault on the part of the Council.
- 27(h) The Council gives no express indemnity nor should it be taken as an implied indemnity whether particular to the Sub-Contractor or jointly for any matter connected with or arising out of the compliance or non-compliance with the requirements of TUPE.
- 27(i) The Service Provider shall not in any circumstances make any claim against the Council in connection with the effect on the Contract of TUPE
- 27(j) The Service Provider undertakes:

- 27(j)(i) not to change the Staff structure grade hours or scales of pay or Service delivery structure without the prior written consent of the Council (such consent not to be unreasonably withheld) but not limited to changes to preclude or promote application of TUPE upon termination or expiry of the Contract
- 27(j)(ii) to consult with Staff and trade unions during the whole process of TUPE.
- 27(k) If requested to do so by the Council the Service Provider shall supply to the Council any and all relevant information and data to permit the Council to prepare the necessary documentation in respect of any subsequent review or possible invitation for tenders for the Service or including information sufficient to enable the Council to meet its legal obligations and to obtain Best Value.

## 28 ENTIRE AGREEMENT

This Contract, the schedules and the documents annexed to it or otherwise referred to in it together with any Individual Care Contract as appropriate issued in connection with this Contract contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to the subject matter.

## 29 EQUALITIES

- 29(a) The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Goods, Services or Works under this Contract, or in its employment practices.
- 29(b) Without prejudice to the generality of the foregoing, the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 29(c) In addition, the Service Provider in providing services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it.
- 29(d) The Service Provider will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.
- 29(e) In the event of any finding of unlawful discrimination being made against the Service Provider during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights

Commission over the same period, the Service Provider shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

- 29(f) The Service Provider will provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Service Provider's compliance with the above conditions.

30 CONFIDENTIAL INFORMATION

- 30(a) The Service Provider will keep confidential any information it becomes aware of by reason of the operation of this Contract and will only divulge or communicate the same to a third party on a need to know basis. The Service Provider shall use its reasonable endeavours to prevent the unauthorised publication or disclosure of any such information or documents.
- 30(b) The Service Provider shall ensure that its Staff and agents are aware of and comply with paragraphs 5.4 and 5.5 of Schedule 2 of this Contract and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by such persons mentioned above.
- 30(c) The Service Provider shall at all times keep all Confidential Information held or known in respect of its past or present Service Users or any information that it becomes aware of by reason of the operation of this Contract and of any other information which the Council may from time to time determine relevant to this Contract.
- 30(d) The Service Provider its Staff and any person employed or engaged by the Service Provider in connection with this Contract shall:
- 30(d)(i) only use Confidential Information for the purposes of this Contract
  - 30(d)(ii) not disclose any Confidential Information to any third party without the prior written consent of the Council which consent the Council shall be absolutely entitled to refuse
  - 30(d)(iii) not use the Confidential Information for the solicitation of business from the Council
- 30(e) The provisions of the whole of this clause 30 shall survive the termination or expiration of this Contract.
- 30(f) The Service Provider shall use its reasonable endeavours to prevent the unauthorised publication or disclosure of any information or documents the Service Provider shall ensure that its employees and agents are aware of and comply with

this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by such person mentioned above.

30(g) The observance of confidentiality in accordance with the preceding clauses shall not apply when:

30(g)(i) the Confidential Information comes into the public domain or is subsequently disclosed to the public otherwise than through the default of either party

30(g)(ii) the Confidential Information is required to be disclosed by law

30(g)(iii) the Confidential Information at the date of the commencement of the Contract was already in the possession of the Service Provider without restrictions as to its use

30(g)(iv) the Confidential Information is required to be disclosed to any regulatory or government body.

### 31 PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING)

The Service Provider will ensure that all Staff and agents are made aware of the Council's policy "Speaking up about Wrongdoing". A copy of the Council's Speaking Up About Wrongdoing "Whistleblowing" Policy can be found on the Council's website.

### 32 NOTIFICATION

32(a) The Service Provider will inform the Council's First Point of Contact immediately (normally the first working day) and confirm by email within 3 working days if any of the following occur:

32(a)(i) hospital admission of a Service User

32(a)(ii) the death of a Service User receiving the Service

32(a)(iii) a formal written complaint received from the Service User

32(a)(iv) allegation of or actual abuse to a Service User

32(a)(v) disappearance of a Service User

32(a)(vi) any circumstances where a Service User has refused provision of the Service

32(a)(vii) significant change to the physical or mental condition of the Service User

32(a)(viii) major injury to a Service User as defined in the "Reporting of Injuries Diseases and Dangerous Occurrences" Regulations 1995

32(a)(ix) allegation of or actual racial harassment or discrimination

32(a)(x) any other serious issues causing concern about the well being of a Service User.

32(b) The Service Provider will notify the Council's Contracts Manager by email of inspection reports carried out by the Registration Body within 3 weeks of the final report being received by the Service Provider.

### 33 EMERGENCY PLANNING

The Service Provider will ensure that it has business continuity plans in place for a range of emergency situations should they arise for example pandemic influenza, power cuts etc.

### 34 SAFEGUARDING

34(a) The parties acknowledge that the Service 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. The Service Provider shall:

34(a)(i) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, 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

34(a)(ii) monitor the level and validity of the checks under this clause 34(a) for each member of the Service Provider's Personnel.

34(b) The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of a Service or activity that is a Regulated Activity 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.

34(c) The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 34 have been met.

34(d) The Service Provider shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, children or vulnerable adults.

34(e) The Service 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 Regulated Activity or who may otherwise present a risk to Service Users.

- 34(f) Prior to the engagement by the Service Provider of any staff or sub-contractor engaged to provide any part of the Services where such individuals will have contact with children up to the age of eighteen years old or where the performance of the Services may involve contact with vulnerable adults (as defined in the Safeguarding Vulnerable Groups Act 2006) the Service Provider shall procure in respect of all Staff or potential Staff or other persons intended to perform any part of the Services:
- 34(f)(i) that each person being considered for engagement be questioned as to whether he/she has any convictions; and
- 34(f)(ii) that the results of a Disclosure and Barring Service (DBS) check of the most extensive available kind is obtained in accordance with Part V of the Police Act 1997 (as amended) and that each DBS check should include a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Service may involve contact with children and/or Safeguarding Vulnerable Groups Act 2006 where the performance of the Service may involve contact with vulnerable adults.

### 35 DATA PROTECTION

- 35(a) The Service Provider shall (and shall procure that any of its Staff involved in the provision of this Contract) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Contract.
- 35(b) Notwithstanding the general obligation in clause 35(a) where the Service Provider is processing Personal Data as a Data Processor for the Council, the Service 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 to the Data Protection Act 1998; and
- 35(b)(i) provide the Council with such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the Data Protection Legislation;
- 35(b)(ii) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 35(b); and
- 35(b)(iii) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.
- 35(c) The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this

Contract or as otherwise expressly authorised in Writing by the Council and in particular the Service Provider shall not store any Council Data, which the Council has notified the Service Provider requires storage in an encrypted format, on any portable device or media unless that device is encrypted.

- 35(d) To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council in any format specified reasonably requested by the Council.
- 35(e) The Service Provider shall ensure that any system on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council's security policy to include, but not limited to, the following requirements:
  - 35(e)(i) Access to the system is restricted to Service Provider Staff with a legitimate need to access the Council Data
  - 35(e)(ii) The system is kept up to date with the latest versions of operating system and anti-virus updates
  - 35(e)(iii) Transfer of data to and from the system is conducted in a secure manner.
- 35(f) The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

#### 36 PROTECTION OF PERSONAL DATA

- 36(a) With respect to the Parties' rights and obligations under this Contract, the parties agree that the Council is the Data Controller and that the Service Provider is the Data Processor.
- 36(b) The Service Provider shall:
  - 36(b)(i) Process the Personal Data only in accordance with the Data Protection Act 1998
  - 36(b)(ii) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body
  - 36(b)(iii) Implement appropriate technical and organisational measures, including but not limited to ensuring that Personal Data is not stored on any portable equipment or storage device or media unless encrypted, to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected



- 36(b)(iv) Take reasonable steps to ensure the reliability of any Service Provider Staff who have access to the Personal Data
- 36(b)(v) Obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors or agents for the provision of the Services.
- 36(b)(vi) Ensure that all Service Provider Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Protection of Personal Data clause.
- 36(b)(vii) The sharing of individual identifiable information between organisations for the provision of coordinated and seamless care must comply with the necessary statutory legal requirement and satisfy the Caldicott principles of safeguarding confidential information.
- 36(b)(viii) Notify the Council (within five Working Days) if it receives:
  - a) a request from a Data Subject to have access to that person's Personal Data; or
  - b) a complaint or request relating to the Council's obligations under the Data Protection Legislation.
- 36(b)(ix) Provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
  - a) providing the Council with full details of the complaint or request
  - b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions
  - c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council)
  - d) providing the Council with any information requested by the Council
- 36(b)(x) Permit the Council (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Service Provider's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Service Provider is in full compliance with its obligations under this Contract.
- 36(b)(xi) Provide a written description of the technical and organisational methods employed by the Service Provider for processing Personal Data (within the timescales required by the Council).

- 36(b)(xii) Not process Personal Data outside the United Kingdom without the prior written consent of the Council and, where the Council consents to a transfer, to comply with:
  - a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
  - b) any reasonable instructions notified to it by the Council
- 36(c) The Service Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 36(d) The Service Provider shall ensure that its Staff, employees and agents are aware of and comply with this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of this clause.

### 37 COUNCIL DATA AND PERSONAL INFORMATION AUDITS

- 37(a) Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:
  - 37(a)(i) to review the integrity, confidentiality and security of the Council Data
  - 37(a)(ii) to review the Service Provider's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services
- 37(b) The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 37(c) Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - 37(c)(i) all information requested by the Council within the permitted scope of the audit
  - 37(c)(ii) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services
  - 37(c)(iii) access to Service Provider's Staff

- 37(d) The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Service.
- 37(e) The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days' notice of its intention to conduct an audit.
- 37(f) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 37(g) This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Contract which may be conducted as specified in this Contract.

#### 38 DEPRIVATION OF LIBERTY SAFEGUARDS

- 38(a) The Service Provider must always apply the principles of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards. The Service Provider should always consult the relevant codes of practice for further detailed guidance. The Service Provider manager is the managing authority for the purposes of the Mental Capacity Act: Deprivation of Liberty Safeguards (DOLS).
- 38(b) The Service Provider will comply with the conditions set as a result of a DOLS Authorisation being given.

#### 39 AGREEMENT STATUS AND TRANSPARENCY

- 39(a) 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 Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 39(b) The Council may consult with the Service Provider to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.
- 39(c) The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Contract.

#### 40 COUNTERPARTS

- 40(a) This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 40(b) Transmission of the executed signature page of a counterpart of this Contract (a) by fax or (b) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Contract. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party

shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

IN THE WITNESS of which the parties hereto have executed this document on the above date by their duly authorised officers

**SCHEDULE 1**  
**SERVICE SPECIFICATION FOR THE PROVISION OF**  
**COMMUNITY SUPPORTED LIVING SERVICES**  
**FOR PEOPLE WITH A LEARNING DISABILITY**

**1.0 DESCRIPTION OF SERVICE**

- 1.1 To provide a supported living service for Service Users with learning disabilities at each Property as detailed in the ICC.
- 1.2 The staffing structure and levels required for the Service at the Property at the Commencement Date will be as profiled in the ICC.
- 1.3 A supported living is a service which is for a significant amount of hours per week, usually more than 50 with additional sleep in nights, to support one or more Service Users in a single or joint tenancy.

**2.0 ASSESSMENT AND REFERRAL TO SERVICE**

- 2.1 Assessment and referral to the Service will be undertaken by the Council and the Service Provider.
- 2.2 The Council will provide to every person entering the Service a full and comprehensive Community Care Assessment which will include a care plan and health action plan if required.
- 2.3 Reviews of the Service to each Service User will be undertaken in accordance with the care plan and by the Service Provider annually unless there is a significant change in need.
- 2.4 Any change in need will be referred to the Care Manager for a reassessment of need and a determination of eligibility to the Service.

2.5 Referrals to the Service of Service Users with significantly different needs from those of the initially referred Service Users will be through negotiation between the Council and the Service Provider and any adjustments to the level of funding will be agreed and a variation to the Contract carried out in accordance with clause 4 Variaton.

### **3.0 OBJECTIVES OF THE SERVICE**

3.1 To provide a community based service for Service Users with a learning disability for example:

- autism
- mental impairment
- some challenging behaviour
- physical/ sensory impairment
- personal care support
- written and verbal communication needs

3.2 To support and enable each Service User to develop independence skills as far as possible whilst acknowledging that learning is a lifelong process.

3.3 To support and enable each Service User with household and budgetary management, cleaning, shopping for food and clothes, social and community activities, personal care when appropriate and employment related activities.

3.4 To support each Service User to maintain and develop family and friendship ties.

3.5 The Service Provider will work effectively with all other relevant agencies to ensure continuity and effectiveness of the Service, for example Reach 2 standards. The Service Provider should ensure that the level of evaluation meets the Supporting People Quality Assurance Framework.

3.6 The Service Provider will develop and maintain systems to monitor and evaluate the effectiveness of the Service.

3.7 The Service Provider will work with the Council on the development and introduction of assistive technology wherever possible to maximise Service User independence.

### **4.0 OUTPUTS/OUTCOMES**

4.1 The Service Provider will work to a person centred planning approach to identify goals and objectives for each Service User.

4.2 The Service Provider will ensure that the Service Users' goals and objectives are monitored and reported at individual Service User reviews and upon request by the Council when reviewing the Service.

### **5.0 INFORMATION FOR SERVICE USERS**

A written statement or brochure in an appropriate format for adults with a learning disability must be given and explained to Service Users when they take up residence at a Property

and this should include the following information:

- details of the Service, the philosophy and operation of the Service
- a statement about how the Service User can complain. This should include details of who will deal with the complaint and the time limit within which a response will be made.
- a statement concerning the Service Provider's policy on equal opportunities/non-discrimination.
- a statement concerning confidentiality and when confidentiality will be breached.
- the right of the Service User to have access to any personal information held on them by the Service Provider.

**SCHEDULE 2**  
**SERVICE SPECIFICATION**  
**SERVICE STANDARDS**

**1 GUIDING PRINCIPLES**

The Council expects care to be provided in a manner that accords with the statement of principles set out below. These principles will need to be applied to the operation of the organisation, the working practises and the personnel procedures.

- 1.1 The provision of good quality domiciliary care which aims to meet assessed needs of each Service User in his/her own home as identified in the Care Plan.
- 1.2 The provision of care in a manner that promotes and encourages the independence of the Service User and acknowledges their right to incur an acceptable degree of calculated risk.
- 1.3 The provision of care in a manner that offers confidentiality, respect dignity and privacy to the Service User.
- 1.4 Decisions about the provision of care should not be made without the Service User's participation and agreement. For those unable to make informed choices then consultation will take place with carers or advocates.
- 1.5 Service User choice should be encouraged with regard to the manner in which the Services are provided within the constraints and timescales agreed at the commencement of the Care Plan.
- 1.6 All Services should be provided in an anti-discriminatory and culturally sensitive manner and have due regard to race, culture, religion, language, gender, sexual orientation and disability.
- 1.7 The confidentiality of any information gained about Service Users should be respected whilst ensuring that Staff are clear that they have a duty to share any

concerns about Service Users' mental and physical welfare with their managers and other professionals involved in the Service Users support.

- 1.8 Service Users are vulnerable and must be protected.
- 1.9 The Service Provider will sign up to Think Local Act Personal (Making it Real )and the Alzheimer's Society's programme Dementia Friendly Communities from commencement of Contract.

## **2 COMPLAINTS**

- 2.1 The Service Provider shall operate a complaints procedure which shall comply with basic principles of effective complaints systems such as being:
  - 2.1.1 easy to access and understand
  - 2.1.2 speedy – with fixed time limits for action and keeping people informed of progress.
  - 2.1.3 confidential to protect Staff and the complainant
  - 2.1.4 informative – providing information to management so that services can be improved
  - 2.1.5 fair – with a full procedure for investigations
  - 2.1.6 effective – dealing with all points raised and providing suitable remedies
  - 2.1.7 regularly monitored and audited – to make sure that it is effective and improved.
- 2.2 Where the Service Provider is subject to the supervision of a Registration Body which has made rules or issued instructions concerning the content or form of the Service Provider's complaints procedure the Service Provider shall act in compliance with any and all such rules or instructions of that Registration Body.
- 2.3 Whichever complaint system above is used the Service Provider shall ensure that:
  - 2.3.1 under no circumstances is a complaint investigated by a member of Staff who may be part of the complaint. The Service Provider will ensure that someone who is independent of the matter complained of carries out the investigation
  - 2.3.2 the complainant is made aware that they are entitled to have the complaint investigated by the Council if they are not satisfied with either the process of investigation or finding of the Service Providers investigation's
  - 2.3.3 the Service Provider will ensure that it responds to the complainant within a max of 20 days of receiving the complaint.
- 2.4 Each party shall make its complaints procedure available to the other party on request.
- 2.5 The Service Provider shall ensure that all Staff are made aware of the procedure referred to in the preceding sub-clause and shall designate one employee to act as a

complaints manager to whom a complaint may be referred should the complainant not be satisfied with the initial response to his complaint.

- 2.6 The Service Provider shall keep accurate and complete written records of all complaints received and the responses to them and if required to do so by a Council Officer shall make such records available to the Council.
- 2.7 A record of complaints made and action taken should be kept in accordance with the above in format as required by the Council and all such records shall be made available to the Council upon request.
- 2.8 Where the Council is investigating a complaint by a Service User the Service Provider is required to participate in all complaint investigations within the timescales requested by the Council.
- 2.9 Any complaint regarding possible physical, psychological, financial, sexual or discriminatory abuse or neglect should be reported immediately to the Council's Adult Social Care Directorate team by telephone and confirmed in Writing as soon as reasonably practical but no later than five Working Days.
- 2.10 Where a complaint is made against a member of the Staff this shall be investigated in accordance with the documented complaints procedure of the Service Provider. In all such cases the Service Provider shall notify the Council's Contracts Manager of any complaints and actions taken in individual cases and the nature of the complaint if it is from a Service User.

### **3 RIGHTS OF SERVICE USERS**

Service Users have the right to:

- 3.1 be treated as individuals with unique needs
- 3.2 exercise personal independence and choice
- 3.3 have their personal dignity respected
- 3.4 have their cultural social religious and emotional needs respected
- 3.5 have access to all personal information held by the Service Provider
- 3.6 participate in formulating their own assessment of needs
- 3.7 participate in any reviews or re-assessment of their needs
- 3.8 receive a non-discriminatory service
- 3.9 receive assistance to maintain personal skills
- 3.10 have access to a formal complaints procedure
- 3.11 maintain their entitlements associated with citizenship
- 3.12 be involved in any decision-making process as it affects them including the right to refuse reasonably a part of the Service and to comment on the Service by means of an independent representative if necessary without fear of reprisal

### **4.0 FINANCES**



- 4.1 The Service Provider will ensure that records of individual Service User funds and any group home funds are maintained in full and have in place a robust quality assurance methodology to audit these at appropriate intervals and at least twice annually. The Service Provider will make these records and the records of their processes available to officers of the Council upon request.
- 4.2 Where there is a joint tenancy and household costs are shared costs and calculations of expenditure must be in evidence.
- 4.3 Telephone bills should be audited to ensure that Staff are not using the Property telephone inappropriately.
- 4.4 The Council will oversee initial claims for benefits in respect of Housing Benefit Management Support the higher care component of Disability Living Allowance the Independent Living Fund and any other state benefits or funding from Supporting People which any of the Service Users may from time to time become entitled to.
- 4.5 The Service Provider shall work with the Council to maximise benefits.
- 4.6 Where there is no appointee the Service Provider will notify the Council of the initial payment of benefits and thereafter of any change to benefits.
- 4.7 The Service Provider will notify the Council about any proposed change in tenancy.

## **5.0 RECORD KEEPING AND CONFIDENTIALITY**

- 5.1 The Service Provider's facilities for storing records such as filing cabinets must be lockable and in a secure environment. Evidence must be available that any statutory requirements relating to the premises have been complied with.
- 5.2 The following information should be recorded in respect of each Service User:
  - name, address, date of birth
  - gender, ethnic origin and significant, relevant items of personal/medical history and critical incidents
  - next of kin - name, address and telephone number
  - GP - name, address and telephone number
  - date of referral, Service commencement and termination
  - current Care Plan details including information as specified in Schedule 1 paragraph 3 Objectives of the Service
  - current risk assessment
  - personal accounts kept in accordance with paragraph 4 of this Schedule
- 5.3 A register of staff must be maintained which should include the following information

- name, address and telephone number
- position held and hours worked
- next of kin - name, address and telephone number
- GP - name, address and telephone number
- Date of issue of identification and retrieval if appropriate
- Recruitment details including references, evidence of Disclosure and Barring Service check and interview
- Induction and training records
- Copies of training certificates and qualifications

5.4 In accordance with Caldicott recommendations and confidentiality requirements the Service Provider will ensure that:

- 5.4.1 Service Users are able to find out how the Service Provider deals with confidential and sensitive information about them and should be given a leaflet (or other communication relevant to their level of understanding) that clearly explains what information is kept on them and how they can access this.
- 5.4.2 Service Users and Staff have access to their personal records in private and as quickly as possible if requested and no later than 21 days whilst considering the interest of any third party information which can only be given with the third party's permission.
- 5.4.3 when the Service User has examined the records they are signed and dated by a member of Staff to show they have been examined and by the Service User when possible.
- 5.4.4 Staff are required to sign and date an acknowledgement that they have examined records pertaining to them upon the fulfilment of their request.
- 5.4.5 Staff induction contains training on confidentiality procedures. Staff files should evidence the date and nature of the induction on confidentiality that was given to new Staff.
- 5.4.6 confidential and security training needs should be assessed on an ongoing basis taking into account the role of each member of Staff used to provide the Service and this should be done annually
- 5.4.7 Staff contracts explicitly mention confidentiality and disclosure issues
- 5.4.8 the flows of Service User information are reviewed
- 5.4.9 information collections have a named owner (member of Staff) who is responsible for protecting access

- 5.4.10 confidential information on Service Users is safeguarded so that unauthorised people do not gain access to it.
  - 5.4.11 protocols governing the sharing of Service User information with other organisations is agreed and understood
  - 5.4.12 a named individual is appointed who will have responsibility for data security
  - 5.4.13 it has a programme to review typical risks regarding Service Users identifiable information
  - 5.4.14 incidents involving security breaches are anticipated and dealt with appropriately
  - 5.4.15 security issues are monitored and reported
  - 5.4.16 passwords are used to safeguard information held on computer regarding the Service
  - 5.4.17 only authorised persons have access to information and only if they need it to carry out their roles.
  - 5.4.18 if it is uncertain about the application of the above to the provision of the Service it will immediately contact the Council for clarification
- 5.5 The Service Provider will ensure that each member of Staff is made aware that their files may be inspected by officers of the Council for the purpose of monitoring.

## **6.0 POLICIES, PROCEDURES AND GUIDANCE**

- 6.1 The Service Provider will ensure that all Staff have access to copies of the policies and procedures listed below so that they can be referred to when necessary:
- 6.1.1 Operational policies including recruitment and retention of Staff
  - 6.1.2 Grievance and disciplinary procedures
  - 6.1.3 Health and Safety Policy in line with the Health & Safety at Work Act 1974 and the Health & Safety at Work Regulations 1992 and any amendments thereof
  - 6.1.4 Staff supervision and training policies
  - 6.1.5 Missing Persons Policy
  - 6.1.6 Lone/out of hours working policy
- 6.2 Staff must also have access to the following policies and procedures and Staff must sign during the induction period to indicate that they have read and

understood each one and such documentation will be retained on Staff files for management and inspection purposes.

- 6.2.1 Code of conduct for Staff
- 6.2.2 Service User rights
- 6.2.3 Risk Management policy and procedure and Health and Safety as it relates to the Service at the Property
- 6.2.4 Record keeping
- 6.2.5 Confidentiality
- 6.2.6 Managing violence and aggression and the use of restraint and physical intervention in line with the Council's Management of Actual and Potential Aggression Policy
- 6.2.7 Whistleblowing Policy
- 6.2.8 Equal Opportunities Policy
- 6.2.9 Protection of vulnerable adults in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands
- 6.2.10 Food Hygiene
- 6.2.11 Fire Safety Policy

## **7.0 RECRUITMENT AND SELECTION**

- 7.1 The Service Provider must inform Staff that the Council reserves the right to view their Staff records.
- 7.2 The Service Provider shall at all times during the period of this Contract engage sufficient Staff of sufficient ability skill knowledge training and experience for the proper performance of the Service and shall continuously supervise the performance of Staff and ensure that there is a sufficient reserve available to provide the Service at all times.
- 7.3 The Service Provider shall be entirely responsible for the employment and conditions of service of its own employees and shall at all times be fully responsible for the payment of all salaries and wages income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any persons employed by the Service Provider and shall fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof.
- 7.4 The Service Provider will ensure that:
  - 7.4.1 There is a clear written job description and employee specification for

all Staff.

- 7.4.2 Job applications are in Writing and describe previous experience, training, full employment history since leaving school and explain the reason for leaving and any gaps in employment.
- 7.4.3 Candidates selected for possible appointment are interviewed and two satisfactory written references are obtained, one of which must be from their current or last employer and from a previous employer from the care sector where applicable. Provision must be made for references to be taken from all previous employers if required. References should ask reasons for leaving, whether the employers providing the reference would offer re-employment and whether any disciplinary investigations have been undertaken and why.
- 7.4.4 References are received and checked before employment commences, including the authenticity of the reference.
- 7.4.5 Job applicants make a written declaration of previous convictions and disqualifying conditions and provide information of any other name by which they have been known.
- 7.4.6 Recruitment procedures are in accordance with clause 34 of this Contract (Safeguarding)
- 7.4.7 The identity of all Staff is verified prior to employment using an official document.
- 7.4.8 The authenticity of qualifications is checked prior to employment.
- 7.4.9 Staff are provided with information about their conditions of employment.
- 7.4.10 All Staff make a written undertaking in respect of confidentiality.  
All new Staff are appointed on a probationary contract, renewal of which must be dependent upon satisfactory performance and completion of the Induction Programme. This provision must also apply to internal transfers.
- 7.4.11 Where any concerns have been raised about a potential member of Staff by a referee or through the Disclosure and Barring Service check and the person is nevertheless deemed to be suitable for care work appropriate and sufficient monitoring is undertaken by the Service Provider in respect of the concerns raised. The Service Provider must be able to demonstrate that such monitoring has been carried out.

## **8.0 STAFFING - qualifications & experience**

- 8.1 It is essential that Managers have (or be working towards) a NVQ Care Level 4 or an equivalent qualification in social care i.e. DipSW , Nursing and must have a minimum of 5 years' experience of social care. It is desirable that Managers have a qualification in Management. If not they must work towards the achievement of the Registered Manager's Award or equivalent.
- 8.2 It is desirable that senior Staff have (or be working towards) a NVQ Care Level 4 or an equivalent qualification in social care i.e. DipSW , Nursing and essential that they have had a minimum of 3 years' experience in social care and that they receive management training within 12 months of the taking up post.
- 8.3 Care Staff must have previous relevant experience or be provided with appropriate training to enable them to provide the Service to the Service Users at the Property and should hold or work towards achieving a Skills for Care Level 2 Supporting Individuals with a Learning Disability award.
- 8.4 Managers should provide evidence of the ability to manage Staff and systems effectively and to establish positive relationships with other professionals.
- 8.5 The Service Provider must ensure that Staff are able to follow policies and procedures.
- 8.6 All Staff must be committed to meeting the needs of the Service Users and maximising their capacity for independence and self-determination.
- 8.7 All Staff recruited to the Service must meet the requirements of any relevant legislation (such as the Health and Social Care Act 2008).

## **9.0 STAFFING – Induction and Training**

- 9.1 A structured induction programme which must last for a minimum of 70 hours should be arranged for all new members of Staff. The Service Provider must be satisfied that Staff are able and competent to work unsupervised and before they do so the following areas must be covered
  - an introduction to the policies procedures and codes of conduct of the Service Provider which Staff will be expected to follow
  - an introduction to the “Principles of Care” and “Valuing People”
  - instruction in moving and handling
  - administration of medication including administration of stesolid for example where required
  - managing violence and aggression and the use of restraint and physical intervention in line with the Council's Management of Actual and Potential Aggression Policy
  - familiarisation with the individual Service User Care Plans and risk

assessments

- basic First Aid
- non-aversive intervention
- Confidentiality and security of Service User information and access to information
- Food hygiene

Staff should sign to confirm that these areas have been covered and that a copy of the policies and procedures has been received and understood.

- 9.2 The Service Provider will ensure that all Staff used to provide care will have completed their induction within 6 weeks of starting work with the Service Provider and their foundation training within 6 months.

## **10.0 STAFFING – Training**

- 10.1 The Service Provider will ensure that there is an ongoing programme of training available which enables Staff to continually improve their performance.
- 10.2 The Manager of the Service will undertake regular appraisals of Staff performance and training needs.
- 10.3 All staff should attend adult protection training.
- 10.4 Staff should not undertake to move, transfer and position Service Users until they have received appropriate moving and handling training in conjunction with best current practice carried out by a qualified trainer (ROSPA or equivalent). Refresher training must be provided on an annual basis.

## **11.0 STAFFING – Supervision**

Supervision will take place between all Staff and his/her line manager in accordance with the requirements of the Registration Body and as a minimum on a three monthly basis and written records will be kept on the content and outcome of each meeting.

## **12.0 STAFFING – Use of vehicles for work purposes**

- 12.1 Staff using their cars for work purposes must ensure that they comply with all road traffic regulation and have appropriate business class insurance, a copy of the insurance certificate will be kept on the Staff member's file and will be available for inspection.
- 12.2 Business related Staff travel and transport costs will be the responsibility of the Service Provider as part of the Service.
- 12.3 Vehicles used by Staff to transport the Service Users should carry appropriate insurance and be regularly serviced and must have a current MOT certificate if over 3 years old. Any concerns about roadworthiness and safety of vehicles

must be reported to the Service Provider's Manager.

12.4 Any driver used by the Service Provider to transport Service Users MUST:-

- Declare any driving convictions
- Be authorised by the Service Provider
- Hold a current driving licence appropriate for the vehicle driven

### **13.0 HEALTH & SAFETY**

13.1 Staff should be required to follow good practice in moving and handling and should be provided with appropriate training and refresher training.

13.2 Records and certificates of all Health & Safety training, including refresher training must be kept and held locally on staff files available for inspection.

13.3 A full written risk assessment should be completed under the requirements of the Health & Safety at Work Regulations 1992 on the Service and if required in respect of each Service User when he/she is first admitted to the service and when any changes to his/her care needs arise.

13.4 All accidents, incidents and violent 'near misses' involving Staff and Service Users must be recorded. This record should include any steps taken to prevent a recurrence. Accidents must also be recorded in an Accident Book.

### **14.0 QUALITY ASSURANCE**

14.1 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 officers of the Council access to all records for the purpose of monitoring and complaint investigation at all times. Confidentiality will be observed at all times and access to Service User notes by officers of the Council other than the Service Manager will only be arranged with Service User/ relative permission.

14.2 The Service Provider must have documented systems which enable it to:

- 14.2.1 check on whether it is delivering the Service in accordance with the Service Specification of each Schedule and their Outcomes and Outputs
- 14.2.2 check whether it is doing this efficiently and effectively
- 14.2.3 check on whether Staff are provided with safe systems of work
- 14.2.4 check whether the Service is being delivered in a way which takes account of Service Users' needs, preferences and satisfaction
- 14.2.5 check to ensure that all records are up to date
- 14.2.6 provide information to the Council evidencing that the systems are in place and being used.
- 14.2.7 check whether Service Users, parents and/or carers, the Council and other relevant agencies consider the quality of the Service can be improved



- 14.3 The Service Provider must fulfil its commitment to safeguard and promote the welfare of Service Users and vulnerable adults and shall have the following in place:
- 14.3.1 Clear priorities for safeguarding and protecting vulnerable adults explicitly stated in strategic policy documents.
  - 14.3.2 A clear commitment by senior management of the organisation to the importance of safeguarding and protecting vulnerable adults.
  - 14.3.3 A clear line of accountability within the organisation for overseeing safeguarding and protecting vulnerable adults and that roles and accountability for taking action and reporting internally and in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands are properly defined and understood by those involved. The policy can be found on the Council's website at [www.shropshire.gov.uk](http://www.shropshire.gov.uk).
  - 14.3.4 Procedures for instigating the West Midlands Safeguarding Policy and for dealing with allegations of abuse against members of Staff and volunteers.
  - 14.3.5 Arrangements to ensure that all Staff receive supervision and undertake safeguarding and protection of vulnerable adult training in order to equip them to carry out their safeguarding responsibilities effectively. Refresher training must be provided at regular intervals and all Staff including temporary Staff and volunteers who work with vulnerable adults must be made aware of the organisations arrangements for protecting vulnerable adults.
  - 14.3.6 Policies to safeguard and protect vulnerable adults and procedures that are in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands.
  - 14.3.7 Arrangements to work effectively with other organisations involved in the delivery of services to vulnerable adults in order to protect vulnerable adults including arrangements for sharing information in accordance with section 4.19.1 of Safeguarding adults: multi-agency policy and procedures for the West Midlands.
  - 14.3.8 A culture of listening to and engaging in dialogue with vulnerable adults and seeking their views and taking account of those views both in individual decisions and the establishment or development of services.
  - 14.3.9 Whistle blowing procedures and a culture that enables issues about safeguarding and protecting vulnerable adults to be raised.

## **15.0 MONITORING**

15.1 The Service Provider shall co-operate with the Council and shall comply with all reasonable requests from the Council to allow monitoring and evaluation of the effective provision of the Service by the Service Provider.

15.2 Without prejudice to the generality of the foregoing the Service Provider shall permit a Council Officer at all reasonable times to inspect or witness the Service Provider's provision of the Service for the purpose of monitoring the Service Provider's performance of its obligations under this Contract. The Council will have careful regard to the nature of the Service provided and shall when on premises controlled by the Service Provider respect the Service Provider's rules as to security health and safety.

15.3 The Service may be monitored by the following:

15.3.1 A monitoring inspection of the Service if required by the Council from time to time. This will be carried out by a nominated Officer from the Council's Community Services Directorate Contracts Unit who will undertake a review on the operation of the Service and compliance with this Contract. A report will be prepared on this and shared with the Service Provider.

15.3.2 The Service Provider and the Council meeting to discuss:

- Finance
- Staff (recruitment / leavers / sickness and agency)
- The Service (existing and developments)
- Feedback from Service Users on the Service
- Summary details of any concerns raised about the Service and actions taken to address these.
- Liaison with Health Care professionals
- Results of the Service Provider's own quality assurance mechanisms

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

15.3.3 The Service Provider demonstrating that the Service provided is in accordance with the standard of care as detailed in the Service Specification

## **16.0 PROVISION OF FOOD AND DRINK**

16.1 Service Users should be encouraged to consume and where appropriate prepare meals which are attractive and nutritionally balanced.

16.2 Service Users should where possible be involved in or responsible for the preparation of meals which should reflect Service User's special dietary needs and choice.

**17.0 ADMINISTRATION**

The Service Provider will supply information which the Council may request from time to time in order to comply with Department of Health or the Department for Communities and Local Government requirements.

AGREED by the Parties through their authorised signatories:

SIGNED by )  
authorised signatory on behalf of )  
the COUNCIL )

SIGNED by )  
authorised signatory on behalf of )  
the COUNCIL )

SIGNED by )  
authorised signatory on behalf of )  
the SERVICE PROVIDER )

Name.....

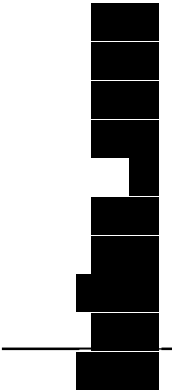
Position in Organisation.....

**Shropshire Council**

**Kempsfield Residential Home - Current Proposed Cost of Service for 2014-15**

**Premises Costs**

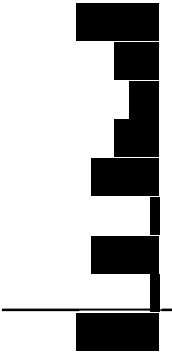
- Property Maintenance
- Grounds Maintenance
- Refuse Collection
- Cleaning Materials
- Window Cleaning
- Hygiene Services
- Rates
- Electricity
- Gas



**Total Premises Costs**

**Supplies & Services Costs**

- Provisions
- Furniture & Equipment
- Postages
- Printing & Stationery
- Telephone Costs
- Uniforms
- Subscriptions
- Other



**Total Supplies & Services Costs**



**INVITATION TO SUBMIT  
OUTLINE PROPOSALS  
(ISOP)  
AND  
RESPONSE DOCUMENT**

**EMC 008 – KEMPSFIELD DAY SERVICES  
EXTERNALISATION  
SHROPSHIRE COUNCIL**

Name of ORGANISATION  
BIDDING  
(please insert)

**Sanctuary Housing Association (trading  
as Sanctuary Supported Living)**

## INVITATION TO SUBMIT OUTLINE PROPOSALS

### **Output Requirements:**

Shropshire Council is seeking a service provider to manage on its behalf Kempfield, a 20 bed residential care home situated in Shrewsbury, Shropshire. It is currently owned and managed by Shropshire Council and has been in operation since the early 1980's.

The home currently has 12 permanent and 1 respite residents aged between 52 to 78 some of whom require significant support. The Home is well established within the local community and residents enjoy a range of community activities within the local vicinity and further afield through regular holidays and day trips.

The home is staffed by a stable and experienced staff group employed by Shropshire Council and applicants should note that it is considered that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') will apply to this contract. Also compliance with the provisions The Best Value Authorities Staff Transfers (Pensions) Direction 2007, in relation to the Local Government Pension Scheme (as administered by Shropshire County Pension Fund) will also be required. Bidders are advised to seek their own legal advice about the practicality of these regulations.

The Home is currently run to a high standard and has received favourable CQC inspections, however it is not a style of service Shropshire Council would recognise as best practice and is in need of transformation.

Shropshire Council is wishing to modernise the style of accommodation and transfer the existing service to a new provider willing to undertake both continuity of service provision in the first instance and redevelopment of the premise into supported living accommodation within 3 years for up to 14 residents with a learning disability, to include those currently living at Kempfield.

Bidders may view the existing premises on request and by appointment only by contacting Debbie Mowl on email [debbie.mowl@shropshire.gov.uk](mailto:debbie.mowl@shropshire.gov.uk)

The Council is currently facing unprecedented financial pressures and is unable to invest any capital in any redevelopment. Prospective operators will therefore have to secure and provide the necessary capital investment to undertake the redevelopment works.

The Council is initially proposing, in order for the redevelopment works to take place, to offer a thirty year lease of the property at a peppercorn rent with an option to acquire a long leasehold interest of 125 years by payment of a premium on or after the fifth anniversary of the lease term.

The Council is also proposing a service contract for an initial period of 5 years with the option for further extensions up to a maximum of a further 5 years.

However under this competitive dialogue process bidders may put forward any alternative proposals including an offer to acquire the freehold or any variant to the Council's initial proposals.

The Council would wish to retain full nomination rights to the redeveloped service.

The Council is seeking a prime service provider with a track record of providing innovative housing support and the experience of being able to affect the type of transformation required. The Council will consider proposals by which a sole organisation provides both the service provision and also the required redevelopment or from a consortia approach.

The Council will require a prospective provider to supply and manage the accommodation requirements of the existing residents during the period of redevelopment and will be required to provide details of these arrangements within their bids.

The service provider must work in accordance with the 'Safeguarding adults: multi-agency policy and procedures for the West Midlands'

The Council wishes to maximise the social and economic impact of the proposed solution and therefore will be seeking a provider who can support volunteering, training and employment opportunities both locally and for service users, and who will actively support the local supply chain both during redevelopment of the service and during normal operation.

### **Procedure**

Please note that the services covered by this contract are 'Part B' services under the EU Procurement Directive 2004/18/EC and The Public Contract Regulations 2006. Accordingly whilst the full regulations will not apply the Council will follow a process based on the principles of transparency. The Council will treat all economic operators equally and in a non-discriminatory way.

This Invitation To Submit Outline Proposals (ISOP) represents the next stage of the competitive dialogue process. The purpose of the competitive dialogue is to identify the solution and bidder who can best meet the Council's needs and objectives for this project.

Through this ISOP stage the Council will select bidders who will be short-listed and taken forward to the next stage of dialogue process where they will be invited to dialogue sessions to discuss their outline proposals. It is the Council's intention to select a maximum of three bidders to take part in the dialogue sessions (provided there are three Bidders who are judged to have submitted outline proposals of sufficient quality after the ISOP evaluation).

### **Pension Information**

#### **Pensions**

In accordance with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 the successful Tenderer must comply in relation to pension benefits. All employees transferred under TUPE who are members of the Local Government Pension Scheme (LGPS), under the Shropshire County Pension Fund administered by Shropshire Council, or who are entitled to be members of the LGPS, must (as a minimum) be offered in respect of future service either;

- the opportunity to join or remain in the LGPS by means of the Tenderer

seeking to become an admission body within the LGPS; or

- Membership of an occupational pension scheme sponsored by the Tenderer which is actuarially certified as providing pension benefits that are at least broadly comparable to those benefits provided by the LGPS. The certification should be by reference to the criteria for 'broad comparability' set out by the Government Actuary's Department (GAD).

Of the Transferring Employees who may transfer from Shropshire Council under TUPE, **TBC** are currently members of the Local Government Pension Scheme (LGPS) operated by the Shropshire County Pension Fund and **TBC** currently have eligibility to be members of the LGPS but have chosen to opt out at the present time.

Tenderers should indicate in their tender whether they intend to:

- apply for admission to the LGPS, and if so whether this will be on the basis of an open or closed scheme; or
- Offer a broadly comparable pension scheme.

### **Broadly Comparable Scheme Requirements**

Tenderers offering membership of a broadly comparable occupational pension scheme to Transferring Employees are required to provide a copy of the actuarial certificate of broad comparability with their tender. The costs of doing so must be met by Tenderer.

The Tenderer must also offer Transferring Employees enhanced early retirement benefits as currently awarded under the LGPS by Shropshire.

### **Pension protection for an employee of the authority in respect of a subsequent contract for the provision of services**

In the event that the Transferring Employees are compulsorily transferred to another employer because of the termination and re-let of the contract, or because of sub-contracting, the contract must provide secure pension protection for any transferring original employees, as above, and the protection provided must be enforceable by the employee.

### **The Local Government Pension Scheme**

Where Tenderers wish to apply for admission to the LGPS an application must be made to the Shropshire County Pension Fund in respect of Transferring Employees transferring from Shropshire Council.

Further information about the LGPS is available via their website – [www.shropshirecountypensionfund.co.uk](http://www.shropshirecountypensionfund.co.uk).

### **If a Tenderer makes a successful application to join the LGPS as an admitted body it must:**

- Enter into an admission agreement with Shropshire Pension Fund. Sample Agreement contained within ISOP Documents.
- Provide a bond, to protect the Fund from funding risks if the Tenderer is unable to meet its pension commitments, if required by Shropshire Council



following an assessment, cost to be met by the Tenderer, which takes into account actuarial advice. Sample Bond contained within ISOP Documents.

- The Tenderer must also offer Transferring Employees enhanced early retirement benefits as currently awarded under the LGPS and by Shropshire Council.
- Shropshire Council shall require a right to set off against any payments due to the Tenderer an amount equal to any overdue employer and/or employee contributions and other payments (and interest payable under the LGPS) due from them under the relevant admission agreements.

### **Pensions Assumptions**

For the purposes of pricing their tender, Tenderers, who are to be requesting admitted body status to the Shropshire County Pension Fund, are requested to assume the following in respect of the Transferring Employees:

- Any surpluses or deficiencies accrued in respect of the Transferring Employees' benefits in the Shropshire County Pension Fund prior to commencement of the relevant admission agreement will not be charged to the Tenderer. The Tenderer should therefore assume that the Shropshire County Pension Fund is notionally fully funded to a level of 100% in respect of the Transferring Employees at the date of transfer. Future changes in funding level on future and past service are at the risk of the Tenderer.
- An employer contribution rate of 20%\*\*.
- The initial level of the bond/indemnity\*\* required for the purposes of the relevant admission agreements will be advised once the risk assessment has been carried out by the Tenderer using the Fund Actuary, in accordance with the LGPS Regulations, cost to be met by the Tenderer. The risk of any change in the level of the bond/indemnity required after financial close will remain with the Tenderer;
- The costs (including any associated independent actuary fee) incurred by the Tenderer in becoming an admission body or obtaining a certificate of broad comparability in relation to any broadly comparable pension scheme shall be borne by the Tenderer;

\*\*In the event that the actuarial assessment amends the figures used for assumptions set out above, Shropshire Council confirms that the Tenderer will be allowed to revisit its pricing in respect of these elements only of their pension's costs prior to financial close.

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## **Instructions for the completion of this response document**

1. This Response Document must be completed in its entirety with responses being given to all questions. If you are unsure of any section and require further clarification, please contact: Procurement Team via email quoting the contract reference EMC 008 to [procurement@shropshire.gov.uk](mailto:procurement@shropshire.gov.uk)
2. Bidders must also complete and sign the three certificates in Sections A1 to A3. These must be signed;

Where the bidder is an individual, by that individual;

Where the bidder is a partnership, by two duly authorised partners;

Where the bidder is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.

3. All information supplied must be accurate and up to date. The Council reserves the right to refuse to consider your bid if this Response Document is not fully completed or is found to be inaccurate.
4. The remaining separate documents making up this Invitation to submit Outline proposals are as follows:-

Invitation Letter  
Instructions for Bidding  
Four Pricing Schedule Bid Forms  
Property Documents & Plans  
TUPE Confidentiality Letter and HR Policies  
Pension Sample Bond and Admission Agreement  
Pen Pictures of Residents  
Form of Contract including specification (Residential)  
Form of Contract including specification (Supported Living)

## **Contents of this document**

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A3	Declaration of Connection with Officers or Elected Members of the Council	12
<b>You must sign all 4 certificates in sections A1 to A4</b>		
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## Award Criteria

The principal objective of this Invitation to Submit Outline Solutions (ISOS) stage of the procurement is to provide the Council with detailed information regarding bidders in terms of their approach, understanding and capability to deliver this project, as well as to reduce the numbers of bidders in the competitive dialogue by applying the evaluation criteria to all ISOS submissions.

Bidders will have their ISOS response evaluated and scored against the following award criteria and scoring mechanism and the award criteria will remain in place for the evaluation of further and final bids:-

Outline Solutions will be evaluated against the criteria shown in the table below. The following award criteria is made up of 'Quality' and 'Price' and shows how each criteria is to be weighted against each other. The most economically advantageous bid will be identified by the bid scoring the highest overall for Quality and Price combined.

<b>Section / Question No.</b>	<b>Award Criteria</b>	<b>Weighting / Max Marks Available</b>
<b>Quality 50% (500 marks)</b>		
Section C / Q 1a	Management of handover process - service users	7.5% / 75 max marks
Section C / Q 1b	Management of handover process - staff	2.5% / 25 max marks
Section C / Q 2	Management of transition to a supported living service	10%/ 100 max marks
Section C / Q 3a	Quality of service - residential	5% / 50 max marks
Section C / Q 3b	Quality of service – supported living	5% / 50 max marks
Section C / Q 4a	i. Social Value - Supporting employment and work opportunities	2.5% / 25 max marks
	ii. Social Value – Supporting traineeships and apprenticeships	2.5% / 25 max marks
Section C / Q 4b	Social Value – Support for local economy	5% / 50 max marks
Section C / Q 5	Involvement and engagement with local community	10% / 100 max marks
Section C / Q 6	Robustness and Sustainability of Business Case and suitability of development proposals	Pass / Fail
<b>Total for quality</b>		<b>50% / 500 max marks</b>

<b>Section / Question No.</b>	<b>Award Criteria</b>	<b>Weighting / Max Marks Available</b>
<b>Price 50% (500 marks)</b>		
Pricing Schedule – Bid Form 1	Price - Residential	20% / 200 max marks
Pricing Schedule - Bid Form 2	Price – Supported Living	25% / 250 max marks
Pricing Schedule – Bid Form 3	Price – Void costs	5% / 50 max marks

<b>Total for price</b>	<b>50% / 500 max marks</b>
Pricing Schedule – Bid Form 4	Pass/fail

In addition to the above marked criteria above there is also a Pass / Fail Criteria response to question 6 and Pricing Schedule Bid Form 4 around the Robustness and Sustainability of the proposed Business case and suitability of the outline development proposals. Bidders are free to set out their own proposals around such issues as the term of lease, freehold acquisition, length of contract, number of individuals to be supported accommodated in a supported living setting on the site and any other variable issues or presumptions which they believe will enhance their solutions.

## **Scoring Scheme**

### **1. Quality Questions**

Questions within the quality sections shown above will be scored using the following scoring scheme. Each answer from the questions identified below will be given a mark between 0 and 10 with the following meanings:

<b>Assessment</b>	<b>Mark</b>	<b>Interpretation</b>
<b>Excellent</b>	<b>10</b>	<i>Exceeds the requirement. Exceptional demonstration by the Bidder of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	<b>9</b>	
<b>Good</b>	<b>8</b>	<i>Satisfies the requirement with minor additional benefits Above average demonstration by the Bidder of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	<b>7</b>	
<b>Acceptable</b>	<b>6</b>	<i>Satisfies the requirement. Demonstration by the Bidder of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures, with evidence to support the response.</i>
	<b>5</b>	
<b>Minor Reservations</b>	<b>4</b>	<i>Satisfies the requirement with minor reservations Some minor reservations regarding how the Bidder will meet this requirement by their allocation of skills and understanding, resources and quality measures, with limited evidence to support the response.</i>
	<b>3</b>	
<b>Serious Reservations</b>	<b>2</b>	<i>Satisfies the requirement with major reservations. Considerable reservations regarding how the Bidder will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>
	<b>1</b>	
<b>Unacceptable</b>	<b>0</b>	<i>Does not meet the requirement</i>

	<p><i>Does not comply and/or insufficient information provided to demonstrate how the Bidder will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i></p>
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The use of odd numbers indicates an answer's allocated mark lies between definitions.

The bid receiving the highest mark for quality overall will receive in the final assessment the full marks available for quality (i.e. 500 marks). Other Bids will receive total marks that reflect the % difference between their initial marks and those of the Bid receiving the highest initial mark for quality overall.

**N.B. A Bid which scores less than 50% of the overall quality mark available (i.e. less than 250 marks on quality overall) will be automatically rejected.**

## **2. Price Evaluation and scoring**

Price is worth a total of 50% (500 marks) of the total bid evaluation and will be evaluated in three parts as follows:-

### 1. Price – Residential Service 20%

The total price (shown in the Pricing Schedule 1 as the **ANNUAL VALUE OF CONTRACT - PRICE PAYABLE BY THE COUNCIL at line71**) will be used for the assessment of this section. The most competitively priced bid for this section will receive 200 Marks, other less competitive bids will receive % of the maximum mark that represents the difference in cost between that bid and the most competitively priced bid.

### 2. Price – Supported Living 25%

The total basket price (shown in the Pricing Schedule 2 as the **Total Cost of the Basket of Goods at line 27**) will be used for the assessment of this section. The most competitively priced bid for this section will receive 250 Marks, other less competitive bids will receive % of the maximum mark that represents the difference in cost between that bid and the most competitively priced bid.

### 3. Price - Voids 5%

The total basket price (shown in the Pricing Schedule 3 as the **Total at line 20**) will be used for the assessment of this section. The most competitively priced bid for this section will receive 50 Marks, other less competitive bids will receive % of the maximum mark that represents the difference in cost between that bid and the most competitively priced bid.

As part of the Invitation to Submit Outline Proposals there are four separate Pricing Schedule Bid Forms. All four schedules need to be fully completed. The schedules are as follows:

Pricing Schedule 1 – Residential Care: This schedule deals with the cost of providing residential care at Kempshfield for the first three years of the contract award. Within this schedule bidders need to complete the 'Summary' worksheet with their costs for years 1-3. In addition to this the 'Core Employee Salaries' and 'Tenant Maintenance' worksheets also need to be completed in

detail. The totals from these two worksheets will automatically feed through to the 'Summary' sheet.

Pricing Schedule 2 - Supported Living: This schedule deals with the cost of providing care at Kempsfield in a supported living setting from year 4 of the contract onwards. Within this schedule bidders will need to supply details of their unit costs, however the section entitled 'Basket of Goods' will be the section that is used for scoring this part of the bid. In addition to this the 'Core Employee Salaries' worksheet needs to be completed in detail. This will not be included in the scoring of the financial section, but will be used to ensure that the staffing levels will be sufficient to provide the level of service being detailed in other sections of the bid.

Pricing Schedule 3 – Void Costs: This schedule deals with the void costs that may be payable by the Council should there be vacant units within the Supported Living setting. The total of all of the void costs from the table will be added together with the lowest overall cost/most competitive bid receiving the 50 marks available for this section. It is therefore essential that all cells are completed e.g. If no void cost would be payable for up to 1 month, then please put zero in the cells for weeks 1 – 3. If a void cost is payable from 1 month, then all time periods after this need to be completed.

Pricing Schedule 4 - Capital Development: This schedule will be marked under a pass/fail criteria. It will be used to look at the robustness and sustainability of the proposed business case for supported living arrangements. All worksheets need to be completed.

All of the Pricing Schedules include cells which cannot be altered by the bidders. This is to ensure that all worksheets are returned in the same format to allow for meaningful analysis/scoring of the bids.

If there are any issues with completion of the Pricing Schedules please contact [REDACTED] on [REDACTED]

## **Section A:**

### **1. Non-Canvassing Certificate**

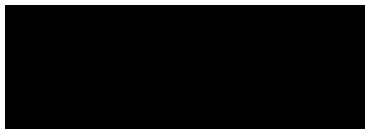
Non-Canvassing Certificate

**To: Shropshire Council (hereinafter called “the Council”)**

I/We hereby certify that I/We have not canvassed or solicited any member officer or employee of the Council in connection with the award of this Bid or any other Bid or proposed Bid for the Services and that no person employed by me/us or acting on my/our behalf has done any such act.

I/We further hereby undertake that I/We will not in the future canvass or solicit any member officer or employee of the Council in connection with the award of this Bid or any other Bid or proposed Bid for the Services and that no person employed by me/us or acting on my/our behalf will do any such act.

Signed (1)



Status:



Signed (2) Please see hard copy for signature

Status:



(For and on behalf of: Sanctuary Housing Association)

Date: 28 August 2014

**Section A:**  
**2. Non-Collusive Bidding Certificate**

Non-collusive Bidding Certificate

**To: Shropshire Council (hereinafter called “the Council”)**

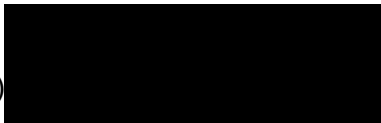
The essence of selective tendering is that the Council shall receive bona fide competitive Bids from all persons bidding. In recognition of this principle:

I/We certify that this is a bona fide bid, intended to be competitive and that I/We have not fixed or adjusted the amount of the bid or the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other person.

I/We also certify that I/We have not done and undertake that I/We will not do at any time any of the following acts:-

- (a) communicating to a person other than the Council the amount or approximate amount of my/our proposed Bid (other than in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance); or
- (b) entering into any agreement or arrangement with any other person that he shall refrain from Bidding or as to the amount of any Bid to be submitted; or
- (c) offering or agreeing to pay or give or paying any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Bid or proposed Bid for the Services any act or omission.

Signed (1)



Status:



Signed (2) Please see hard copy for signature

Status:



(For and on behalf of: Sanctuary Housing Association)



**Section A:**  
**3. Declaration of Connection with Officers or Elected Members of the Council**

Are you or any of your staff who will be affected by this invitation to bid related or connected in any way with any Shropshire Council Elected Councillor or Employee?

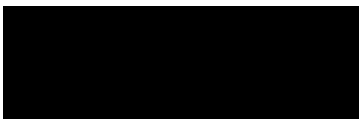


Yes / **No**

If yes, please give details:

Name	Relationship

***Please note:***

*This information is collected to enable the Council to ensure that bids are assessed without favouritism. Whether or not you have a connection with elected members or employees will have no bearing on the success of your bid, but your bid will not be considered unless this declaration has been completed.*

Signed (1)		Status:	
Signed (2)	<u>Please see hard copy for signature</u>	Status:	
(For and on behalf of: <u>Sanctuary Housing Association</u> )			

Date: 28 August 2014

**Section B:**  
**Bidding Organisation Details**

1.	<b>Bidders Details</b>
1.1	<p>Name of Bidding Company/Organisation: <b>Sanctuary Housing Association (trading as Sanctuary Supported Living)</b></p> <p>Address: <b>Sanctuary House, Chamber Court, Castle Street Worcester</b></p> <p>Postcode: <b>WR1 3ZQ</b></p> <p>Tel: <b>01905 334000</b></p> <p>Email: <b>bidmanagement@sanctuary-housing.co.uk</b></p>
1.2	<p>Registered name (if different from above): <b>Same as above</b></p> <p>Registered Office Address: <b>Same as above</b></p> <p>Postcode: <b>Same as above</b></p> <p>Company registration number: <b>Registered Society: 19059R</b></p>
1.3	<p>Details of the individual completing this Bid and to which we may correspond:</p> <p>Name: <b>[REDACTED]</b></p> <p>Job title: <b>Group Commercial Bidding Manager</b></p> <p>Correspondence Address: <b>Sanctuary House, Chamber Court, Castle Street, Worcester</b></p> <p>Postcode: <b>WR1 3ZQ</b></p> <p>Tel: <b>01905 334060</b></p> <p>Email: <b>bid.management@sanctuary-housing.co.uk</b></p>

## **Section C:** **Outline Solution Schedule**

Please expand the space in the sections below to answer the questions. Please only provide supporting documentation which is relevant to the tender questions.

1.	<b>Tender Specification Response</b>	
1a	<p data-bbox="252 521 1310 656"><u>Please detail how your organisation would manage the handover of the service from the Council to your organisation. This should include: communication with service users' families and relatives; involvement and relationship with advocacy services; involvement with social work professionals.</u></p> <div data-bbox="252 685 1299 831" style="background-color: black; width: 100%; height: 65px;"></div> <div data-bbox="252 857 1310 1200" style="background-color: black; width: 100%; height: 153px;"></div> <div data-bbox="252 1227 1321 1503" style="background-color: black; width: 100%; height: 123px;"></div> <div data-bbox="252 1529 1321 1704" style="background-color: black; width: 100%; height: 78px;"></div> <div data-bbox="252 1731 1230 1805" style="background-color: black; width: 100%; height: 33px;"></div> <div data-bbox="252 1832 1342 2029" style="background-color: black; width: 100%; height: 88px;"></div>	7.5% / 75 max marks

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1b	<p><u>Please detail how your organisation would manage the handover of the service from the Council to your organisation in respect of staff.</u></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	2.5% / 25 max marks
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	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	
2	<p><u>Please detail how your organisation would manage the overall transition from a residential service to a supported living service, particularly with reference to service users.</u></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	10% / 100 max marks







	<p>[Redacted content]</p>	
3a	<p><u>Please detail how your organisation will ensure that it delivers a quality residential care service for this project. Reference should be made to quality assurance measures focussing on building independence within a residential setting.</u></p> <p>[Redacted content]</p>	5% / 50 max marks









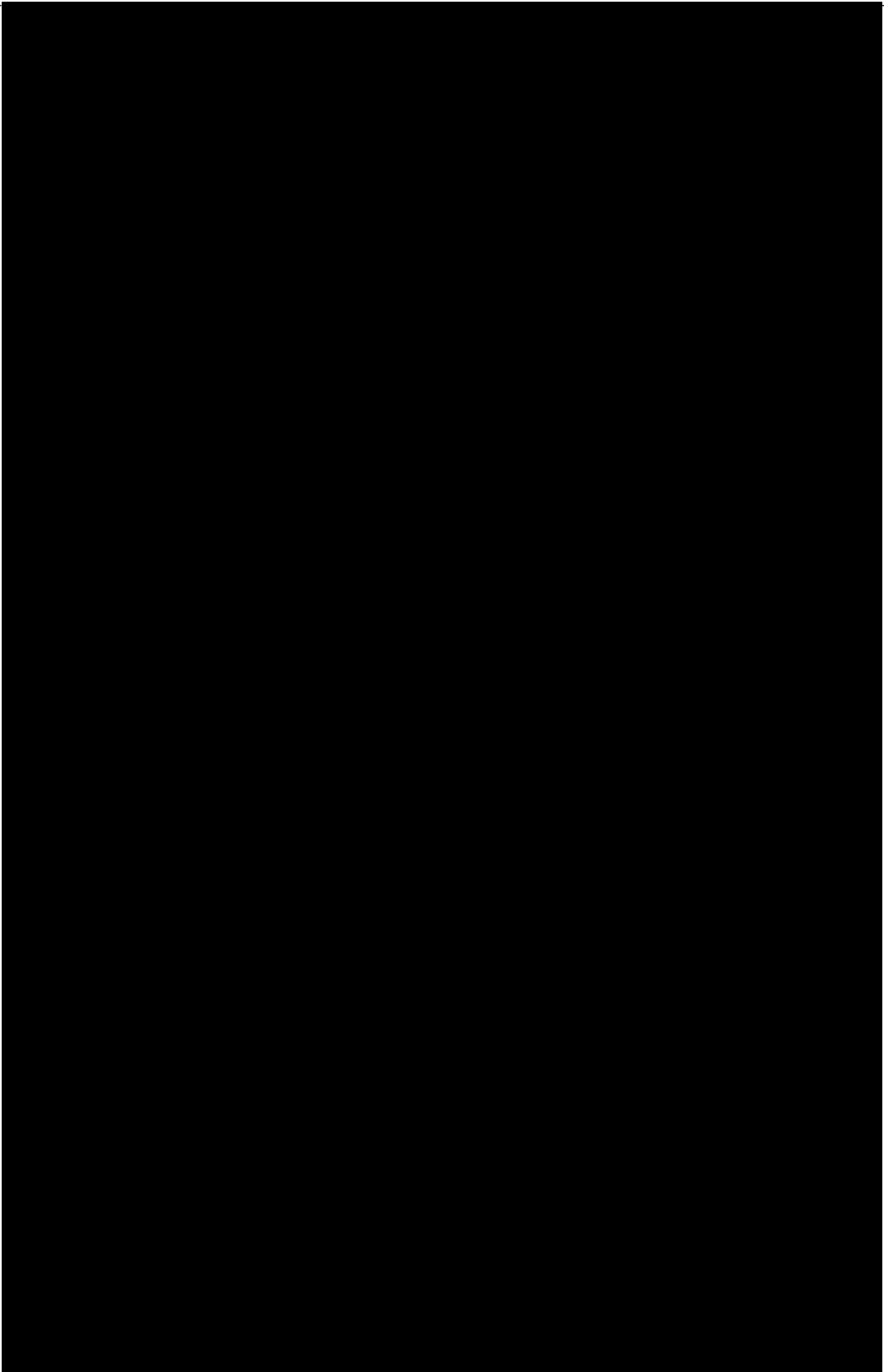

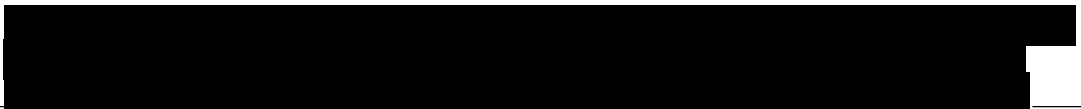




	<p>[Redacted]</p> <p>[Redacted]</p>	
3b	<p><u>Please detail how your organisation would ensure that it delivers a quality supported living service. Reference should be made to quality assurance measures focussing on building independence within a supported living setting.</u></p> <p>[Redacted]</p> <ul style="list-style-type: none"><li>[Redacted]</li><li>[Redacted]</li><li>[Redacted]</li><li>[Redacted]</li></ul> <p>[Redacted]</p> <p>[Redacted]</p> <ul style="list-style-type: none"><li>[Redacted]</li><li>[Redacted]</li><li>[Redacted]</li><li>[Redacted]</li><li>[Redacted]</li><li>[Redacted]</li><li>[Redacted]</li><li>[Redacted]</li></ul> <p>[Redacted]</p>	5% / 50 max marks



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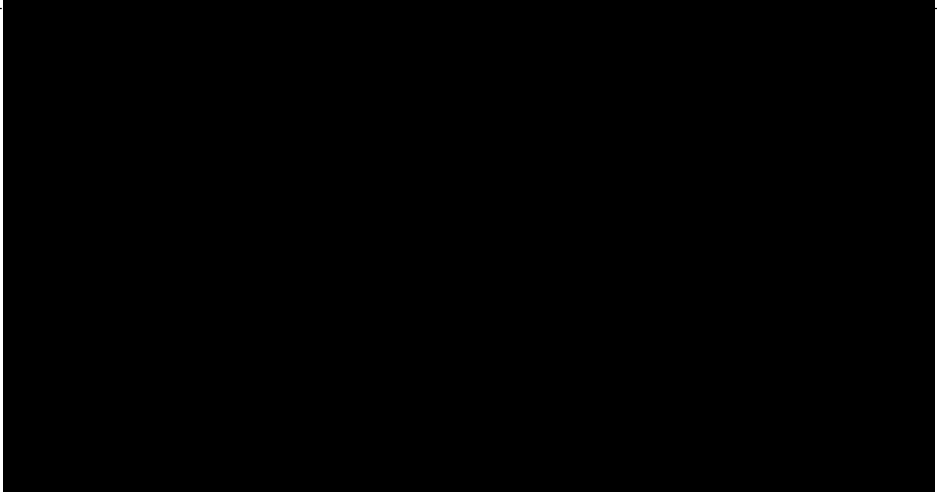


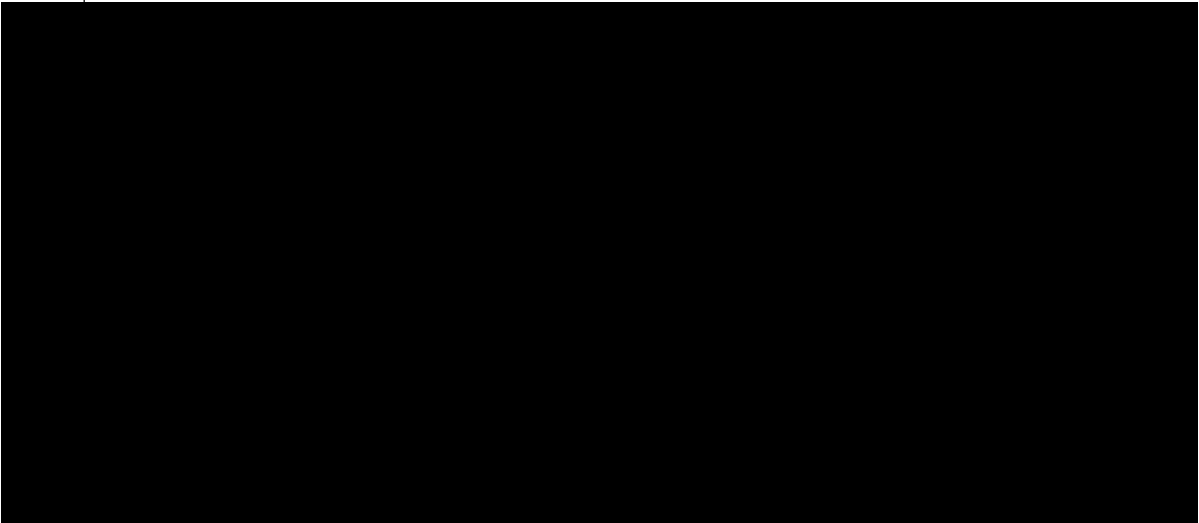
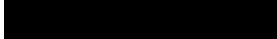

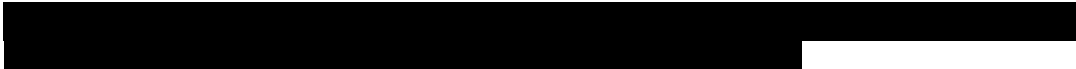
	<p>[Redacted text block]</p> <p>[Redacted text block]</p> <p>[Redacted text block]</p> <ul style="list-style-type: none"><li>[Redacted list item]</li><li>[Redacted list item]</li><li>[Redacted list item]</li><li>[Redacted list item]</li><li>[Redacted list item]</li><li>[Redacted list item]</li><li>[Redacted list item]</li></ul> <p>[Redacted text block]</p> <p>[Redacted text block]</p>	
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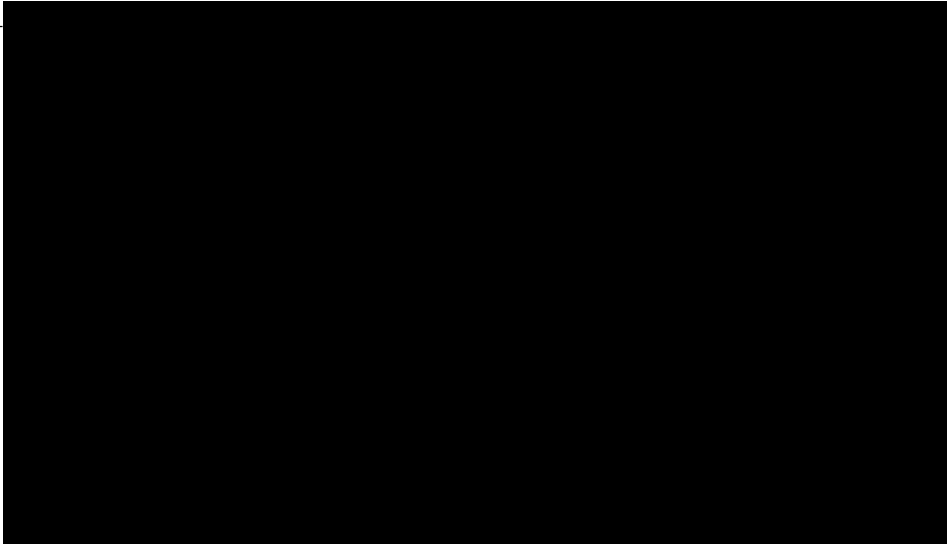



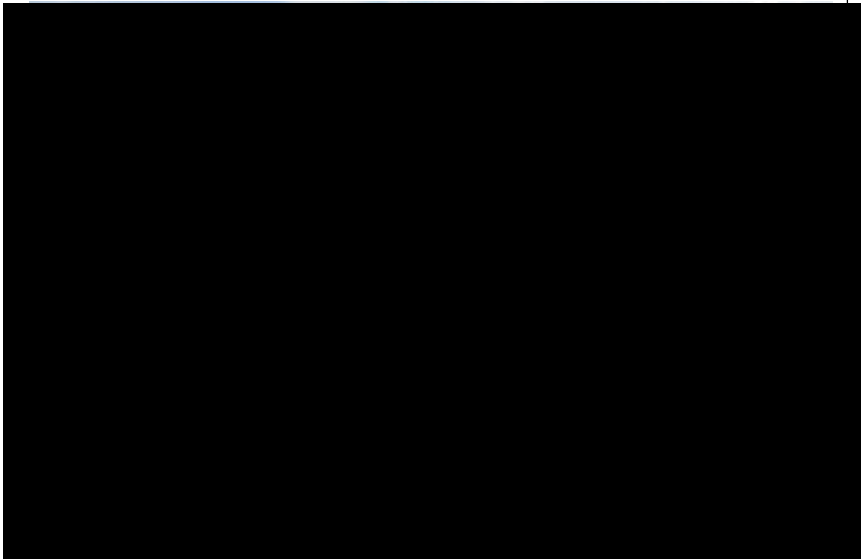
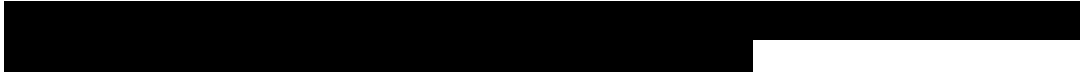


	  	
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4a	<p data-bbox="245 840 1366 974"><u>i. Please state how your organisation would support service users to access employment and voluntary work opportunities if you were successful in being awarded this contract.</u></p> 	2.5% / 25 max marks

	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>2.5% / 25 max marks</p>
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	<p><b>Provided DIY taster workshops so people can learn more about the different</b>   </p>	




	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	
4b	<p><u>Please state how your organisation would use Shropshire's supply chain during the required redevelopment phase and the ongoing provision of the service.</u></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	5% / 50 max marks









		
6	<p><u>Please set out in detail your business case for this project to develop this service from its current residential provision to supported living after 3 years of the contract. (You will also need to complete the Financial Model Form Schedule 4 to be read in conjunction with the response to this question)</u></p> <p><u>Shropshire Council has no capital to contribute to the development, please therefore include details of capital for your investment.</u></p> <p><u>You must also provide outline details of your proposed development.</u></p> <p><u>You must also include details of the basis of your proposals around such issues as the term of lease, freehold acquisition, length of contract, number of individuals to be supported accommodated in a supported living setting on the site and any other variable issues or presumptions which which you believe will enhance your</u></p>	Pass / Fail

solutions.

You must also explain how you would use the rental income received from the tenants when it becomes a supported living service in order to maintain the tenancy and the quality of the living environment.

Tenderers should also indicate in their bid whether they intend to:

- apply for admission to the LGPS, and if so whether this will be on the basis of an open or closed scheme; or
- Offer a broadly comparable pension scheme.

[Redacted content]







[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]



[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]