

FIFE COUNCIL CONDITIONS OF CONTRACT FOR THE PURCHASE OF SOCIAL CARE SERVICES FOR ADULTS AND OLDER PEOPLE

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1. DEFINITIONS, INTERPRETATION AND RELATED MATTER

- 1.1 Any reference to the singular shall be construed as also including the plural and vice versa and a reference to any gender shall be construed as including the other genders, unless the Contract otherwise requires.
- 1.2 Any reference in these Conditions to a statute or order or other legal requirement shall include from time to time any statutory extension, modification or re-enactment or amendment of such statute or order or legal requirement and any regulations and orders made under them.
- 1.3 Any reference to any agreement or document shall be deemed to include a reference to that agreement or document as amended, supplemented or substituted from time to time.
- 1.4 The headings in these Conditions are inserted for ease of reference only and shall not affect the interpretation or construction of the Conditions.

In these Conditions:

- 1.5 **“Abuse”** means something that causes actual or likely significant harm to a child/young person. It may be physical, emotional or sexual or neglect of the child/young person;
- 1.6 **“Acceptance Letter”** means the letter sent by the Council to the Service Provider accepting the Tenders;
- 1.7 **“Adults at Risk”** are defined by the Adult Support and Protection (Scotland) Act 2007 as individuals, aged 16 or over, who: are unable to safeguard their property, rights or other interests; are at risk of harm; and because they are affected by

disability, Mental Disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than others who are not so affected;

- 1.8 **“Assessment of Needs”** means the process of understanding the needs of a Supported Person, in order to establish eligibility for assistance and to determine an appropriate Personal Plan;
- 1.9 **“Best Value”** means the obligations of the Council under section 1(1) of the Local Government in Scotland Act 2003 including the statutory instruments and guidance approved by the Scottish Ministers in relation to this Act;
- 1.10 **“Care Inspectorate”**, being the body established under section 44 of the Public Services Reform (Scotland) Act 2010, having its headquarters for the time being at Compass House, 11 Riverside Way, Dundee, DD1 4NY and its statutory successors;
- 1.11 **“Change in Law”** means:
- (a) The coming into effect of any Law that is not in effect at the date the contract to follow hereon is concluded;
 - (b) The modification, repeal or replacement of any Law after the date the contract to follow hereon is concluded; and/or
 - (c) A change after the date the contract to follow hereon is concluded. in the interpretation or application by any Competent Authority of any Law;
 - (d) But shall not include changes which were reasonably foreseeable and/or were taken into account by the Parties at the date the contract to follow hereon is concluded;
 - (e) 'Change in Law' shall include any introduction of new taxes, duties or increased exposure to existing taxes, duties or tariffs or the removal of any benefit, subsidy or relief in each case due to either (a) the change in the membership status of the United Kingdom as a result of its withdrawal (or agreement reached with respect to the United Kingdom's withdrawal) from membership of the European Union, and/or (b) a decision or agreement for Scotland to no longer form part of the United Kingdom.
- 1.12 **“Child Protection”** means taking measures to reduce the risk of physical, emotional or sexual abuse, neglect or significant harm of a child/young person, enabling children/young people or staff to report concerns about actual or potential abuse or significant harm and responding to allegations, occurrences and suspicions of abuse or significant harm of a child/young person;
- 1.13 **“Competent Authority”** means any court or any local, national or supranational legislative body of competent jurisdiction;
- 1.14 **“Complaints Register”** means a register containing any formal complaint made by a Supported Person or a Representative about the Service, the outcome of such complaint and the action taken;

- 1.15 “**Conditions**” means these Terms and Conditions of Contract for the purchase of services;
- 1.16 “**Contract**” means the Contract between the Council and the Service Provider, consisting of Invitation to Tender, Tender, Acceptance Letter, the Conditions, any supplementary Conditions and all specifications and other documents that are comprised in the Contract;
- 1.17 “**Contract Officer**” means an individual employed by the Council in this capacity and charged with the monitoring of the Contract amongst other responsibilities;
- 1.18 “**Contract Period**” means the periods during which the services are to be provided by the Service Provider to the Council as specified in the Contract;
- 1.19 “**Council**” means Fife Council, constituted in terms of the Local Government etc (Scotland) Act 1994, and having its principal offices at Fife House, North Street, Glenrothes, Fife, KY7 5LT, contracting on behalf of the Fife Health & Social Care Partnership;
- 1.20 “**Council's Agreed Rate**” means the agreed rate to be paid by the Council in return for the provision of Services, or as subsequently amended in accordance with any of the provisions of this Contract. For the avoidance of doubt the Council’s Agreed Rate shall have no bearing whatsoever on any agreed rate being paid by any other Council in any other jurisdiction in Great Britain;
- 1.21 “**Data Protection Legislation**” means any applicable law relating to the processing, privacy and use of Personal Data applicable to the Council and/or the Service Provider including in the UK (i) , the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, the General Data Protection Regulation (2016/279); (ii) following the withdrawal of the United Kingdom from the European Union, the UK GDPR and the Data Protection Act 2018 (and regulations made thereunder) (“DPA 2018”) and (iii) any corresponding or equivalent national laws or regulations, once in force and applicable and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority including the UK Information Commissioner;
- 1.22 “**Disclosure**” means the information provided, either by post or online, by Disclosure Scotland about someone’s criminal record in relation to a Level 1, Level 2 or PVG scheme disclosure, as defined by the Disclosure (Scotland) Act 2020;

- 1.23 **“Disclosure Scotland”** means the Disclosure Bureau empowered under the Disclosure (Scotland) Act 2020 or its statutory successor to issue criminal record certificates and enhanced criminal record certificates and based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA and its statutory successors;
- 1.24 **“Disclosure (Scotland) Act 2020”/ “Disclosure Act”** means the Act of Parliament relating to the disclosure of criminal history and other relevant information. It is designed to improve the disclosure system in Scotland by focusing on protecting the public, while balancing the need for people to move on from offending and simplifying the process for disclosing criminal history information.
- 1.25 **“Equality and Human Rights Commission”** means the body established by the Equality Act 2006, and having a place of business at 151 West George Street, Glasgow, G2 2JJ and its statutory successors;
- 1.26 **“Harm”** means something that causes actual or likely significant harm to a person. It may be physical, emotional, financial, sexual, self-harm or neglect of the person;
- 1.27 **“Individual Placement Agreement”** means the agreement between the Council and the Service Provider concerning the needs of a particular Supported Person to be given a Placement by the Service Provider;
- 1.28 **“Individual Service”** means the Service to be provided to the Supported Person by the Service Provider and the Services as highlighted within the Terms and Conditions of this Contract;
- 1.29 **“Invitation to Tender”** means the document setting out the Council’s requirements for the Contract;
- 1.30 **“Mental Disorder”** means any mental disorder as specified within the Mental Health (Care and Treatment) (Scotland) Act 2003 including dementia and learning disability;
- 1.31 **“Mental Welfare Commission”** means the Mental Welfare Commission for Scotland, as defined by the Mental Health (Care and Treatment) (Scotland) Act 2003 and having a place of business at Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE and its statutory successors;
- 1.32 **“Health and Social Care Standards”** means the Health & Social Care Standards: My Support, My Life, 2017 (HSCS). The HSCS, developed in accordance with the Regulation of Care (Scotland) Act 2001 and published by the Scottish Government from time to time, are the standards for the relevant service(s) to be provided under for this Contract;

- 1.33 “**Level 1 Disclosure**” means a disclosure product that discloses unspent convictions, meaning it reveals criminal convictions that are not yet considered ‘spent’ and can continue to be disclosed. Section 1 of the Disclosure (Scotland) Act 2020 sets out what is contained in this disclosure in more detail.
- 1.34 “**Level 2 Disclosure**” means a more comprehensive product that reveals both spent and unspent convictions, along with other relevant information held by the police. Level 2 disclosures can also include details on unspent cautions or children's hearing outcomes. Section 8 of the Disclosure (Scotland) Act 2020 sets out what is contained in this disclosure in more detail.
- 1.35 “**Outcomes**” means the aims and objectives for the Supported Persons agreed in their Personal Plan;
- 1.36 “**Partnership**” means Fife Health & Social Care Partnership (HSCP);
- 1.37 “**Personal Plan**” means the personal plan as required under the Regulation of Care Regulations and the Health & Social Care Standards: My Support, My Life, 2017, that shall form the basis of Service provision to meet the Service User’s needs as assessed by the Council’s assessment officer. The Personal Plan is sometimes referred to as the ‘Personal Plan’ or the ‘Care Plan’;
- 1.38 “**Placement**” means the arrangement for the provision of the Service for a Supported Person;
- 1.39 “**Premises**” means the location where the Services are to be performed, as specified in the Contract;
- 1.40 “**Protecting Vulnerable Groups (PVG) Scheme Disclosure**” means a Level 2 check with PVG scheme membership, as defined by the Disclosure (Scotland) Act 2020. This is a legal requirement for positions (paid or voluntary) that are Regulated Roles;
- 1.41 “**Protecting Vulnerable Groups (PVG) Scheme**” means the disclosure system as defined by Section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007 (the PVG Act), as amended by the Disclosure (Scotland) Act 2020 and managed by Disclosure Scotland for persons undertaking a Regulated Role with protected Adults and/or Children, as defined in the Disclosure (Scotland) Act 2020. It helps ensure people who are unsuitable to work with children and protected adults cannot do regulated work with these vulnerable groups;
- 1.42 “**Registration**” means registration granted by the Care Inspectorate in terms of the Regulation of Care (Scotland) Act 2001, and its statutory successors;

1.43 “**Regulated Role**” means a position (paid or voluntary) that involves carrying out certain activities that gives a person carrying them out contact with children or protected adults. This might be:

- jobs with caring responsibilities
- teaching or supervising children or protected adults
- providing personal services to children or protected adults
- working directly with children or protected adults

Contact can be supervised or unsupervised, depending on what activity you are doing. Examples of regulated roles are teachers, children’s football coaches and support workers;

1.44 “**Regulation of Care Regulations**” means The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002;

1.45 “**Procurement Regulations**” means The Public Contracts (Scotland) Regulations 2015;

1.46 “**Representative**” means the person nominated by the Supported Person to be contacted or advised by the Service Provider and/or the Council regarding the Supported Person's circumstances or any significant change thereto whether informally or as their Attorney by Power of Attorney or court order in terms of the Adults with Incapacity (Scotland) Act 2000, failing such nomination, the Supported Person's next of kin or any other person who the Service Provider and the Council agree has a relevant interest with regard to the Supported Person;

1.47 “**Risk Assessment**” means the process of identifying individual and environmental hazards to the safety or welfare of the Supported Person, estimating their seriousness and likelihood, and identifying and recording reasonable measures to minimise unnecessary hazards;

1.48 “**Scottish Social Services Council**” means that body set up under the Regulation of Care (Scotland) Act 2001 and having its head office at Compass House, 11 Riverside Drive, Dundee DD1 4NY and its statutory successors;

1.49 “**Self-Assessment Form**” means the form provided by the Care Inspectorate to the Service Provider prior to an arranged inspection visit which is used by the Service Provider to communicate details of the effectiveness of the Service in meeting the applicable quality themes and quality statements enforced and monitored by the Care Inspectorate;

1.50 “**Service**” means the detail of the services to be provided in accordance with the Conditions of this Contract (including the Service Specification) and agreed Personal Plan;

- 1.51 **“Service Provider”** shall mean the Tenderer/Contractor;
- 1.52 **“Service Specification”** means the ‘Statement of Requirements’ forming part of the Contract;
- 1.53 **“Significant Occurrence Form”** means the Significant Occurrence Form that should be submitted to the Social Work Contracts Team to report any significant occurrence or incident regarding a Supported Person;
- 1.54 **“Social Work Contact Centre”** means the Emergency Out of Hours Social Work Service where Council staff are on duty between 5pm and 9pm Monday to Friday as well as day and night every weekend and public holidays and can be contacted on 03451 550099 (or such other number as the Council may intimate to you) to discuss any urgent issues surrounding the care and well-being of Supported Persons or any other matter that in the opinion of the Service Provider or other Representative requires the immediate advice or intervention of a duty Social Worker;
- 1.55 **“Social Work Contracts Team”** means the group of Fife Council employees based at 6th Floor, Fife House, North Street, Glenrothes, KY7 5LT or other locations as advised from time to time which are, amongst other responsibilities, charged with the application, monitoring and enforcement of this Contract;
- 1.56 **“Social Worker”** means a suitably qualified and registered person employed by the Council, the Service Provider or a 3rd party, to perform a required statutory function;
- 1.57 **“Social Work Out of Hours Contact”** means the duty Social Worker who can be contacted out-with office hours, to discuss any urgent issues surrounding the care and well-being of a Supported Person or any other matter that in the opinion of the Service Provider, Carer or other Representative requires the immediate advice or intervention of a duty Social Worker;
- 1.58 **“Staff”** means any person engaged by the Service Provider in terms of a contract of employment between that person and the Service Provider for the purposes of providing the Services but shall exclude any sub-contractor or Volunteer involved in or with the Service;
- 1.59 **“Statement of Requirements”** means the specification of services including any technical requirements as contained in the Contract;
- 1.60 **“Step in Event”** Any incident or circumstance, or series of events or circumstances, which in the Council’s judgement (acting reasonably) place the health and safety of Supported Persons at risk, including (but not restricted to):

- (a) Cancellation of the Service Provider's registration by the Care Inspectorate;
- (b) The Service Provider failing to make or implement improvements required by the Care Inspectorate as part of enforcement action by them;
- (c) Significant Adult Support & Protection concerns; and/or
- (d) The Service Provider being unable to safely staff and/or manage the service, in-extremis circumstances resulting in Supported Persons being at significant risk;

1.61 **"Supported Person"** means any person in receipt of Services in terms of this Contract, still including such persons when Services to them are suspended on a temporary basis;

1.62 **"Tender"** means the tender submitted by the Service Provider in response to the Invitation to Tender;

1.63 **"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

1.64 **"UK GDPR"** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

1.65 **"Unpaid Carer"** means a person of any age who provides unpaid help and support to wife, husband, partner, son, daughter, parent, relative, partner, friend or neighbour who cannot manage without the carers help;

1.66 **"Volunteer"** means any person willing to assist in the support provided to the Supported Persons at the request of the Service Provider other than by way of a contract of employment or of service and who does not receive any payment for the same by way of wages or otherwise except repayment of necessary outlays such as travelling expenses;

1.67 **"Working Days"** shall mean Monday-Friday inclusive, unless stated otherwise in the Statement of Requirements;

2. ACCEPTANCE OF TENDERS

The Council does not bind itself to accept the lowest or any Tender and reserves the right not to award the Contract.

3. BEST INTERESTS OF SUPPORTED PERSONS

The parties to this Contract by their execution hereof undertake to act at all times reasonably and have regard to the best interests of the Supported Persons supported under this Contract.

4. ESTIMATED QUANTITIES AND ESTIMATED EXPENDITURE

The quantities and values given in the Invitation to Tender are estimated and are provided for guidance only. The Council is not bound to the quantities and values given, and the quantities and values may be increased or decreased by the Council without invalidating the Contract.

5. CHANGE TO CONTRACT REQUIREMENTS

- 5.1 The Council shall have the right from time to time during the Contract Period, by notice in writing to the Service Provider, to add to or omit from or otherwise vary any of the Services to be provided by the Service Provider to the Council and the Service Provider shall carry out such variations and be bound by the Conditions, other than an amendment to the Contract price occasioned thereby, as though the said variations were included in the Contract.
- 5.2 The Council during the Contract Period may request that services, similar and relevant to the Contract be added to the Contract. The Service Provider shall be afforded the opportunity to quote for such services, however, the Council shall be entitled to source such services from an alternative supplier should the Council deem the quote provided by the Service Provider to be uncompetitive.

6 RESPONSIBILITY OF THE COUNCIL

- 6.1 It is the responsibility of the Council to:
- (a) keep under review the assessment of need and the Personal Plan of each Supported Person including the overall Outcomes to be achieved;
 - (b) provide advice and assistance to the Supported Person where requested; and
 - (c) lead on any Adult or Child Protection matters.
- 6.2 The Council is responsible for:
- (a) Notifying the Service Provider in writing of any concerns the Council may have with respect to the performance of the Services or adherence to the Terms and Conditions of this Contract. The Service Provider shall be given the opportunity to reply within a timescale specified by the Council within such notification. The Council reserves the right to take urgent action to protect the welfare of Supported Persons receiving Services from the Service Provider if in the Council's discretion such action is necessary;
 - (b) Ensuring that an appropriate level of consultation takes place with the Service Provider prior to the introduction of administrative or financial changes likely to affect the provision of the Services;
 - (c) Ensuring that the Service Provider has agreed a programme of support consistent with the Supported Person's requirements; and
 - (d) Ensuring that the Contract is monitored and that any significant variations to the Contract or concerns are immediately brought to the attention of the Service Provider.

7 SERVICE PROVIDER OBLIGATIONS

7.1 In the provision of the Service, the Service Provider shall perform its obligations:

- (a) with appropriately experienced, qualified and trained staff;
- (b) in accordance with good social care practice;
- (c) in compliance with all applicable laws and guidance;
- (d) for registered services in accordance with the Health and Social Care Standards: My Support, My Life, 2017 and any requirements, and consider/act upon recommendations, made by the Care Inspectorate;
- (e) to promote each Supported Person's quality of life; and
- (f) to promote delivery of Best Value, including:
 - (i). quality assurance through a policy that is consistent with the requirements of this Contract and incorporates a requirement for an annual review of all the Service Provider's management/working practices in relation to the Service to enable such practices to be modified (as necessary) in order to improve and maintain the delivery of the Service Specification;
 - (ii). modification of its working practices (upon request in writing from the Council from time to time) in order to improve the Service or rectify any weaknesses or fault in its working practices which are identified by the Council.

7.2 The Service Provider must ensure that its Staff understand and, at all times, comply with the obligations resulting from this Contract.

7.3 The interest, wellbeing and social care needs of Supported Persons are paramount. The Service Provider must at all times during the term of the Contract ensure that the Supported Person's rights as an individual, as referred to in the relevant Health and Social Care Standards: My Support, My Life, 2017, are respected.

7.4 The Service Provider shall ensure the information about its services which are detailed in the on-line directory <https://www.onyourdoorstepfife.org/> are accurate and up to date.

7.5 The Service Provider shall provide the Services to the Supported Person(s) in accordance with their Assessment of Need and relevant Personal Plan. The Service Provider will undertake all work agreed and that which is allocated to them within the Supported Person's Personal Plan.

7.6 The Service Provider is required to ensure that any significant changes to a Supported Persons conditions or circumstances are immediately intimated to the HSCP.

- 7.7 The Service Provider hereby agrees to provide all Services under this Contract in accordance with the Terms and Conditions of this Contract and shall provide the Services to the Statement of Requirements as specified in the Tender Part 1.
- 7.8 The Service Provider shall not require or request the Supported Person to sign any Contract, form or document in respect of the Service which conflicts with the provisions of this Contract. Where any such Contract does so conflict then the terms of this Contract shall take precedence.
- 7.9 The Service Provider shall comply with the Data Protection Legislation.

8 DUTY OF CARE

The Service Provider shall perform any Services under the Contract with all reasonable skill, care and diligence and in accordance with all relevant legislative and statutory requirements and industry best practice.

9 REGISTRATION

- 9.1 It is a condition of the Contract that, the Service Provider holds or shall obtain a Certificate of Registration with the Care Inspectorate in respect of the services which form the subject matter of this contract in accordance with the provisions of the Public Services Reform (Scotland) Act 2010 or any other relevant legislation, and shall not act so as to prejudice the said Registration. In addition, the Council shall where possible co-operate with the appropriate statutory authority in monitoring the Service Provider's compliance with the requirements of this Contract.
- 9.2 In the event that the Care Inspectorate imposes conditions, serves notice to cancel Registration or varies categories of Registration of the Service, the Service Provider shall immediately notify the Council in writing by e-mail, or by telephone. Where verbal notification is given the Service Provider will follow this with written confirmation within two (2) Working Days. Furthermore, the Service Provider shall provide to the Council a copy of all relevant documentation received by the Service Provider from the Care Inspectorate. This shall be carried out within seven (7) Working Days of receipt by the Service Provider. In the case of variation or extension of Registration categories the Council shall not be obliged to nominate any person under the Contract whose needs fall within the varied or extended Registration categories.
- 9.3 If the Care Inspectorate gives notice to the Service Provider of a proposal to cancel the Registration, or if the Care Inspectorate has made Summary Application to the Sheriff for an Order cancelling the Registration, then the Council may, but shall not be bound to, terminate the Contract without notice irrespective of whether or not the Service Provider has made representations to the Care Inspectorate about cancellation, or the period for making such

representations has lapsed, or the Summary Application to the Sheriff is being opposed.

- 9.4 Service Providers must provide high quality care and support to Supported Persons within their care and aim to achieve a Care Inspectorate Grade 4 (Good) in all themed inspection areas. When a care provider is inspected and the outcome results in grades lower than Grade 4 (Good), the Service Provider must inform the HSCP immediately and HSCP will arrange for discussion to take place with the care provider regarding the implementation of an improvement plan. The HSCP may impose a suspension on placements / services until the required improvements are made.
- 9.5 In order that the Council may monitor the operation of the Contract the Service Provider shall, where applicable;
- (a) inform in advance, where prior notice is given, the Social Work Contracts Team (or its equivalent) of scheduled Care Inspectorate inspection visits;
 - (b) provide the Social Work Contracts Team with a copy of the Self-Assessment Form where this is issued by Care Inspectorate;
 - (c) inform in advance, when prior notice is given, the Social Work Contracts Team of any feedback sessions with Care Inspectorate and invite the Social Work Contracts Team to attend;
 - (d) provide to the Social Work Contracts Team all final inspection reports or any other documents making recommendations by or setting out requirements from Care Inspectorate relating to the Services. This shall be carried out within seven (7) Working Days of receipt by the Service Provider. For the avoidance of doubt this Condition shall only relate to reports that are made available to the Service Provider.
- 9.6 The Council, where possible, will co-operate with the Care Inspectorate to reduce areas of duplication, however the Council reserves the right to take all steps reasonably necessary to enable the Council to monitor the Service Provider's compliance with this Contract.
- 9.7 If the Registration is subject to one or more conditions being imposed and in the event of the Service Provider failing to comply with such a condition(s), the Council will be entitled to terminate the Contract in terms of Condition 44 (Termination).

10 SERVICE PROVIDER CIRCUMSTANCES

The Council shall require, in writing, details of any change in a Service Provider's circumstances that are material to the operation of the Contract e.g. change in company status, changes in service provision etc. Failure to do so may result in the exclusion of the Service Provider from the Contract.

11 DELIVERY

11.1 Should the Service Provider fail to deliver the Service in accordance with the agreed schedule and quality standards the Council may appoint an alternative provider and render the Service Provider liable for all costs incurred by the Council in doing so.

11.2 Any costs incurred by the Council, in terminating the Contract shall also be charged to the Service Provider.

12 BUSINESS CONTINUITY AND CONTINGENCY

12.1 The Service Provider will develop, implement, maintain and hold responsibility for processes and procedures in relation to business continuity. The Service Provider shall maintain a business continuity plan which sets out the actions the Service Provider will take in order to ensure continuity of service provision in the event of any incident or disruption. The business continuity plan may take account of the supports reasonably expected to be available from statutory authorities including but not limited to, the civil and emergency planning provisions within the Local Authority area. The Service Provider shall provide a copy to the Council on request. The Service Provider shall notify the Council as soon as reasonably practicable of the activation of said plan.

12.2 Where either Party becomes aware of anything which may lead to a serious risk to the health or safety of supported persons, or to the continuity of the Service, they must alert all relevant parties immediately.

12.3 The Council and Service Provider will then meet to discuss any issues raised by Condition 12.2 (Business Continuity & Contingency) and agree any actions that are required to mitigate the risks, which may include support to the Service Provider from the Council under their own business continuity plan or any further relevant actions.

13 INFORMATION FOR SUPPORTED PERSONS

13.1 Prior to delivery of the Services, the Service Provider shall provide the Supported Person or their Representative with the following information:

- (a) The introductory information pack as referred to in the relevant Health and Social Care Standards: My Support, My Life, 2017; and
- (b) A written agreement as referred to in the relevant Health and Social Care Standards: My Support, My Life, 2017.

13.2 The information referred to in Condition 13.1 (Information for Supported Persons) shall be reviewed and regularly updated by the Service Provider to ensure accuracy of the same and a copy of the said information and any amendments thereto shall be supplied to the Council on request.

13.3 The Service Provider shall produce a Personal Plan in accordance with the relevant Health and Social Care Standards: My Support, My Life, 2017.

13.4 Where a Supported Person has access to an advocate or interpreter or other person to assist them to communicate, the Service Provider shall take all reasonable steps to avail themselves of the facilities offered by such persons.

14 SERVICE PROVIDER'S PROCEDURES

Throughout the duration of this Contract the Service Provider shall ensure that the policies and procedures submitted and approved by the Council when the Service Provider took part in the said tender process are in force and are routinely reviewed and amended to ensure that they reflect up-to-date knowledge and best practise in relation to the support of Supported Persons. Copies of such amendments shall be supplied to the Council on request. The Service Provider shall ensure that all relevant staff are trained in these policies and procedures.

15 PREVENTING AND REPORTING HARM (ADULTS)

15.1 Prior to the commencement of this contract, the Service Provider will ensure that they have in place a Reporting Harm Process that is compliant with the most recent Fife Inter-Agency Adult Support and Protection Guidance, which has been updated beginning June 2022. In particular, the Service Provider should be aware of Fife's "Reporting Harm" Protocol.

15.2 If requested by the Council, the Service Provider will submit for the purpose of the Council's written approval, details of their reporting harm process or details of how it intends to put in place a Reporting Harm Process, prior to the commencement of this contract.

15.3 In complying with this Contract, the Service Provider will take all reasonable measures to minimise the risk of harm to adults and other individuals, as required by the Adult Support and Protection (Scotland) Act 2007. Harm includes but is not restricted to physical, sexual, emotional, psychological, financial harm, self-harm or neglect.

15.4 The Service Provider must comply with all relevant legislation and ancillary documentation that relates to the support and protection of adults at risk, children and other vulnerable individuals. This includes ensuring compliance with Fife Inter-Agency Adult Support and Protection Guidance, and Fife Information sharing protocols.

15.5 The Service Provider shall ensure that all staff (paid or voluntary) who are alerted to, witnessed, reported or suspected harm know the organisation's procedures for reporting such incidents.

- 15.6 In the event of the Service Provider becoming aware of harm (witnessed, reported or suspected) of any adult in their care, the Service Provider will submit a "Report of Harm" form to the Social Work Contact Centre.
- 15.7 There must be no undue delay in reporting any instances of harm (witnessed, reported or suspected harm).
- 15.8 The Service Provider will also take appropriate measures to enable the adult to report actual or potential harm and shall warrant that it will respond in a timely manner. This requirement does not negate the Service Provider's responsibility to report instances of harm to the adult's allocated Social Worker or the Social Work Contact Centre.
- 15.9 Notwithstanding the requirements of this Condition, the Service Provider still has a responsibility to contact the emergency services when an adult is in immediate danger, requires urgent medical attention or crime is suspected.

16 PREVENTING AND REPORTING HARM (CHILDREN & YOUNGER PEOPLE)

- 16.1 Prior to the commencement of this Contract, the Service Provider will ensure they have in place a Child Protection Reporting Process that is compliant with the Fife Child Protection Inter-Agency Guidance and other relevant legislation and guidance.
- 16.2 If requested by the Council, the Service Provider will submit, for the purpose of the Council's prior written approval, details of their Child Protection Reporting Process, or details of how it intends to put in place a Child Protection Reporting Process, prior to commencement of this Contract.
- 16.3 In complying with this Contract the Service Provider will take all reasonable measures to minimise the risk of harm or abuse to children. Harm includes, but is not restricted to, physical, sexual and emotional harm and neglect. This includes a responsibility to report any concerns that a child may have been harmed or may be at risk of harm, even when a child is not directly receiving a service from the Service Provider.
- 16.4 The Service Provider must comply with all relevant legislation and ancillary documentation that relates to the support and protection of adults at risk, children, and other vulnerable individuals. This includes ensuring compliance with the latest version of the Fife Child Protection Inter-Agency Guidance, Fife Information Sharing Protocols, and the National Framework for Child Protection Learning and Development in Scotland 2012.
- 16.5 In the event of the Service Provider becoming aware of harm (witnessed, reported or suspected) to any child, the Service Provider will refer to, and follow the guidance in the latest version of the Fife Child Protection Inter-Agency Guidance.

- 16.6 The Service Provider should ensure that their policies, procedures and practices are in line with, any legal requirements to disclose information, and/ or any restrictions on confidentiality.
- 16.7 The Service Provider shall ensure that all staff (paid and voluntary) who are alerted to witnessed, reported or suspected harm to children know the organisation's procedures for reporting such incidents.
- 16.8 There must be no undue delay in reporting any instances of harm (including reported, witnessed or suspected harm).
- 16.9 The Service Provider will also take appropriate measures to enable the Child/Young Person(s) to report concern about actual or potential harm and shall warrant that it will respond in a timely manner. This requirement does not negate the Service Provider's responsibility to report instances of witnessed, reported or suspected harm in line with the Fife Child Protection Inter-Agency Guidance.

17 SERVICE PROVIDER'S STATUS

- 17.1 In carrying out the Services the Service Provider shall be acting as principal and not as the agent of the Council. Accordingly:
- (a) the Service Provider shall not (and shall procure that the Service Provider's agents and servants do not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the Council; and
 - (b) nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of the Contract or any negligence on the part of the Council, or the Council's staff or agents.

18 PRICE

- 18.1 All prices quoted shall be net of Value Added Tax. Net prices shall be deemed to include all delivery and carriage charges unless the Tender specifies otherwise.
- 18.2 All prices quoted shall be deemed to be fixed for the Contract Period, unless the Council has agreed to a variation in price.
- 18.3 The Service Provider shall be expected to pass onto the Council any benefit in the form of lower prices as a consequence of decreases in costs in the supply chain.
- 18.4 Fife's HSCP will consider the market situation and available budget on an annual basis. Consideration is also given to the impact and changes in the Scottish Living Wage, to rates paid to providers, as appropriate.

19 FINANCIAL ARRANGEMENTS

- 19.1 In exchange for the provision of the services by the Service Provider, the Council shall make payment to the Service Provider, at the Council's Agreed Rate in accordance with the financial arrangements.
- 19.2 Service Providers are not required to submit invoices, unless otherwise stated in the Contract, as care services provided to be paid will be generated from the Partnership's Information Management System ("IMS") (LiquidLogic/ContrOcc).
- 19.3 Invoices from the Service Provider to be sent to the invoicing address as detailed in the Contract, if required. Unless otherwise stated in the Contract, payment shall be made within 30 days of receipt and agreement of invoices, such invoices to be submitted monthly in arrears, for services undertaken to the satisfaction of the Council.
- 19.4 Services will be paid to care providers based on the commissioned level of care and paid in arrears.
- 19.5 The Council will make payment directly to the Service Provider's nominated bank account by Bank Automated Clearing System (BACS) payments. Payment shall be made within 30 days to Service Providers following the end of the period of care service(s) were provided / delivered.
- 19.6 Any adjustments to care service provided that impacts on the payment of care will be recorded within the Partnership's IMS and will be amended in the next payment due to be made to the Service Provider.
- 19.7 In the event that the Service Provider is liable to make payment of any sum of money to the Council, whether arising from this Contract or otherwise, then the Council shall be entitled to deduct an equivalent amount from any sum then due (or which at any time thereafter may become due) to the Service Provider under this Contract or any other Contract. The Council will inform the Service Provider of any amounts to be deducted.
- 19.8 The Council's Agreed Rate will be paid subject to satisfactory performance of this Contract by the Service Provider and may be revised in light of any re-negotiation of this Contract. Any revisions shall be negotiated with the Service Provider and confirmed in writing.
- 19.9 The Council shall not be liable to the Service Provider for the cost of any Services provided to Supported Persons which are in addition to the Council's Agreed Rate.

- 19.10 The Service Provider will not in any manner whatsoever commit or purport to commit the Council to the payment of any money to any person, firm or corporation without the prior written consent of the Council.
- 19.11 The Supported Person should at a level appropriate to their needs, be encouraged by the Provider to manage their own finances and have discretion in spending any money belonging to them. The Service Provider should have in place appropriate written procedures detailing arrangements to safeguard any Supported Person who requires assistance with the handling and banking of money and any other financial matters. If a Service Provider is unsure to what extent a Supported Person should contribute to the management of their finances, this should be discussed between the Service Provider and the Supported Person's allocated Social Worker.
- 19.12 No Supported Person shall be required or requested by the Service Provider to sign any agreement, consent forms, disclaimer notices or acceptance notices which in any way conflict with the Terms and Conditions expressed or implied in this Contract or which affect their statutory rights.
- 19.13 The Service Provider will consent to the Council obtaining from the Service Provider's bankers or accountants, a financial reference in respect of the Service Provider, at such times as the Council may reasonably require. The Service Provider or Service Provider's accountant shall also submit to the Council an annual statement of accounts, including profit and loss accounts and balance sheets. Alternatively, the Council may accept a copy of the Service Provider's most recent audited accounts. The Council will treat this information in the strictest of confidence and use it only for the purpose for which it was requested.
- 19.14 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 19.15 Notwithstanding Condition 31 (Assignment, Sub-Contracting & Change of Control) the Service Provider may assign to another person (an "assignee") the right to receive payment of the price or any part thereof due to the Service Provider under the Contract subject to (i) deduction of sums in respect of which the Council exercises the right of recovery and (ii) all the related rights of the Council under the Contract in relation to the recovery of sums due but unpaid. The Service Provider shall notify or procure that any assignee notifies the Council of any variations to the arrangements for payment of the price or for handling invoices, in each case in sufficient time to enable the Council to redirect payments or invoices appropriately. In the absence of such notification the Council shall be under no obligation to vary the arrangements for payment of the price or for handling invoices.

20 AUDIT

20.1 The Service Provider shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Service Provider paid for by the Council on a time charge basis. The Service Provider shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council in connection with the Contract.

20.2 The provisions of this Condition 20 (Audit) shall apply during the Contract Period and after its termination howsoever arising.

21 PUBLIC RECORDS MANAGEMENT AND TRANSFER

21.1 The Service Provider shall, for the duration of this Agreement, provide the Council with all assistance reasonably requested by the Council to assist the Council in complying with its obligations under the Public Records (Scotland) Act 2011 and with the Council's Records Management Plan where such compliance is in respect of records created or to be created by the Service Provider on behalf of the Council in.

21.2 Without prejudice to the foregoing generality this shall include:

- a) Records must be held and maintained by the successful tenderer in confidential storage in accordance with the Data Protection Legislation.
- b) Council records must be held in a secure manner appropriate to the nature and content of the records. Where Council records are held electronically, this will include appropriate system back-up.
- c) Access to Council records must be controlled in a manner appropriate to the nature and content of the records and an audit trail evidencing access to and amending of these records must be available on request.
- d) Council records must be retained and destroyed in accordance with the provisions of the Council Records Retention Schedule. (<https://www.scottisharchives.org.uk/wp-content/uploads/2018/08/scarrs-2.3.pdf>) and this destruction must be in a manner appropriate to the nature and content of the records. Evidence of destruction must be provided to the Council at time of destruction.
- e) All Council records must be returned to the Council or transferred to their nominated Provider in a manner approved by the Council, acting reasonably, at no additional cost to the Council. Electronic records must be promptly and appropriately destroyed following their return / transfer. This destruction must be evidenced to the Council.
- f) The Service Provider shall demonstrate its compliance with these requirements to the Council's reasonable satisfaction.
- g) In the event of any conflict between this requirement and any other provision of the contract to follow hereon, this requirement shall take priority.

22 MONITORING PROCEDURES

22.1 The Service Provider must submit copies of all published inspection reports,

where applicable, to the Council within seven (7) Working Days of receipt.

- 22.2 Compliance with this Contract and each Individual Placement Agreement will be subject to monitoring by the Council.
- 22.3 The Service Provider will ensure that the information, records and documentation necessary to effectively monitor the performance of the Contract are accurately maintained at all times and that their validity is checked at regular intervals.
- 22.4 The Service Provider undertakes to provide the Council with information to allow for the monitoring, review and assessment of the Service Provider's capabilities to provide the standards of care required under the Contract and by the appropriate statutory authority.
- 22.5 The Service Provider will submit on a regular basis, a Summary Report, in the agreed format, detailing the Supported Persons who have received a service from the Service Provider.
- 22.6 The Summary Report should also contain notification of any changes to the agreed service, notification of any temporary absences from the service and notification of any permanent absences from the service.
- 22.7 Both parties will monitor the Service with a view to consistently improving the quality of the Service in accordance with the terms and condition of this Contract. The Service Provider shall comply with all reasonable requirements of the Council to achieve this aim, in accordance with the monitoring arrangements set out in this Contract.
- 22.8 A monitoring and evaluation system specifying key targets and outcomes will be developed and mutually agreed by the Service Provider and the Council. In the event of the Service Provider and the Council failing to agree a monitoring and evaluation system, then the Council shall be entitled to terminate the Contract in accordance with Condition 44 (Termination).
- 22.9 The means by which the Services provided shall be monitored and evaluated may include:
- (a) Feedback from Supported Persons and/or their Representative on the Services being received;
 - (b) Feedback from staff within the Council and where appropriate from other relevant bodies;
 - (c) Consideration of the outcome of complaints raised under the Complaints Procedure as outlined in Condition 36 (Complaints);
 - (d) Any other information, where deemed to be appropriate by the Council.

22.10 Monitoring of the Contract will be the responsibility of the officer designated to manage the Contract on behalf of the Council. This will be a Contract Officer or other appropriate Council officer.

22.11 A Contract Officer or such other officer of the Council will visit the Service Provider at intervals during the lifetime of the Contract to monitor the Contract. At the discretion of the Council, the Contract Officer will visit the Service Provider more often should concerns exist regarding compliance with the Contract Terms and Conditions. In usual circumstances visits will be arranged in advance but the Council reserves the right to visit without notice at any reasonable time.

22.12 The Service Provider will be notified in writing if the Council has any concerns about their adherence to the terms of the Contract and the Service Provider will be given the opportunity to reply within a time-scale specified by the Council. The Council reserves the right to take urgent action to protect the welfare of any Supported Person in receipt of a Service under this Contract if it appears to the Council that such action is necessary.

23 REGULATIONS

23.1 The Service Provider must at all times comply with all applicable Council Policy which is relevant to the services.

23.2 In addition to the foregoing the Service Provider must at all times comply with all or any relevant legislation, regulations, standards and codes of practice issued by a Competent Authority in force from time to time throughout the duration of this Contract.

24 ADVOCACY AND REPRESENTATION

24.1 The Service Provider shall ensure that Supported Persons have information about and are assisted to obtain appropriate advocacy services under the following legislation:

- Adults with Incapacity (Scotland) Act 2000
- The Mental Health (Care and Treatment (Scotland) Act 2003. This Act also imposes a duty to provide advocacy services for people under 16 years of age who have a Mental Disorder.
- Adult Support and Protection Act (Scotland) 2007
- The Equality Act 2010
- The Human Rights Act 1998
- The Children (Scotland) Act 1995
- The Children's Hearings (Scotland) Act 2011
- Social Care (Self-Directed Support) (Scotland) Act 2013
- The Children and Young People (Scotland) Act 2014

- 24.2 For the purposes of making complaints in accordance with Condition 36 (Complaints). The Service Provider shall ensure that front line Staff are confident in assisting Supported Persons to access appropriate advocacy services.
- 24.3 The views of the Supported Persons and their Social Workers or advocates must be taken into account through the establishment of a system of consultation which encourages individual suggestion.
- 24.4 The Service Provider should ensure that Supported Persons covered by the Mental Health (Care and Treatment) (Scotland) Act 2003 (including people who have a mental health issue, a learning disability, autism or dementia), who have a legal right to independent advocacy, are made aware of this right and supported to exercise it.
- 24.5 The Service Provider must facilitate access to independent advocacy services and in any event shall allow Representative or advocates to work with Supported Persons, should the Supported Person so wish. In addition, the Service Provider shall bring to the attention any issues regarding advocacy and representation to an appropriate officer of the Council.

25 SUSPENSION OF SERVICES TO A SUPPORTED PERSON

- 25.1 Notwithstanding a Supported Person's rights to choose the Service, the Council may suspend it where:
- (a) it considers that a breach or series of breaches of the Contract by the Service Provider creates an immediate or serious risk of harm to Supported Persons;
 - (b) notice of assignation, disposal, subcontracting or change of control has been given by the Service Provider to the Council and the Council has serious concerns about the viability of the arrangement, or where a Service Provider has failed to provide notice of the same, or where the Council has given notice of termination as set out in Condition 44 (Termination);
 - (c) the Service Provider has received a score of 2 or less in the themed area of 'How well do we support people's wellbeing?' in its most recent grading, or a score of 2 or less in another themed area where that will clearly impact on the quality of care or likely continuity of the Service;
 - (d) the Care Inspectorate has placed a suspension on the Service;
 - (e) Complaints have been made and upheld either by the Council or the Care Inspectorate;
 - (f) Following concerns raised from an Adult or Child Protection investigation;
 - (g) Any matter of financial concern or viability of the service;
 - (h) Following a review of the service.
- 25.2 Where decisions have to be taken to exercise the right of suspension as per this Condition 25.1 (Suspension of Services to a Supported Person) this will be referred to the Partnership's relevant Head of Service and/or Chief Social Work Officer. Following this decision, the Council shall notify;

- (a) the Service Provider in writing of the reason for the suspension and the date at which the suspension will take effect; and
- (b) Supported Persons who are in the process of choosing a Service Provider.

25.3 During the period of any suspension the Service Provider must continue to cooperate with and comply with any requirements of the Council in order to resolve the suspension and to ensure the needs of Supported Persons continue to be met.

25.4 Provision of the Services to a Supported Person shall be discontinued where following review of the Supported Person's circumstances in conjunction with the Service Provider and, so far as possible, the Supported Person and/or their Representative, the Council considers that those needs would be better serviced by alternative arrangements. In all such cases the Council and the Service Provider shall seek to resolve matters amicably to the satisfaction of all parties while safeguarding the needs of the Supported Person. In this instance, the provision of the Service to the Supported Person shall cease upon the date specified in the Council's notice to the Service Provider.

26 CONFIDENTIALITY

26.1 The Service Provider shall keep confidential any information obtained or supplied under the Contract and shall not divulge the same to any third party without the prior written consent of the Council. The Service Provider shall only divulge confidential information to those employees who are directly involved in the Contract and shall ensure that such employees are aware of and comply with this obligation as to confidentiality.

26.2 The provisions of this Condition 26 (Confidentiality) shall apply during the Contract Period and after its termination howsoever arising.

26.3 The Service Provider will have a policy in relation to the confidentiality of information which shall be agreed with the Council. The Service Provider shall ensure that Supported Person(s) are made aware of the policy and the duty of confidentiality and how it affects them as individuals and as to how the Service Provider is required to ensure this is maintained. The policy shall be written so that it is easily understood by the Service Provider's staff and the Supported Person(s).

26.4 The Service Provider shall at no time without the prior written agreement of the Council either:

- (a) make any publicity releases or announcements concerning the subject matter of any agreement or contractual arrangement between the Service Provider and the Council; or
- (b) except as may be necessary to enable the Service Provider to perform its obligations under any contractual arrangement with the Council, use,

reproduce, copy, disclose to, place at the disposal of, use on behalf of any third party, or enable any third party to use, peruse or copy any information which is provided to the Service Provider by or on behalf of the Council.

- 26.5 The provisions of this Condition shall be subject always to any legislation, rule of law or any pending civil or criminal investigation or inquiry and subject also in particular to compliance with all or any statutory provisions in force from time to time.
- 26.6 Where the Service Provider is in any doubt as to the duties incumbent upon it, then the Service Provider should without delay contact the Supported Person's social worker or the relevant Social Work team.
- 26.7 The Service Provider shall indemnify the Council against all the losses, liabilities, damages costs, expenses, claims and other actions arising directly or indirectly out of a breach of this Condition by the Service Provider.
- 26.8 On the termination of the Contract, for whatever reason, the Service Provider shall forthwith deliver to the Council or destroy at the Council's sole option, all the Council's data in its possession or under its control within such timescales as may be prescribed by the Council.

27 DATA PROTECTION

- 27.1 The Parties hereby acknowledge that the Council and the Service Provider are each acting as separate Controllers of the Supported Person's personal data, and each undertake to comply with their respective duties under Data Protection Legislation.
- 27.2 In order for the Service Provider to perform the Contract, the parties may require to disclose the Supported Person's Personal Data to each other, but only to the extent it is necessary for the proper delivery of the Contract and for no other purpose, including (but not restricted to) issues of child or adult protection.
- 27.3 The Parties agree to use any Personal Data exchanged in terms of this Contract only for the purposes of the Contract or as permitted by Data Protection Legislation.
- 27.4 Where the Service Provider receives Personal Data from the Council through an enquiry or referral and the Contract is not subsequently taken up for the Supported Person, the Personal Data received by the Service Provider must be securely destroyed or returned to the Council.
- 27.5 The Service Provider shall not be required to pass information to the Council in relation to a Supported Person, member of Staff, or any other person, if the disclosure would cause the Provider to breach the terms of Data Protection Legislation. The Provider must supply appropriate reasons in terms of Data Protection Legislation in respect of refusing disclosure of said information within

a reasonable timescale specified by the Council. Where the cause of the potential breach of Data Protection Law is due to a lack of necessary consent to disclosure of the information, the Service Provider will use all reasonable endeavours to obtain the necessary consent to disclose the information.

27.6 The Service Provider hereby warrants that that:

- (i) any processing of the Supported Person's Personal data will satisfy the requirements of Data Protection Legislation;
- (ii) It will ensure that it provides appropriate guidance and training to Staff in respect of any Personal Data disclosed to them in respect of each Supported Person placed with them.

27.7 The Service Provider must notify the Council immediately and, in any event, no later than 24 hours after becoming aware of any risks or compromise to the Council's Data or the Supported Person's Personal Data or any incidents or concerns which may impact on the confidentiality, integrity or availability of this. The Service Provider shall thereafter promptly, at its own expense, (i) provide the Council with such information as it reasonably requires in connection with the risk; (ii) take such steps as the Council reasonably requires it to take to mitigate the detrimental effects of the risk; and (iii) otherwise co-operate with the Council in investigating and dealing with the risk and its consequences. Where risks are identified which are considered to have been ignored or an inappropriate response provided, the Council reserves the right to suspend the provision of information to the Provider until appropriate remedial action has been taken.

27.8 The Council may elect to enter into a data sharing agreement with the Service Provider relative to the obligations in this clause.

28 STAFFING

28.1 The Service Provider must ensure that sufficient, competent and capable staff are provided to fulfil the services in compliance with the terms of this Contract and, where applicable, the requirements of the Care Inspectorate and National Care Standards (Care Homes for Children and Young People, 2002, revised 2005) guidelines and the Health and Social Care Standards: My Support, My Life, 2017. The Service Provider must evidence that staff assigned to the provision of the Services are suitably qualified.

28.2 The Service Provider must ensure that all staff have access to induction, supervision and training documentation as specified by the Care Inspectorate, if applicable, and to the reasonable satisfaction of the Council. A copy of records pertaining to recruitment and selection, induction, supervision and training shall be supplied on request to the Council. Management systems must encompass all aspects of Equal Opportunities and Equalities and Diversity Legislation, including the appropriate Codes of Practice published by the Equalities and Human Rights Commission.

28.3 The Service Provider shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Service Provider notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Service Provider shall forthwith take all necessary steps to comply with such notice and if required by the Council the Service Provider shall replace any person removed under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

28.4 The decision of the Council shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Service Provider has furnished the information or taken the steps required of the Service Provider by this condition.

28.5 The Service Provider is required to register with Disclosure Scotland for PVG Scheme Disclosure checks to be undertaken before carers and staff are allowed to deliver the Service. The appropriate level of Disclosure shall be determined by reference to the Disclosure (Scotland) Act 2020, any regulations made under that Act and any guidance issued by Disclosure Scotland. For the avoidance of doubt the Service Provider shall comply with the Disclosure (Scotland) Act 2020 in respect of all staff who are providing support to the Supported Person and any of the Service Provider's staff who are providing an administrative function on behalf of the Supported Person. The Service Provider must also comply with the Disclosure (Scotland) Act 2020 should a staff member change their job role to a position which provides an administrative function on behalf of the Supported Person.

28.6 The Service Provider shall use the contents of the Disclosure to make recruitment decisions and unless the Disclosure contains no convictions, reprimands, warnings, cautions, other relevant information or other government information, the Service Provider shall conduct a risk assessment and use that risk assessment to protect the interests of the Supported Person(s) including, without prejudice to the forgoing generality, prohibiting the subject of the Disclosure from providing the services directly to the Supported Person.

28.7 To ensure compliance with Conditions 28.5 & 28.6 (Staffing), the Service Provider shall record the following information and shall disclose this information to the Council upon request;

- (a) the type of Disclosure (i.e. Level 1 or Level 2 Disclosure or PVG Scheme Disclosure);
- (b) the issue date of the Disclosure or the PVG Scheme Disclosure;
- (c) the unique reference number;
- (d) the name of the subject of the record check or update;
- (e) the position held or applied for; and
- (f) the recruitment decision taken based upon the risk assessment.

28.8 To ensure compliance with Condition 28.7 (Staffing), the Service Provider shall record the fact that a risk assessment has been undertaken and shall, upon request from the Council, disclose these records.

28.9 If Disclosure checks on a new or existing employee disclose any of the issues detailed in Condition 28.10.a (Staffing), the Service Provider shall provide a copy of the relevant risk assessment to the Council no later than 10 Working Days before the employee is due to be engaged on the Services, and shall not use that employee to deliver the Services without the Council's prior written consent.

28.10 The circumstance referred to in Condition 28.9 (Staffing) are if the Employee's Disclosure check reveals any of the following:

- (a) have any previous convictions under the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1074 (Exclusions and Exceptions) (Scotland) Order 2003;
- (b) have spent or unspent convictions involving fraud, theft, sexual assault, physical assault or any other offences rendering the employee unsuitable for the provision of the Services;
- (c) have a physical or mental condition which presents a hazard to the safety of the supported person, themselves, or other employees
- (d) appear on any register of sexual offenders, which may be in force at the time of entering into this Contract or during its currency.

28.11 If and when instructed by the Council, the Service Provider shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.

28.12 The Council shall be entitled, but not unreasonably or vexatiously, to make enquiries with the police or with any other appropriate agency about any of the Service Provider's staff or carers engaged or proposed to be engaged in the provision of the Services.

28.13 The Council shall be entitled, but not unreasonably or vexatiously, to require the Service Provider by notice in writing to withdraw from the provision of Services to the Council any member of staff who fails to comply with any of the Disclosure criteria at Condition 28.10 (Staffing). The Service Provider shall forthwith withdraw such staff from the provision of Services to the Council and shall immediately provide a replacement if necessary.

28.14 The Council shall in no circumstances be liable either to the Service Provider or any of its carers or employees under Condition 28.13 (Staffing) above and the Service Provider shall save, defend, indemnify and hold harmless the Council against any such claims.

- 28.15 The Council may, at its sole discretion, require a statement from each individual assigned to the provision of the Services under the Contract, certifying that none of the circumstances narrated in Condition 28.10 (Staffing) are applicable.
- 28.16 The Service Provider shall be duty bound, in the interest of the Supported Person(s) safety and security, to withdraw from the performance of the Contract any individual who:
- (a) Is not medically fit to perform the work required under this Contract or provides a risk to the health of those with whom that person may come into contact during work on this Contract;
 - (b) Is by the nature of his/her response to the requirements of Condition 28.10 (Staffing) hereof deemed to be an inappropriate person to be engaged in the provision of the Services; and;
 - (c) Has provided false or misleading information in Condition 28.10 (Staffing) hereof, or whose circumstances have changed such that he/she would now, in terms of Condition 28.10 (Staffing), hereof be deemed to be an inappropriate person to be engaged in the provision of the Services.
- 28.17 Any individual removed as a consequence of this Condition will be replaced promptly with a properly qualified replacement in such time as is acceptable to the Council and at no extra cost to the Council.
- 28.18 Notwithstanding Condition 15 (Preventing & Reporting Harm – Adults) & Condition 16 (Preventing & Reporting Harm – Children & Younger People) of this Contract, the Service Provider shall ensure that all staff are made aware of the relevant individual to contact in the Service Provider's employment for whom instances of alleged, suspected or actual abuse of a Supported Person may be escalated. The Service Provider shall warrant that any such incidences will be reported to the Council within the required timescale as narrated in Conditions 15 & 16.
- 28.19 The Service Provider shall ensure that staff are aware of the Council's policy on monitoring as narrated in Condition 22 (Monitoring Procedures).
- 28.20 The Service Provider shall ensure that all staff are aware of their responsibilities and obligations as outlined in Condition 26 (Confidentiality).
- 28.21 The Service Provider shall ensure that all staff must at all times comply with all or any relevant legislation which is relevant to the Services provided as narrated in Condition 23 (Regulations).
- 28.22 The Service Provider must ensure compliance to the Health and Care (Staffing) (Scotland) Act 2019. The Service Provider shall provide any data and information requested in relation to governance and reporting arrangements that are in place to provide assurance to the Council of adherence to this Act.
- 28.23 The Service Provider shall ensure that all staff are aware of the relevant individual to contact in the Service Provider's employment for whom accidents,

emergencies or any other serious incident including death of a Supported Person may be escalated. The aforementioned must also be reported within the required timescales as narrated in Condition 37 (Notification of Emergencies).

28.24 Except as otherwise noted in the Contract, the Service Provider shall be entirely responsible for the employment and conditions of service of its own staff.

28.25 The Service Provider shall bear the cost of any notice, instruction or decision of the Council under this condition.

29 TUPE

29.1 The Service Provider recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Service Provider on the commencement of the Contract; (b) transfer to another Service Provider on the expiry of the Contract.

29.2 During the period of six months preceding the expiry of the Contract or after the Council has given notice to terminate the Contract or the Service Provider stops trading, and within 20 working days of being so requested by the Council, the Service Provider shall fully and accurately disclose to the Council or to any person nominated by the Council information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:

- (a) the total number of personnel whose employment with the Service Provider is liable to be terminated at the expiry of the Contract but for any operation of law; and
- (b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
- (c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
- (d) details of pensions entitlements, if any.

29.3 The Service Provider shall permit the Council to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential Service Providers as the Council considers appropriate in connection with any re-tendering. The Service Provider shall co-operate with the re-tendering of the Contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

29.4 The Service Provider agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses,

awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this condition.

29.5 In the event that the information provided by the Service Provider in accordance with this condition becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Service Provider becoming aware that the information originally given was inaccurate, the Service Provider shall notify the Council of the inaccuracies and provide the amended information. The Service Provider shall be liable for any increase in costs the Council may incur as a result of the inaccurate or late production of data.

29.6 The provisions of this Condition 29 (TUPE) shall apply during the Contract Period and after its termination howsoever arising.

30 HEALTH AND SAFETY

30.1 In the delivery of the Services the Service Provider will comply with the requirements and standards of the Health and Safety at Work etc Act 1974 and its associated statutory provisions in particular the Management of Health and Safety at Work Regulations 1999 and the Manual Handling Operations Regulations 1992 as well as other appropriate legislation.

30.2 When requested by the Council, the Service Provider will submit documentary evidence of compliance with current health and safety and fire legislation to enable the Council to audit the Service Provider's compliance with the relevant legislation. This may include policy and procedure documents, certificates, risk assessments, inspection and maintenance records, accident reports or training records necessary under legislation. Any subsequent significant changes to these policies, arrangements or procedures should be notified to the Council.

30.3 The Service Provider will notify the Council immediately of any significant occurrence which has affected or may impact on the health and safety of the Supported Person(s) and such an occurrence must be reported to the Health and Safety Executive, Environmental Health Officer or Fire Officer.

30.4 The Service Providers is responsible for ensuring that arrangements exist for the reporting of adverse incidents, the retaining of material evidence, the handling of contaminated items, the dissemination of safety advice and the control of risks relating to health and social care equipment (medical devices) in line with the information and guidance all as contained in Scottish Government Health Finance Directorate Letter CEL 43 (2009)¹ and any information and guidance updating, amending or replacing CEL 43 (2009), provided that such updated, amended or replacement guidance is published and publicly available on line, publicly

displayed, or the content of it has been notified to the Service Provider by The Council.

30.5 In particular, but without prejudice to the generality of the provisions of Condition 30.4 (Health and Safety) hereof, the Service Provider shall:

- (a) Procure that its managers, staff, sub-contractors and agents are aware of the procedures for reporting adverse incidents, retaining material evidence, handling contaminated items and for implementing safety advice and the Service Provider shall procure that such procedures are implemented;
- (b) Monitor relevant websites for information on equipment safety and management issues e.g. MHRA2, 3;
- (c) Monitor safety alerts and bulletins, and cascade within its own organisation;
- (d) Monitor internal cascade systems to ensure alerts are received, assessed and acted upon;
- (e) Discuss equipment safety issues with the Council;
- (f) Promote equipment safety by staff education and training.

30.6 The Council reserves the right to carry out periodic monitoring of health and safety issues and to investigate any incident reported under this Condition or brought to its attention by any other means to ensure continuing satisfactory standards of health and safety during the provision of the Services. The Service Provider will make available to the Council any documentary or other evidence that may be necessary for monitoring or investigating health and safety standards.

30.7 The Service Provider will give careful consideration to the purpose of any excursion or journey away from the Supported Person's home. Well planned and controlled excursions will include arrangements to ensure the safety and supervision of any Supported Person and the interests and security of others. Appropriate risk assessments should be undertaken prior to any excursion taking place and, if appropriate, other relevant parties should be informed in advance. While excursions away from the Supported Person's home with the Supported Person should form a part of a well-balanced Personal Plan, the Service Provider shall ensure that the excursion does not expose the Supported Person to any situation where there is an element of unnecessary risk to the Supported Person, members of the public or members of staff. Activities away from the Supported Person's home must always be of a nature that is sympathetic to the needs of the Supported Person.

30.8 The Service Provider shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory

authority in connection with the performance of Services of the type supplied to the Council, whether specifically or generally. The Service Provider shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.

30.9 The Service Provider shall comply with Fife Council's "General Health and Safety Rules for Contractors" as detailed within Fife Council document OHS-C-41. Fife Council Health & Safety Rules for Contractors "Contractor Rules Set" OHS-C-41.G1

30.10 The Service Provider shall ensure that his health and policy statement and any other risk assessment, method statement or other written safe system of work necessary for the safe discharge of his contractual and legal obligations, is made available without delay to the Council on request.

31 ASSIGNATION, SUB-CONTRACTING AND CHANGE OF CONTROL

The Service Provider shall not assign or sub-contract any part of this Contract.

32 HUMAN RIGHTS

32.1 The Service Provider shall in its implementation of the Contract comply with the requirements of the Human Rights Act 1998 ("the 1998 Act") and all secondary legislation made under the 1998 Act as though the Service Provider were a Public Authority for the purposes of the Human Rights Act 1998.

32.2 The Service Provider must ensure compliance with The United Nations Convention on the Rights of the Child (UNCRC) (Incorporation Scotland) Act 2024, to support the delivery of a proactive culture of everyday accountability for children's rights across public services in Scotland. The Service Provider should be prepared to evidence compliance with their duties under the Act, if required or requested to do so.

33 NON-DISCRIMINATION, EQUAL OPPORTUNITIES AND EQUALITY AND DIVERSITY

33.1 The Service Provider hereby confirms that to the best of its knowledge and belief they have complied with the following Acts and Statutory Instruments and hereby agree to continue to comply with them as though the Service Provider were a public body listed in Schedule 19 of the Equality Act 2010:

- (a) The Equality Act 2010
- (b) The Gender Recognition Act 2004

33.2 The Service Provider shall comply with the terms of the Equality Act 2010 as though it were a public body listed in Schedule 19 of the Equality Act 2010.

33.3 The Service Provider shall observe as far as possible the Equality Act 2010 Code of Practice – Employment Statutory Code of Practice produced by the Equality and Human Rights Commission which can be found at:
<https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>

33.4 The Service Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation or proceedings brought against the Service Provider under the Equality Act 2010.

33.5 The Service Provider shall provide a copy of its Equal Opportunities Policy and/or Equality and Diversity policies. The Service Provider warrants that these policies comply with all statutory obligations. Further, the Service Provider warrants that it shall not treat one group of people, less favourably than others because of their colour, race, nationality or ethnic origin, gender, physical abilities, age, religious beliefs or sexual orientation.

33.6 The Service Provider shall observe as far as possible the Equality and Human Rights Commission Code of Practice on Employment, Code of Practice on Equal Pay, and Code of Practice on Services, Public Functions and Associations, as approved by Parliament on 6th April 2011. These Codes gives practical guidance to employers and others in the elimination of discrimination, both within the workplace and in the provision of services, and the promotion of equality.

33.7 If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Service Provider, then the Service Provider shall take all necessary steps to prevent recurrence of such discrimination. Repeated breaches of this Condition may be regarded by the Council as a material breach of the contract.

33.8 In the event that the Service Provider enters into any sub-contracts in connection with this agreement it shall impose obligations on its sub-contractor in proportionate and relevant terms substantially similar to those imposed on it pursuant to this Condition.

34 BEST VALUE AND QUALITY ASSURANCE

34.1 The Service Provider and the Council agree to work together in partnership in order to promote Best Value for the Council and the Supported Persons by using reasonable endeavours to secure a continuous improvement in the Service throughout the period this Contract is in force, through a combination of good practice, economy, efficiency and effectiveness.

34.2 Without prejudice to the general application of Condition 34.1 (Best Value and Quality Assurance) above, the Council and the Service Provider shall formally meet, when so required by the Council, in order to;

- (a) assess the Service Providers performance in respect of the Service and this Contract;
- (b) agree ways to promote the smooth and efficient running of the Service and this Contract;
- (c) agree the measures to be adopted by each of the Parties in order to secure a continuous improvement in the Service.

34.3 In addition to the meeting referred to in Condition 34.2 (Best Value and Quality Assurance) above, the Service Provider shall attend additional ad hoc meetings as shall be required by the Council from time to time, to deal with new developments, in relation to the Service.

34.4 The Service Provider shall be responsible (at its own expense) for preparing and circulating a detailed report for any Best Value meeting which is convened pursuant to Condition 34.2 (Best Value and Quality Assurance), in order to;

- (a) summarise the matters which were adopted by the Service Provider since the preceding Best Value meeting in order to improve the Service;
- (b) assess the success of the measures referred to in Condition 34.5(a) (Best Value and Assurance), above;
- (c) set out the Service Provider's proposals to the Council for the continuous improvement of the Service, to be achieved within a time to be stipulated by the Council, acting reasonably;
- (d) address any particular issues about the Service which have been notified to the Service Provider by the Council.

35 INDEMNITY AND INSURANCE

35.1 The Service Provider shall indemnify and keep indemnified the Council against all claims for personal injuries (including death) and all loss or damage of any kind whatsoever which may be attributed directly or indirectly to the Services supplied under the Contract or which arise from or are incurred by reason of the negligence of the Service Provider or its employees or any infringement or alleged infringement of letters, patent, design, copyright or other intellectual property right in any of the Services provided under the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in relation thereto.

35.2 The Service Provider's insurance cover for all such claims, and that of any sub-contractor, shall be to a minimum amount of:

- Employer's Liability - £10 million
- Public Liability - £5 million
- Professional Indemnity/ Negligence (where appropriate) - £1 million

or such other sum as may be specified in the tender documentation, or such greater sums as the Service Provider may choose, for any one occurrence or series of occurrences arising out of one event.

35.3 The Service Provider shall, prior to commencement of the Contract produce to the Council evidence of relevant policy or policies of insurance and the receipts in respect of premiums paid. The Service Provider shall in addition produce such evidence as the Council may reasonably require that the insurance cover is in force throughout the duration of the Contract, within 7 days of any such request. The Service Provider shall authorise the Council to contact the Service Provider's insurance broker directly, and make such enquires as may be required, prior to the commencement of this Contract, following any renewal of insurance, and as otherwise reasonable requested by the Council.

35.4 If the Service Provider utilises motor vehicles for the purpose of this Contract, then he/she must maintain appropriate vehicle and passenger insurance and shall supply to the Council on request, copies of all or any of the relative policies with confirmation that all due premium payments have been paid.

35.5 Where the Service Provider fails to provide or procure any copies of the documentation required in accordance with Condition 35.4 (Indemnity & Insurance) above, then the Service Provider shall ensure that the staff member is made aware that he/she may not, under any circumstances whatsoever, transport any Supported Person until the requisite documentation is in place and copies of same are furnished to the Service Provider.

35.6 For the avoidance of doubt, nothing in the Contract shall render the Service Provider liable for any matter which occurs as a direct result of a negligent act on the part of the Council, its agents or employees.

36 COMPLAINTS

36.1 The Service Provider shall ensure that the Supported Persons are consulted and encouraged to comment and/or complain about the services received.

36.2 Full written records must be kept by the Service Provider of all complaints received in connection with the Service, whether orally or in writing from any source, for the Council's regular perusal to facilitate the Council's monitoring processes. Such written records shall detail the action taken by the Service Provider in respect of each such complaint.

36.3 Every complaint received by the Service Provider shall be recorded on the Service Provider's Complaints Register which must be made available to the Council on request.

- 36.4 The Service Provider will ensure they have an up to date Complaints policy and procedure and will ensure that each complaint registered is investigated in line with said procedure.
- 36.5 The Service Provider shall ensure that where a Supported Person and/or their Representative wishes to make an informal or formal complaint in relation to the Service provided by either the Council or the Service Provider, but does not want to do this directly, then they may intimate this to their Social Worker, the relevant social work team or any other relevant person.
- 36.6 The Service Provider shall ensure that the Supported Person and/or their Representative is informed of their right to complain directly to the Council if they are not happy with any aspect of the Service provided. The HSCP or other relevant person will make the Council's complaint's leaflets available on request.
- 36.7 Any complaints received by the Service Provider that may have a bearing on Adult Protection or Child Protection should be reported and managed in accordance with Condition 15 (Preventing and Reporting Harm – Adults) and Condition 16 (Preventing & Reporting Harm – Children & Younger People).
- 36.8 In the event of uncertainty as to whether a complaint may fall under the scope of Adult or Child Protection procedures, the allocated Social Worker or the Social Work Contact Centre should be consulted.
- 36.9 In the event of uncertainty as to whether a complaint may fall under the scope of Child Protection procedures, the Fife Child Protection Inter-Agency Guidance should be consulted.
- 36.10 Any complaint received that relates to a Significant Occurrence should be reported in accordance with Condition 37 (Notification of Emergencies).
- 36.11 In a situation that relates to both a Significant Occurrence and an Adult or Child Protection issue, both Conditions should be followed. Where there is uncertainty or discrepancy between these procedures, the Adult or Child Protection procedures must take precedence.
- 36.12 Following notification of any complaint (including any complaints received directly from, or on behalf of, a Supported Person), the Council may carry out any additional inquiry or investigation it deems necessary. Where appropriate, the Council shall consult with the Service Provider prior to determining the scope of any inquiry or investigation.
- 36.13 The Service Provider will provide any support or co-operation requested by the Council in order to facilitate any inquiry or investigation. This includes, but is not restricted to, making available documentary and other evidence, and enabling Council officers to interview staff members.

37 NOTIFICATION OF EMERGENCIES

37.1 The Service Provider shall notify the Council of any accident, emergency, significant occurrence or other incident relating to the Supported Person (as defined within this Condition 37 (Notification of Emergencies) where such an incident occurs during the provision of the Services. The Service Provider shall submit written confirmation of the incident as soon as reasonably practicable. Without prejudice to the generality of the Service Provider's obligations under this Condition the Service Provider shall comply with the following;

- (a) In the event of hospitalisation of the Supported Person, the Service Provider shall inform the Council (unless otherwise advised) and any other person authorised to be advised in the Supported Person's Personal Plan of this and the expected duration of the hospitalisation as soon as reasonably practicable but in any event, no later than the Working Day following the Service Provider becoming aware of such hospitalisation.
- (b) In the event of an accident, emergency, significant occurrence or other incident occurring to a Supported Person with a Mental Disorder whilst Services are being provided, the Service Provider shall inform the Council and shall also immediately and without delay inform the Mental Welfare Commission by telephone of such circumstances confirming the details of same to the Mental Welfare Commission in writing (by fax or email) within three (3) Working Days. The Service Provider shall supply the Council and the Mental Welfare Commission such information in respect of such accidents, emergencies and other serious incidents as is reasonably requested by the Council and the Mental Welfare Commission.
- (c) If a situation of danger to any persons pertaining to the provision of this Service should arise as a result of the actions of a Supported Person, the Service Provider shall inform the Council of the situation in order that the Council can advise and assist the Supported Person as is consistent with its statutory duties and responsibilities. This shall include, if the Council considers it appropriate after reviewing the Supported Person's needs, the provision of alternative support arrangements for the Supported Person.

37.2 For the avoidance of doubt, the Service Provider shall immediately inform the Council of any of the following occurrences which would constitute an emergency:

- (a) Any significant incident, including allegations or evidence of abuse relating to a Supported Person or the Care of the Supported Person;
- (b) Maladministration of a Supported Person's funds or property, or serious loss or damage to a Supported Person's property;
- (c) Significant changes in a Supported Person's needs or circumstances;
- (d) Formal complaints in respect of any aspect of a Supported Person's Care;
- (e) Unplanned absence of a Supported Person from the Premises;
- (f) A Supported Person's admission to or return from hospital as an in- patient;
- (g) Death of a Supported Person.

38 FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

All information submitted to the Council may need to be disclosed and/or published by the Council. The Council may consult with the Service Provider prior to releasing information. However, the ultimate decision whether to release the information or not rests with the Council. Without prejudice to the foregoing generality, the Council may disclose information in compliance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, (the decisions of the Council in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner).

39 ALTERATION OF CONTRACT CONDITIONS

The Conditions shall be binding on the Service Provider in full, and no modification, alteration or amendment thereof shall be binding on the Council or be effective against the Council, unless such modification, alteration or amendment has been expressly agreed to and accepted by the Council in writing as being a condition of the Contract.

40 NOTICES

Notices served on the Service Provider must be sent by recorded delivery or registered post to the Service Provider's registered office or principal office. Notices served on the Council must be sent by recorded delivery or registered post to the Category Manager, Procurement Service, Fife Council, Fife House, North Street, Glenrothes, KY7 5LT. Notices served on the Council should also be cc'd to Council's Head of Legal Services, Fife Council, 2nd Floor, Fife House, Glenrothes KY7 5LT. Receipt of such Notice shall be deemed to have occurred 2 days following the date of posting.

41 ARBITRATION

41.1 If any dispute or difference concerning the Contract shall arise between the Council and the Service Provider, then negotiations to resolve such dispute or difference shall be entered into between the Council and the Service Provider.

41.2 If the parties fail to reach Contract within 14 days of such negotiations commencing, then either party may refer the dispute or difference to arbitration.

41.3 All arbitrations shall be undertaken in accordance with the Scottish Arbitration Code 2010 or any amendment thereto or replacement therefor ("the Code"), subject always to the provisions of Condition 41.5 (Arbitration).

41.4 All arbitrations shall take place in Scotland and shall in all respects be governed by the Law of Scotland.

41.5 Notwithstanding the provisions of the Code, recourse to the Court of Session under Section 3 of the Administration of Justice (Scotland) Act 1972 shall be permitted.

41.6 If any matters arising out of or under this Contract are referred to arbitration, in accordance with Condition 41 (Arbitration) the parties shall continue to perform their obligations under the Contract throughout the period of arbitration.

42 BREACH OF CONTRACT

If at any time, and from any cause, the Service Provider shall fail to supply the Council with any Services within the time mentioned in the Contract and in accordance with the Conditions thereof, or if he shall fail to remedy such a failure within 7 days after receiving notice of such failure, or if in any other respect the Service Provider breaches, or fails to observe or perform any of his obligations under the Contract, the Council may, if they think fit, after giving the Service Provider 7 days notice in writing to terminate the Contract, enter into another contract for the supply of such Services with some other firm or person or company, and all losses, expenses, costs and charges incurred by the Council in this connection shall be a debt due by the Service Provider to the Council and may be deducted from any monies in the hands of the Council due to the Service Provider or may be recovered by legal action.

43 INSOLVENCY

If the Service Provider (being an individual or firm) becomes apparently insolvent within the meaning of section 7 of the Bankruptcy (Scotland) Act 1985 or is sequestrated or (being a company) enters into liquidation proceedings whether voluntary or compulsory (save for the purpose of amalgamation or reconstruction of the company not involving a realisation of assets) or has a receiver, administrative receiver or administrator appointed to it or (in either case) enters into an arrangement or composition for the benefit of the Service Providers creditors or suffers any diligence to be done or execution to be levied on the Service Providers goods, then in any of these events the Council shall be entitled to immediately terminate the Contract by giving 7 days notice in writing to that effect to the Service Provider and that without prejudice to any accrued rights or remedies available to the Council under the Contract.

44 TERMINATION

44.1 Either Party may terminate this Contract by giving the other at least six (6) months' notice (or lesser period by written arrangement between the Parties).

44.2 During the period of notice the Service Provider will and shall procure that it will co-operate fully with the Council to ensure that the interests of the Supported Person are met under whatever new arrangements may be proposed. On expiry of the notice period the Council shall arrange for the Supported Person to leave the Service Provider's property and the Supported Person's personal belongings shall be removed at that time.

44.3 The Council may terminate this Contract without notice if the Council is of the opinion that the Service Provider is in material breach of the Terms and Conditions of this Contract in that it has materially failed to provide the Services in accordance with the Terms and Conditions of this Contract or where the Council has served notice of a non-material breach of the Terms and Conditions of this Contract on the Service Provider and the Service Provider has failed to remedy said non-material breach within the timescale set out in the notice.

44.4 The Service Provider shall notify the Council in writing immediately upon the occurrence of any of the following;

- (a) where the Service Provider is an individual, if the Service Provider becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) Act 1985;
- (b) where the Service Provider is a firm or a number of persons acting together in any capacity, if any event above occurs in respect of the firm or any partner in the firm or any of those persons, or a petition is presented for the Service Provider to be wound up as an unregistered company;
- (c) where the Service Provider is a company, if the company passes a resolution for winding up, or the Court makes an Administration Order or a Winding Up Order, or an Administrator or Receiver is appointed by or on behalf of a creditor, or possession is taken of any of its property under the terms of a Floating Charge.

44.5 If the performance, price, delivery or quality of the Service provided by the Service Provider is deemed by the Council to be uncompetitive or unacceptable steps shall be taken to achieve a mutual agreement as to a course of action to be undertaken by the Service Provider to affect the required improvements. If agreement is not reached, or if the Service Provider fails to undertake the agreed course of action to affect the required improvements within the timescale agreed, the Council may then terminate the Contract by serving 28 days prior written notice of termination on the Service Provider.

44.6 The Council may terminate the Contract in the following circumstances:

- (a) The Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) (modification of contracts during their term); or
- (b) The Service Provider has, at the time of the contract award, been in one of the situations referred to in Regulation 58(1) (exclusion grounds), including as a result of the application of Regulation 58(2), and should, therefore have been excluded from the procurement procedure; or

44.7 If the ground of termination is either that described in Conditions 44.4.a or 44.4.c (Termination), the Council may terminate the contract.

44.8 If the ground of termination is that in Condition 44.4.b (Termination), the Council may terminate the contract forthwith by serving a written Notice to that effect on the Service Provider in accordance with these Conditions of Contract and the Service Provider shall be liable to repay to the Council all sums paid to it in terms of the Contract. This condition shall survive the said termination of the contract.

45 INDUCEMENTS/COLLUSION

The Council shall be entitled to terminate the Contract and to recover from the Service Provider the amount of any loss resulting from such termination, if the Service Provider shall have offered or given, or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act or practised collusion in relation to the obtaining or execution of the Contract or any other contract with the Council. This shall include, but not be restricted to, the conviction of the Service Provider of any offence under The Bribery Act 2010.

46 FORCE MAJEURE

46.1 Neither party shall be liable to the other for any failure or delay in the performance of its obligations hereunder if such failure or delay occurs as a result of circumstances beyond a party's reasonable control including but not limited to industrial action (with the exception of industrial action by a party's own work force), fire, flood, pandemic, riot, war, Act of God, lightning, aircraft impact, explosion, civil commotion, malicious damage, storm, tempest, earthquake, legal enactment or governmental or other regulation.

46.2 Both Parties agree to use their best efforts to ensure that during any period when Force Majeure circumstances exist, the care needs and service requirements of the Supported Person are accommodated to the fullest extent practicable.

46.3 Where as a result of the occurrence of any event beyond the reasonable control of a party as described in Condition 46.1 (Force Majeure) of the Contract has not been performed for a period exceeding one month or it appears impossible or unlikely that the whole or a substantial part of the Contract shall be capable of performance for a period exceeding one month, then the non-defaulting party may elect to terminate the Contract without liability upon giving 14 days written notice to that effect to the other party.

47 CONFLICT OF INTEREST

In order to prevent conflicts of interest arising and in accordance with the Local Government and Housing Act 1989, officers and Councillors of the Council must not participate in the award of any Contract to an organisation in which they have an interest. The Service Provider will therefore inform the Council if any elected member or employee of the Council has a financial interest in the Service Provider, is a member

or trustee of the Service Provider or any governing body or committee, or is a member, volunteer, adviser or otherwise has an interest in or involvement with the Service Provider.

48 CONFLICTING CONDITIONS

In the event of any conflict between these Conditions and the Statement of Requirements the Statement of Requirements shall prevail.

49 PUBLICITY

The Service Provider is prohibited from advertising or publicly announcing that they are supplying or has supplied any services to the Council without the prior written consent of the Council and, in the event of the Council giving such consent, the form of the advertisement or announcement shall also require the prior written consent of the Council.

50 WAIVER

Failure by either party at any time to insist upon strict performance of any term, condition or provision of the Contract, or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract. A waiver of any default shall not constitute a waiver of any subsequent default. No waiver of any of the terms, Conditions or provisions of the Contract shall be effective unless it is agreed in writing.

51 SEVERANCE

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed, and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid provision removed. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

52 PATENTS, INFORMATION AND COPYRIGHT

52.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Council, that nothing done by the Service Provider in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Service Provider shall indemnify the Council against all actions, claims, demands, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition.

52.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

- (a) furnished to or made available to the Service Provider by the Council shall remain vested in the Council absolutely;
- (b) prepared by or for the Service Provider for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in the Council absolutely, and (without prejudice to Condition 26 (Confidentiality)) the Service Provider shall not and shall procure that the Service Provider's servants and agents shall not (except to the extent necessary for the implementation of the Contract) without the prior written consent of the Council use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to the Contract) which the Service Provider may obtain pursuant to or by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Service Provider shall not refer to the Council or the Contract in any advertisement without the Council's prior written consent.

52.3 The provisions of this Condition 52 (Patents, Information & Copyright) shall apply during the Contract Period and after its termination howsoever arising.

53 ENVIRONMENTAL REQUIREMENTS

53.1 The Service Provider shall not supply or use in the supply of Services any product which may endanger the health of any person, shall cause significant damage to the environment during manufacture, disposal or use, which consumes a disproportionate amount of energy during manufacture, use or disposal, which cause unnecessary waste, or which contain materials derived from threatened species or environments.

53.2 Sustainability is a key policy area for Fife Council and it is important therefore that Suppliers with whom the Council engages for the supply of goods, materials and services are equally committed to the environment.

53.3 When working on the Premises, the Service Provider agrees to discharge his contractual obligations in accordance with law and in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

53.4 The Service Provider shall ensure that his environmental policy statement is made available to the Council on request.

54 STEP IN

54.1 If a Step-in Event occurs, the Council may take such action as it deems necessary to carry on the Services and safeguard the Supported Persons, including (but not restricted to):

- (a) Stepping in to manage all or certain part(s) the Services;
- (b) Gaining access to and use of the Service Provider's Premises, equipment, records and any other infrastructure necessary to operate the Services;
- (c) Directing the Staff;
- (d) Providing human resources (either directly or indirectly or through a third party) as a substitute to or in addition to the Staff;
- (e) Directing sub-contractors;
- (f) Any other action which the Council deems necessary;

54.2 Any action taken under this Condition will not prejudice any other remedy available to the Council under the Contract.

54.3 Commencement of action under this Condition will begin by the Council issuing a step-in notice to the Service Provider where this is possible and to the person managing the Services at the time, stating:

- (a) The reasons for the action;
- (b) The date the action will begin; and
- (c) The name and contact details of the officer of the Council authorising the step-in and their authority to do so.

54.4 The Council will notify the Care Inspectorate and any other appropriate statutory bodies about action under this Condition and will work closely with them throughout the duration of the step-in action.

54.5 The extent of actions taken under this Condition may be varied by the Council issuing a step-in variation notice to the Service Provider.

54.6 Where action is taken under this Condition the Service Provider will provide the Council, at no additional cost, with all necessary access to and permissions for use of property, and/or the Premises together with such equipment and facilities required for the provision of the Services.

54.7 When any immediate action has been taken to safeguard Supported Persons, the Council and Service Provider will meet to discuss the future provision of the Services.

54.8 Step-in action will continue until the Service Provider has satisfied the Council that the circumstances leading to the Step-in Event are no longer present and it

can safely resume provision of the Services without serious risk to Supported Persons or until Supported Persons have been removed to safety.

54.9 Action under this Condition may be ended by the Council issuing a cessation of step-in notice to the Service Provider, which notice shall include:

- (a) The agreed requirements to be met if the Service Provider is to resume full provision of the Services,
- (b) The date that action under this Condition will cease, and
- (c) Any relevant information that the Service Provider will need relating to the period where action was taken under this Condition.

54.10 The Council may recover any costs incurred in acting under this Condition from the Service Provider. Recoverable costs may be deducted from the sums owed to the Service Provider or shall otherwise be recoverable from the Service Provider as a debt to the Council.

55 BLACKLISTING

The Service Provider must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of the Data Protection Act 2018 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract.

56 DATA MATCHING – TRADE CREDITORS

Fife Council has a duty to protect the funds it administers and for this purpose may use the information provided by the Service Provider to the Council during the tender process, or during any resulting contract, to assist in the prevention and detection of fraud. Data matching involves comparing computer records held by Fife Council against other computer records held by the Council or other body. This is usually personal information. Fife Council may share the information provided in successful tenders, or during any resulting contract, with other bodies for the prevention and detection of fraud. All collection, use and storage of personal information will be in accordance with the Data Protection Act 2018.

57 CHANGE IN LAW

57.1 If either Party considers that there has been a Change in Law which:

- (a) renders it impossible or unlawful to give effect to this Agreement;
- (b) causes the provisions of this Agreement to become inconsistent with any Law;
- (c) materially and adversely affects the commercial benefit of this Agreement to either or both of the Parties,

then that Party may serve a notice on the other Party requesting that the Parties shall meet to discuss such circumstances and shall, in good faith, seek to agree the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the date the contract to follow hereon is concluded.

57.2 If the Parties are unable to agree pursuant to Condition 53.1 (Environmental Requirements), then either Party may refer the issue for determination by an Expert to determine the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the date the contract to follow hereon is concluded.

57.3 Without prejudice to the other provisions of this Condition, the Parties agree that:

- (a) neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law (and such circumstance shall constitute a Force Majeure Event);
- (b) subject to Condition 57.3.a (Change in Law), the occurrence of a Change in Law will not constitute a Force Majeure Event, or otherwise entitle either Party to suspend or terminate its obligations under this Agreement;
- (c) each of them shall use its reasonable endeavours to minimise and mitigate the consequences of Changes in Law on the performance of its obligations under this Agreement.

58 APPLICABLE LAW

The Contract shall be governed by the law of Scotland and the Service Provider, and the Council submit to the exclusive jurisdiction of the Scottish Courts.