



INDIVIDUAL AGREEMENT FOR THE PROVISION OF HOME CARE AND SUPPORT

SPECIAL TERMS AND CONDITIONS

DEFINITIONS USED IN THIS AGREEMENT

Advocate	person/s who represent and support Individuals
Annual Review	annual review of the SSAQ support plan undertaken by the Care Manager/Care Co-ordinator
Assessment	the method by which the Individual's needs are determined by the Council
Authority Data	<p>a) 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> <ul style="list-style-type: none">(i) supplied to the Contractor by or on behalf of the Council; or(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or <p>b) any Personal Data for which the Council is the Data Controller</p>
British Standard Specification	nationally recognised standards of quality for goods and services
Care and Support	registered domiciliary care as defined by CQC and also the provision of non-personal and housing related support and re-ablement
Care Manager/Care Co-ordinator	a person, who may or may not be an employee of the Council, who is appointed to develop a support plan aimed at meeting the assessed needs of an Individual

Care Programme Approach	framework for assessment, care, and review of people with severe mental health problems
Change of Ownership	a transfer of ownership of the Contractor's organisation to new owner(s)/organisation
CHAS	Contractor's Health and Safety Assessment Scheme
Common Induction Standards	standards developed by Skills for Care which Staff delivering Services need to meet as part of their induction
Contracts Officer	the person appointed by the Council to liaise with the Contractor in respect of matters relating to this Agreement
Contractor Support Plan	support plan drawn up by the Contractor
Councils' Validation Process	the Council's Validation Forum. All Individual packages of care and support must be agreed via this forum.
CQC	Care Quality Commission
Data Controller	a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are or are to be, processed
Data Processor	in relation to personal data, the means any person (other than an employee of the data controller) who processes the data on behalf of the data controller'
Data Subject	an individual who is the subject of personal data
Default	any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act omission, negligence or statement of the relevant party, its employees, servants, agents or sub-contractors in connection with or in relation to this Contract and in respect of which such party is liable to the other
Disclosure and Barring Service (DBS)	the DBS is responsible for the disclosure checks and the barring of individuals from working with vulnerable groups (It was previously known as the

	Criminal Records Bureau and Independent Safeguarding Authority)
DoH Heatwave Plan	a national heatwave guidance written by the Department of Health
DOLs	Deprivation of Liberty Safeguards
The Equality Scheme	the scheme drawn up to support the Council in meeting its Public Sector Equality Duty as required by the Equality Act 2010
Essential Standards Of Quality and Safety	the new registration system of the CQC for health and adult social care which requires services to meet essential standards of quality and safety that respect Individual's dignity and protection of their rights
Focus on Undernutrition	the focus on undernutrition service providing a standardised approach to the management of undernutrition and training in the community
GP	general practitioner
Health Action Plan	a plan to facilitate good health for Individual's with a learning disability
Health Care Passport	a document which sets out an Individual's health needs
Health, Safety and Wellbeing Team	the team responsible for undertaking Health and Safety Accreditations at the Council
Housing Related Support	this support is delivered to Individuals with a learning disability, who receive Supporting People funded Floating Support (support delivered to the individual not linked to the property) to establish or maintain independent living skills
IMCA	Independent Mental Capacity Advocate the IMCA is central to the working of the Mental Capacity Act. Advocates work with someone who lacks capacity to make certain important decisions, and has no one else who can be consulted, to try and establish their wishes
Individual	person(s) accessing the Services by the Contractor under the terms of this Contract

Individual Agreement	the agreement between the Council, the Contractor, and the Individual in respect of the Service to be provided in the home
Individual's Guide	a document available to Individuals setting out the Contractor's terms, conditions, and information about the Services
Initial Review	review undertaken by the Care Manager/Care Co-ordinator at the 6 (six) week introductory stage of an Individual Agreement
LGO	Local Government Officer
MAR	Medication Administration Record
Medical Advice Alerts (MDA)	safety warnings about medical equipment from the Medicines and Healthcare Products Regulatory Agency
National Minimum Data Set (NMDS)	the NMDS collate information from social care employers to provide outstanding workforce intelligence relied upon by government, strategic bodies, employers and individuals to make decisions that will improve outcomes for people who use adult social care services
National Service Framework for Older People	a Department of Health programme of action linking services to support independence and promote good health, specialised services for key conditions, and culture change so that all older people and their carers are always treated with respect, dignity and fairness
NMC	Nursing Midwifery Council
Nominated Officer	the Council officer(s) nominated to receive Authority Data including Personal Data from the Contractor on behalf of the Council and indentified in writing to the Contractor
Operational Finance	the section within Council responsible for processing payments in respect of Services purchased under the terms of this Contract
PCI Security Standards Council	the payment card industry security standards council which sets standards to be met in respect of firms processing Personal Card Data
Personal Data	data which relates to an individual who can be

identified

- a) from those data, or
- b) from those data and other information which is in the possession of, the data controller

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual

Personalisation

the government's vision and strategy of how Health and Social Care services will be purchased and provided

Price

the price as stated in the contract particulars

Processing

in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data including

- a) organisation, adaptation or alteration of the information or data
- b) retrieval, consultation or use of the information or data,
- c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
- d) alignment, combination, blocking or erasure or destruction of the information or data.

Professionals

staff from other organisations with specialised health related qualifications. e.g. general practitioners, nurses, dietician, consultants, community psychiatric nurses, opticians, ophthalmologists

QCF

the Qualifications and Credit Framework

Registration Authority

the Care Quality Commission

Registration Certificate

a certificate confirming the registration of the Service pursuant to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009

Registered Manager	the nominated person registered with the CQC (or successor) to manage the carrying on of a regulated activity
Representative	lasting/enduring power of attorney; deputy/receiver by the court of protection pursuant to a court order
Review	the process by which an Individual's needs are re-evaluated following a time of experiencing the Services
RIACT	the department within the Council responsible for commissioning individual re-ablement services
Safeguarding Adults and Children's Policy	the Council's policy for safeguarding adults and safeguarding children
Service	the service as defined in the specification for care and support for adults
Service Manager, Contracts and Quality	the person appointed to oversee and monitor this Contract namely the Service Manager, Contracts and Quality, Development and Commissioning, Town Hall, Darlington DL1 5QT
Statement of Purpose	a document outlining the service that the Contractor delivers as per CQC guidance
Strategic Commissioner	A commissioner responsible for commissioning Adult Social Care within the Council.
Supported Self Assessment Questionnaire (SSAQ)	is a document which records the Individual's needs and what support they might need to carry on living independently in the community
SSAQ Support Plan	the Council's support plan developed from the Supported Self Assessment Questionnaire
SSIP	Safety Schemes in Procurement
Staff	any individual used by the Contractor to provide the Services including employed staff, temporary staff, agency workers, sub-contractors, volunteers, trainees, and students
Statement of Purpose	a document submitted to CQC, which sets out information about the Services in line with

Schedule 3 of the CQC (Registration) Regulations
2009

Support Plan

the Care Manager/Care Co-ordinator completes a Support Plan detailing an Individual's assessment and outcomes (Council's Support Plan). The Contractor completes their own Support Plans (Contractor's Support Plan) detailing how the Individual will receive care, treatment and support, and the level and type of assistance to be provided to ensure that the assessed needs of the Individuals are met, e.g. support plans, risk assessments, reviews

Statement of
Accounts

accounts showing the Contractor's financial position over a given period, usually completed annually

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1. INDEPENDENT CONTRACTOR

The Parties agree that the Contractor is an independent contractor and not an agent, employee or partner of the Council and therefore not eligible to participate in any benefit programmes of the Council. The Contractor will be responsible for payment of his/her own Income Tax and National Insurance Payments or similar contributions in respect of his/her fees and the Contractor hereby indemnifies the Council against any claims that may be made against the Council for Income Tax or National Insurance or similar contributions relating to the provision of the Services by the Contractor. The Contractor shall in addition be responsible for any loss of benefits paid under his previous contact of employment, or additional tax liability incurred, by reason of his accepting a contract with the Council as a consultant which commences immediately after the termination of his/her employment with the Council and the Contractor shall indemnify the Council in respect of any additional tax liability, loss or demand that the Council may thereby occasion.

2. CHANGE OF OWNERSHIP

2.1 The Contractor shall notify the Service Manager, Contracts and Quality, in writing, when there is a proposed Change of Ownership.

2.2 The Council shall not be obliged to agree to a Change of Ownership.

2.3 Following receipt of notification the Council will implement the Accreditation Procedures and forward an accreditation pack to the new owner(s). Accreditation Procedures will be adhered to; to ensure uniform measures and criteria for accreditation are used.

2.4 Where the Council agrees to a Change of Ownership, the Contractor shall be responsible for any costs incurred by the Council, including legal costs as a result of the Change of Ownership.

3. FINANCIAL VIABILITY

3.1 The Contractor will, from time to time, be asked to demonstrate its financial viability to the Council. This may be done by provision of some if not all of the following:

- a) details of the Contractor's trading status
- b) details of all parent, subsidiary or associated companies, firms etc.
- c) a copy of the audited Statement of Accounts of the Contractor or the Statement of Accounts of the parent company
- d) permission for the Council to seek a reference from the Contractor's bankers

e) annual budget

4. CORRUPT PRACTICES/CONFLICTS OF INTEREST

4.1 The Council has the power to terminate this Agreement and to recover from the Contractor the amount of any loss resulting from the cancellation, if the Contractor or any person employed by him or on his behalf:-

(a) has offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for;

- (i) doing, or for refraining from doing, anything in relation to either the obtaining of, or the execution of, the Contract or any other contract with the Council.
- (ii) showing or refraining from showing favour or disfavour to any person in relation to the Contract, or any other contract with the Council.

(b) has committed any offence under the Bribery Act 2010 (or any amendment of this) or has given any fee or reward the receipt of which is an offence under section 117 of the Local Government Act 1972.

4.2 In the case of any action as described above by a member of Staff, the Council's right to cancel and recover loss shall apply whether or not the action is with the Contractor's knowledge.

4.3 In order to prevent conflicts of interest arising and in accordance with the Local Government Housing Act 1989, Council officers and Councillors cannot participate in the award of any Agreement to an organisation in which they have an interest.

4.4 The Council must be informed of all cases where any elected Council Member or Council employee including his/her close relative or associate has involvement in the Contractor's business or other related activity.

4.5 The Contractor must declare any involvement of any member of the Council's staff as a director/ partner/ associate/ trustee/ management of the Contractor and the information registered and documented with the Council.

4.6 The Contractor is required to declare in writing any relationships with an individual who is responsible for commissioning or purchasing the Services, or for arranging placements on behalf of the Council.

4.7 Any person who has a financial interest in the Contractor, and who is involved in recommending which care homes are appropriate to meet assessed needs must declare that relationship in writing to the Service Manager, Contracts and Quality.

4.8 The Contractor, or any person howsoever employed by the Contractor, or any associated, or subsidiary business of the Contractor (whether or not

employed pursuant to a contract of employment), and any independent contractor, or volunteer engaged by the Contractor, or any associated, or subsidiary business of the Contractor, shall not purchase from an existing Individual, or any third party acting on behalf of the Individual any property, or personal effects owned by the Individual either jointly or in their own right.

5. ELIGIBILITY

- 5.1 The named individual requiring care and support under this Agreement will have had an assessment of need in accordance with the Fair Access to Care Services national framework which has indicated eligible assessed needs for care. A copy of the Council's Fair Access to Care Eligibility Criteria is available on the Council's website at www.darlington.gov.uk.
- 5.2 This policy has provided a framework for the development of the eligibility threshold that local authorities must establish for making decisions about who is, and who is not eligible to receive a social care service following an assessment of need.
- 5.3 Eligibility criteria are crucial in ensuring that the needs of the local population are met in an effective, fair, and efficient manner and that service users, carers, and the general public have the information they need in order to understand how decisions are made and how priorities are set. In Darlington the eligibility criteria currently exclude people who are assessed as having low and moderate risks to independence, but include people with assessed risks at substantial and critical levels.

6. PAYMENT AND PRICE

- 6.1 The Council shall pay the Contractor the Price as set out in the Contract Particulars.
- 6.2 The Council shall pay for the Services on a pro rata basis in accordance with time spent providing the Services and the hourly rate as specified in the Contract Particulars and subject to clause 6.4 below:
- 6.3 Fifteen (15) minute visits will be paid at a rate of 40% of the hourly rate. Visits commissioned for over fifteen (15) minutes will be paid pro rata.
- 6.4 Visits of fifteen (15) minute duration will only be commissioned where it has been assessed that the care/support required could be undertaken within this timescale or it is the Individual's choice.
- 6.5 The Council will not make payment for any services without these services being commissioned from the Contractor and an Individual Agreement being signed by all relevant parties.
- 6.6 The Contractor will submit their hours provided on the approved pro-forma at weekly intervals electronically. The Council will specify the dates of the periods. Contractors must ensure that the Council is provided with this

information on a timely basis (on a set day each week) and may only request up to two (2) months in arrears. Any entitlement to payment for periods in excess of this two (2) month period will be forfeited.

- 6.7 The Contractor is responsible for using all best endeavours to submit honest and accurate returns which shall be a condition of this contract. The Council reserves the right to seek damages for time spent investigating inaccurate returns.
- 6.8 The Council may require the hours provided in an electronic format via a provider portal.
- 6.9 Subject to clause 8.7 payments will be made by the Council at four (4) weekly intervals in arrears for contracted hours and where applicable amended hours, the periods starting on a Monday and ending on a Sunday.
- 6.10 Should the Council discover any discrepancies following the submission of a pro-forma, the Council reserves the right to withhold payment of the Price until an investigation in the matter has been completed and the matter is resolved.
- 6.11 The Contractor must inform the Care Manager/Care Co-ordinator immediately of situations where the employee arrives and is refused entry to an Individual's home or an Individual is not at home on the days stipulated in the Individual Agreement. If the service is not provided then this must be recorded on the pro-forma.
- 6.12 The Contractor shall retain staff time sheets for the current financial year and three (3) years thereafter for audit purposes.

7. REVIEW OF PRICE

- 7.1 The Price as detailed on the Contract Particulars will be fixed for the duration of this Agreement.

8. BREAKS IN SERVICE DELIVERY TO THE INDIVIDUAL

- 8.1 An Individual Agreement will not be terminated due to a short break in the requirement of the Services e.g. short stay in hospital (unless advised of a revision in the level of care) or a short holiday.
- 8.2 Where the Named Individual has been admitted to hospital, the Council will pay 60% of the total cost of the current care package for a maximum period of one (1) week. Where an Individual is discharged home from hospital within the one (1) week period it would be expected that the Contractor be able to re-start the care package following a planned discharge.

- 8.3 Where the Named Individual notifies the Contractor direct that they do not require their domiciliary care service for a short period of time the Contractor will notify the Care Manager/Care Co-ordinator to report this. Any change in a Individual's circumstances, which necessitates a variation in the type, or level, or timing of services, provided must be agreed verbally and then in writing (this may be done via e-mail) by the Council, as this may have an effect on the cost of the agreed care/support package and the Individuals contribution. Such a variation, which could include holidays, sickness or hospitalisation, will be an amendment to the Individual Agreement between all three parties and will be effective from a date agreed by the Contractor and the Council.
- 8.4 The Contractor will subsequently receive a copy of the amended SSAQ Support Plan where there is a permanent or significant change (not in circumstances outlined in clause 8.1 above).
- 8.5 The exception to this is in response to an emergency situation, the procedures for which are detailed in the specification. Such emergency variations must be confirmed as soon as possible in line with Specification clause 8 (Response to Emergency Situations).
- 8.6 It may be necessary on occasion to purchase services that are not clearly defined within the Specification. On such occasions, clause H1 (Standard Terms and Conditions) will be applied.

9. CONTRACTOR'S CHARGING POLICY

- 9.1 The Contractor should have clear and accessible policies and procedures on the charges that may apply for activities not contained within this Agreement e.g. entrance fees for either the Individual and/or accompanying staff member
- 9.2 Where the Contractor charges Individuals for transport the charges payable should be stated in a related policy.
- 9.3 All charges should be clearly defined in the Individual's Guide, given to Individuals on commencement of the Service.

10. TERMINATION (ADDITIONAL PROVISIONS) (supercedes part D of the Standard Terms and Conditions)

- 10.1 The Council may terminate this Agreement at any time upon ninety (90) days written notice upon the Contractor.
- 10.2 The following issues are considered to be of such a serious nature as to warrant the immediate termination of this Agreement without notice if so determined by the Council:
- (i) Non-compliance with the provisions of the Health & Safety at Work etc., Act 1974, and any subsequent health and safety regulations by the Contractor following full accreditation status.

- (ii) Operation of the organisation without the necessary insurance cover.
- (iii) Non-compliance with the requirements of the Race Relations Act 1976 and Race Relations (Amendment) Act 2000 and Equality Act 2010 by the Contractor.
- (iv) Evidence of the misuse of drugs and/or medicines by the Contractor.
- (v) Evidence of the abuse and/or mistreatment of the Individual by the Contractor.
- (vi) If the Contractor takes financial advantage of the relationship with the Individual.
- (vii) If the Contractor consistently or seriously fail to comply with this Agreement.
- (viii) Persistently fails after a reasonable period of notice has been given to provide the Service in accordance with the terms of this Agreement.
- (ix) Makes a composition or arrangement with its creditors, or has a proposal in respect of the Contractor for the voluntary arrangements for composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986.
- (x) Has an application made under the Insolvency Act 1986 in respect of the company to the Court for the appointment of an Administrative Receiver.
- (xi) Has a Winding-Up Order made, or (except for the purposes of amalgamation or reconstruction) a resolution for Voluntary Winding-Up passed.
- (xii) Has a Provisional Liquidator, Receiver or Manager of the business, or undertaking duly appointed.
- (xiii) Is in circumstances which entitle the Court, or a Creditor to appoint, or have appointed a Receiver, a Manager or Administrative Receiver, or which entitle the Court to make a Winding Up Order.
- (xiv) Offers any improper inducements, or exerts unreasonable pressure upon potential Individuals or their relatives, or others with an interest, to attempt to encourage the potential Individuals to go into the the Service.
- (xv) Shall have committed any offence under the Bribery Act 2010.
- (xvi) Shall have given any undisclosed or illicit fee or reward to any elected Member, or Officer of the Council in order to gain unfair gain or advantage.
- (xvii) if a County Court Judgment is recorded against the Contractor

- 10.3 This Agreement may be terminated by the Council upon forty eight (48) hours notice if:
- (i) The Registration Certificate of the Contractor in respect of the Service is cancelled by the Registration Authority.
 - (ii) The Contractor has been convicted of an offence under any provision of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009.
 - (iii) The Contractor is guilty, following legal action, of misconduct, or negligence in the management of the property.
- 10.4 The Council is entitled to terminate the Agreement on thirty (30) days notice in the event that it offers to enter into a replacement Agreement with the Contractor based on revised Council Terms and Conditions.
- 10.5 If the Agreement is terminated under this clause, the Council shall be entitled to recover from the Contractor all losses resulting from such termination.
- 10.6 The deliberate submission of any false claim by the Contractor shall entitle the Council to immediately terminate this Contract and may lead to the Council taking appropriate legal action.

11. TRANSITIONAL PROTECTION

- 11.1 In the event of this Contract being terminated under clauses 10.2 (ix) to 10.2 (xi) above the Council shall have the right, subject to consultation with the liquidator, receiver or manager as appropriate to assume day to day management of the the Service for a period of one hundred and eighty (180) days, or until alternative arrangement have been arranged whichever is earlier, except where a new contractor who is able to enter into a contract with the Council has been found and is able to register with the CQC within one hundred and eighty (180) days of the date of termination of this Contract.

12. DISPUTE RESOLUTION PROCEDURE (supercedes clause D3 in Standard Terms and Conditions)

- 12.1 The provisions of this clause are without prejudice to the Council's right to terminate the Agreement under clause 10.
- 12.2 Both the Council and Contractor will use their best endeavours to resolve by agreement any dispute between them with respect to any matter relating to this Contract.
- 12.3 Should a dispute arise between the parties in connection with the Agreement:

- (i) the aggrieved party shall give to the other party, as soon as reasonably practicable, written details of their dispute and outline potential actions that may be taken to remedy the matter. This will be delivered by hand or recorded delivery to the aggrieved party to the other party.
- (ii) a meeting between the Contractor's representative and the Service Manager, Contracts and Quality or his/her representative will be arranged within five (5) working days of receipt of written details of the dispute, in order to resolve the issue(s);
- (iii) A written action plan will be submitted to the aggrieved party within fourteen (14) working days which will set out
 - a) actions required to remedy the dispute,
 - b) achievable timescales for actions to be implemented,
 - c) name of responsible person for implementing the actions
 - d) how the actions will be monitored once implemented to prevent any further breach of the Contract.
- (iv) The action plan will be monitored by an officer of the Council within fourteen (14) working days of the action plan being received and where appropriate other appropriate Professionals may become involved with monitoring of the action plan.
- (v) Where there is insufficient evidence to demonstrate that the dispute has been remedied to the satisfaction of the aggrieved party within the twenty eight (28) working days of the receipt of written details of the dispute, the action plan will be reviewed and updated and further monitoring will be undertaken.
- (vi) The Council and the Contractor will use their best endeavours to co-operate and work together to remedy the dispute.

12.4 In the event that a dispute cannot be resolved in accordance with this clause and within twenty eight (28) working days of the receipt of written details of the dispute, the aggrieved party may terminate this Contract by the provision of ninety (90) days written notice to the other party (except where a shorter notice period is agreed between the parties).

12.5 Nothing in this clause shall preclude either party from applying at any time to the English courts for a remedy as may be considered appropriate.

13. TERMINATION OF INDIVIDUAL AGREEMENT

13.1 Where the Individual Agreement is terminated, the parties must comply with the Specification and act reasonably to avoid unnecessary disruption to the Named Individual and a safe transition of Services.

- 13.2 The Named Individual may at any time for any reason terminate the Individual Agreement having given a minimum of fourteen (14) days written notice to the Contractor and the Council.
- 13.3 The Council may terminate the Individual Agreement, having given fourteen (14) days written notice to the Individual and the Contractor, if in the opinion of the Care Manager/Care Co-ordinator, after a Review meeting, an Individual no longer requires the Services.
- 13.4 The Contractor may terminate the Individual Agreement having given fourteen (14) days written notice to the Council and the Individual, if the care needs of an Individual are such that it is agreed with the Council and Contractor that the Contractor is unable to provide the appropriate care.
- 13.5 A shorter termination period in respect of an Individual Agreement may be agreed in writing between the parties where reasonable.

**14. INDEMNITY AND LIABILITY
(ADDITIONAL PROVISION - INDIRECT AND CONSEQUENTIAL LOSS)**

- 14.1 The Contractor shall indemnify the Council in full for any direct or indirect loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party including any consequential loss (which shall include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) and against all Liabilities against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

15. DISCLOSURE AND BARRING SERVICE

- 15.1 The Contractor shall upon reasonable request by the Authorised Officer at the Contractor's cost provide in good faith, details including full name, address, date of birth and place of birth of any employee or operative whether directly employed by the Contractor or otherwise engaged by them to provide the Service and shall do so within fourteen (14) days of any such request for the purpose of enabling the Council to carry out an enhanced DBS check at the Contractor's cost pursuant to the provisions of Part V of the Police Act 1997.
- 15.2 Where, following a check under clause 15.1 above, a criminal conviction certificate is obtained by the Council following the DBS check and the nature of the listed previous convictions leads the Council to the reasonable conclusion that the person who was checked is unsuitable to provide the Service, then upon the Council giving notice to the Contractor, they shall immediately upon receipt of that notice remove the person considered as unsuitable from the contract or where the person has not at that time started to provide the Service the Contractor shall act so as to stop that person from providing the Service. The Council is not under any obligation to disclose the results of any DBS check.

16. BUSINESS CONTINUITY PLAN

16.1 “Business Continuity Plan” means the plan setting out the Contractor’s proposed methodology to ensure continuance of the Contract in the event of an emergency.

16.2 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure it can continue to perform all of its ordinary functions in the event of an emergency. Organisations providing services or goods which underpin the Council’s service provision must be able to continue to provide in the event of an emergency. The Contractor shall use its reasonable endeavours:

16.2.1 To prepare a robust Business Continuity Plan that ensures the continuation of this Contract; and

16.2.2 Upon request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time to time); and

16.2.3 To allow the Council at its discretion from time to time to monitor the Contractor’s business continuity arrangements; and

16.2.4 To notify the Council if an incident occurs which activates the Contractor’s Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and

16.2.5 To provide the Council with details of how the Contractor managed any incident which resulted in the activation of the Contractor’s Business Continuity Plan and any consequential amendments made to the Contractor’s processes and/or procedures thereafter.

17. JOINT WORKING

17.1 The Contractor will need to be familiar with the roles and expected functions being undertaken by any other agencies and Professionals contributing to the support of Individuals.

17.2 The Contractor will liaise with other agencies and Professionals involved with Individuals and will keep them informed on work undertaken and progress made as appropriate.

17.3 The Contractor must work as part of inter-agency arrangements in supporting Individuals in the community.

17.4 The Contractor must inform the Care Manager/Care Co-ordinator of any situation of which they become aware of where another party to the Council Support Plan is failing to undertake their expected role of function.

18. CONTRACT MONITORING

- 18.1 The Contractor is required to collaborate with the Council over the Contract Period to achieve continuous improvement in the quality and delivery of the Services in accordance with the Council's obligations under Part I of the Local Government Act 1999.
- 18.2 The Authorised Officer shall monitor compliance with this Agreement Information collected through monitoring processes will be used to produce a monitoring report.
- 18.3 The Council may require the Contractor to supply statistical information regarding Individuals in such a format and at intervals as may reasonably be determined by the Council and/or Government Departments. Normally, the Council would anticipate giving the Contractor advance notice of such requirements in order to ensure that information is being collected by the Care Home in a suitable format. All information received by the Council will be treated in confidence.
- 18.4 The Contractor shall at all times co-operate with the Council for the purposes of monitoring this Agreement. The Authorised Officer reserves the right to visit the domiciliary care service and/or Individuals at any reasonable time without giving notice and without prejudice to Individuals' right to privacy.
- 18.5 The Contractor shall co-operate with all reasonable requests from the Council to access records, at the Contractor's cost, relevant to:
- (a) the Contract, including the monitoring of the Contract and the Services;
 - (b) the investigation of a formal complaint in accordance with the Council's Complaints Procedure;
 - (c) an investigation under Safeguarding Adults procedures.
- 18.6 To ensure compliance with the Contract and the Data Protection Act 1998, the Contractor shall evidence that they have taken adequate and appropriate steps to gain authority from Staff to allow the Authorised Officer to view personal information relating to their employment.
- 18.7 Conditions 18.1 to 18.4 shall not replace, or take precedence over regulations with regard to registration and inspection functions of the Registration Authority under the provisions of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009, or any successor legislation.
- 18.8 Monitoring will also be carried out by continuous review of the assessed needs of the Individuals as detailed in an Individuals' Support Plan (for the avoidance of doubt this includes the Council Support Plan and Contractor

Support Plan) to ensure that their needs are being met. This will be the responsibility of each Individual's Care Manager/Care Co-ordinator or nominated representative who will undertake the reviews and spot checks as deemed necessary.

19. HEALTHWATCH (PREVIOUSLY CALLED LOCAL INVOLVEMENT NETWORKS (LiNks))

- 19.1 The Contractor must ensure that the designated Healthwatch representatives are allowed to enter and view services that provide state funded care to individuals.
- 19.2 The Contractor must ensure that information about state funded services is given to the designated Healthwatch representatives when they request it.

20. COMMUNITY SAFETY

- 20.1 The Council has a statutory duty to ensure that it does all that it reasonably can to prevent crime and disorder in its area under the Crime and Disorder Act 1998. The Contractor is requested to assist the Council in the provision of the Service, in order to enable the Council to comply with this obligation at no additional expense to the Council.

21. MEETINGS

- 21.1 The Contractor Manager shall attend any meetings, including but not limited to site meetings, safeguarding strategy meetings and large scale investigations as may reasonably be requested by the Council. The Contractor shall make all arrangements for sub-contractors and suppliers to be present as required by the Council.
- 21.2 Where there is a large scale investigation, the Contractor shall ensure that their attendee/s at meetings have up to date knowledge of the current situation and brings a full and comprehensive report to inform the meeting.
- 21.3 The Contractor shall ensure that the Council are made aware of the appropriate grade of Staff required to attend any large scale investigations.

22. ASSIGNMENT AND SUB-CONTRACTING (ADDITIONAL PROVISIONS)

- 22.1 The Contractor shall identify each part of the Services that it intends to sub-contract and the proposed sub-contractor for each item identified prior to seeking the Council's consent to such sub-contracting.
- 22.2 The Council shall be entitled to:
 - 22.2.1 refuse consent to a Contractor's proposal to sub-contract
 - 22.2.2 impose conditions in relation to any consent to sub-contracting given including a requirement that a guarantee or other security be provided.

22.3 The Council requires as a condition precedent of consent the Contractor to obtain collateral warranties from any sub-contractor [or other member if part of a consortium arrangement] in a form prescribed by the Council and duly executed in the presence of the Council.

Where the Council agrees to an assignment/sub-contracting, the Contractor shall be responsible for any costs incurred by the Council, including legal costs as a result of the assignment/sub-contracting.

23. TUPE INDEMNITY

23.1 For the purposes of this clause, the following definitions shall take effect:-

23.2 “Current Employer” the employer of the Transferring Employees immediately before the Commencement Date;

23.3 “Employment Costs” remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions and pensions contributions;

23.4 “Prohibited Act” include any of the following (i) termination of employment of any employees; or (ii) the alteration or change of terms or conditions of any employees; or (iii) the recruitment of any employees; or (iv) relocation or assignment to new duties of any Employees,

23.5 “Transferring Employees” those employees employed wholly or mainly by the Current Employer in providing the Service described in the Specification prior to the Commencement Date.

23.6 The Council and the Contractor acknowledge that where as a result of TUPE the contracts of employment between the Current Employer and the Transferring Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 10 of TUPE) transfer, they will have effect after the Commencement Date as if originally made between the Contractor and the Transferring Employees.

23.7 All Employment Costs in respect of the period:

23.7.1 up to and including the Commencement Date in relation to the Transferring Employees (whether or not due for payment at that date) will be borne by the Current Employer;

23.7.2 after the Commencement Date will be borne by the Contractor;

23.7.3 and will if necessary be apportioned on a time basis between the Contractor and the Current Employer.

23.8 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly and

whether incurred by the Council pursuant to an indemnity provided to the Replacement Contractor in connection with:

- 23.8.1 The employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);
- 23.8.2 Any act, omission or default of the Contractor in respect of the employment of the Transferring Employees;
- 23.8.3 The Contractor's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Council or the replacement contractor to give the Contractor the information required from the Council or the Replacement Contractor to enable the Contractor to comply with its obligations under TUPE; and
- 23.8.4 The Contractor's failure to provide the employee liability information under Regulation 11 of TUPE;
- 23.8.5 Any claim by a Transferring Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the replacement contractor is not then participating, or pursuant to the Transferring Employee's terms and conditions of employment;
- 23.8.6 The Contractor's failure to comply with its obligations under clause 23.9 below.

23.9 The Contractor will not in the event of notice of termination of this Contract or from a date of twelve (12) months before expiry of the Contract Period carry out a Prohibited Act.

24. CONFIDENTIAL REPORTING POLICY

24.1 The Council is committed to the highest possible standards of openness, probity and accountability. To emphasise that, it has in place a Confidential Reporting Policy ("the Policy"), the aim of which is to set down the Council's expectations of its staff, partners and contractors and spell out the protections that exist for those who raise legitimate concerns.

24.2 As well as staff of the Council, you as a Contractor may come across something, which you feel is seriously wrong within the Council during the course of your daily work with us. You can be confident that reporting any serious concerns regarding any aspect of the Council's work shall be done so without any repercussions.

24.3 Further information about the Policy and how to raise an issue can be found from the Council's website.

25. FREEDOM OF INFORMATION AND DATA PROTECTION (ADDITIONAL PROVISIONS)

25.1 If the Contractor fails to provide any legitimate comment or objection in relation to the proposed disclosure of information within the timescale suggested, the Council will not be held responsible for any resulting loss, damage, harm or other detriment. The Contractor recognises that the Council has a statutory duty to respond to requests within prescribed timescales.

25.2 The Contractor shall not publish or otherwise disclose any information contained in this Contract or in any negotiations surrounding this Contract.

26. MENTAL CAPACITY ACT 2005

26.1 The Mental Capacity Act 2005 and regulations thereto (and any successor legislation) provides a statutory framework to empower and protect vulnerable people where they have been assessed as lacking capacity. It makes it clear who can take decisions, in which situations, and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. It is expected that the Contractor and their staff should be aware of and be familiar with the safeguarding provisions of an Individual's liberty. The Contractor has a legal duty to incorporate the Mental Capacity Act 2005 into the development of its policies and procedures and in developing Staff through training and also in informing through communications with the Individuals of their rights under this act.

27. SAFEGUARDING ADULTS AND CHILDREN / WHISTLEBLOWING/ DEPRIVATION OF LIBERTY

27.1 The Contractor must have a policy and procedure in place in relation to safeguarding Adults and Children and whistleblowing which is:

27.1.1 accessible by all Staff;

27.1.2 contains the reporting procedures and principles as contained in Darlington Safeguarding Adults/Children's Procedures, as detailed in:

Adult Safeguarding -

<http://www.darlington.gov.uk/Health/AdultServices2010/SafeguardingAdults/SafeguardingAdults.htm>

Children's Safeguarding -

<http://www.darlington.gov.uk/Children/LSCB/lscb.htm>

27.2 contains definitions of abuse and guidance on how to recognise abuse, clear guidelines on how and who to report concerns about abuse and

contact details, and how it will be investigated in line with Darlington Safeguarding Procedures.

- 27.3 All Staff must receive training in safeguarding and whistle blowing which is updated every three years. Manager, Deputy Manager and Senior Staff will be trained at safeguarding level 2 - managing the alert training.
- 27.4 The Contractor will ensure that relevant Senior Staff have received training on the Mental Capacity Act 2005, which includes Deprivation of Liberty Safeguards, at a level that is appropriate to their role.
- 27.5 The Contractor will ensure that each care file contains a threshold document provided by the Council, which is completed as and when required.
- 27.6 If the care provided amounts to restrictions on the person's freedom and autonomy, this should be raised with the Deprivation of Liberty Team at Darlington Borough Council.

28. EQUAL OPPORTUNITIES

- 28.1 The Council is committed to equality of opportunity for all in its service delivery, employment and in the way it operates as an organisation. The Council therefore requires the Contractor to comply with all legislative requirements relating to equality together with the additional requirements of Darlington Borough Council's Equality Scheme. As such, the Contractor will not discriminate on the grounds of age, disability, gender reassignment, pregnancy & maternity, race, religion and belief, sex, sexual orientation, marriage and civil partnership.
- 28.2 The Contractor shall have in place an equal opportunities policy that will apply to those who currently receive services from the Contractor, or on behalf of the Contractor, potential users of the Services; their carers; other agencies and professionals; employees; job applicants and the general public.
- 28.3 In the event of any finding of unlawful discrimination in the areas covered by the Equality Act 2010 or the Council's Equality Scheme being made against the Contractor, or any other sub-contractor employed by the Contractor during the period covered by this Contract by any Court, Employment Tribunal, or an adverse finding in any formal investigation by the Equality and Human Rights Commission over the same period, the Contractor shall inform the Council of this finding forthwith and shall take appropriate steps to prevent repetition of the discrimination.
- 28.4 The Contractor shall, on request, provide the Council with details of any steps taken under these circumstances and provide such information as the Council may reasonably request from time to time for the purpose of monitoring the Contractor's compliance in relation to this Contract.

- 28.5 The Contractor shall observe the Equality Act 2010 which places a duty on the Council, as a public authority, in the exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce inequalities of outcome which result from socio-economic disadvantage.
- 28.6 The legislation requires public authorities to work to avoid unlawful discrimination before it occurs and to promote equality of opportunity and good relations between people of different groups and the Council will expect the Contractor and any sub-contractors to facilitate this through delivery of the contract.
- 28.7 Discrimination in the areas covered by the Council's Equality Scheme against any individual or group of people will be seen as a breach of this Contract.

29. REGISTERED MANAGER

- 29.1 The Manager of the domiciliary care service have the skills and experience and be able to put into practice the Statement of Purpose and meet the diverse needs of the Named Individual who uses the Services.
- 29.2 The Contractor shall ensure the Manager completes the Skills for Care Manager/Care Co-ordinator Induction Standards at the commencement of their employment.

30. STAFFING AND RECRUITMENT

- 30.1 The Contractor shall employ in and about the Services only such persons who have satisfied the Contractor that they are careful, skilled, honest, experienced and are trained and/or qualified as required by the guidance issued by the Secretary of State under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009 and will comply with the Code of Conduct of the General Social Care Council (and subsequent guidance as issued from time to time).
- 30.2 The Contractor shall employ sufficient persons to ensure that the Service is provided at all times and in all respects to meet contractual and legislative requirements, the needs of the Individuals and staffing levels will be appropriate to the size and purpose of the care service.
- 30.3 The Contractor will have a staff rota showing full names of which Staff are on duty at any time of the twenty four (24) hour period.
- 30.4 The Contractor will ensure that Staff who are asked to take on another role/responsibility within the Service are suitably trained and are provided with the correct protective clothing in line with any applicable health and safety requirements.
- 30.5 The Contractor will:

- 30.5.1 have in place a recruitment policy and procedure which meets both legislative and the Council's requirements.
- 30.5.2 undertake appropriate checks in line with the Disclosure and Barring Service (DBS) (or subsequent enactments) prior to permanent, temporary, agency, bank, voluntary staff and those providing additional services under arrangements with the Contractor.
- 30.5.3 not employ Staff without first obtaining at least two (2) satisfactory written references, one of which should (where reasonably practicable) be from the job applicant's previous employer.
- 30.5.4 respond to all reference requests received in respect of current or former employees within two (2) weeks of the receipt of such a request and be able to provide evidence of such requests.
- 30.5.5 supply all Staff with a contract of employment, a detailed job description and a person specification.
- 30.5.6 demonstrate that Staff have the right skills, qualifications, experience and knowledge to support Individuals, and are able to communicate with Individuals and other Staff and Professionals to ensure the care and support of Individuals are not compromised.

31. STAFF INDUCTION

- 31.1 The Contractor will ensure:
 - 31.1.1 the Registered Manager and Staff receive a comprehensive induction into the workplace that takes account of recognised standards within the sector, internal policies and procedures and is relevant to their workplace and their role and which is completed before they are allowed to work unsupervised.
 - 31.1.2 the Registered Manager must undertake and complete the Skills for Care Common Induction Standards within twelve (12) weeks of commencement of employment with the Contractor and a copy of their certificate of completion held on their personal file.
 - 31.1.3 all Staff must undertake and complete the Skills for Care Common Induction Standards or subsequent guidance as issued from time to time within twelve (12) weeks of commencement of employment with the Contractor and a copy of their certificate of completion held on their personal file.

31.1.4 the Registered Manager and Staff will have a learning and development plan in place from the point of induction, as provided in clause 35 below.

32. LEARNING AND DEVELOPMENT PLAN

32.1 The Registered Manager and each member of Staff will have a learning and development plan which includes:

- (a) training/qualifications achieved prior to employment with the Service
- (b) training identified to meet the legislative requirements and needs of the Individuals receiving a Service
- (c) how and when identified training needs will be met
- (d) the employee's own personal development goals
- (e) evidence of training completed to date
- (f) evidence of how competencies are assessed

32.2 The learning and development plan will be updated regularly through the Contractor's supervision and appraisal processes.

33. TRAINING AND DEVELOPMENT PROGRAMME

33.1 The Contractor must have in place adequate policies and procedures relating to a training and development programme.

33.2 The Contractor will:

- 33.2.1 have a policy and procedure in place which sets out how the Contractor will develop a training and development programme for all Staff which meets the learning outcomes and qualifications relevant to their job role as advised the by Skills for Care and which is reviewed on an annual basis.
- 33.2.2 have a commitment to the provision of practice based training which is specific to the needs of the Individuals.
- 33.2.3 evidence that Staff undergo competency checks and are able to undertake their job role satisfactorily.
- 33.2.4 review Staff qualifications, knowledge and skills on a regular basis to ensure Staff are up to date with current practice.
- 33.2.5 ensure 75% of care Staff have completed or working towards a QCF or NVQ in Health and Social Care or diploma in Health and Social Care at a level which is pertinent to their role.

33.2.6 ensure training is up to date and refresher training is planned into the programme which meets the identified training needs of Staff and the needs of the Individuals.

33.2.7 Ensure that Staff undertake training in the following areas

- moving and handling (theory and practical)
- health and safety
- fire training (to include fire drills)
- safeguarding adults (managers and deputy manager and senior staff to achieve Level 2)
- under nutrition and hydration
- support planning and risk assessment
- end of life care
- dignity in care
- mental capacity act
- food hygiene

33.2.8 ensure that Staff responsible for the administration of medications within the service have undertaken accredited, practice based administration of medication training. Staff need to understand the difference between prompting and administration of medication.

33.3 The Contractor must ensure that Staff training is relevant to the needs of the Individuals and may include, but is not limited to:

- confidentiality
- disability equality
- Mental Capacity Act 2005
- deprivation of liberty (DOLs)
- infection control
- communication
- first aid
- managing complex behaviour
- dementia awareness
- sensory impairment awareness
- stroke awareness
- managing aggression
- epilepsy
- diabetes
- autism

34. THE NATIONAL MINIMUM DATA SET FOR SOCIAL CARE

34.1 The National Minimum Data Set for Social Care (NMDS-SC) enables planning at a local, regional and national level. This is critical in providing

stability and growth in the social care industry, supporting workforce planning, and assisting the allocation of training resources.

- 34.2 The Council requires the Contractor to complete the data set each year. The Contractor shall supply printed copies of their completed NMDS-SC to the Council on request.

35. SUPERVISION AND APPRAISAL

- 35.1 The Contractor must have in place policies and procedures relating to supervision and appraisal of Staff.
- 35.2 The Contractor will maintain a supervision and appraisal plan (“the Plan”) which sets out when Staff can expect to receive supervision and appraisal, and records actual dates of supervision. The Plan should be shared with Staff to allow sufficient time for Staff to prepare for supervision and appraisal meetings.
- 35.3 Staff will receive a minimum of four (4) supervisions on a three (3) monthly basis, which is recorded in a standardised way and signed and dated by both the supervisee and supervisor. One of these should be an observation in an Individual’s home and also in addition, an annual medication competency check is required for staff who administer medication.
- 35.4 Where staff are employed on complex individual cases where high levels of personal care and support are needed a higher level of supervision and support will be available to them.
- 35.5 Staff responsible for supervisions and appraisals will be given training to ensure that they are competent within their supervisory role.
- 35.6 Appraisals will be undertaken on an annual basis to ensure staff are competent to do the work for which they are employed, promote professional development and identify any training needs.
- 35.7 Training needs identified within supervision and/or appraisal must be transferred to the Staff member’s individual learning and development plan and the Contractors training and development programme.

36. IDENTIFICATION OF SUPPORT WORKER

- 36.1 Only authorised persons must accompany staff to Individual’s homes.
- 36.2 The Contractor must issue Staff with a means of identification, which the Staff will carry at all times.
- 36.3 Where an Individual has a visual impairment and is unable to verify the identification of the Support Worker the Contractor must notify the Individual by telephone, of the names of the Staff involved in their care.

37. DISCIPLINARY AND GRIEVANCE PROCEDURES

37.1 The Contractor must have in place both disciplinary and grievance procedures which are available to all Staff.

38. INSURANCE (ADDITIONAL PROVISIONS)

38.1 The Contractor will ensure that the insurance certificates are available for inspection.

38.2 The Contractor shall ensure that it has motor insurance (where appropriate), which complies with the Road Traffic Act 1988 as amended and any statutory order thereunder.

38.3 In order to confirm that satisfactory insurance policies are in place, the Contractor will be required to forward a copy of their up to date insurance certificate(s). This will be required:

(i) at the time of accreditation (new Contractors/Proprietors)

(ii) on the policy renewal date

(iii) at any other time as requested by the Council

38.4 The Contractor shall have in place a procedure for ensuring that any insurance claim made on behalf of an Individual is followed to its conclusion and the Individual is informed of the outcome in writing as soon as is reasonably practicable.

39. COMPLAINTS, COMMENTS AND COMPLIMENTS

39.1 The Contractor shall have a written complaints, comments and compliments procedure (“the complaints procedure”) to enable the Individual and their carers to make complaints and representations about the Services.

39.2 The complaints procedure should ensure that the Individual and their carers are positively encouraged to bring to the attention of managers, issues or aspects of the Services, about which they are unhappy or dissatisfied.

39.3 The complaints procedure shall contain information on advocacy provision.

39.4 The complaints procedure must detail the number of stages, timescales and how to escalate the matter should the complainant remain dissatisfied with the response. This should include details of how to refer a complaint to the Council (where the Services are provided under this Contract and an Individual Agreement) or alternatively the Local Government Ombudsman (“LGO”) (where services are provided under a private arrangement).

39.5 The complaints procedure should make it clear that the complainant can contact the Council or the LGO at any time and provide details at any

stage, refer a complaint to the Complaints Manager, Darlington Borough Council, or email complaints@darlington.gov.uk (where services are provided under Local Authority Agreements), or to the LGO:

The Local Government Ombudsman
PO Box 4771, Coventry CV4 0EH
Phone: 0300 061 0614 or 0845 602 1983

- 39.6 Individuals and carers must be given information about the complaints procedure and how it works. The information should be easily understood and made available in alternative formats on request.
- 39.7 The complaints procedure should be readily available to any person on request and in a suitable format.
- 39.8 All Staff must know how to assist an Individual and/or their carers in the making of a complaint or representation.
- 39.9 The Contractor must keep records of complaints, comments and compliments received from Individuals, and carers, undertake an audit of complaints received, and make the record available to the Council at all reasonable times and on receipt of reasonable notice.

40. CALL MONITORING

- 40.1 The Council may implement a call monitoring system within the lifeline of this Agreement. Contractors will be required to work with the call monitoring system which is likely to include a self-billing function.
- 40.2 Contractors would be required to meet the one-off costs of implementing the monitoring system within their organisation, for example for data population and relevant system testing.
- 40.3 If required an Agreement variation will be used as per clause H1 Standard Terms and Conditions.
- 40.4 In the interim, where the Contractor has an existing call monitoring system in place, they may be required to work with the Council so that information from this system can be collated via the Council's Contractor Portal.

41. RECORDS AND INFORMATION

- 41.1 The Contractor shall maintain policy and procedures for record keeping that comply with all relevant statutory requirements. These records shall include those required by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009, and allied regulations and amendments. It is the responsibility of the Contractor to comply with all current statutory requirements.

- 41.2 Appropriate records will be kept by the Contractor as required by the Council. Authorised Officers with responsibility for contract compliance will be given access to all records appertaining to the service provision, including those of employees, staff rotas and will require evidence to confirm that the hours shown on staff rotas were actually worked. Such evidence may be in the form of employee payment details. The Contractor will ensure that they obtain permission from Staff for such access, in order to ensure compliance with the Data Protection Act 1998.
- 41.3 The Council has a fiduciary responsibility to Council Tax payers. The proper discharge of this duty requires that the Council may from time to time require access upon reasonable request to financial information in order to establish the continuing financial viability of the Contractor. The Council will treat this information in the strictest confidence and only for the purpose for which it was requested, and undertakes to inform the Contractor of any concerns which may arise from it.
- 41.4 The Contractor shall make available an exact copy of the Contract for the purpose of informing management and Staff.
- 41.5 The Council shall make an exact copy of the Contract available to all Commissioners, Service Managers and Care Managers/Care Co-ordinators to ensure they are informed both of their responsibilities and the standards required in the provision of the Services.
- 41.6 Authorised Officers shall be given access by the Contractor to all appropriate records relating to this Contract with reasonable notice.
- 41.7 The Contractor will allow an Individual access to all records concerning themselves, and to have the opportunity to contribute to the records. Care shall be taken to ensure that all third party information is appropriately separated into a confidential section of the file containing the records.
- 41.8 The Contractor will ensure that confidential information is securely stored.
- 41.9 The Contractor will ensure that Staff sign and date all documentation used within the Contractor Support Plan.
- 41.10 Daily recording by the Contractor and its Staff shall give details of care and support given to each Individual and entries must be signed and dated by Staff.
- 41.11 The Contractor will ensure that the maintenance and destruction of document and personal files takes into account all relevant legislation and CQC guidance.

42. INFORMATION ASSURANCE

42.1 Authority Data

- 42.1.1 The Contractor shall not, or shall not attempt to, Process the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Council.
- 42.1.2 Where Authority Data is Processed by the Contractor, the Contractor shall supply the Authority Data to the Council as requested by the Council and where applicable, subject to clause 3 below.
- 42.1.3 Where the Contractor is required to transfer Personal Data to the Council, any such transfer of Personal Data shall be done in the following manner:-
- 42.1.4 Information containing Personal Data, howsoever conveyed, shall be clearly marked 'RESTRICTED'.
- 42.1.5 When supplied by paper documents, the Personal Data shall be held in a secure environment prior to transfer. Personal Data shall be either:-
 - 42.1.5.1 Hand-delivered to the Nominated Officer. It shall not be sufficient to leave the Personal Data with any person other than Nominated Officer who will be asked to check the content of the paper documents and acknowledge receipt of the paper documents by written signature; or
 - 42.1.5.2 Sent by post by recorded/special delivery or by a trusted courier to the Nominated Officer at the Council. The Contractor must ensure that documents containing Personal Data are sent in a sealed envelope/package which is correctly addressed to the Nominated Officer and clearly marked 'RESTRICTED'. It shall not be sufficient to send the Personal Data to the Council without the name of the Nominated Officer being clearly displayed.
- 42.1.2.3 When supplied by electronic media (including but not limited to compact disks, memory sticks, floppy disks, digital video disks), the Personal Data shall be encrypted in accordance with Good Industry Practice.
- 42.1.2.4 When supplied by electronic mail, the Personal Data will be transferred to the Nominated Officer and shall be either:-
 - 42.1.2.4.1 Encrypted in accordance with Good Industry Practice; or
 - 42.1.2.4.2 Sent in an attachment protected by a secure password. Passwords will be communicated by telephone directly to the Nominated Officer.
- 42.1.2.5 No Personal Data will be sent unsecured in the title field or body of an e-mail.

- 42.1.2.6 No Personal Data will be sent by facsimile unless the Contractor has written authorisation from the Council to do so and arrangements are in place to ensure safe transmission and receipt of the Personal Data.
- 42.1.3 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data whilst in its possession.
- 42.1.4 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with Good Industry Practice.
- 42.1.5 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Council may:-
 - 42.1.5.1 Require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data if achievable and the Contractor shall do so within a reasonable timescale specified by the Council; and/or
 - 42.1.5.2 Itself restore or procure the restoration of Authority Data, and shall be entitled to recover from the Contractor any reasonable expenses incurred in doing so.
- 42.1.6 If at any time the Contractor suspects or discovers that Authority Data has or may have become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Council immediately and inform the Council of the remedial action the Contractor proposes to take. Before any remedial action is commenced by the Contractor, the Contractor must seek written authorisation from the Council.
- 42.2 **Protection of Personal Data**
- 42.2.1 With respect to the parties' rights and obligations under this Contract, the Council and the Contractor recognise that the Council is the Data Controller and that the Contractor is the Data Processor.
- 42.2.2 The Contractor shall:-
 - 42.2.2.1 Process the Personal Data only in accordance with written instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Council to the Contractor);
 - 42.2.2.2 Process the Personal Data only to the extent, and in such a manner, as is necessary for the provision of the Services or as is required by Law or any regulatory body;
 - 42.2.2.3 Implement appropriate technical and organisational measures 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;

- 42.2.2.4 Take every reasonable precaution to ensure that Authority Data is divulged only to Employees where necessary for the provision of the Services and only to the extent essential to each Employee's role in the provision of the Services;
- 42.2.2.5 Take reasonable steps to ensure the reliability of any Employees who have access to the Personal Data, including but not limited to, Disclosure and Barring Service checks;
- 42.2.2.6 Ensure that Employees are trained on a continuing basis to ensure adherence to clauses 1 and 2 of these Special Terms and Conditions;
- 42.2.2.7 Obtain prior written consent from the Council in order to transfer the Personal Data to any sub-contractors or affiliates for the provision of the Services;
- 42.2.2.8 Ensure that all Employees who have access to the Personal Data are informed of the confidential nature of the Personal Data and comply with obligations set out in clauses 1 and 2 of these Special Terms and Conditions; and
- 42.2.2.9 Ensure that none of the Employees publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council.
- 42.2.2.10 The Contractor shall notify the Council (within five business days) if it receives:-
 - 42.2.2.10.1 A request from a Data Subject to have access to that person's Personal Data; and/or
 - 42.2.2.10.2 A complaint or request relating to the Council's obligations under the DPA.
- 42.2.2.11 The Contractor shall provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:-
 - 42.2.2.11.1 Providing the Council with full details of the complaint or request;
 - 42.2.2.11.2 Complying with a request under DPA within the relevant timescales set out in the relevant

legislation and in accordance with the Council's instructions;

42.2.2.11.3 Providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales notified to it by the Council); and

42.2.2.11.4 Providing the Council with any information reasonably requested by the Council.

42.2.2.12 The Contractor shall permit the Authorised Officer or Nominated Officer of the Council (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor'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 monitor and/or procure that the Contractor is in full compliance with its obligations under Law and this Contract;

42.2.2.13 The Contractor shall provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data on request from the Council (within the reasonable timescales notified to it by the Council); and

42.2.2.14 The Contractor shall not process Personal Data outside the European Economic Area without the prior written consent of the Council and, where the Council consents to such a transfer, to comply with the obligations of the Council as set out within special condition 1.3 and any reasonable written instructions notified to it by the Council.

42.3 **Payment Card Industry Data Security Standard**

42.3.1 In addition to the requirements set out clauses 45.1 and 45.2 of these Special Terms and Conditions, where the Contractor is processing and handling Personal Card Data, the Contractor shall be validated to level 1 of the standard set out by the PCI Security Standards Council as amended from time to time irrespective of the level of transactions processed by the Contractor.

42.4 **Limitation of liability for loss of data**

42.4.1 The Contractor shall indemnify and keep indemnified the Council against all claims, actions, demands, proceedings, damages, costs, charges, losses and expenses in respect of Authority Data, which would not have arisen but for some act, omission or negligence on the part of the Contractor.

43. **CONFIDENTIALITY (ADDITIONAL PROVISIONS)**

43.1 The Contractor must have a clear policy and procedure regarding confidentiality, which is known to and understood by all Staff involved in the provision of the Services.

- 43.2 The policy and procedures based upon it must take into account and comply with Caldicott recommendations (or successor legislation).
- 43.3 The Contractor will make Staff aware that personal files may be requested by Authorised Officers as part of the contract monitoring procedures.
- 43.4 Staff files available for inspection shall have consensual documentation in place which is signed and dated by Staff.

44. POLICIES AND PROCEDURES

- 44.1 The Contractor shall have in place a detailed set of policies and procedures which are accessible to all Staff and will provide detailed instructions for Staff on the agreed way that tasks are to be completed.
- 44.2 The Contractor will review the policies and procedures on a regular basis to include the development of new documentation relating to changing legislation and good practice guidance from the Department of Health, local/health authorities and other professional organisations.
- 44.3 It shall be an essential term of this Contract that the Contractor must have in place the policies and procedures listed in the table below (as a minimum) and as further described in appropriate clause/standards within this Contract:

Policy and Procedure	Clause/Standards
Health and Safety	Clause 45 – Special Terms & Conditions
Equal Opportunities	Clause 28 – Special Terms & Conditions
Staffing and Recruitment	Clause 30 – Special Terms & Conditions
Supervision and Appraisal	Clause 35 – Special Terms & Conditions
Disciplinary and Grievance	Clause 37 – Special Terms & Conditions
Comments, Compliments, Complaints	Clause 39 – Special Terms & Conditions
Confidentiality	Clause 43 – Special Terms & Conditions
Risk Assessment	Clause 7 – Specification
Nutrition and Hydration	Clause 39 – Specification
Management of Medicines	Clause 38 – Specification
Skin Care	Clause 40 – Specification
Notification of Death of an Individual	Clause 12 – Specification
Smoking/No Smoking	Clause 14 – Specification
Accidents/Incidents/Falls	Clause 10 – Specification
Safeguarding Adults / Children / whistleblowing.	Clause 37 – Special Terms & Conditions
Communication with the Contractor Organisation and with the Council	Clause 15 – Specification

Pets	Clause 16 – Specification
Gifts	Clause 17 - Specification
Wills	Clause 18 – Specification
Individual’s Financial Rights	Clause 19 – Specification
Quality Assurance	Clause 20 – Specification
Heatwave Planning	Clause 22 – Specification
Cold Weather Planning	Clause 23 – Specification
Moving and Handling	Clause 24 – Specification
Fire Safety	Clause 47– Special Terms & Conditions
Key Holding	Clause 13 - Specification
Destruction of files	Clause 41.11 – Special Terms & Conditions
Charging Policy	Clause 11 – Special Terms and Conditions.

45. HEALTH AND SAFETY

- 45.1 The Contractor must be CHAS or equivalent compliant, approved by an accredited body of SSIP or Pre Qualified by the Health, Safety and Wellbeing Team (valid for a 2 year period). The contract cannot proceed without one of the above. The contractor’s approval, when not via DBC Prequalification, must be checked to ensure they have been assessed for the works for which they are being procured.
- 45.2 The Contractor shall have in place effective health and safety policies which comply with all relevant legislation. These shall be implemented at all times.
- 45.3 It is agreed that:
- 45.3.1 The Contractor will maintain a safe, secure, healthy and accessible work environment.
 - 45.3.2 The Contractor will provide and maintain suitable and safe vehicles, equipment and systems of work.
 - 45.3.3 The Contractor will carry out all activities so as to avoid, or adequately control, risks to health and safety.
 - 45.3.4 The Contractor will identify all significant hazards and all risks to health and safety will be assessed. Appropriate preventative and protective measures will be implemented.
 - 45.3.5 The Contractor will maintain a positive health and safety culture with a view to continuously improving the Contractor’s health and safety performance.

- 45.3.6 The Contractor will establish, monitor and review plans and targets for improving the Contractor's health and safety performance.
- 45.3.7 The Contractor will ensure that all Staff are motivated and empowered to work safely and to protect their long-term health, not simply to avoid accidents.
- 45.3.8 The Contractor will ensure that a system is in place for recording and reviewing all accidents and incidents involving staff and Individuals and actions taken to prevent future occurrence.
- 45.3.9 The Contractor will establish appropriate emergency procedures for situations of serious and imminent danger.
- 45.3.10 The Contractor will provide adequate health and safety training and supervision.
- 45.3.11 The Contractor will take into account employees' capabilities as regards health and safety matters when assigning tasks to them.
- 45.3.12 The Contractor will provide a professional health and safety support service.
- 45.3.13 The Contractor will ensure that where appropriate, the Individual is assisted in making informed choices and calculates the risks involved in certain actions.
- 45.3.14 The Contractor shall measure performance of the health and safety policies against standards to reveal where improvement is required and be committed to continuous improvement.

45.4 The Council reserve the right to periodically undertake a health and safety audit of the Services, which may be carried out during the monitoring of the Contract.

Further guidance is available at [Darlington Borough Council website](#).

46. INFECTION CONTROL

46.1 The Contractor will have a policy and procedure which complies with the Department of Health's Code of Practice for health and adult social care on the prevention and control of infections and related guidance (2010), and any subsequent legislation/good practice guidance.

47. FIRE SAFETY

47.1 The Contractor will undertake an environmental assessment of the Named Individual's home to include fire safety.

47.2 Where the Contractor charges the Individual for the cost of the PAT testing the charges will be set out in the Individual's Guide.