

**DATED**

**A FRAMEWORK AGREEMENT FOR THE PROVISION OF STANDARD HOME  
CARE SERVICES INCORPORATING**

**LOT 1 – CENTRAL**

**LOT 2 – WEST**

**LOT 3 – EAST**

**LOT 4 – SOUTH**

**between**

**DERBY CITY COUNCIL**

**and**

**[INSERT NAME OF SERVICE PROVIDER]**

## **CONTENTS**

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### **CLAUSE**

1.	Definitions and Interpretation.....	1
2.	Term of Framework agreement .....	8
3.	Scope of Framework Agreement.....	8
4.	Award Procedure.....	9
5.	fees for Services .....	10
6.	warranties and representation .....	11
7.	Service Pre-Requisites.....	12
8.	Supply of services .....	12
9.	Confidentiality.....	12
10.	Data protection .....	13
11.	Freedom of information.....	13
12.	Publicity .....	14
13.	Termination on Default .....	15
14.	Termination on insolvency and change of control .....	17
15.	Termination on notice .....	18
16.	Suspension of Service Provider’s appointment .....	19
17.	Consequences of Termination and expiry .....	19
18.	Dispute resolution.....	20
19.	Conflicts of interest .....	21
20.	Prevention of bribery.....	21
21.	Retendering and Handover .....	23
22.	subcontracting and assignment .....	24
23.	variation to framework agreement.....	25
24.	Third party rights.....	25
25.	Severability.....	25
26.	rights and remedies.....	25
27.	Waiver .....	26
28.	Force majeure.....	26
29.	Notices.....	26
30.	Modern Slavery .....	27
31.	Whistleblowing .....	28
32.	partnership or agency .....	28
33.	Entire agreement.....	28
34.	Counterparts .....	29
35.	Governing law and jurisdiction .....	29

### **SCHEDULE**

SCHEDULE 1	SPECIFICATION.....	31
SCHEDULE 2	SERVICE PROVIDER'S TENDER.....	32
SCHEDULE 3	CONTRACT MANAGEMENT.....	33
1.	Authorised representatives .....	33

2.	Key personnel.....	33
SCHEDULE 4	VARIATION PROCEDURE .....	34
1.	General principles.....	34
2.	Procedure.....	34
SCHEDULE 5	SUSPENSION GROUNDS .....	36
SCHEDULE 6	COMMERCIALLY SENSITIVE INFORMATION.....	37
SCHEDULE 7	SAFEGUARDING POLICIES .....	38
SCHEDULE 8	INDIVIDUAL AGREEMENT.....	39
SCHEDULE 9	AWARD PROCEDURES .....	40
SCHEDULE 10	FEE STRUCTURE.....	41
SCHEDULE 11	TENDER CLARIFICATIONS .....	42
SCHEDULE 12	NOTICE PERIODS .....	43
SCHEDULE 13	INVITATION TO TENDER .....	44

**THIS AGREEMENT** is dated

**PARTIES**

- (1) DERBY CITY COUNCIL of the Council House, Corporation Street, Derby DE1 2FS (**Council**).
- (2) [*FULL COMPANY NAME*] incorporated and registered in England and Wales with company number [*NUMBER*] whose registered office is at [*REGISTERED OFFICE ADDRESS*] (**Service Provider**).

**BACKGROUND**

The Council placed a contract notice [*REFERENCE*] on [*DATE*] in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of Standard Home Care Services (divided into Lots) to itself under a Framework Agreement.

- (A) The Council invited potential service providers (including the Service Provider) on [*DATE*] to tender for the provision of Standard Home Care services
- (B) On the basis of the Service Providers Tender, the Council selected the Service Provider to enter a Framework Agreement to provide these Services in [*Lot OR Lots 1, 2, 3 ,4*]. The Services are to be provided on receipt of an Order within the Lots in accordance with this Framework Agreement.
- (C) The Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this Framework Agreement and any awarded Individual Agreement.
- (D) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Service Provider under this Framework Agreement
- (E) It is the Parties' intention that the Council have no obligation to place Individual Agreements with the Service Provider under this Framework or at all.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

**Approval:** means the prior written approval of the Council

**Auditor:** means the National Audit Office or an auditor appointed by the Council as the context requires.

**Authorised Representatives:** the persons respectively designated as such by the Council and the Service Provider, the first such persons being set out in Schedule 3 (Contract Management).

**Award:** the result of a Contract Opportunity process being concluded, together with the completion and signing of an Order Form incorporating the Individual Agreement terms and condition for a particular Customer in accordance with the Award Procedures as set out in this Framework Agreement.

**Award Procedures:** procedures described in Schedule 9 (Award Procedures) used to Award an Individual Agreement.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Change of Control:** means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

**Commencement Date:** means [insert date]

**Commercially Sensitive Information:** the information listed in Schedule 5 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Council that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss.

**Confidential Information:** means any information either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, Staff and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this Framework Agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential. which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including trade secrets, Intellectual Property Rights, know-how of either Party, all personal data and sensitive data within the meaning of the DPA and all Commercially Sensitive Information.

**CQC:** means the Care Quality Commission and its successor.

**Customer:** means the individual to whom the Service Provider is providing the Service under the terms of an Individual Agreement.

**Data Protection Legislation:** the Data Protection Act 2018 (DPA) and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018, and the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws

and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Default:** means any breach of the obligations of the relevant Party under this Agreement (including fundamental breach, material breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

**Default Notice:** a notice in writing setting out the details of the Service Provider's Default.

**Environmental Information Regulations:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Fees:** the fees as detailed in Schedule 10 which shall become due and payable by the Council to the Service Provider in respect of the Services in accordance with the provisions of any Individual Agreement.

**Final Warning Notice:** has the meaning set out in clause 16 (Persistent Breach).

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event:** any cause affecting the performance by a party of its obligations under this Agreement, which are reasonably unforeseeable and are arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Staff or any other failure in the Service Provider's supply chain.

**Framework Agreement:** means this agreement and all Schedules to this agreement as varied from time to time.

**Framework Agreement Variation Procedure:** means the procedure set out in Schedule 4 (Variation Procedure).

**Framework Provider:** means the Service Provider and other service providers appointed as framework providers under this Framework Agreement.

**Framework Year:** means any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

**Good Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

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**Guidance:** means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

**Improper Conduct:** means any action that may reasonably be considered to be to the detriment of a Customer's welfare or to the delivery of the Service – either by positive action or by omission. Such action shall include but is not limited to:

- (a) Abuse
- (b) fraud and theft from Customers
- (c) sexual misconduct or sexual exploitation
- (d) improper inducements, including inducements offered to employees of the Council
- (e) conspiracy with officer or officers of the Council or any Staff to defraud or disadvantage Customers
- (f) financial malpractice
- (g) business continuity failure.

**Individual Agreement:** means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Council and the Service Provider comprising the terms and conditions of this Framework Agreement, the Individual Agreement terms and conditions (as may be amended) Order Form and any document referred to in it.

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** the period commencing on the Commencement Date and ending on the third anniversary of the Commencement Date or earlier termination of this Framework Agreement.

**Key Personnel:** those Staff identified Schedule 3 (Contract Management) for the roles attributed to such Staff, as modified pursuant to Schedule 3 (Contract Management).

**Law:** means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

**Lot:** means the Services divided into lots as referred to in the OJEU Notice and set out in Schedule 1

**Month:** means a calendar month.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

**OJEU Notice:** means the contract notice [REFERENCE AND DATE] published in the Official Journal of the European Union.

**Order:** the order placed by the Council to the Service Provider which sets out the details of the Services to be supplied.

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**Order Form:** means the document setting out details of an Order in the form set out in Schedule 8.

**Parent Company:** means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. **Holding Company** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

**Party:** means the Council and/or the Service Provider.

**Personal Data:** shall have the same meaning as set out in the Data Protection Act 2018.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Council; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

**Regulations:** means The Public Contracts Regulations 2015 (*SI 2015/102*).

**Regulatory Bodies:** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Council.

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Framework Agreement, whether those services are provided by the Council internally or by any Replacement Service Provider.

**Replacement Service Provider:** any third-party supplier of Replacement Services appointed by the Council from time to time.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

**Safeguarding Adults Policy:** the Council's policy for safeguarding vulnerable adults as set out in Schedule 7 (Safeguarding Policies).

**Safeguarding Children Policy:** the Council's policy for safeguarding children adults as set out in Schedule 7 (Safeguarding Policies).

**Service Provider's Lots:** means the lots to which the Service Provider has been appointed under this Framework Agreement as set out in Schedule 1.

**Tender:** the tender submitted by the Service Provider on [DATE] and other associated documentation set out in Schedule 2.

**Services:** the Standard Home Care services as described in Schedule 1 (Specification) and divided into Lots.

**Specification:** the Service specification at Schedule 1 of this Framework Agreement.

**Staff:** all persons employed by the Service Provider to perform its obligations under a Contract together with the Service Provider's agents, suppliers and Sub-Contractors used in the performance of its obligations under the Individual Agreement.

**Sub-Contract:** any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or service providers that enter into a Sub-Contract with the Service Provider.

**Term:** the period of the Initial Term of this Framework Agreement as may be varied by:

- (a) any extensions to this Framework Agreement which are agreed pursuant to clause 2.2 or
- (b) the earlier termination of this Framework Agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this Framework Agreement.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**Variation:** any change, amendment or variation to this Framework Agreement including to any of the Services.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

**Year:** means a calendar year.

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- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Framework Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular meaning shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 23.59 on 31 December 2020 at the date of this Framework Agreement.
- 1.10 A reference to **writing** or **written** does not include faxes.
- 1.11 Any obligation in this Framework Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Framework Agreement) at any time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this Framework Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.14 Where the word “day” is used it will mean calendar day, unless expressly states Working Day which is defined above.
- 1.15 In the event of, and only to the extent of any conflict or inconsistency between the provisions of this Framework Agreement and the terms and conditions of an

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Individual Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses and schedules of the Individual Agreement
- (b) Order Form including the Service Request Form except Service Provider's Response to the Service Request Form
- (c) Framework Agreement and the schedules to this Framework Agreement other than Schedule 2 (Service Providers Tender);
- (d) any other document referred to in the clauses of the Order Form, and
- (e) Schedule 2 (Service Providers Tender) to this Framework Agreement and the Response to the Service Request Form.

## **COMMENCEMENT AND DURATION**

### **2. TERM OF FRAMEWORK AGREEMENT**

- 2.1 This Framework Agreement shall take effect on the Commencement Date (unless it is terminated in accordance with the terms of this Framework Agreement or is otherwise lawfully terminate) and shall continue for the Initial Term.
- 2.2 The Council may extend this Framework Agreement beyond the Initial Term by a further period or periods of up to two years (Extension Period).
- 2.3 If the Council wishes to extend this Framework Agreement, it shall give the Service Provider at least three months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 2.4 If the Council gives such notice, then the Term shall be extended by the period set out in the notice.
- 2.5 If the Council does not wish to extend this Framework Agreement beyond the Initial Term this Framework Agreement shall expire on the expiry of the Initial Term and the provisions of 17 (Consequences of Termination and Expiry) shall apply.

### **3. SCOPE OF FRAMEWORK AGREEMENT**

- 3.1 This Framework Agreement governs the relationship between the Council and the Service Provider in respect of the provision of the Services by the Service Provider to Customers.
- 3.2 The Council appoints the Service Provider as a Framework Provider of the Services and the Service Provider shall be eligible to receive Orders for such Services for Customers during the Term.

- 3.3 The Council and the Service Provider agree to work together in an open and trusting style with a view to ensuring best value is achieved and a fair price is paid for any Services provided.
- 3.4 The Council may at their absolute discretion and from time to time order Services from the Service Provider in accordance with the ordering procedure set out in clause 4 (Award Procedure) during the Term. The Parties acknowledge and agree that the Council has the right to Award Individual Agreements pursuant to this Framework Agreement provided that they comply at all times with the Award Procedure in Schedule 9 (Award Procedures).
- 3.5 If and to the extent that any Services under this Framework Agreement are required, the Council shall:
- (a) enter into an Individual Agreements with the Service Provider for these Services materially in accordance with the terms of the Individual Agreements; and
  - (b) comply with the procedure in Schedule 9 (Award Procedures).
- 3.6 The Service Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Council for the Services and that the Council is at all times entitled to enter into other contracts and arrangements with other Service Providers for the provision of any or all services which are the same as or similar to the Services.

#### **4. AWARD PROCEDURE**

- 4.1 If the Council decides to source Services through this Framework Agreement then they may do so in accordance with the provisions set out in the Schedule 9 (Award Procedures) and in accordance with the Regulations.
- 4.2 Should the Council wish to place an Order with a Service Provider the Parties shall comply with the Award Procedures set out in the Schedule 9 (Award Procedures) to this Framework Agreement.
- 4.3 The Parties acknowledge and agree that the Individual Agreements shall be formed upon the signing of the Order Form by the Council, upon completion of the Award Procedure provisions set out in the Schedule 9 (Award Procedures) to this Framework Agreement.

##### **Form of Award**

- 4.4 Subject to clauses 4.1 and 4.2 above, the Council may place an Order with a Service Provider by carrying of the process in writing in via electronic provision in accordance with the Regulations and Schedule 9 (Award Procedures).

**Accepting and Declining Awards**

- 4.5 Following receipt of an Order Form, the Service Provider shall promptly and in any event within a reasonable period determined by the Council and notified to the Service Provider in writing (which in any event shall not exceed two Working Days) acknowledge receipt of the Order Form and either:
- (a) notify the Council in writing and with detailed reasons that it is unable to fulfil the Order; or
  - (b) notify the Council that it is able to fulfil the Order by signing and returning the Order Form.
- 4.6 If the Service Provider:
- (a) notifies the Council that it is unable to fulfil an Order; or
  - (b) the time limit referred to in clause 4.5 above has expired;
- then the Order shall lapse and the Council may then send that Order Form to another Service Provider in accordance with the procedure set out in Schedule 9.
- 4.7 If the Service Provider modifies or imposes conditions on the fulfilment of an Order, then the Council may either:
- (a) Re-issue the Order Form incorporating the modifications or conditions; or
  - (b) treat the Service Provider's response as notification of its inability to fulfil the Award and the provisions of clause 4.6 above shall apply.
- 4.8 The Parties acknowledge and agree that any Service Request Form is an "invitation to treat" by the Council. Accordingly, the Service Provider shall sign and return the Order Form which shall constitute its offer to the Council. The Council shall signal its acceptance of the Service Provider's offer and the formation of an Individual Agreement by counter-signing the Order Form.
- 4.9 For the avoidance of doubt, signing of the Order Form in accordance with the provisions of this clause will incorporate these Framework Agreement terms and conditions and those of the Individual Agreement which the Order Form relates.
- 5. FEES FOR SERVICES**
- 5.1 The Fees payable to the Service Provider for the Services shall be the Fees listed in the Schedule 10 Fee Structure for the relevant Lot and such prices shall be adjusted annually in accordance with the provision of Schedule 10.

**6. WARRANTIES AND REPRESENTATION**

- 6.1 The Supplier warrants and represents to the Council that:
- (a) it has full capacity and authority and all Necessary Consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
  - (b) this Framework Agreement is executed by a duly authorised representative of the Supplier;
  - (c) in entering into this Framework Agreement or any Individual Agreement it has not committed any Prohibited Act;
  - (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the Tender Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council before the execution of this Framework Agreement and it will promptly advise the Council of any fact, matter, inaccuracies or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading, or may materially or adversely affect its ability to perform the Services;
  - (e) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Framework Agreement and any Individual Agreement thereunder;
  - (f) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Individual Agreement which may be entered into with the Council or Other Contracting Bodies;
  - (g) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and
  - (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

**7. SERVICE PRE-REQUISITES**

- 7.1 The Supplier shall be responsible for obtaining all licences, authorisations, CQC ratings, consents or permits required in relation to the performance of this Framework Agreement and any Individual Agreement, the details of these may be set out in the Specification (Schedule 1) or Tender documents, which all form part of this Framework Agreement.

**THE SERVICES**

**8. SUPPLY OF SERVICES**

- 8.1 The Service Provider shall perform all Individual Agreements entered into with the Council in accordance with:
- (a) the requirements of this Framework Agreement (including the Specification); and
  - (b) the terms and conditions of the respective Individual Agreements.
- 8.2 The Service Provider shall be able to provide the Services to the Council with effect from the Commencement Date and for the duration of any Individual Agreement in accordance with the provisions of this Agreement.

**INFORMATION**

**9. CONFIDENTIALITY**

- 9.1 Subject to clause 9.2 below, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 9.2 Clause 9.1 above shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 11.1 (Freedom of Information) shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
  - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;
  - (c) 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 9.1 above;
  - (d) by the Council of any document to which it is a party and which the parties to this Framework Agreement have agreed contains no commercially sensitive information;
  - (e) to enable a determination to be made under clause 17.6 (Dispute Resolution);

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- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Council to any other department, office or agency of the Government; and
- (h) by the Council relating to this Framework Agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

9.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's' employees, rate-payers or Customers, are delivered up to the Council or securely destroyed.

**10. DATA PROTECTION**

10.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

10.2 The Information Sharing Agreement sets out the scope, nature and purpose of processing, the duration of the processing and the types of Personal Data and categories of Data Subject

10.3 Either Party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement.

**11. FREEDOM OF INFORMATION**

11.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.

11.2 The Service Provider shall and shall procure that its Sub-Contractors shall, at no additional costs to the Council:

- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

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- (c) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations
- 11.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
  - (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
  - (b) is to be disclosed in response to a Request for Information.
- 11.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 11.5 The Service Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
  - (a) without consulting with the Service Provider; or
  - (b) following consultation with the Service Provider and having taken its views into account,

provided always that where clause 11.5 **Error! Reference source not found.** above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

- 11.6 The Service Provider shall ensure that all Information produced in the course of the Framework Agreement or relating to the Framework Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 11.7 The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 11.5 above.

## **12. PUBLICITY**

- 12.1 The Service Provider shall not:

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- (a) make or consent to the making of any public statement, press announcements or publicise this Framework Agreement, any Individual Agreement connected to it or any contents in any way; or
  - (b) use the Council's name, brand or logo in any promotion or marketing or announcement of orders,  
without the prior written Approval of the Council, such consent shall not be unreasonably withheld or delayed.
- 12.2 The Service Provider shall not do anything that may damage the reputation of the Council or bring the Council into disrepute
- 12.3 The Service Provider shall not undertake any activity, including any public statement in either online or offline channels, which will bring the reputation of the Council into disrepute. The Service Provider shall notify the Council with immediate effect as soon as it becomes aware of any activity or information provided by it which, may adversely affect the involvement of the Council in this Agreement; or the reputation of the Council.
- 12.4 The Council shall be entitled to publicise this Framework Agreement (together with all and any Individual Agreement) in accordance with any legal obligation on the Council, including any examination of this Framework Agreement by the Auditor or otherwise.
- 12.5 Any use of the logo of the Council must be approved by the Council Communications department prior to use. Use of the Council's logo must comply with the Council's brand guidelines which will determine its position and size in relationship to any partner/other logos. The appropriate version of the Council's logo shall be supplied by the Council's Communications who will ensure the relationship with the Council is made clear (e.g. 'funded by', 'supported by' or 'working in partnership with').

**TERMINATION, DISRUPTION AND SUSPENSION**

**13. TERMINATION ON DEFAULT**

- 13.1 The Council may terminate the Framework Agreement by giving written notice to the Service Provider with effect from the date specified in such notice:
- (a) where the Service Provider commits a material breach and the Service Provider has not remedied the material breach to the satisfaction of the Council within 20 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied;
  - (b) where the Council terminates an Individual Agreement awarded to the Service Provider under this Framework Agreement as a consequence of a material breach by the Service Provider;

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- (c) any warranty given by the other party in clause 6 (WARRANTIES AND REPRESENTATIONS) of this Framework Agreement is found to be untrue or misleading;
  - (d) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 13.2 For the purposes of clause 13.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:
  - (a) a substantial portion of this Framework Agreement or Individual Agreement;  
or
  - (b) any of the obligations set out in clause 18 of the Individual Agreement (Insurance), clause 19 of the Individual Agreement (Safeguarding), clause 23 of the Individual Agreement (Discrimination), (Section 3.6 of Specification in Schedule 1 of this Framework Agreement) (Abuse), clause 7 (Pre-Requisites), clause 18 of the Individual Agreement (Health & Safety), clauses 31 and 32 of the Individual Agreement (Quality Assurance) , over the term of this Framework Agreement or any Individual Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.]
- 13.3 The Council may terminate this Agreement and any Individual Agreement forthwith and without further liability upon written notice to the Service Provider if there is a breach of the provision of clause 19 of the Individual Agreement (Safeguarding Children and Vulnerable Adults), clause 17.6 (Prevention of Bribery).
- 13.4 The Council may terminate the Agreement and any Individual Agreement, by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing of the Service Provider which adversely impacts on the Service Provider's ability to supply Services under this Framework Agreement or any Individual Agreement.
- 13.5 If this Framework Agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Service Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
- 13.6 The Service Provider may terminate this Framework Agreement in the event that the Council fails to pay any undisputed sum due to the Service Provider by giving 60 calendar days' written notice to the Council ("Payment Default"). In the event that the Council remedies the Payment Default in the 60-day notice period, the Service Provider's notice to terminate this Framework Agreement shall be deemed to have been withdrawn.

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**14. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

14.1 Without affecting any other right or remedy available to it, the Council may terminate this Agreement and any Contracts with immediate effect by giving written notice to the Service Provider if:

- (a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986] **OR** [(being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986] **OR** [(being a partnership) has any partner to whom any of the foregoing apply];
- (b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (g) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(a) to clause 14.1(g) (Termination of Change of Control and Insolvency) inclusive;;

- (i) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.2 The Service Provider shall notify the Council immediately if the Service Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Council may terminate the Agreement by notice in writing with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Council becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

**15. TERMINATION ON NOTICE**

15.1 Without affecting any other right or remedy available to it, the Council shall have the right to terminate this Framework Agreement at any time by giving:

- (a) 30 days written notice to the Service Provider
- (b) any other period of notice as agreed in writing by the Parties.

15.2 The Service Provider may terminate this Framework Agreement by giving 180 days written notice to the Council.

15.3 In the event that the Service Provider gives notice to the Council in accordance with the term of an Individual Agreement, and does so for multiple Individual Agreement in 30 calendar day period, the notice provision in those Individual Agreements shall be as details in Schedule 12 (Notice Periods).

15.4 The Council may terminate this Framework Agreement by giving not less than one months' written notice to the Service Provider in the event that:

- (a) this Framework Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 ("PCR 2015"); or
- (b) the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of PCR 2015, including as a result of the application of regulation 57(2) of PCR 2015, and should therefore have been excluded from the procurement procedure; or
- (c) this Framework Agreement should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty For European Union.

**16. SUSPENSION OF SERVICE PROVIDER'S APPOINTMENT**

- 16.1 Without prejudice to the Council's rights to terminate the Framework Agreement in accordance with clauses, 13 (Termination on Default) and 15 (Termination on Notice), the Council may suspend the Service Provider's right to receive Orders from the Council in any or all Lots by giving notice in writing to the Services Provider. If the Council provider notice to the Services Provider in accordance with this clause 16, the Service Provider's appointment shall be suspended for the period set out in the notice or such other periods notified to the Services Provider by the Council in writing from time to time.
- 16.2 Following any suspension, the Council shall use reasonable endeavours to investigate the cause of concern as soon as possible, and the Service Provider shall give the Council all assistance that it requires.
- 16.3 In the event that the Council is satisfied that the cause of the concern did not occur or will not re-occur or is otherwise satisfied, it may remove the suspension and so inform the Service Provider in writing.
- 16.4 In the event that the Council is satisfied, following an investigation, that the cause of concern is well founded it may terminate this Agreement and/or all Individual Agreements made under it and the terms of clauses 17 (Consequences of Termination and Expiry) and **Error! Reference source not found.** (Retendering and Handover) shall apply.

**17. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 17.1 Notwithstanding the service of a notice to terminate this Agreement or a Contract, the Service Provider shall continue to fulfil its obligations under this Agreement or any Individual Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this clause 17 (Consequences of Termination).
- 17.2 Upon the expiry or termination of this Framework Agreement or any Individual Agreement being in whole or in part for any reason the Service Provider shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Service Provider.
- 17.3 On termination or expiry of this Framework Agreement the Service Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith or destroyed and the Service Provider's Authorised Representative shall certify full compliance with this clause, save that it may keep one copy of any such data or information for a period of up to six (6) months to comply with its obligation under this Framework Agreement, or such period as is necessary for compliance with statute.

- 17.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 17.5 Where a Replacement Service Provider is required by the Council, the Council shall be entitled to recover actual costs from the Service Provider, provided always that the need is as a consequence of any breach by the Service Provider.
- 17.6 The provisions of clause 17.6 (Dispute Resolution), clause 12 (Publicity), clause 9 (Confidentiality), clause 11 (Freedom of Information), clause 10 (Data Protection), clause 13 (Termination on Default), clause 17 (Consequences of Termination and Expiry), clause 21 (Retendering and Handover), 31 (Whistleblowing), 26 (Severability), 35 (Governing Law and Jurisdiction) shall survive termination or expiry of this Framework Agreement.

**18. DISPUTE RESOLUTION**

- 18.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representative of the Council and the [EMPLOYEE TITLE] of the Service Provider shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representative of the Council and the Authorised Representative of the Service Provider are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Integrated Commissioning of the Council and the nominated [SENIOR OFFICER] of the Service Provider who shall attempt in good faith to resolve it; and
  - (c) if the Head of Integrated Commissioning of the Council and the nominated [SENIOR OFFICER] of the Service Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

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- 18.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 35 (Governing Law and Jurisdiction) which clause shall apply at all times.

**19. CONFLICTS OF INTEREST**

- 19.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Council under the provisions of the Contract.
- 19.2 The Service Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in clause 19.1 above arises or is reasonably foreseeable.
- 19.3 The Council reserves the right to terminate the Agreement immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

**20. PREVENTION OF BRIBERY**

- 20.1 The Service Provider:
- (a) shall not, and shall procure that any Service Provider Party and all Service Provider Staff shall not, in connection with this Framework Agreement or any Individual Agreement commit a Prohibited Act;
  - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement or any Individual Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Framework Agreement or an Individual Agreement.
- 20.2 The Service Provider shall:
- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

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- (b) within 20 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 20 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 20.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Service Provider Staff or any Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 20.4 If any breach of clause 20.1 above is suspected or known, the Service Provider must notify the Council immediately.
- 20.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 20.1, the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for six years following the expiry or termination of this Agreement.
- 20.6 The Council may terminate this Framework Agreement or an Individual Agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Staff (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 20.1 above. In determining whether to exercise the right of termination under this clause 20.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement or an Individual Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:
  - (a) with the authority or with the actual knowledge of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be);  
or,
  - (b) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had such knowledge;
- 20.7 Any notice of termination under clause 20.6 above must specify:
  - (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
  - (c) the date on which this Framework Agreement will terminate.

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20.8 Despite clause 17.6 (Dispute Resolution), any dispute relating to:

- (a) the interpretation of this clause 17.6; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

20.9 Any termination under clause 20.6 above will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

**21. RETENDERING AND HANDOVER**

21.1 Within 15 Working Days of being so requested by the Council, the Service Provider shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Council to issue invitations to offer for the future provision of the Services for any Individual Agreement.

21.2 Where, in the opinion of the Council, TUPE is likely to apply on the termination or expiration of any Individual Agreement, the information to be provided by the Service Provider shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):

- (a) the number of employees who would be transferred, but with no obligation on the Service Provider to specify their names;
- (b) in respect of each of those employees, their dates of birth, sex, salary, pensions, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those Employees individually and any outstanding claims arising from their employment; and
- (c) the general terms and conditions applicable to those employees, including provisions, probationary periods, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity, paternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements and any other collective agreements, facility time arrangements and additional employment benefits.

21.3 The Service Provider shall advise the Council immediately of any changes to these details between the date on which they are provided and the Framework Agreement expiry date and shall ensure that the information disclosed is accurate and up to date as at the expiry date and that all known existing liabilities relating to such Staff have been discharged.

21.4 The Service Provider shall indemnify the Council against any claim made against the Council at any time by any person in respect of the liability incurred by the Council arising from any deficiency or inaccuracy in information, which the Service Provider

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is required to provide under this clause 21.

- 21.5 The Service Provider shall, if required by the Council, provide an undertaking and warrant to any person to whom the Service Provider's Staff may transfer pursuant to TUPE to the effect the Service Provider has discharged all its obligations as employer.
- 21.6 The Service Provider shall co-operate fully with the Council during the handover arising from the completion or earlier termination of the Framework Agreement. This co-operation, during the setting up operations period of the Replacement Service Provider, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
- 21.7 Within 10 Working Days of being so requested by the Council, the Service Provider shall transfer to the Council, or any person designated by the Council, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Council.

**GENERAL PROVISIONS**

**22. SUBCONTRACTING AND ASSIGNMENT**

- 22.1 Subject to clause 22.2 and clause 22.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Council, such consent not to be unreasonably withheld.
- 22.2 In the event that the Council provides its prior written consent to the Service Provider entering into any Sub-Contract in connection with this Framework Agreement or any Individual Agreement it shall not in any way relieve the Service Provider from its liabilities and the Service Provider shall:
- (a) remain fully responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Framework Agreement and shall procure that the Sub-Contractor complies with such terms; and
  - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
- 22.3 Provided that the Council has given prior written consent, the Supplier shall be entitled to novate the Framework Agreement where:

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- (a) the specific change in contractor was provided for in the procurement process for the award of this Framework Agreement;
- (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Framework Agreement.

22.4 The Council shall be entitled to novate the Framework Agreement to any Contracting Authority other body which substantially performs any of the functions that previously had been performed by the Council.

**23. VARIATION TO FRAMEWORK AGREEMENT**

23.1 Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 4

**24. THIRD PARTY RIGHTS**

A person who is not a party to this Framework Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**25. SEVERABILITY**

25.1 If any of the provisions or part provision of this Framework Agreement is judged to be illegal or unenforceable or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Framework Agreement.

25.2 If any provision or part-provision of this Framework Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**26. RIGHTS AND REMEDIES**

26.1 Except as expressly provided in this Framework Agreement, the rights and remedies provided under this Framework Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

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26.2 Subject to the specific limitations set out in this Framework Agreement, no remedy conferred by any provision of this Framework Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Framework Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

**27. WAIVER**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Service Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this Framework Agreement.

**28. FORCE MAJEURE**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control and its reasonable foresight. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three (3) months, the party not affected may terminate this Framework Agreement by giving 30 days' written notice to the affected party.

**29. NOTICES**

29.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

29.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, pre-paid first class post, or other next Working Day delivery service), or e-mail (confirmed case by letter of the same date). Such letter or e-mail shall be addressed to the other Party in the manner referred to in clause 29.3. Any notice or communication shall be deemed to have been received:

(a) if delivered by hand at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting;

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(c) if sent by email, at the time of transmission, or, if this time falls outside working hours in the place of receipt, when working hours resume. In this clause 31.2(c), working hours means 9.30am to 4.30pm Monday to Friday on a day that is not a public holiday in the place of receipt.

29.3 For the purposes of clause 29.2, the address of each Party shall be:

(a) For the Council:

[NAME OF COUNCIL'S REPRESENTATIVE]

Address:

For the attention of:

Tel:

Fax:

E-mail:

(b) For the Supplier:

[NAME OF SERVICE PROVIDER'S AUTHORISED REPRESENTATIVE]

Address:

For the attention of:

Tel:

Fax:

E-mail:

29.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**30. MODERN SLAVERY**

30.1 The Service Provider represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Service Provider nor any of its officers, employees or other persons associated with it:

- (a) has been convicted of any offence involving slavery and human trafficking;
- (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body

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regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 30.2 The Service Provider shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

**31. WHISTLEBLOWING**

- 31.1 The Service Provider shall ensure that it has a Whistleblowing Procedure which shall be approved by the Council from time to time.
- 31.2 The Service Provider confirms that the Council is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and its Staff will be made aware of this provision.
- 31.3 The Service Provider shall ensure that Staff involved in the provision of the Service under this Framework Agreement or any Order are aware of the Council's Whistleblowing Policy (available on the Council's website or on request) and the arrangements to be followed in the event of them having any concerns and wishing to make a disclosure pursuant to the policy.

**32. PARTNERSHIP OR AGENCY**

- 32.1 Nothing in this Framework Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Framework Agreement.

**33. ENTIRE AGREEMENT**

- 33.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this clause 33 shall operate to exclude any liability for fraud.
- 33.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Framework Agreement.

**34. COUNTERPARTS**

This Framework Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Framework Agreement, but all the counterparts shall together constitute the same agreement.

**35. GOVERNING LAW AND JURISDICTION**

35.1 This Framework Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

35.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Framework Agreement or its subject matter.

Signed by [NAME OF DIRECTOR]  
for and on behalf of Derby City  
Council

.....  
Director

Signed by [NAME OF DIRECTOR]  
for and on behalf of Derby City  
Council

.....  
Director

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF  
**SERVICE PROVIDER**]

.....  
Director

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF  
**SERVICE PROVIDER**]

.....  
Director

**Schedule 1 Specification**

**Schedule 2 Service Provider's Tender**

**Schedule 3 Contract Management**

**1. AUTHORISED REPRESENTATIVES**

1.1 The Council's initial Authorised Representative: Council Market manager - Adults

1.2 The Service Provider's initial Authorised Representative: [INSERT DETAILS]

**2. KEY PERSONNEL**

CQC Registered Manager for the Service Provider

**Schedule 4 Variation Procedure**

**1. GENERAL PRINCIPLES**

- 1.1 Where the Council or the Service Provider sees a need to change this Framework Agreement, the Council may at any time request, and the Service Provider may at any time recommend, such Variation only in accordance with the Variation Procedure set out in paragraph 2 of this Schedule 4.
- 1.2 Until such time as a Variation is made in accordance with the Variation Procedure, the Council and the Service Provider shall, unless otherwise agreed in writing, continue to perform this Framework Agreement in compliance with its terms before such Variation.
- 1.3 Any discussions which may take place between the Council and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Variation shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Staff which has not been authorised in advance by a Variation, and which has not been otherwise agreed in accordance with the provisions of this Schedule 4, shall be undertaken entirely at the expense and liability of the Service Provider.

**2. PROCEDURE**

- 2.1 Discussion between the Council and the Service Provider concerning a Variation shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this Framework Agreement by the Council; or
  - (c) a recommendation to change this Framework Agreement by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Council, the Service Provider shall, unless otherwise agreed, submit two copies of drafted Deed of Variation signed by the Service Provider to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this Framework Agreement by the Service Provider shall be submitted directly to the Council. The Council shall give its response to the request to vary within three weeks.
- 2.4 The Council shall provide a Deed of Variation in draft form which both parties shall agree and sign, each shall contain:
  - (a) full details of the Variation, including any specifications;

- (b) the price, if any, of the Variation;
- (c) a date of implementation,
- (d) a schedule of payments if appropriate; and
- (e) provision for signature by the Council and the Service Provider.

2.5 A Deed of Variation signed by the Council and by the Service Provider shall constitute an amendment to this Framework Agreement.

### **Schedule 5 Suspension Grounds**

The Council may suspend the Service Provider Framework Agreement and their ability to receive Orders in accordance with clause 16 for the following reason, but this is not intended to be an exhaustive list of grounds and the Council may up date and amend these grounds from time to time:

- (a) evidence that the Service Provider does not have sufficient financial stability to maintain the Services in the event of financial demands on the Service Provider;
- (b) failure to maintain registration with the CQC or its successor (if applicable) during the period of the Agreement, to deliver personal care in the City of Derby or failure to apply to the CQC for registration to deliver personal care in the City of Derby within four weeks of contract award letter.
- (c) failure to adhere to any future regulator the CQC or its successor (if applicable) quality standards and ratings systems;
- (d) failure to maintain a CQC rating of 'Requires Improvement', 'Good' or 'Outstanding' for Personal Care the duration of the Agreement;
- (e) failure to provide information after repeated requests under this Agreement;
- (f) provision of false or misleading information to the Council or to Customers or their representatives, (including prospective Customers or representatives) by the Service Provider or its Staff;
- (g) the safety or welfare of Customers is in the opinion of the Council at serious risk due to the acts or omissions of the Service Provider or its Staff;
- (h) failure to remedy inadequate performance.

**Schedule 6 Commercially Sensitive Information**

DETAILS OF ANY SERVICE PROVIDER INFORMATION TO BE CLASSIFIED AS  
COMMERCIALY SENSITIVE]

**Schedule 7 Safeguarding Policies**

**Children's**

<http://www.derbyscb.org.uk/staff-and-volunteers/policies-and-procedures/>

<https://www.ddscp.org.uk/>

**Adults**

<http://www.derbysab.org.uk/>

<http://www.derby.gov.uk/health-and-social-care/safeguarding-adults-at-risk/safeguarding-vulnerable-adults>

**Schedule 8 Individual Agreement**

The Individual Agreement terms and conditions as set out in this Schedule 8 will govern all Orders pursuant to this Framework.

**Schedule 9 Award Procedures**

**Schedule 10 Fee Structure**

The Service Provider will provide the Services for the Fees set by the Council, as detailed below:

<b>Description</b>	<b>Fee* (£)</b>
Weekday hourly Fee rate (7am-8pm)	15.96
Weekday 15-minute Fee rate (7am-8pm)	5.17
Evening/Weekend hourly Fee rate	17.67
Evening/Weekend 15-minute Fee rate	7.70

*\*Note - Fees stated are as at financial year 2020/21 and will be subject to the annual fee review as agreed by the Council's Cabinet for the financial year 2021/22.*

Lengths of calls that are over 15 minutes will be paid at a pro-rata amount of the relevant hourly rate. If calls overlap times for two different rates, they will be allocated the rate that applies at the start of the call.

**Annual Fee Review**

The Service Provider will engage with the Council's annual Fee review process and procedures. Service Providers will be required to submit a response to the Council's Standard Home Care Rate consultation process between October and December following the timescales and process set by the Council. The information provided will be used to inform the annual Fee schedule for Standard Home Care that will be implemented in April of the subsequent financial year.

Any Fee requests relating to changes in a Customer's perceived enhanced care and support needs must be discussed separately via a review of needs with the Customer's social worker.

The invoicing and payment arrangements will be set out in Individual Agreement.

**Schedule 11 Tender Clarifications**

**Schedule 12 Notice Periods**

With reference to clause 15.3 in the event that the Service Provider gives notice to the Council in accordance with the term of an Individual Agreement, and does so for multiple Individual Agreement in 30 calendar day period, the notice provision in those Individual Agreements shall be amended to be the following Notice Period, dependant on the number of Individual Agreements on which notice is served;

- a) Individual Agreements with a cumulative total of 1 – 2 Customers, the Notice Period is no less than 30 calendar days;
- b) Individual Agreements with a cumulative total of 3 to 5 Customers, the Notice Period is no less than 90 calendar days;
- c) Individual Agreements with a cumulative total of greater than 6 Customers, the Notice Period is no less than 180 calendar days or
- d) As agreed between the Council and Service Provider in writing

the extended period is to enable the Council and the Service Provider to together to ensure the safe and timely transition of the Customers.

**Schedule 13 Invitation to Tender**