

RELEVANT BACKGROUND AND APPROACH TO MODEL CONTRACT

This new form of Outcome based contract for use with Option 3 of the Social Care (Self-Directed support) (Scotland) Act 2013 (the “Act”) has been produced with the support of a range of stakeholders, including supported persons, service providers and local authority purchasers. Option 3 being where the local authority selects and makes arrangements for the provision of the support for the supported person and pays for that support which is delivered by a third party provider.

A new form of contract governing these arrangements is needed to ensure:

1. that contracts used are more reflective of the choice and control individuals receiving self-directed support have and put individuals at the heart of matters;
2. contracts are based on measurable outcomes which demonstrate the difference made by services or supports; and
3. that contracts used are clear and concise and as short as possible.

There are numerous current approaches to this area at present including:

1. Council Framework Agreements between Council and Multiple Providers using a standard “order form” for call-off contracts for each individual;
2. Council Framework Agreements between Council and Multiple Providers using a more bespoke “individual focused” agreement/contract reflecting the self-directed support context;
3. Council “Light Touch Framework Agreements” between Council and a more open pool of multiple providers using either of the order forms noted above;
4. Council Direct Agreements with Providers relying on the dispensation (from competitive procurement) for health and social care contracts value under £663,540 (*incl. of VAT*) under the Procurement Reform (Scotland) Act 2014 bespoke to reflect the self-directed support context.

It is suggested that, going forward, Councils would benefit from the use of an accessible and individual focused agreement. It is suggested that this approach should, however, avoid placing any contractual liabilities on the individual.

It is envisaged that the draft agreement would, in order to cover off Council duties / legal requirements, sit alongside “background” terms and conditions between Council and Provider. Those background terms and conditions will ideally address the “background” matters as between Council and Provider.

It is important to note from the self-directed support context the following relevant to option 3:

- Through Social Work Services, the Council shall arrange and approve a care assessment and identify the level of care and support and Outcomes to be achieved in the Person’s care and support plan;
- The Council decides how much money can be spent on a person’s support and suggests who should provide this support; and
- The Provider shall produce a personal plan as required by the Health and Social Care Standards based on the assessment information provided by the Council.

An individual focused contract of the type suggested is then entered into and sits alongside background Terms and Conditions entered into as between the Council and Provider (entered into be it as part of a Framework Agreement, purchasing system or general eligibility step).

THIS IS THE MODEL INDIVIDUAL AGREEMENT FOR SOCIAL CARE SUPPORT FORMING SCHEDULE 4 TO THE DRAFT FRAMEWORK TERMS FOR SOCIAL CARE SERVICES BEING PART OF THE SUITE OF TOOLS NEEDED TO MOVE TOWARDS A FLEXIBLE FRAMEWORK APPROACH TO THE PROCUREMENT OF SOCIAL CARE SERVICES CONDUCTED UNDER REGULATION 76 OF THE PUBLIC CONTRACTS (SCOTLAND) REGULATIONS 2015 IN CIRCUMSTANCES WHERE A PURCHASER, SUCH AS A LOCAL AUTHORITY, PROCURES AND APPOINTS MULTIPLE PROVIDERS TO A FLEXIBLE FRAMEWORK FOR THE DELIVERY OF SOCIAL CARE SERVICES. IT IS DRAFTED ON THE BASIS OF THIS BESPOKE INDIVIDUAL FOCUSED AGREEMENT AND ACCOMPANYING FRAMEWORK TERMS.

THE DRAFT RESPECTS THAT PURCHASERS OF SUCH SERVICES WILL HAVE THEIR OWN PROCEDURES IN PLACE, PARTICULARLY RELATING TO ASSESSMENT AND THE PREPARATION OF INDIVIDUAL SUPPORT PLANS AND WILL DECIDE HOW BEST TO INCORPORATE INDIVIDUAL AGREEMENTS INTO THEIR PROCESSES (RESPECTING THAT PROCESSES MAY REQUIRE UPDATING TO ALIGN WITH DEREK FEELEY'S INDEPENDENT REVIEW OF ADULT SOCIAL CARE). THIS INCLUDES DECIDING WHAT IS THE BEST STAGE OF THE ASSESSMENT PROCESS TO DO THIS, FOR EXAMPLE, BY ARRANGING FOR SUPPORT PLANS TO BE ANNEXED TO AND INCORPORATED INTO EACH INDIVIDUAL AGREEMENT AND FOR THIS TO BE SIGNED OFF DURING INITIAL CONTACT WITH EACH INDIVIDUAL OR THEIR REPRESENTATIVE.

THE INDIVIDUAL AGREEMENT IS DRAFTED FOR SIGNATURE BY ALL 3 PARTIES INVOLVED INCLUDING THE INDIVIDUAL OR THEIR REPRESENTATIVE. THIS IS TO DEMONSTRATE THE INDIVIDUAL'S INVOLVEMENT IN THE PREPARATION OF THE SUPPORT PLAN AND THAT INDIVIDUALS ARE AT THE HEART OF THE PROCESS. IT IS APPRECIATED THAT LOCAL AUTHORITIES, INDIVIDUALS AND THEIR REPRESENTATIVES MAY WISH TO BUILD IN MORE FLEXIBLE/LIGHTER TOUCH ARRANGEMENTS WHICH DEMONSTRATE THE INDIVIDUAL'S INVOLVEMENT/ ARE MORE REFLECTIVE OF PRACTICE AND PROCEDURES.

THIS IS A WORKING DRAFT FOR DISCUSSION PURPOSES.

INDEPENDENT LEGAL ADVICE SHOULD BE SOUGHT.

THIS DRAFT IS PROVIDED TO FACILITATE THE MOVE TOWARDS A FLEXIBLE FRAMEWORK APPROACH AND COMMISSIONING FOR OUTCOMES. CCPS SHALL NOT BE LIABLE FOR ANY RELIANCE PLACED ON THIS [DRAFT MODEL AGREEMENT] [DRAFT STANDARD FRAMEWORK TERMS].

Agreement for Social Care Support

This Agreement is between:

[] having its principal office at []
 (“the Council”)

[PROVIDER NAME AND ADDRESS]
 (“the Provider”)

[SUPPORTED PERSON) NAME AND ADDRESS]
 (“the Person”)

(each a “Party” and together “the Parties”)

The Parties agree the following:

Start Date of Support Services (“Start Date”)	[TO BE INSERTED]
Review Date of Support Services (“Review Date”)	[On an annual basis beginning one year after the Start Date]

1. BACKGROUND:

Values and Principles of SDS

The Social Care (Self-directed Support) (Scotland) Act 2013 (the “Act”) establishes the right for eligible individuals to receive Self-directed Support (“SDS”). SDS aims to enable individuals to have greater flexibility, choice and control over their social care support and the right to choose who provides their support.

The Act sets out the following principles for individuals receiving support: involvement, informed choice and collaboration, the right to be treated with dignity and to participate in society (the “SDS Principles”).

Information about this Agreement

The Person has chosen option 3 of the SDS options under the Act or this is the default position (“Option 3”). Option 3 allows the Council to arrange the provision of the support for the Person by the Provider

Schedule 1 to this Agreement sets out the Individual Outcomes and Individual Budget agreed as between the Person and the Council in accordance with the Act.

The Council has selected the Provider, and the Provider agrees, to provide support the Person in achieving the Individual Outcomes using the Individual Budget (the “Support”).

Where this Agreement refers to information which is to be provided to or by the Person, reference to the Person will, where appropriate, include their representative.

Where the Person is represented by an individual who is authorised to make decisions and enter contracts on their behalf, that representative may sign this Agreement on behalf of the Person.

This Agreement is for the provision of services to the Person only and does not make any of the Parties partners or agents of one another.

Contract between the Provider and the Council

The Council and the Provider have entered into a separate [Framework Agreement / Contract] (the “Contract”) which controls the arrangement between the Provider and Council in relation to the overall

supply of the Support. The terms, conditions, rights and obligations set out in the Contract shall apply to the Agreement. This includes requirements for the Provider to comply with all relevant regulatory and legal requirements in delivering SDS generally and the Support in this Agreement. If there are any differences between this Agreement and the Contract, the terms of this Agreement will take priority.

Purpose

The purpose of the Support is to enable the Person to:

- use their Individual Budget to meet their Individual Outcomes; and
- be provided with flexible and personalised care.

2. DURATION OF THE SUPPORT SERVICES

The Provider shall provide the Person with the Support from the Start Date and shall continue to do so until this Agreement is terminated as described in section 10 (*Ending the Agreement*).

3. DELIVERING THE SUPPORT SERVICES

The Support

The Support will consist of the Provider supporting the Person:

- by facilitating discussion that enables the Provider to prepare a plan which sets out the type of support required by the Person, how, when and by whom the support is to be provided along with an explanation of how this support will meet the Individual Outcomes as agreed and detailed within the plan (the “Support Plan”);
- by providing flexible, personalised support to deliver the Support Plan [including the provision of direct care];
- regularly consulting with the Person to ensure they are satisfied with the provision of the support and to ensure the Support Plan continues to meet the Person’s needs and satisfy the Individual Outcomes; and
- to ensure, as much as possible in accordance with the Act, the Person has their desired level of choice and control over their support.

The Provider will:

- ensure that in providing the Support, it adheres to the Contract;
- deliver the Support in accordance with [best practice in its sector](#) and taking into account the individual needs of the Person;
- ensure the SDS Principles are adhered to in delivering the Support;
- [follow the principles set out in the National Health and Social Care Standards [and be registered with the Care Inspectorate];] and
- assist in ensuring the Person receives the support detailed in the Support Plan to meet the Individual Outcomes;
- adapt to changing needs, priorities and lessons learned; and
- ensure that the Person knows what to do if they are not happy with an aspect of the service.

Managing the Individual Budget

The Provider will only use the Individual Budget for providing the Person's care and support as agreed in the Support Plan and to meet the Person's Individual Outcomes.

The Council will manage the Individual Budget including the payment of invoices.

The Provider shall provide the Person with an up to date financial statement which clearly sets out how the Individual Budget is being spent at agreed regular intervals and on request.

Provision of Direct Care

The Provider shall provide direct support in a flexible and personalised way to meet the Individual Outcomes. The direct support may include:

- social and emotional support;
- support to assist the Person in accessing community based services and resources;
- support to assist the Person to develop and maintain relationships with family members and friends; and
- any other activities as identified in the Person's Support Plan or as may be reasonable and appropriate to ensure the Individual Outcomes are met.

The Provider and the Person can, on a flexible basis, agree any changes to the Support Plan to meet the varying needs of the Person in meeting the Person's Individual Outcomes [provided the cost of any changes remains within the Individual Budget](#).

4. REVIEW BY THE COUNCIL

The Council will:

- ensure the current SDS Principles and Ethical Commissioning and Procurement Principles SPPN 7/2021 are followed when carrying out its duties in connection with this Agreement;
- review the delivery of the Support on the Review Date with the Person and the Provider and, where reasonable, as requested by the Person or Provider, for the purpose of deciding whether the Individual Outcomes are being achieved and whether any changes are required; and
- make payment as agreed in the Contract with the Provider for the provision of the Support.

The Council may review and request copies of relevant records, and other documents as necessary to verify the Provider's compliance with the terms of this Agreement and the Provider will provide the Council with all reasonable co-operation, access and assistance which may be requested by the Council.

5. ROLE OF THE PERSON

Subject to paragraph 9 (*No Liability on the Person*), the Person shall advise the Provider and/or the Council about any changes to their support needs and request a review of their support provision when needed.

6. GAPS IN PROVISION OF SUPPORT

The Provider, after discussion with the Person, will let the Council know if there are any changes to provision of support which mean the Person's Individual Outcomes are not met.

The Council will inform the Provider and the Person if there are any planned changes to the Person's Individual Budget or a review of the Person's care needs. The Council will only reduce the Individual Budget as a reasonable result of a review and reassessment of the Person's needs.

7. CHANGES TO SUPPORT

The Provider will discuss with the Person any planned changes which may affect this Agreement including:

- the Provider's ability to deliver the Support;
- any changes of persons involved in the delivery of Support or times of visits; and
- longer term changes to the provision of Support.

The Council will consult and involve the Person in any planned changes to the commissioning or procurement of support provision which may impact upon this Agreement or the availability of the Provider to provide the Support, recognising that the Person has the right under Option 2 to choose to retain the Provider regardless of any procurement exercises.

8. DATA PROTECTION

The Council and the Provider will comply with all requirements of data protection legislation.

The Person agrees to their personal data being processed by the Provider and Council and has provided their consent to the processing in the form of the Consent Statement set out in Schedule 2.

9. NO LIABILITY ON THE PERSON

Nothing in this Agreement is intended to, or will be deemed to, place any obligations on the Person or where relevant, their representative. The Person and where relevant, their representative, shall not incur any liability for failure to comply with the provisions of paragraph 5 (*Role of the Person*).

10. ENDING THE AGREEMENT

Each Party shall be entitled to end the Agreement by providing 28 days' notice to the other two parties.

The Council shall be entitled to end the Agreement immediately where it is necessary to do so in order to protect the health or safety of the Person or, in consultation with the Person if the Provider has committed a Default under the Contract.

The Provider shall comply with the Contract including transitional provisions upon the expiry or termination of the Agreement.

SIGNATORIES

Signed by [PERSON] [or] [[REPRESENTATIVE] acting for and on behalf of the Person]

At:.....
On.....
Signature:.....
Full name:.....
Address:.....

In the presence of:

Witness signature:.....
Full name:.....
Address:.....

Signed for and on behalf of [COUNCIL]

At:.....
On.....
Signature:.....
Full name:.....
Position:.....

In the presence of:

Witness signature:.....
Full name:.....
Address:.....

Signed for and on behalf of [PROVIDER]

At:.....
On.....
Signature:.....
Full name:.....
Position:.....

In the presence of:

Witness signature:.....
Full name:.....
Address:.....

This is Schedule 1 to the foregoing Agreement between [COUNCIL], [PERSON] and [PROVIDER].

SCHEDULE 1

Individual Outcomes and Individual Budget

[TO COMPLETE]

Individual Outcomes

Individual Outcomes are as set out in the Support Plan. This Schedule sets out how the following strategic Outcomes based upon the Health and Social Care Standards and Principles set by the Care Inspectorate will be met for the Person-

1. Experience high quality care and support that is right for me

What this Individual Outcome means for me – []

Steps to achieving Individual Outcome and how success will be measured []

2. Fully involved in all decisions about my care and support

What this Individual Outcome means for me – []

Steps to achieving Individual Outcome and how success will be measured []

3. Confidence in the people who support and care for me

What this Individual Outcome means for me – []

Steps to achieving Individual Outcome and how this success will be measured []

4. Confidence in the organisation providing my care and support

What this Individual Outcome means for me – []

Steps to achieving Individual Outcome and how success will be measured []

In each case respecting the Principles of:

- Dignity and respect;
- Compassion;
- Being included;
- Responsive care and support; and
- Wellbeing.

Individual Budget

[]

This is Schedule 2 to the foregoing Agreement between [COUNCIL], [PERSON] and [PROVIDER].

SCHEDULE 2

Data Processing Consent

To:

[NAME OF THE PERSON]

[ADDRESS OF THE PERSON]

[NAME OF COUNCIL] (the "Council") and [NAME OF PROVIDER] (the "Provider") will process your personal information for the purposes of providing you with support in accordance with the Agreement for Self-Directed Support between you, the Council and the Provider.

In order to provide you with the support, the Council and Provider will collect personal information about you including your name, address, date of birth and information about your health and social care needs. The Council and Provider will collect this information from you in the course of their relationship with you.

Your personal data will be handled in accordance with data protection legislation.

The Council and Provider may share the information they have collected about you with each other for the purposes of delivering and reviewing the support provided to you as well as the support provided by the Provider to all individuals.

Further details about how your personal information will be collected and processed and your rights in relation to this information is available in the Council's privacy notice at appendix 1 and the Provider's privacy notice at appendix 2.

If you are content with the above, please sign the below consent statement to confirm.

I, [INSERT NAME OF PERSON] [or] [[NAME OF REPRESENTATIVE] on behalf of [INSERT NAME OF PERSON], consent to the processing of personal information by the Provider and Council in accordance with the above statement and the Council and Provider's privacy notices.

Signature:

Full name:

Date:

You may withdraw consent to the processing at any time by contacting the Provider or the Council. Please note that this may prevent the Council and the Provider from being able to continue to provide the support.

Please note that consent to processing should only be provided by a representative where the individual lacks the capacity to provide consent and the representative has legal authority to make decisions on their behalf.

Guidance note: Can be amended/replaced if a Council relies on other Articles for processing an Individual's Personal Data in terms of the Data Protection Act 2018/UK GDPR

Appendix 1

[INSERT COUNCIL PRIVACY NOTICE]

Appendix 2

[INSERT PROVIDER PRIVACY NOTICE]