

Service Contract Agreement for the provision of Day Services

Made between Wirral Borough Council (the Council) and Wirral Evolutions Limited (the Company)

1. Introduction

- 1.1 This agreement is effective from **1st December 2015** and sets out the conditions for Day Services to be provided to the customer either in a building based setting or in the community.
- 1.2 It is intended to help foster a culture of partnership between the Council, the Company and customers who need and are eligible for support and their Carers.
- 1.3 The Company must demonstrate an alignment with the Council's 2020 Vision and meet all the conditions set out in this specification.
- 1.4 This specification intends to encourage a business relationship with the Company built on trust and shared values in respect of achieving positive outcomes for customers who may be vulnerable and who need support in Wirral.
- 1.5 This agreement will be the governing contract between the Council and the Company and therefore will be referred to as the Contract throughout the document.

2. Glossary of Terms

Authorised Officer	The person responsible for letting, managing and supervising the Contract on behalf of the Council and who shall until further notice be the Director of Adult Social Services who may act through designated representatives
Block basis	An arrangement whereby the company is engaged to deliver day services under the terms of this Agreement to a group of Customers for an agreed price.
Carer	A person, paid or unpaid, who supports someone who uses this service
Customer	A person who uses this service
Customer Service Specification	The details of the service to be delivered by the Company to a Customer as set out in their Personal Support Plan and correspondence between the Council and the Company.
Direct Payment	A method of discharging a Personal Budget to a Customer who has chosen to arrange their own personal support by transferring cash resources from the Council to a separate bank account managed by the Customer to be used to fund the services detailed in the personal support plan that meets the outcomes specified within it
Personal Budget	An allocation of funding made available by the Council based on an assessment of a Customer's support needs
Personal Support Plan	A written agreement between the Council and the person using the service which sets out the support that is required to deliver the outcomes agreed in a Support Plan. It forms part of this Agreement insofar as it sets out the specific tasks and support that is required to be provided to a customer by the Company.
Self-Directed Assessment	A statutory assessment of a Customer's needs undertaken by themselves, with or without the assistance of a third party and approved by the Council.
Session	The provision of a service to a single customer for a period between 4-8 hours and a half session shall be such a period of up to 4 hours

Service Specification	Details of the service provided under this Agreement as set out in Appendix 2
Services	The services to be provided by the Company for Customers under this Contract
Wirral Wide	Circumstances where the service will be delivered throughout Wirral and not located in a specific area.
Worker	A person who on behalf of the Provider provides help and support under this Contract to a Customer (including employees, agency workers and agents and sub-contractors)

3. **The Service**

- 3.1 This Agreement is for the provision of the service which provides Day Services and Day Time Opportunities for Wirral residents.
- 3.2 The Company will be providing day services which includes building based and community based activities.
- 3.3 The service will be provided in accordance with the Service Specification (Appendix 2) appended to this agreement.

4. **Service Delivery**

- 4.1 The Company will deliver the outcomes for Customers as stipulated in their Support Plans.
- 4.2 The Company will be required to demonstrate that they have met the Council's Key Performance Indicators as set out by the Council for monitoring the contract. They will also need to demonstrated that they have contributed to the Wirral pledges as set out in the Councils 2020 Vision

5. **Contract and Performance Management**

- 5.1 The Company must comply with all the monitoring and evaluation arrangements set out in this Contract and Service Specification and will:-
- 5.1.1 Allow the Council to attend the services in order to monitor the Standards which will include carrying out spot checks.
- 5.1.2 Ensure that there is a documented system of Quality Assurance including provision for quarterly reviews to ensure the service offered to Customers meets this specification.
- 5.1.3 Operate a system whereby the views of the Customers about the service provided or to be developed are sought and taken account of.
- 5.1.4 Provide to the Quality Assurance Team of the Council reasonable access to employee rotas, incident books and other relevant records and documents relating to the service, except where this conflicts with any overriding duty of confidentiality or the information is commercially sensitive and disclosure is to be limited to those employees of the Council who have a need to know
- 5.1.5 Provide to the Council reasonable access to all data and other records relating to the cost of delivering the Services for the purpose of satisfying itself that the Services are being delivered efficiently and at a reasonable cost to the Council.
- 5.1.6 Inform the Council of any serious event that affects or might affect the well-being or safety of a customer.

- 5.1.7 Allow the Council to interview employees who deliver the service for or on behalf of the Company.
- 5.1.8 As part of the contract monitoring process, the Services will be monitored by the Council at a minimum of once per year. This will also include an annual report (containing information agreed with the Council) which will be provided to the Council.
- 5.2 If either party seek to make changes to the required service levels and standards set out in this agreement, the Council and the Company must be prepared to enter into negotiations to discuss the contract and service changes and come to a mutual agreement about any changes.
- 5.3 The Council may at its discretion share information with Customers or prospective service users and their families about the Company in so far as it relates to the provision of services covered by the agreement in order to assist them making an informed choice about which service they will attend.
- 5.4 The Company will have a named person who will be responsible for the day to day contract performance, who will liaise with the Council, and who will be of sufficient seniority to make executive decisions on behalf of the Company.

6. **Quality Assessment and Assurance Framework**

- 6.1 The Company must have a robust Quality Assurance System in place to cover:-
- 6.1.1 The outcomes for Customers using the service, clearly defining the standards and indicators that need to be achieved and monitored on a continuous basis to ensure the service is run in accordance with the best interests of the person using the services.
- 6.1.2 A documented system for monitoring, recording and acting on the views of Customers using the service regarding activities offered.
- 6.1.3 The standards required, the method of attaining these, and the audit procedure.
- 6.1.4 Customer feedback, which is analysed and measures the success of the service in meeting the outcomes for Customers using the service.
- 6.1.5 The Quality Assurance System report summary must be routinely available to Customers and the council on request
- 6.1.6 A defined process for consulting regularly with Customers and their carers or representatives about the service and mechanisms for taking account of feedback to improve service delivery and achievement of positive outcomes for them.
- 6.1.7 Various means and support arrangements for Customers to give feedback on the services they receive (e.g. questionnaire, interview, phone call, service review etc) and a range of different formats (language, pictorial, font size, etc).
- 6.1.8 When written feedback, both complimentary and constructive, is received the Company will provide a formal response to the person giving feedback noting its receipt and the action that will follow.
- 6.1.9 The Company will be required to complete monitoring information for the Council as agreed from time to time but not less than each and every quarter. The information that is to be provided will be determined by the Council(acting reasonably)

6.1.10 The Company must produce documented procedures(for the delivery of the Services in addition to any other requirement as mentioned in Policies and Procedures (Appendix 1)

6.1.11 As part of the Quality Assurance process, the Company will work with the Council to develop a Contingency Plan to ensure that processes are in place to cover provider failure.

7. **Cost of the service**

7.1 The funding that will be provided to the Company from the Council is as follows:

	Year 1	Year 2	Year 3
	£	£	£
Total Contract Value	4,635,800	4,626,300	4,536,300

7.2 The above funding is based on the provision of 164320 sessions annually

7.3 Additional sessions will be paid for at a cost per session to be agreed between the Council and the Company and determined on the basis of eligible assessed needs for that additional session.

8. **Financial Arrangements**

8.1 On the 10th day of each and every month the Company will receive payment from the Council for the services provided under this Contract being the proportion of the annual contract sum calculated by dividing the total number of days in the month by the number of days in the year.-

8.2 In respect of any additional services the Company will invoice the Council four weekly in arrears for services it has provided under the terms of this Agreement. Invoices must be in an electronic format acceptable to the Council.

8.3 The Council will pay invoices by BACS within 28 days of the invoice date except where an invoice is considered to be in error or not reconcilable with service additions whereupon the Council shall make appropriate enquiries and then reach a decision on payment within a reasonable period of time after it has obtained all reasonably available and relevant information.

9. **Unit cost for the service**

9.1 The Council and the Company will agree a unit cost for the services during the initial three years of this contract and from the commencement of the fourth year of the Contract or such later date as may be agreed the Council will pay for the service at the agreed unit cost for sessions that are delivered. In default of agreement , the Council may terminate the Contract on giving the Company not less than 12 months' notice in writing

10. **Number of Sessions**

10.1 Additional placements above the sessions agreed as part of the block contract, may be commissioned by the Council on a sessional basis, at the cost that is agreed by the Council and the Company

10.2 If Customers who are provided with a service under the block contract leave the service, their sessions will be allocated to an individual/s that the Council commission under this block contract on the basis of eligible assessed needs.

11. **Staffing**

- 11.1 The Company must ensure that they have the appropriate staffing levels to deliver the service and ensure the safety of the Customers.
- 11.2 The Council will not be responsible for the payment of redundancy of staff.

12. **Insurance and Indemnity**

- 12.1 The Company will indemnify and keep indemnified the Council against any liability as regards the death of or injury to any person or the loss of or damage to any property connected with the provision of the service or any act of the Company except and to the extent that it may arise out of a negligent act of the Council, its employees or agents not being the Company or employed by the Company. The Company must:-
 - 12.1.1 Comply with all relevant and any future legislation that might apply to the services defined in this Agreement.
 - 12.1.2 Maintain Public Liability Insurance in the minimum sum of £5million for any one claim or series of claims arising out of one event.
 - 12.1.3 Maintain Employers Liability Insurance in the minimum sum of £10 million for any one claim or series of claims arising out of one event.
 - 12.1.4 Maintain comprehensive insurance cover for any motor vehicle used in connection with any part of the service that complies with the Road Traffic Act 1972 and is adequate for the type of use being made in connection with the service.
 - 12.1.5 Procure and maintain the above mentioned insurance(s) with a reputable company or companies approved by the Council.
 - 12.1.6 make available to the Council upon request copies of the above mentioned insurance policies together with receipts for current premiums relating to their requirements.

13. **Termination**

- 13.1 Either party may terminate the Contract at any time by giving not less than 12 months' notice in writing expiring on the anniversary of the commencement of the Contract.
- 13.2 Without prejudice to the exercise of any other rights and remedies a party may possess, one party may terminate the contract with immediate effect or by giving notice if the other party:-
 - 13.2.1 Is persistently in breach of its obligations under the terms of the agreement, or
 - 13.2.2 Commits a material breach of any of its obligations under the contract or
 - 13.2.3 Where a breach is capable of being remedied, fails to remedy such breach within the period of time specified in a notice served in accordance with Clause16
- 13.3 The Company's persistent failure to provide all or part of the Service in accordance with this Contract during the period of the Contract will (without limitation) be regarded as a material breach of Contract, and the Council shall be entitled to recover reasonable costs resulting from any such failure that are directly attributable to obtaining services from an alternative Provider.

- 13.4 The following reasons shall entitle the Council to terminate the Contract with immediate effect if the Company, or worker acting on behalf of the Company (in relation to 13.4.3. 13.4.4, 13.4.5. 13.4.6,),
- 13.4.1 Becomes bankrupt, or becomes subject to any application or arrangement or process under the Insolvency Act 1986, including liquidation, administration or receivership
 - 13.4.2 Is convicted of a criminal offence having a direct bearing on the fitness to carry out the Company's obligations under the Contract,
 - 13.4.3 Takes advantage, financial or otherwise, of the relationship with the Customer, their Carer, or other member of their family,
 - 13.4.4 Offers, gives, or agrees to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing any action in relation to the execution of the Contract,
 - 13.4.5 Gives or offers any gift or consideration whatsoever as an inducement or reward to any employee or Member of the Council for doing or forbearing to do any action in relation to this or any other Contract with the Council,
 - 13.4.6 If there is evidence of any other corrupt practice on the part of the Company its agents or sub-contractors including any offence under the Bribery Act 2010.

13.5 Where notice of termination is served for any of the reasons described above in Clauses 13.2 to 13.4 and the termination takes effect, the server shall be entitled to recover from the other party the reasonable amount of any loss resulting from such termination and any loss directly attributable to any breach of this Contract which preceded the termination.

13.6 Termination of this Contract, for whatever reason, shall not affect the liability of either party for the payment of any sums arising under this Contract prior to the date of its termination.

13.7 In the event of there being served any notice to terminate the Contract in accordance with any provision of the Contract either party may dispute the proposed termination and such issue may be determined in accordance with a procedure for Resolution of Disputes and for Mediation to be agreed by the parties.

13.8 In the event that this Contract is terminated, the Provider must continue to supply the Service up to and including the date of termination or until such time as arrangements are made to transfer ongoing personal support arrangements to an alternative provider.. The Company shall render all reasonable assistance to and cooperation with, the Council in the implementation of the arrangements for the transfer of the personal support arrangements to any alternative provider or to the Council.

14. **Assignment and Sub-contracting**

14.1 The Company may not assign the benefit or advantage of this Contract or the specified services without the previous written consent of the Council. The Company may enter into subcontracts for the delivery of the Services with the prior written consent of the Council such consent not to be unreasonably withheld. Such consent if given:-

- 14.1.1 Will involve the vetting of any potential sub-contractor by the Council
- 14.1.2 Will not relieve the Provider of any liability or obligation under the contract
- 14.1.3 Will not relieve the Provider becoming liable for the acts, defaults or neglect of its sub-contractor or its agents or employees.

14.2 The Council may not assign the contract except where there may be statutory succession. Upon any such assignment all obligations and responsibilities imposed by this contract shall be released except for liabilities connected to any antecedent breaches, and except as provided for in relevant legislation.

15. **Variation**

15.1 Subject to Clause 15.2, variations to this Contract may not be made unless they are made by agreement in writing and by mutual consent.

15.2 Notwithstanding Clause 15.1, variations to the Personal Support Plan and the Customer Service Specification which reflects the changing needs of the Customer as determined by the Council's statutory assessment of need may be made by the Council and communicated to the Company. The Company shall deliver the service in accordance with such variations.

16. **Default**

16.1 Where either party fails to comply with any of the provisions of the Contract the party not in default may serve notice in writing stating the provision of the contract with which the party is considered to be non-compliant and requiring remedial action (if practicable) within a specified period of time.

16.2 When notice of default is issued to the Company it is required to:-

16.2.1 Submit an action plan within 5 working days) with reasonable time scales identifying what action will be taken to address the default in the provision of the contract. Failure to do so will be a material breach of contract.

16.2.2 The Company will be invited to attend a meeting with the Council following the receipt of the action plan for scrutiny and determination by the Council of reasonable time scales, for carrying out the remedial action it requires.

16.2.3 Not used

16.2.4 The Council may serve a further notice on the Company which determines the time scales within which the defaults identified by the Council. at the meeting referred to above or otherwise shall be remedied

16.3 If the Company fails to meet the required standards of Services pursuant to the Contract, then without prejudice to any other right or remedy the Council may have, and without terminating the Contract, the Council may:-

16.3.1 Itself provide or procure the provision of the relevant part of the Service from a third party not specified in this Contract until the breach has been remedied to the reasonable satisfaction of the Council and recover the reasonable costs thereof from the Company

16.3.2 Deduct from any sums due or otherwise charge to the Company the reasonable cost of any Service so provided together with relevant administration costs.

16.3.3 Stop or suspend all further referrals to the Company until satisfied that the default has been remedied.

16.4 Where the Council is in default under the terms of the Contract the Company will be entitled to recover reasonable costs from the Council that are directly attributable to the default referred to in the notice, but only if the Service Provider has served notice of Default on the Council specifying the breach and a reasonable period within which it is to be remedied and the Council has failed to comply with that notice

17. **CONFIDENTIALITY**

17.1 Subject to **clause 17.2**, the Parties shall keep confidential all matters relating to this Deed and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

17.2 **Clause 17.1** shall not apply to any disclosure of information:

17.2.1 required by any applicable law, provided that **clause 18.2** shall apply to any disclosures required under the FOIA;

17.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Deed;

17.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of **clause 17.1**;

17.2.4 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

17.2.5 by the Council or Wirral Evolutions to any other department, office or agency of the Government; and

17.2.6 by either Party with the other Party's prior written consent.

18. **FREEDOM OF INFORMATION**

18.1 Each Party acknowledges that the other is subject to the requirements of the FOIA and each Party shall assist and cooperate with the other (at its own expense) to enable the other Party to comply with its Information disclosure requirements.

18.2 Nothing in this Deed shall prevent either Party from disclosing any Information it holds whether relating to this Deed or otherwise which either party in its absolute discretion considers it is required to disclose in order to comply with FOIA and any other statutory requirements whether or not existing at the date of this Deed. However, in the case of Information relating to this Deed the Party receiving the Request for Information (the "**Receiving Party**") shall consult the other Party (the "**Consulting Party**") as soon as practicable after receipt of the request before disclosing any Information.

18.3 The Consulting Party shall respond to the Receiving Party pursuant to **clause 18.2** as soon as reasonably practicable and in any event within five Business Days by either;

18.3.1 consenting in writing to the disclosure; or

18.3.2 providing the Receiving Party with written representations as to why it believes the Information is covered by an exemption or exception under the FOIA.

18.4 The Receiving Party shall take the Consulting Party's views into account when considering whether it has a duty to disclose the Information under the FOIA and shall notify the Consulting Party of its decision prior to disclosure. If a Receiving Party shall at any time notify the other (the "**Notified Party**") that it has received a Request for Information in respect of which the Receiving Party requires the assistance of the Notified Party then:

18.4.1 the Notified Party shall at its own cost provide and procure that any of its sub-contracts (if any) provide all necessary assistance required by the Receiving Party in order to allow that party to comply with the Request for Information within the period or periods when it is obliged to respond to the Request for Information;

- 18.4.2 without limitation to the foregoing the Notified Party shall at its own cost within five Business Days of request supply and procure that any of its agents, servants, employees or sub-contractors (if any) supply to the party such Information and documents as it holds on behalf of the Requesting Party as requested by that party in such form as reasonably prescribed by that party; and
- 18.4.3 the Notified Party shall ensure that all Information produced by the Notified Party or any of its agents, servants, employees or sub-contractors in the course of performing any of its obligations under this Deed is retained for disclosure and shall permit the party to inspect such records as required from time to time.
- 18.5 In the event that a Receiving Party shall at any time receive any Request for Information relating to this Deed or any activities or business of the other party which the Receiving Party does not hold then the Receiving Party shall transfer the Request for Information to the other party as soon as reasonably practicable and in any event within two Business Days of receipt.
19. **DATA PROTECTION**
- 19.1 The Parties will comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the Deed and/or any Personal Data to be processed in connection with the Deed.
- 19.2 Notwithstanding the general obligation in **clause 19.1**, where Wirral Evolutions is processing Personal Data as a Data Processor for the Council, Wirral Evolutions shall:
- 19.2.1 only process such Personal Data for any purposes connected with the management of the Transferring Employees, for the purposes for which such information was originally collected or for any other lawful purpose and on instructions received from the Council from time to time;
- 19.2.2 ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data and to prevent the accidental or unlawful destruction of or accidental loss of, alteration to, unauthorised disclosure of or access to Personal Data as required under the Seventh Data Protection Principle in **Schedule 1** to the DPA;
- 19.2.3 not cause or permit the Personal Data to be transferred outside the European Economic Area (as defined in the DPA) without the prior written consent of the Council;
- 19.2.4 provide the Council with such information as the Council may reasonably require to satisfy itself that Wirral Evolutions is complying with its obligations under the DPA;
- 19.2.5 promptly notify the Council of any breach of the security measures required to be put in place pursuant to **clause 19.2**; and
- 19.2.6 not do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
- 19.3 The provisions of this clause shall apply during the continuance of the Deed and indefinitely after the Transfer Date.

20. NOTICES

20.1 Any notice to be given under this Deed shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Party shall be as set out in **clause 20.3** or such other address as each Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served if:

20.1.1 personally delivered, at the time of delivery;

20.1.2 sent by facsimile, at the time of transmission;

20.1.3 posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities; and

20.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

20.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be) and a contemporaneous note of the telephone call warning the recipient that the electronic mail message has been sent to him was made.

20.3 The address for service of notices as referred to in **clause 20.1** shall be as follows unless otherwise notified to the other Party in writing:

20.3.1 if to the Council, addressed to the *[insert details]*;

Tel: *[insert details]*

Fax: *[insert details]*

E-Mail: *[insert details]*

20.3.2 and

20.3.3 if to Wirral Evolutions, addressed to the *[insert details]*;

Tel: *[insert details]*

Fax: *[insert details]*

E-Mail: *[insert details]*

21. FORCE MAJEURE

21.1 Force Majeure Event means any circumstance not within a Party's reasonable control including, without limitation:

21.1.1 acts of God, flood, drought, earthquake or other natural disaster;

21.1.2 epidemic or pandemic;

- 21.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 21.1.4 nuclear, chemical or biological contamination or sonic boom;
 - 21.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - 21.1.6 collapse of buildings, fire, explosion or accident; and
 - 21.1.7 any labour or trade dispute, strikes, industrial action or lockouts; and
 - 21.1.8 interruption or failure of utility service.
- 21.2 Provided it has complied with **clause 21.4**, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Deed by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of this Deed or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 21.3 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 21.4 The Affected Party shall:
- 21.4.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Deed; and
 - 21.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 21.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks, the Party not affected by the Force Majeure Event may terminate this Deed by giving four weeks' written notice to the Affected Party.
- 21.6 If the Force Majeure Event prevails for a continuous period of more than 6 months, either Party may terminate this Deed by giving 14 days' written notice to the other Party. On the expiry of this notice period, this Deed will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Deed occurring prior to such termination.

22. **RIGHTS AND REMEDIES**

- 22.1 Except as expressly provided in this Deed, the rights and remedies provided under this Deed are in addition to, and not exclusive of, any rights or remedies provided by law.

23. **SEVERANCE**

- 23.1 If any term of this Deed is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Deed and this will not affect the remainder of this Deed which will continue in full force and effect. In this event the parties will agree in accordance with **clause 15** a valid and enforceable term to replace the severed term which, to the maximum extent possible, achieves the parties' original commercial intention and has the same economic effect as the severed term.

24. **NO WAIVER**

24.1 A delay in exercising or failure to exercise a right or remedy under or in connection with this Deed will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

25. **THIRD PARTY RIGHTS**

25.1 The parties do not intend that any term of this Deed will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

26. **ENTIRE AGREEMENT**

26.1 This Deed constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

26.1.1 Neither Party entered into this Deed in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in this Deed; and

26.1.2 nothing in this **clause 26** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

27. **COUNTERPARTS**

27.1 This Deed may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one deed.

28. **GOVERNING LAW AND JURISDICTION**

28.1 This Deed (including any non-contractual obligations relating to it) will be governed by and interpreted in accordance with the law of England and Wales.

Appendix 1

Policies and Procedures

The Provider must be able to produce on request by, and to the satisfaction of, the Council the following records and documented procedures in addition to any other requirement of any other clause in this Agreement:-

1. (a) Statement of Purpose, incorporating the Company's aims and objectives,
2. (b) Complaints and compliments procedure
3. (c) Record of complaints and outcomes
4. (d) Customers Consultation process
5. (e) Staff Training and Development Plans
6. (f) Review records
7. (g) Risk assessment documents
8. (h) Risk assessment records
9. (i) Guidance for all staff on safety precautions to be taken following assessment of risk, including written procedures on Fire prevention, First Aid, Safe use of Electricity, Food Safety and Hygiene, Safe Moving and Handling, Control of Infection and reporting Infectious Diseases, self-management of medication, reporting of injuries, diseases, accidents and dangerous occurrences;
10. (j) Moving and handling training records
11. (k) Staff rotas
12. (l) A staffing structure and scheme of delegation of the organisation, indicating managerial relationships between staff, and how information can be effectively communicated throughout the organisation
13. (m) Staff supervision records
14. (n) Policies relating to equality, diversity and anti-oppressive practice
15. (o) Policies to illustrate that information for Customers and their families can be made available in an appropriate range of formats and languages
16. (p) Policies regarding confidentiality and access to records
17. (q) Log of requests to access records
18. (r) Register of gifts, bequests accepted and refused from Customers
19. (s) Policy relating to the transmission of blood borne viruses such as HIV, AIDS and Hepatitis B

20. (t) Record of emergency service documentation received prior to commencement of service
21. (u) Financial policies and procedures
22. (v) Safeguarding Policies and Procedures

The Council will make available to Company on request copies of its own policies and procedures as amended from time to time which shall be the acceptable minimum standards.

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Appendix 2

Day Opportunities for Adults who use Services Service Specification

1. Introduction

- 1.1 Wirral Council currently commissions a range of day opportunities for adults who use services. There is a commitment by the Local Authority to work in partnership with all stakeholders to reconfigure services so that they continue to meet both current and future needs within the resources available.
- 1.2 It has been recognised that the way services are commissioned and provided for people who use services will continue to evolve, and Wirral Council is fully committed to a person-centred and self-directed approach to service commissioning.
- 1.3 Guiding Principles
- An understanding that changing the way in which organisations and professionals work can improve outcomes for people who use services and their families/Carers.
 - People who use services and their families have natural authority and are best placed to be their most powerful and enduring leaders, decision makers and advocates.
 - Families, friends and personal networks are the foundations of a rich and valued life in the community.
 - People who use services and their families are in the best position to determine their own needs and goals and to plan for the future.
 - Individuals and their families will directly commission the support they receive if they wish to.
 - Communities are enriched by the inclusion and participation of people who use services, and these communities are the most important way of providing friendship, support and a meaningful life to people who use services, their families and Carers.
 - The lives of people who use services are enhanced when they can determine their preferred supports and services and control the required resources, to the extent that they wish.
 - Partnership between individuals, families and Carers, communities, local government, service providers and the business sector are vital in meeting the needs of people who use services.
 - People are supported to gain the skills, development and progression in order to be as independent as possible.
- 1.4 In the light of growing demand for support and the limitations on public funding that are a feature of the current economic downturn, it is more important than ever that public services make best use of resources by securing the right day opportunity and support services for people who use services. At the same time there are opportunities to secure better outcomes whilst targeting our spending at the right things. This requires a model of support that concentrates on enablement and self-actualisation rather than dependency on long-term care.

- 1.5 An effective Adults Day Opportunity Service should provide a service for adults with the aim of ensuring they can participate in and help steer the services required, taking into account their specific needs. Day opportunities should also enable people to make informed decisions and choices.

2 Definition

2.1 Day Opportunities

2.1.1 For the purpose of this Day Opportunities delivery specification, a day opportunity is defined as a support and activity service provided during the day (including evening and weekends) for the purpose of delivering outcomes specified in the attendee's support plan and to provide respite for the Carer of a person who uses services.

2.1.2 A day opportunity would ordinarily be utilised to enhance a person's life through social interaction, opportunities to be independent and experiences to encourage self-realisation. They might also specifically offer a safe environment for a vulnerable person and/or a means of providing personal care. It is expected that day opportunities would normally take place away from the home environment.

3 Purpose of the Service

3.1 The purpose of Day opportunities is to support the person who uses services in improving their quality of life. Day opportunities should assist the person who uses services to lead an independent and fulfilling life, help them to maintain a healthy lifestyle, and to promote and enhance effective personal support networks. This supports Wirral Council's commitment to helping people live safely and independently, and be socially included within their local communities.

3.2 A successful day opportunity should support the person who uses services to take greater control of their own life and encourage them to remain as independent as possible within their own home, the community and within their chosen way of life.

3.3 The person who uses services must be at the centre of all decisions about how they are supported. The Service Provider should provide services in such a way that the person who uses services is able to feel secure, confident and included in all decisions regarding the service provided to them.

4 Aims of the Service

4.1 The intention is to commission day opportunities for adults who use services that meet future service demands, and to develop services in line with the national and local agendas including high level partnership working and promotion of independence and self-actualisation.

4.2 Day Opportunities for adults who uses services aims to provide:

- Faster and efficient access to a choice of appropriate help and support for people who use services delivered in a person-centred and individual way.
- More choice and control for individuals and their Carers.
- A more consistent and equitable service to a greater number of local people who use services.
- A more evidence based approach to service delivery.
- Ensuring best service quality and value for money.
- An increase in the number of people who use services who achieve increased independence through paid employment.

4.3 **Expected key outcomes include:**

- Improved user experience and satisfaction.
- Improved Carer experience and satisfaction.
- To provide social contact and stimulation.
- To offer meaningful activities which maintain and enhance physical and mental wellbeing.
- To provide a place where people who use services can be helped to access universal services.
- To provide (or provide access to) education and training opportunities.
- To maintain/restore and develop independence including basic life-skills.
- Care and monitoring of highly dependent or frail and vulnerable adults.
- Low level support and monitoring for adults at risk.
- Support and advice for Carers including respite care.
- To assist recovery and rehabilitation after a critical episode.
- An improved level of social inclusion.
- Increased levels of independence and self-actualisation.
- Significant reduction in overall service operational costs.

4.4 **Objectives of the service**

- Provide services that are person-centred and meets individual needs.
- Provide support for people who use services and their Carers.
- Promote re-enablement model of support.
- Promote community engagement.
- Increase the amount of choice and control users and their Carers have in their lives.
- Use a quality assurance framework to measure the quality of outcomes and further develop day services.

4.5 **Core Values**

4.5.1 Wirral Council has determined the following values to be paramount when commissioning day opportunities for adults who use services.

- Treating people who use services as individuals and promoting their dignity, independence and self-determination. People who use services will be valued for their own individual skills, abilities and strengths. This means listening and responding to people who use services, in an effort to understand their unique position. It also means being open to learning as each individual has a valuable contribution to make.
- Responding flexibly to a change in a person's circumstances.
- A commitment and ethos of consulting and involving people who use services.
- People who use services will have opportunities to make independent choices as individuals.
- People who use services have a right to friendships and relationships. This increases independence and reduces reliance on publicly funded services.
- Seeking to achieve a balanced approach to risk, which gives people who use services control and the right to make mistakes without serious implications for their security and safety.
- In all aspects of service provision and employment, no employee or people who use services should receive less favourable treatment than another on grounds of race, sexuality, age, ability, etc.
- Promoting fair access and aim to ensure that the service reflects the needs of Black and Ethnic minority communities.
- Assisting people who use services to realise personal aspirations and abilities in aspects of daily life, focussing on assisting people who use services to realise their potential and aspirations in the context of maintaining their independence and participation in the community.
- Every people who use services, regardless of their circumstances, is a unique and intrinsically valued human being. An active awareness of this shall be

demonstrated by all services, particularly in areas where dignity may be most at risk.

- Reduce social isolation, promoting social inclusion and integration.
- People who use services, irrespective of their living situation will retain all their rights, entitlements and responsibilities when they enter services and shall be helped to preserve and exercise them.
- Working with people who use services to achieve realistic and achievable goals and outcomes.
- The day opportunity service recognises that the quality of services will be measured against national and local standards, but will also be measured against the expectations of people who use services and Carers.

4.5.2 Where they are ready to do so, people who use services should be supported to seek paid employment in the open market.

5 The Nature of the Service

5.1 Under this Specification, the nature of a Day Opportunity is the provision of services away from the Service User's home during waking hours.

5.2 Day Opportunities are about providing opportunities for people to learn new skills through further and adult education, spending time with friends and most important of all the chance to get a real job. This also includes taking part in a wide range of social and leisure activities that do not necessarily need to be undertaken within a day centre setting.

5.3 Day Opportunities need to reflect the future need of people who use services, ensuring that there is increases in the real choices people have over how they spend their days. There should be an agreement about how to achieve the outcomes disabled people have identified; making sure the right support is in place at the right time.

6 Eligibility for the service

6.1 Wirral Council is currently required, for Adult Social Care Services; to apply eligibility criteria based on the Local Authority Circular LAC (2002) 13 "Fair Access to Care Services – Guidance on Eligibility Criteria for Adult Social Care".

7 Service Levels

7.1 The Provider will produce clear concise information that is accessible to the intended Service User group describing the core elements of the service to be delivered and the cost of these.

7.2 If the service is not able to accommodate any particular care/support needs these should be stated.

7.3 Where there are additional/optional service elements available at additional cost these should be described and the cost stated.

7.4 When quoting for costs for core level of service these **must** be expressed as either:

- A cost per hour
- A cost per half session (a period of up to 4 hours)
- A cost per full session (a period between 4-8 hours)
- A cost for evening or weekends

7.5 Refreshments throughout the day should be provided regardless of the length of the session (this may be costed separately).

- 7.6 When quoting costs for additional/optional service elements this must be expressed as the **total** cost for the additional/optional element.

8 Monitoring of Changing Needs

- 8.1 People using the service, their families, friends and advocates will be involved in the monitoring process.
- 8.2 The Provider will feedback to the Department any information relating to any change in circumstances in the needs of the person (be this an increase/decrease in support required) using the service.

9 Performance Management and Monitoring

9.1 Quality Assurance

- 9.1.1 Performance of the Provider will be measured using the agreed Quality Assurance Framework as referenced in the terms and conditions of the contract.

9.2 Monitoring and Review

- 9.2.1 The Provider will maintain an appropriate management information systems, that will enable the provider to evidence the quality and compliance in all areas of the service and will present this information for the purposes of monitoring and contract compliance.
- 9.2.2 The Provider will complete and submit as a minimum an annual self-assessment that will be validated by visits in a variety of venues, and will have themed focus areas:
- 9.2.3 The provider will meet with the Contracts Lead officer at a frequency prescribed by the Contracts Lead.

10 Key Performance Indicators

- 10.1 Also see Terms and Conditions for the Minimum Dataset

10.2 People who use Services being Valued Members of the Community

- 10.2.1 The Provider will be required to evidence that people who use services have access to and are able to participate in the multitude of resources and social experiences which make up community life.
- 10.2.2 The Provider will be required to evidence that the Day Opportunity supports people who use services aspirations in everyday community life; from supporting and participating in various activities including leisure, to assisting the person who uses services to become part of their community.

10.3 People who use services realising their Aspirations

- 10.3.1 The Provider will be able to evidence that the person who uses services is encouraged to define and realise their own goals and aspirations.
- 10.3.2 The Provider will also be able to demonstrate that the Day Opportunity assists people who use services in their aspirations by supporting long-term learning or social opportunities; or shorter-term activities
- 10.3.3 The Provider will be able to demonstrate that the Day Opportunity offers people who use services focused encouragement, motivation and support in order to achieve these aspirations, and any practical assistance necessary for their facilitation.

10.4 People who use services have a Social Life

- 10.4.1 The Provider will be able to evidence that the people who use services have chosen how they will spend their time and who they will socialise with.
- 10.4.2 The Provider will be able to demonstrate that the Day Opportunity has assisted the people who use services to visit, utilise, contribute to and be a valued member of any facilities in ordinary places that define local community life.
- 10.4.3 The Provider will be able to evidence that through facilitating this process, the person who uses services feels more confident about facing the challenges that accompany new social experiences.
- 10.4.4 The Provider will be able to demonstrate that the person who uses services feels confident to access social opportunities without the need for support.
- 10.4.5 The Provider will be able to demonstrate that the Day Opportunity has supported people who use services to maintain personal relationships and cultural issues which they may face in day to day life.

11 Delivery of the Service

11.1 Location

- 11.1.1 Where services are community based, there need not be a specified building from which to deliver these services. However, where an activity could be affected by external issues such as weather conditions, a suitable alternative should be provided. Contingency plans must be made available if the service cannot be delivered from the usual site. Community bases and activities should be available to people with all levels of need and consideration should also be given to accessibility, with disabled access provided wherever possible.
- 11.1.2 Where an accommodation base is provided, it/they will be of sufficient and flexible size to accommodate the number of people using the facility, having quiet space for people who wish to take a break.
- 11.1.3 The Provider will ensure that bases are maintained in good order and have suitable facilities/equipment to meet the assessed needs of the people who use services accessing the service. Bases will meet the Disability Discrimination Act requirements and all requirements of legislation in respect of Health and Safety, Fire Precautions and Environmental Health will be satisfied.
- 11.1.4 Service bases must be suitable in terms of toileting and changing facilities and accommodate those who cannot use a standard disabled toilet. In exceptional circumstances another facility nearby can be accessed for toileting and changing (e.g. a local health centre). Toileting and changing areas should not be unisex.

11.2 Equipment

- 11.2.1 The Provider will possess all necessary equipment appropriate for the services being delivered, excluding personal items which the person who uses services would be expected to possess. Equipment will be maintained in accordance with Health and Safety legislation and the manufacturers' guidance, supervised by suitable trained staff when in use and stored safely when not in use.
- 11.2.2 Providers should also ensure that they have appropriate administrative resources including email, phone, photocopying etc, to support the needs of the services being delivered.
- 11.2.3 This service will be delivered across Wirral and allocation will be through the Care Arranging Team.

- 11.2.4 The service should always take place in a location that promotes independence and least removes the person in receipt from their local community and social support networks.
- 11.2.5 The Provider will advise the Council of the days and times that the Service will operate. Where a Service operates on Bank Holidays no enhanced payment will be made by the Council for attendees.

12 Risk Taking

- 12.1 The Provider will ensure that where a risk assessment is needed, they will communicate with families, Carers, Advocates and practitioners to collate relevant information.
- 12.2 The Provider should acknowledge that all people who use services are entitled to take risks, but should ensure that all information and the consequences of actions are given to the person to enable them to make an informed choice.
- 12.3 The Provider will need to ensure that there are contingency plans in place so that the person able to take the risk in a safe and positive way.
- 12.4 The Provider is required to make any necessary assessment of the risks to their own employees in relation to lone working.
- 12.5 The Provider will promote, adopt and comply with Wirral Council's 'Positive Risk Taking Policy'.

13 Confidentiality

- 13.1 The Provider will have a written policy on confidentiality which must be accessible and available to all the people who use the service.
- 13.2 The policy should ensure that any personal information disclosed to the Provider in the course of its work must be treated as confidential and should only be disclosed with the consent of the person who uses services concerned.
- 13.3 There is a requirement, on request that the Provider shares relevant information about the people who use services to the commissioners.

14 Legislation and Guidance

- 12.1 The provider will comply with any relevant legislation, indicators of good practice and policy objectives that are contained in:
- 12.2 Mental Capacity Act (2005) and Deprivation of Liberty Safeguards
- 12.3 Dignity in Care/Respect Agenda
- 12.4 The Health & Social Care Act (2008) (Regulated Activities) Regulations 2010 – Essential Standards of Quality and Safety
- 12.5 Valuing People Now (2009)
- 12.6 Valuing Employment Now (2009)
- 12.7 Putting People First (2007)
- 12.8 A Life Like Any Other (2008)
- 12.9 Healthcare for All (2008)

- 12.10 Department of Health Guidance – ‘No Secrets’
- 12.11 Independent Living Strategy (2008)
- 12.12 Our Health, Our Care, Our Say (2006).
- 12.13 Promoting Equality (2007)
- 12.14 Think Local Act Personal (2010)

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