

**APPENDIX 3 – WAIVER FORM**

<b>PROJECT / CONTRACT TITLE</b>	COMMISSIONING STRATEGY FOR REGULATED ADULT SOCIAL CARE 2024+ - HOME SUPPORT AND QUICK DISCHARGE SERVICES
<b>PROJECT / CONTRACT REFERENCE NUMBER</b>	Home Support Services (adults and children) - current contract runs from 8 April 2019 – to 7 April 2024  Quick Discharge Service (adults) – current contract runs from 3 June 2019 to 2 June 2024
<b>DESCRIPTION OF CONTRACT (GOODS / SERVICES PROVIDED)</b>	Home care
<b>SUPPLIER (where relevant)</b>	Home Support Services – currently 66 providers  Quick Discharge Services – currently a single provider
<b>CONTRACT PERIOD</b>	Extension for both contracts until no later than 7 October 2024 (max of 6 months)
<b>VALUE (£/p)</b>	These are Framework Agreements so no set value.  However, the potential annual value is £159m and the potential total value is £1.115bn for 7 years – this includes possible values for the Birmingham Childrens Trust and NHS partners. The Council estimates spend under these arrangements to be £64m for home support services and £15m for quick discharge services in 2024/2025 (in accordance with the Council’s current forecast spend).  All spend is subject to changes in demand, inflation and application of relevant Grants for future years and will need to be managed in line with the Council’s available budget.
<b>FUNDING SOURCE</b>	Home Support (adults): Adult Social Care revenue budget  Quick Discharge Services (adults): Adult Social Care revenue budget and Better Care Fund  Home Support (Children’s): Birmingham Children’s Trust revenue budget

<b>DIRECTORATE</b>	Adult Social Care (and on behalf of Birmingham Children's Trust)	
<b>SERVICE AREA</b>	Adults	
<b>SERVICE LEAD</b>	Alison Malik	
<b>DIRECTOR/ ASSISTANT DIRECTOR</b>	Louise Collett	
<b>HEAD OF SERVICE</b>	Alison Malik	
<b>Please indicate the justification for a Waiver to the Procurement and Contract Rules</b>		
i. <b>Efficiency / expediency in relation to process:</b> Following the Rules in whole or part would not add value to the intended outcomes and would significantly impact the delivery of the Council Plan and priority outcomes. A Waiver would not compromise transparency and accountability.		
ii. <b>Increased cost / loss of income:</b> Following the Rules in whole or part would likely result in increased costs or loss of opportunity.		
iii. <b>Time constraints beyond the control of the Council:</b> Following the Rules in whole or part would create unreasonable time pressures to deliver outcomes required. In such cases this must not be through poor planning or lack of action by the Council to have created the time constraint.		X
iv. <b>Avoidance of reputational damage:</b> Failure to act promptly would have a serious, damaging and long-term impact on the reputation of the Council, that from a time perspective the Council cannot afford to be mitigated through a formal tendering process.		
v. <b>Request for noting for transparency as a formal Breach of the Rules:</b> Noting outcome of formal Breach investigation and seeking to note in line with Waiver Approval procedure.		
<b>Please provide details on reasons for applying for a Waiver</b>		
<p>The Council currently commissions home support and quick discharge services under the following contracts:</p> <ul style="list-style-type: none"> <li>• Home Support Services (adults and children) – commenced 8 April 2019</li> <li>• Quick Discharge Service (adults) – commenced 3 June 2019</li> </ul> <p>As Framework contracts, these services were procured for a period of 3 years, with an option to extend for a further 2 years, subject to satisfactory performance.</p> <p>In early 2020, Covid 19 was confirmed as a Pandemic and the adult social care sector was heavily impacted. The impact is well documented but included home support providers not having access to PPE, availability of testing for home care workers was significantly later than for care home staff, restrictions to supporting Covid positive citizens, impact of lockdown on care workers - especially where schools were closed, sickness absence levels of care workers, access to appropriate transport for care workers, changes in practice and infection control</p>		

guidelines, additional training requirements, cost pressures, impact of furlough and the wider economic shutdown on care worker recruitment, vaccination rollout etc.

With the original contract terms coming to an end in 2022, a decision was made to extend the existing contracts for a further 2 years. The sector were unable to support a re-procurement of these services at that time.

As a result of these extensions, current contracts now expire as follows:

Home Support Services (adults and children) – expire 7 April 2024

Quick Discharge Service (adults) – expire 2 June 2024

During the Pandemic, the Council and NHS worked closely together, to ensure vulnerable citizens had their care needs met (both short and long term) and also to ensure that short term home care (Quick Discharge Services) was available at the scale and pace needed to support hospital discharge and wider health and social care system flow.

This included the establishment of the Birmingham Integrated Care Partnership programme, which identified working with the regulated adult social care sector as a priority.

Joint workshops were held between the Council and NHS between April 2021 – December 2021 to establish the priorities for joint commissioning of regulated care. However unfortunately this work had to be paused between December 2021 and February 2022 due to the Covid and winter response, which put significant pressure on the whole health and care system.

The programme resumed again in March 2022 and it was agreed that the first services we would seek to jointly commission, would be home support and quick discharge services, knowing that the Council's current contracts would expire in 2024. At the time, the Integrated Care Board was spot purchasing any such care they were commissioning for individuals.

To further complicate matters, in July 2022 (under the Health and Care Act 2022) the structure of local NHS commissioning changed, with Integrated Care Systems and Integrated Care Boards established across England. The purpose of these was to see partnerships of organisations come together to plan and deliver joined up health and care services, and to improve the lives of people who live and work in their area. New governance was established across health and social care to ensure the new requirements could be implemented and that we moved towards place-based commissioning. This included a restructure of what was then the Clinical Commissioning Group.

As part of this, priorities, programmes and resources were reviewed. Dialogue continued, however the scale of change across the NHS did make it difficult to secure direction and it wasn't until July 2023 when it was confirmed that unfortunately joint commissioning of home support services would not be possible in time for Council contracts expiring in April/June 2024 – albeit both partners are continuing to work towards strategic market management.

Council Officers have therefore been working on commissioning proposals to take forward home support and quick discharge services between July 2023 and October 2023, including data analysis, legal advice, market and citizen engagement and seeking views of partners.

Therefore due to the impact of the Covid-19 Pandemic on both the provider market alongside significant dialogue with the NHS about opportunities for joint commissioning of these services, Officers have been unable to progress commissioning proposals sooner. Whilst it

may be possible to recommission these services before current contract expiry in April 2024 (for home support services) and June 2024 (for quick discharge services), the market for these services is highly competitive and has previously been litigious. These issues combined, mean that recommissioning services before April 2024 is unrealistic and a short extension up until 7 October 2024 at the latest, is proposed. This will allow time for the process to be carefully managed and implemented, including dealing with any legal challenges and ensuring services are mobilised effectively.

**Which part(s) of the Procurement and Contract Governance Rules are being sought to be waived?**

Contract Extensions and Modifications clause 4.36

**What implications, risk(s) or consequences would apply if a Waiver is not approved?**

The Council would not have in place appropriate contracts to commission statutory care for citizens. This would have a significant impact on citizens, who would have to wait for home support services and also on the wider health and care system as we would be unable to support hospital discharges at the scale and pace needed.

The risks of provider challenge with regards the extension have been mitigated as far as is practicable, through market engagement. Existing providers are unlikely to have any significant concerns with the proposed extension. Potential providers who are excluded from the current Framework Agreement will have the opportunity to tender at the earliest possible opportunity and the new commissioning arrangements have been designed to maximise the number of high quality providers and to re-open as needed. This will therefore offer far greater market opportunities in future.

**What longer terms plans are in place to ensure compliant contractual arrangements will be established prior to the end of the contract awarded under Waiver?**

Extending the current contracts is a short term proposal to allow time for the future Commissioning and Procurement Strategies to be implemented.

**Other Comments**

None.

**DECLARATIONS**

**I (the undersigned) declare that I have no conflicts of interest which would otherwise prevent my signature to this Waiver.**

<b>Directorate Service Lead</b>	Alison Malik	<b>Date</b>	23/10/23
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**Corporate Procurement Comments**

Waiver form appended to Cabinet report for Cabinet approval

<b>Name / Title</b> Mike Smith <b>Head of People Category</b>		<b>Date</b>	
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**AUTHORISATIONS**

	DIRECTORATE SIGN OFF	CORPORATE SIGN OFF	Date
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<b>Over £5,000 up to £100,000</b>	Assistant Director or Head of Service (in line with the Scheme of Delegations)	Relevant Head of Category (Corporate Procurement Service)	
Comment (if required)		Waiver form appended to Cabinet report for Cabinet approval	
Name / Title			
<b>Over £100,000 to £200,000</b>	Assistant Director	Assistant Director (Procurement)	
Comment (if required)			
Name / Title			
<b>Over £200,000 to £500k (revenue) or to £1million (capital)**</b>	Director	Section 151 Officer in conjunction with Cabinet Member (Finance)	
Comment (if required)	To be completed as part of Cabinet report sign-off process		
Name / Title			

\*\* Above these levels and/ or Key Decision and/ or where deemed required by the Cabinet Member formal sign off is required at Cabinet.