

DATED

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**FRAMEWORK AGREEMENT FOR THE PROVISION OF OUTCOME FOCUSED HOME CARE INCLUDING TEC  
ENABLED CARE**

between

**Derby City Council**

and

***[Insert Name of Supplier]***

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This agreement is dated

## Parties

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

## BACKGROUND

- (A) The Council placed a contract notice 2025/S 000-044856 on 31<sup>st</sup> July 2025 on the UK digital platform (Find a Tender) inviting potential service providers (including the Supplier) to tender for the provision of Home Care services to the Council under a framework agreement.
- (B) On the basis of the Supplier's Tender, the Council selected the Supplier to enter a framework agreement to provide services to the Council in accordance with this Framework Agreement.
- (C) 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 Supplier under this Framework Agreement.
- (D) It is the Parties' intention that the Council has no obligation to place Orders with the Supplier under this Framework Agreement 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.

**Achieved KPIs:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 1).

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

**Audit:** means an audit carried out pursuant to clause 12.

**Auditor:** means the Council's internal and external auditors, including the Council's statutory or regulatory auditors, the Comptroller and Auditor General, their staff or any appointed representatives of the National Audit Office, HM Treasury or the Cabinet Office, any party formally

appointed by the Council to carry out audit or similar review functions and the successors or assigns of any Auditor.

**Authorised Representative:** means the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in clause 32.

**Call-off Terms and Conditions:** means the terms and conditions in Schedule 5.

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

**Commencement Date:** means 6<sup>th</sup> April 2026

**Competed Services Award Criteria:** means the award criteria to be applied to Supplemental Tenders received through mini-competitions held for the award of Contracts pursuant to clause 5.7 as set out in the Order.

**Complaint:** means any complaint (whether formal or informal) raised by any Customer in relation to the Supplier's performance under the Framework Agreement or under any Contract in accordance with clause 20.

**Connected Person:** has the meaning given in paragraph 45, Part 3, Schedule 6 of Procurement Act 2023.

**Confidential Information:** means any information of either Party, however it is conveyed, that relates to the business, assets, affairs, developments, trade secrets, operations, processes, product information, know-how, designs or software, personnel and customers, clients, 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 agreement, the terms of this 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.

**Contract:** 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 Supplier comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to clause 5.7).

**Contract Notice:** means the contract notice 2025/S 000-044856 published in the UK digital platform.

**Controller:** as defined in the Data Protection Legislation.

**Customer:** any individual for whose benefit the Services of this agreement are ordered and performed.

**Default:** means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term or material breach as defined in clause 46.2 of the Call-off Terms and Conditions) 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 Contract and in respect of which such Party is liable to the other.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party].

**Data Subject:** shall have the same meaning as set out in the Data Protection Legislation.

**Debarment List:** the list of suppliers referred to in section 62 of the Procurement Act 2023.

**Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

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

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

**Financial Year:** the period from 1 April to 31 March.

**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 7](#).

**Framework Providers:** means the Supplier and other suppliers 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.

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

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

**Initial Term:** the duration of the agreement starting at 00.01 am on the Commencement Date and ending at 11.59 pm on the day before the fourth anniversary of the Commencement Date.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**KPIs:** the key performance indicators for the Framework Agreement as specified in Schedule 1.

**Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

**Lots:** means the Services divided into lots as referred to in the Contract Notice and set out in Schedule 1 Part 2.

**Management Information:** means the management information specified in Schedule 6.

**Month:** means a calendar month.

**Order:** means an order for Services sent by the Council to the Supplier in accordance with the award procedures in clause 5.

**Order Form:** means a document setting out details of an Order in the form set out in Schedule 4 or as otherwise agreed in accordance with clause 5.10.

**Parent Company:** means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. **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 Supplier.

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

**Processor:** as defined in the Data Protection Legislation.

**Pricing Matrices:** means the pricing matrices set out in Schedule 3.

**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 as an inducement or reward for any 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 Framework Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts relating to this Framework Agreement or any other contract with the Council;
  - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Council; or
  - (iv) of defrauding attempting to defraud or conspiring to defraud the Council (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017).

- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) if such activity, practice or conduct had been carried out in the UK.

**Procurement Act:** means the Procurement Act 2023.

**PSQ Response:** means the response to the procurement specific questionnaire submitted by the Supplier to the Council on 28<sup>th</sup> August 2025.

**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.

**Relevant Requirements:** all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**Requests for Information:** means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**Rota Order:** the rota order for sending Orders as set out in Schedule 2.

**Services:** means the Home Care services detailed in Schedule 1.

**Staff:** means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and Subcontractors used in the performance of its obligations under this Framework Agreement or Contracts.

**Standard Services:** means the standard services referred to in Schedule 1.

**Subcontract:** any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

**Subcontractor:** the contractors or service providers that enter into a Subcontract with the Supplier.

**Supplemental Tender:** means the documents submitted to the Council in response to the Council's invitation to Framework Providers for formal offers to supply it with Competed Services.

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

**Supplier Personnel:** means all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Target KPI:** the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Schedule 1.

**Tender:** means the tender submitted by the Supplier to the Council on 28<sup>th</sup> August 2025 (Procurement Specific Questionnaire) and 15<sup>th</sup> October 2025.

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

- a) any extension pursuant to clause 2.2; or

- b) the earlier termination of this agreement in accordance with its terms.

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

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Working Days:** means any day other than a Saturday, Sunday or public holiday in England and Wales.

**Year:** means a calendar year.

1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.
- (e) reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (f) unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time;
- (g) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (h) 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 shall include the Schedules;
- (i) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
- (j) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- (k) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (l) reference to writing or written excludes fax but not email;

- (m) any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **Part one: framework arrangements and award procedure**

### **2. Term of Framework Agreement**

- 2.1 The Framework Agreement commences on the Commencement Date and continues for the Term.
- 2.2 The Council may, by giving the Supplier not less than three months' written notice prior to expiry of the Term, request the extension of this agreement in respect of the whole (or part) of the Services and on the same terms mutatis mutandis, for a period or periods of up to two years from the day following expiry of the Term, provided that the maximum length of the Term shall not exceed eight years.

### **3. Estimated Value of Framework Agreement**

- 3.1 The estimated value of this Framework Agreement (including all possible extensions) is £161,008,320.

### **4. Scope of Framework Agreement**

- 4.1 This Framework Agreement governs the relationship between the Council and the Supplier in respect of the provision of the Services by the Supplier to the Council.
- 4.2 This Framework Agreement is not awarded as an open framework as set out in section 49 of the Procurement Act 2023.
- 4.3 The Council appoints the Supplier as a Framework Provider of the Services and the Supplier shall be eligible to receive Orders for such Services from the Council during the Term.
- 4.4 The Council may at its absolute discretion and from time to time order Services from the Supplier in accordance with the ordering procedure set out in clause 5 during the Term. If there is a conflict between clause 5 and the Procurement Act, the Procurement Act shall take precedence.
- 4.5 If and to the extent that any Services under this Framework Agreement are required the Council shall:
  - (a) enter into a contract with the Supplier for these Services materially in accordance with the terms of the Contract; and
  - (b) comply with the ordering procedure in clause 5.
- 4.6 The Supplier 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 suppliers for the provision of any or all services which are the same as or similar to the Services.

## **5. Award procedures**

### **Awards under the Framework Agreement**

5.1 If the Council decides to source Services through the Framework Agreement then it may:

- (a) satisfy its requirements for the Services by awarding a Contract in accordance with the terms laid down in this Framework Agreement without re-opening competition through the rota process;
- (b) satisfy its requirements for the Services by directly awarding a Contract to a Framework Provider without re-opening competition; or
- (c) satisfy its requirements for Services by awarding a Contract following a mini-competition conducted in accordance with the requirements of clause 5.7.

### **Rota Process**

5.2 When ordering Services under the Framework Agreement without re-opening competition by using the rota process, the Council shall:

- (a) identify the relevant Lot which its Services requirements fall into;
- (b) send an Order to the Framework Provider ordered highest in the Rota Order for that Lot for the day that the Order is made;
- (c) if the Framework Provider who was ordered highest is not able to provide the Services, send an Order to the Framework Provider ordered next highest in the Rota Order;
- (d) repeat the process set out in clause 5.2(c) until the Order is fulfilled or there are no further Framework Providers qualified to fulfil it within the Lot;
- (e) if, following the process set out at clause 5.2(d), there are no Framework Provider within the Lot is able to fulfil the Order, send Orders to any or all Framework Providers on other lots, except Lot 5;
- (f) if the Framework Providers sent Orders in accordance with clause 5.2(e) are not able to provide the Services, send Orders to any or all of the Framework Providers on Lot 5.

5.3 The Council may, instead of sending an Order to a single Framework Provider under clause 5.2(b) elect to send an Order to the Framework Providers ordered first and second on the Rota Order.

5.4 Where the Council elects to send an Order to multiple Framework Providers under clause 5.3, the process set out at clause 5.2(c) shall be amended so that the Council shall send the order to the next two highest ordered Framework Providers.

- 5.5 Where, as part of the rota process for placing Orders, an Order would be sent to more than a single Framework Provider at once, the successful Framework Provider shall be the first Framework Provider to confirm their acceptance of the Order, subject to that Framework Provider being able adequately perform the Order.

#### **Direct Award**

- 5.6 The Council may at its sole discretion choose to place an Order directly with any Framework Provider for any reason. For the avoidance of doubt, this provision shall include an Order for block services as well as individual services.

#### **Competed Services (awards following mini-competitions)**

- 5.7 The Council reserves the right at any time to carry out a further competition for awarding Orders for Services or for additional services which are connected to the Services, provided that carrying out any such further competition shall not be in breach of any applicable Law and shall not constitute a material change to the Framework Agreement. Where the Council so elects to exercise this right, the Council shall:

- (a) identify the Framework Providers capable of performing the Contract for the Competed Services requirements;
- (b) supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Procurement Act and Guidance;
- (c) invite tenders by conducting a mini-competition for its Service or additional services requirements in accordance with the Procurement Act and Guidance and in particular:
  - (i) consult in writing the Framework Providers capable of performing the Contract for the Competed Services requirements and invite them within a specified time limit to submit a Supplemental Tender;
  - (ii) set a time limit for the receipt by it of the Supplemental Tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and
  - (iii) keep each Supplemental Tender confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;
- (d) apply the Competed Services Award Criteria to any compliant Supplemental Tenders submitted through the mini-competition; and
- (e) subject to clause 5.9 place an Order with the successful Framework Provider.

- 5.8 The Supplier agrees that all Supplemental Tenders submitted by the Supplier in relation to a mini-competition held pursuant to this clause 5 shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the Council in accordance with this clause 5).

5.9 Notwithstanding the fact that the Council has followed the procedure set out above for conducting a mini-competition, the Council may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Framework Agreement shall oblige any Council to place any Order for Services.

#### **Form of Order**

5.10 Subject to clause 5.1 to clause 5.9, the Council may place an Order with the Supplier by serving an order in writing in substantially the form set out in Schedule 4 or such similar or analogous form agreed with the Supplier including systems of ordering involving e-mail or other online solutions or such other form as the Council may in its sole discretion deem reasonably necessary to effect a proper order (such as in the case of a mini-competition).

#### **Accepting and declining Orders**

5.11 Following receipt of an Order, the Supplier shall promptly and in any event within thirty minutes acknowledge receipt of the Order 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.

5.12 If the Supplier:

- (a) notifies the Council that it is unable to fulfil an Order; or
- (b) the time limit referred to in clause 5.11 has expired;

then the Order shall lapse and the Council may then send that Order to another Framework Provider in accordance with the procedure set out in clause 5.2(d).

5.13 If the Supplier modifies or imposes conditions on the fulfilment of an Order, then the Council may either:

- (a) reissue the Order incorporating the modifications or conditions; or
- (b) treat the Supplier's response as notification of its inability to fulfil the Order and the provisions of clause 5.12 shall apply.

5.14 The Parties agree that a Contract in respect of any Order shall come into force and be enforceable upon the earlier of:

- (a) the Framework Provider signing and returning the Order Form; or
- (b) the Framework Provider beginning the performance of the Services.

## **6. Contract performance and precedence of documents**

6.1 The Supplier shall perform all Contracts entered into with the Council in accordance with:

- (a) the requirements of this Framework Agreement; and
- (b) the terms and conditions of the respective Contracts.

6.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the Contract;
- (b) the Order Form except Appendices 2 (Supplier's Tender) and 3 (Supplemental Tender) to the Order Form;
- (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix 2 (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender);
- (d) any other document referred to in the clauses of the Contract; and
- (e) Schedule 1, part 2 of the Framework Agreement and Appendix 2 to the Order Form (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender).

## **7. Prices for Services**

7.1 Subject to clause 7.2, the prices offered by the Supplier for Contracts to the Council for Services shall be the prices listed in the Pricing Matrix for the relevant Lot and such prices may be adjusted in accordance with the provisions of **Schedule 3**.

7.2 Where it was communicated as part of any mini-competition that the Contract obtained through the mini-competition would not be subject to the pricing set out at clause 7.1, the prices offered by the Supplier for Contracts to the Council for any Services tendered by mini-competition shall be based on the requirements of the mini-competition held pursuant to clause **5**.

### **Supplier's general framework obligations**

## **8. Warranties and representations**

8.1 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 Contract, the Supplier, the Staff, Subcontractor(s) and Supplier Personnel have not committed any Prohibited Act;

- (d) the Supplier, the Staff, Subcontractor(s) and Supplier Personnel have not been nor are subject to any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act;
- (e) the Supplier, the Staff, Subcontractor(s) and Supplier Personnel have not been nor are listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts on the grounds of a Prohibited Act;
- (f) as at the Commencement Date, all information, statements and representations contained in the Tender and the PSQ 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 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;
- (g) 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 Contract which may be entered into with the Council;
- (h) 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
- (i) 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.

8.2 The Supplier shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 8.1 at the relevant time.

8.3 The Supplier shall promptly notify the Council in writing if, during the Term:

- (a) the Supplier, the Supplier's Connected Persons or any Subcontractor is placed on the Debarment List; or
- (b) a mandatory exclusion ground or discretionary exclusion ground applies to the Supplier, the Supplier's Connected Persons or any Subcontractor.

8.4 The Supplier shall promptly notify the Council in writing within 21 days of any changes to the Supplier's Connected Persons together with information regarding the identity of the new Connected Persons.

## **9. Service pre-requisites**

The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Contract.

## **10. KPIs**

10.1 Where any Service is stated in Schedule 1 to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.

10.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within Schedule 1.

10.3 The Supplier shall provide monthly reports summarising the Achieved KPIs as provided for in clause 11.

## **Supplier's information obligations**

### **11. Reporting and meetings**

11.1 The Supplier shall submit Management Information to the Council in the form set out in **Schedule 6** throughout the Term.

11.2 The Authorised Representatives shall meet at on at least a:

- for Lots 1, 2, 3 and 4: quarterly basis; or
- for Lot 5: an annual basis

to monitor and review the performance of this Framework Agreement, including the achievement of the Target KPIs. Such meetings shall be minuted by the Council's Authorised Representative and copies of those minutes shall be circulated to and approved by both parties.

11.3 Without prejudice to any other reports required under this agreement, in advance of each meeting to be held in accordance with clause 11.2:

- (a) the Supplier shall provide the Council with a written report detailing its performance against each of the KPIs and identifying any issues regarding the performance of the agreement for discussion at the meeting; and
- (b) the Council shall notify the Supplier of any concerns it has regarding the performance of the agreement for discussion at the meeting.

11.4 The Council may make changes to the nature of the Management Information that the Supplier is required to supply and shall give the Supplier at least one month's written notice of any changes.

11.5 The Council may increase the extent to which it monitors the performance of the Services if the Supplier fails to meet the Target KPIs or fails to fulfil its other obligations under this agreement. The Council shall give the Supplier prior notification of its intention to increase the level of its monitoring. The Supplier shall bear its own costs in complying with such enhanced monitoring as is conducted by the Council pursuant to this clause 11.5.

## **12. Records and audit access**

12.1 The Supplier shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with the Council and the amounts paid by the Council.

12.2 The Supplier shall keep the records and accounts referred to in clause 12.1 above in accordance with good accountancy practice.

12.3 The Supplier shall afford the Council or the Auditor (or both) such access to such records and accounts as they may require from time to time.

12.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of six years after expiry of the Term to the Council and the Auditor.

12.5 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.

12.6 Subject to the Council's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

- (a) all information requested by the Auditor within the scope of the Audit;
- (b) reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services; and
- (c) access to the Staff.

12.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 12, unless the Audit reveals a Default or a material breach of the Framework Agreement by the Supplier in which case the Supplier shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

### **13. Confidentiality**

- 13.1 Subject to clause 13.2, the Parties shall keep confidential the Confidential Information of the Parties and shall use all reasonable endeavours to prevent their employees, officers, representatives, contractors, subcontractors or advisers from making any disclosure to any person of any matters relating thereto.
- 13.2 clause 13.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, a court of competent jurisdiction or regulatory authority, or to any disclosures required under the FOIA or the Environmental Information Regulations or which was available to the receiving party on a non-confidential basis before disclosure;
  - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework 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 13.1;
  - (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 Confidential Information;
  - (e) to enable a determination to be made under clause 21;
  - (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
  - (g) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the information; and
  - (h) by the Council relating to this Framework Agreement and in respect of which the Supplier has given its prior written consent to disclosure.
- 13.3 The Parties shall not use the Confidential Information of the Parties for any purpose other than to exercise their rights and perform their obligations under or in connection with this Framework Agreement.

### **14. Data protection**

- 14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. Schedule 8 sets out the scope, nature and purpose

of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

14.3 Without prejudice to the generality of clause 14.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

14.4 Without prejudice to the generality of clause 14.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the written instructions of the Council (as set out in Schedule 8), unless the Supplier is required by Domestic Law to otherwise process the Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Council;
- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
  - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data.
- (d) notify the Council immediately if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner).
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Council or the Council's designated auditor pursuant to clause 12 and immediately inform the Council if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;
- (i) indemnify the Council against any losses, damages, costs or expenses incurred by the Council arising from, or in connection with, any breach of the Supplier's obligations under this clause 13.
- 14.5 Where the Supplier intends to engage a Sub-Contractor pursuant to clause 24 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
  - (b) obtain prior written consent from the Council to the processing;
  - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 14.
- 14.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 14 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).
- 14.7 The provisions of this clause shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

## **15. Freedom of information**

- 15.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Council all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Council.
- 15.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) the Council shall be responsible for determining in its absolute discretion whether any Confidential Information and any other Information is exempt from disclosure in accordance with the FOIA and the EIRs.

## **16. Publicity**

- 16.1 Unless otherwise directed by the Council, the Supplier shall not make any press announcements or publicise this Framework Agreement in any way without the Council's prior written consent.
- 16.2 The Council shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Council or otherwise, including any examination of this Framework Agreement by the Auditor.
- 16.3 The Supplier shall not do anything that may damage the reputation of the Council or bring the Council into disrepute.

## **Framework Agreement termination and suspension**

### **17. Termination**

#### **Termination on breach**

17.1 Without affecting any other right or remedy available to it, the Council may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice:

- (a) where the Supplier commits a material breach and the Supplier 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 a Contract awarded to the Supplier under this Framework Agreement as a consequence of a Default by the Supplier;
- (c) where any warranty given in clause 8 of this agreement is found to be untrue or misleading;
- (d) where the Supplier fails to meet 4 or more Target KPIs in a rolling twelve month period;

17.2 The Council may give the Supplier written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies. A notice of an intention to terminate under this clause must:

- (a) set out which termination ground the Council considers applies pursuant to section 78(2) of the Procurement Act 2023 together with the Council's reasons for deciding to terminate on this basis;
- (b) invite the Supplier to make representations to the Council about the existence of the termination ground and the Council's decision to terminate;
- (c) specify the means by which, and the time by which, such representations must be made ;and
- (d) insofar as it states the Council's intention to terminate by reference to the status of a Subcontractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time by which the Supplier may terminate the Subcontract and, if necessary, appoint an alternative Subcontractor.

17.3 On expiry of the time for the Supplier to make representations under clause 17.2(c), if, after considering any representations, the Council is satisfied that the termination ground applies, it may terminate the agreement with immediate effect by giving final written notice to the Supplier.

#### **Termination on insolvency and Change of Control**

17.4 Without affecting any other right or remedy available to it, the Council may terminate this agreement with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier 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 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

- (b) the Supplier 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 any of its creditors;
- (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 Supplier (being a company, limited liability partnership or partnership);
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership), or the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over all or any of the assets of the Supplier or a receiver is appointed over all or any of the assets of the Supplier;
- (g) a creditor or encumbrancer of the Supplier 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 Supplier'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 Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.4(a) to clause 17.4(g) (inclusive); or
- (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.5 The Supplier shall notify the Council immediately if the Supplier undergoes a Change of Control. The Council may terminate the Framework Agreement by giving notice in writing to the Supplier 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.

#### **Termination by Council for convenience**

17.6 The Council shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three Months' written notice to the Supplier.

**18. Suspension of Supplier's appointment**

Without prejudice to the Council's rights to terminate the Framework Agreement in clause 17, if a right to terminate this Framework Agreement arises in accordance with clause 17, the Council may suspend the Supplier's right to receive Orders from the Council in any or all Supplier's Lots by giving notice in writing to the Supplier. If the Council provides notice to the Supplier in accordance with this clause 18, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Council in writing from time to time.

**19. Consequences of termination and expiry**

19.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 19.

19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

19.3 Within 15 Working Days of the date of termination or expiry of the Framework Agreement, the Supplier shall return or destroy at the request of the Council any data, personal information relating to the Council or its personnel or Confidential Information belonging to the Council in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Supplier's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance, in either case as determined by the Council.

19.4 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.

19.5 The provisions of clause 8, clause 12, clause 13, clause 14, clause 16, clause 19, clause 22, and clause 33 shall remain in full force and effect and survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## 20. Complaints handling and resolution

- 20.1 The Supplier shall have and maintain a suitable complaints policy which it shall provide to Customers in a form which is accessible to them (including any such policy being written in plain English and being easy to read for the average Customer).
- 20.2 The Supplier shall provide the Council with a copy of its complaints policy and shall make any amendments to the policy reasonably required by the Council.
- 20.3 The Supplier shall make sure that Customers are made aware that in addition to the Supplier's complaints procedure, that Customers may also access the Council's own complaints procedures and shall provide the Customers with details on how to access these.
- 20.4 The Supplier shall use its best endeavours to assist in the resolution of any Complaint made by a Customer in relation to the Services, the Framework Agreement or a Contract through the Council's own complaint's procedure.
- 20.5 Within two Working Days of a request by the Council, the Supplier shall provide full details of a Complaint to the Council, including details of steps taken for its resolution.
- 20.6 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Contract, the Supplier shall use its best endeavours to resolve the Complaint in accordance with its complaints policy and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

## 21. Dispute resolution

- 21.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, 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 Representatives of the parties shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Council's Head of Adult's Commissioning, Integration & Market Development and [*INSERT SUPPLIER SENIOR OFFICER TITLE*] of the Supplier who shall attempt in good faith to resolve it;
  - (c) if the Council's Head of Adult's Commissioning, Integration & Market Development and [*INSERT SUPPLIER SENIOR OFFICER TITLE*] of the Supplier are for any reason unable to

resolve the Dispute within 30 Working Days of it being referred to them, the parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 10 Working days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR

- (d) unless otherwise agreed between the parties, the mediation will start not later than 30 Working days after the date of the ADR notice.

21.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

21.3 If for any reason the Dispute is not resolved within 30 Working days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 33.

## **General provisions**

### **22. Prevention of bribery**

22.1 The Supplier shall (and shall procure that the Staff, Subcontractor(s) and Supplier Personnel shall):

- (a) not, in connection with this Framework Agreement and any Contract made under it, commit a Prohibited Act;
- (b) not do, suffer or omit to do anything that would cause the Council or the Staff, Subcontractor(s) and Supplier Personnel to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
- (c) comply with the Council's Anti-Bribery and Anti-Corruption Policy as updated from time to time;
- (d) notify the Council (in writing) if it becomes aware of any breach of clause 22.1(a) or clause 22.1(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Framework Agreement and any Contract made under it.

22.2 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this Framework Agreement and any Contract made under it and the steps taken to comply with its obligations under clause 22.1.

22.3 The Supplier shall allow the Council and its Auditor to audit any of the Supplier's records and any other relevant documentation in accordance with clause 12.

- 22.4 If the Supplier, the Staff, Subcontractor(s) or Supplier Personnel breaches this clause 22, the Council may by notice:
- (a) require the Supplier to remove from performance of this Framework Agreement and any Contract made under it any Staff, Subcontractor(s) or Supplier Personnel whose acts or omissions have caused the breach; or
  - (b) immediately terminate this Framework Agreement and any Contract made under it.
- 22.5 Any notice served by the Council under clause 22.4 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council have elected to take (including, where relevant, the date on which this Framework Agreement and any Contract made under it shall terminate).
- 22.6 Despite clause 21, any dispute relating to:
- (a) the interpretation of this clause 22; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final binding and conclusive.
- 22.7 Any termination under this clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## **23. Modern slavery**

- 23.1 The Supplier shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (Anti-slavery Laws) including but not limited to the Modern Slavery Act 2015;
  - (b) comply with the Council's Anti-Slavery Policy;
  - (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
  - (d) include in its contracts with its Subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 23; and
  - (e) notify the Council (in writing) as soon as it becomes aware of any breach or suspected breach of clause 23.1.
- 23.2 The Supplier represents and warrants throughout the Term that:
- (a) neither the Supplier nor any of its officers, employees or Subcontractors:

- (i) has been convicted of any offence involving slavery and human trafficking anywhere in the world; or
- (ii) having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; or
- (iii) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in any government procurement programmes or other government contracts.

23.3 The Supplier shall implement due diligence procedures for its Subcontractors or any part of its supply chain performing obligations under this agreement to ensure that there is no slavery or human trafficking taking place.

23.4 The Supplier shall:

- (a) maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with this agreement;
- (b) without prejudice to clause 12, if the Council reasonably suspects the Supplier of breach of clause 23, permit the Council and its third party representatives to have access to and take copies of any records and any other information at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 23; and
- (c) implement annual audits of its compliance and its Subcontractors' compliance with the Anti-Slavery Policy, either directly or through a third party auditor.

23.5 The Supplier shall:

- (a) implement a system of training for its employees, and Subcontractors to ensure compliance with the Anti-Slavery Policy and Anti-slavery Laws;
- (b) keep a record of all training offered and completed by its employees, and subcontractors to ensure compliance with the Anti-Slavery Policy and Anti-slavery Laws and shall make a copy of the record available to the Council on request.

## **24. Subcontracting and assignment**

24.1 Subject to clause 24.2 neither party shall be entitled to assign, novate, transfer, mortgage, charge or otherwise deal in any other manner with or 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 subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Council. For the avoidance of

doubt, the Council shall not consent to any proposed Subcontract if the Subcontractor (or any Connected Person of the Subcontractor) is on the Debarment List.

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

## **25. Variations to Framework Agreement**

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in [Schedule 7](#).

## **26. Third party rights**

- 26.1 Unless it expressly states otherwise and except as provided in [clause 4](#), [clause 5](#) and [clause 8.1](#), this Framework Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **27. Severance**

- 27.1 If any provision or part-provision of this Framework Agreement is or becomes invalid, illegal or unenforceable, the relevant provision or part-provision shall be deemed deleted. Any deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 27.2 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.

## **28. Rights and remedies**

The rights and remedies provided under this Framework Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **29. Interest**

- 29.1 Each party shall pay interest on any sum due under this Framework Agreement, calculated as follows:
- (a) Rate: 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
  - (b) Period: From when the overdue sum became due, until it is paid.

### **30. Waiver**

- 30.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 30.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

### **31. Entire agreement**

- 31.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 31.2 Each party acknowledges that in entering into this Framework Agreement it does not rely on, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement.
- 31.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Framework Agreement.
- 31.4 Nothing in this clause shall limit or exclude any liability for fraud.

### **32. Notices**

- 32.1 Any notice given to a party under or in connection with this Framework Agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
    - (i) Council: [Comissioningsupport@derby.gov.uk](mailto:Comissioningsupport@derby.gov.uk) or [carebrokerage.duty@derby.gov.uk](mailto:carebrokerage.duty@derby.gov.uk) .
    - (ii) Supplier: [*INSERT SUPPLIER EMAIL ADDRESS*].
- 32.2 Any notice 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; or
- (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.

32.3 Where the Supplier serves any notice on the Council, it shall also simultaneously notify the Senior Commissioning Officer of the Council of the relevant matters. This shall not be a formal notice in and of itself and it shall not be a requirement for any notice under clause 32.1 to be valid.

32.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**33. Governing law and jurisdiction**

33.1 This Framework Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

33.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of  
Derby City Council

.....

.....

Authorised Signatory

Print Name

.....

.....

Authorised Signatory

Print Name

Signed for and on behalf of  
*[NAME OF SUPPLIER]*

.....

.....

Authorised Signatory

Print Name and Title



**Schedule 1 Services and Lots**

**Part 1 Services**



**Part 2 Supplier's Lots and Tender**

**Appendix 1: The Supplier Lot(s)**

**Appendix 2: The Supplier's Tender**



## Schedule 2 Lots and Rota Order

### Part 1 Lots

Rota Reference and Rota Order are subject to change throughout the framework term at the sole discretion of the Council. The Lots have been awarded as follows:

NAME OF LOT	FRAMEWORK PROVIDERS	ROTA REFERENCE
Lot 1 – Central Area	Key 2 Care Limited t/a Derbyshire Care Services	A
	MMR Homecare	B
	Nationwide Care Services Ltd	C
	Newdon Health Care Limited	D
Lot 2 – West Area	Key 2 Care Limited t/a Derbyshire Care Services	A
	Mediline Home Care Limited	B
	MMR Homecare	C
	Fosse Healthcare	D
Lot 3 – East Area	Mediline Home Care Limited	A
	Newdon Health Care Limited	B
	iCare (GB) Limited	C
	Bright Intergrated Ltd	D
Lot 4 – South Area	Nationwide Care Services Ltd	A
	iCare (GB) Limited	B
	Bright Intergrated Ltd	C
	Fosse Healthcare	D
Lot 5 – A separate list of approved support providers required on an ad-hoc basis	Bhandal Care Blue Sky Care Ltd Integrative Care Supported Living Care NASSH Healthcare Ltd YOURCARE24 Alpha-Imperial Pvt Ltd First Choice Medical Solutions Ltd UP24 SEVEN Services Profad Care Agency LifeCome Care	N/A

Part 2 Rota Order

	Monday	Tuesday	Wednesday	Thursday	Friday
1st	A	B	C	D	A
2nd	B	C	D	A	B
3rd	C	D	A	B	C
4th	D	A	B	C	D



## Schedule 3 Pricing Matrices

### 1. Prices

Description	Fee* (£) per hour
Standard Home Care	£21.41
Home Care Plus	£22.08

### 2. Pricing revisions

- 2.1 At the Council's sole and absolute discretion, the Council may elect to increase the prices set out in the Pricing Matrix by whatever amount it sees fit, following a decision made by the Council's cabinet.
- 2.2 The Supplier shall have no right or power under this agreement to demand any price increase or to require the Council to take any matter into account in deciding whether or not to exercise its right to increase the prices as per paragraph 2.1. Any pricing increase decision is the sole decision of the Council and is made at the Council's absolute discretion.
- 2.3 The Council shall notify the Supplier of any pricing increases as soon as reasonably practicable, but in any event no later than two weeks following the approval of any such price increase by the Council's cabinet.
- 2.4 Any pricing increase shall take effect from the following Financial Year from when the decision to increase the pricing was made.



## Schedule 4 Order Form

### ORDER FORM

Contract No. [DATE]

#### INDIVIDUAL AGREEMENT TO BUY A SPECIFIED LEVEL OF DOMICILIARY CARE

THE COUNCIL: **Derby City Council, Council House, Corporation Street, Derby, DE1 2FS**

THE SUPPLIER: \*\*\*\*\*

THE CUSTOMER: **Home Care Non-Timetable -**

1. This contract supersedes all previous contracts for the identified services and only the detail contained herein shall apply to this arrangement.

2. It is agreed between the Council and, the Supplier that the Customer shall receive Domiciliary Care from the Service Commencement Date [DATE] on a continuing basis or until the date specified below.

3. This is subject to the provisions of the Framework Agreement for the provision of Home Care Services made between the Council and the Supplier, a copy of which has been provided, and additional copies may be obtained from the , **Adults Commissioning, Integration, and Market Development, People Services, 1<sup>st</sup> Floor The Council House, Corporation Street, Derby DE1 2FS** and the provisions of the Call-off Terms and Conditions for contracts made under that framework, a copy of which can be found at <https://www.derby.gov.uk/health-and-social-care/your-life-your-choice/adults-commissioning/frameworks/>.

4. **The weekly payment by the Council will be as follows:**

Total Weekly Cost: £ from [DATE] onwards

#### Services

##### Homecare Primary Care - Non-Timetable

<b>Service:</b>	<b>Care Pkg Ref:</b>
<b>Start Date:</b>	<b>End Date:</b>
<b>Quantity:</b>	<b>Cost:</b>

#### 5. CONTACTS IN THE COUNCIL

Contact Support can be contacted by telephoning or writing to: **Community Support Team, People Services, 1st Floor, The Council House, Corporation Street, Derby, DE1 2FS, Telephone: 01332 640825 Email: [Contact.Support@derby.gov.uk](mailto:Contact.Support@derby.gov.uk)**

The Commissioning Team can be contacted by emailing or writing to the **Team, Adults Commissioning, Integration, and Market Development, People Services People Services, 1st Floor, The Council House, Corporation Street, Derby, DE1 2FS. Email: [Commissioningsupport@derby.gov.uk](mailto:Commissioningsupport@derby.gov.uk)**

Any queries regarding financial arrangements should be made to **Community Care Charging & Support Team, The Council House, Corporation Street, Derby, DE1 2FS. Email: [HomeCareCharging@derby.gov.uk](mailto:HomeCareCharging@derby.gov.uk)**

**6. SUPPLIER CONTACT**

**Registered Manager -**

Agreed this day of [DATE]

Between

For and on Behalf of The Council

and

For and on Behalf of The Provider

**Signature:**

**Signature:**



**Andrew Muirhead  
Head of Adults  
Commissioning, Integration,  
and Market Development**

**Designation:**



**Andrew Appleyard  
Service Director  
Adult Social Care Services**

**Schedule 5 Call-off Terms and Conditions**

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## BACKGROUND

- (A) The Council placed a contract notice 2025/S 000-044856 on 31st July 2025 on the UK digital platform inviting potential service providers (including the Supplier) to tender for the provision of Home Care services to the Council under a framework agreement.
- (B) On the basis of the Supplier's Tender, the Council selected the Supplier to enter a framework agreement to provide services to Contracting Bodies who will place Orders in accordance with the Framework Agreement.
- (C) The Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Supplier under the Framework Agreement.
- (D) The Council has selected the Supplier to provide the Services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

### 1. Definitions

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

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

**Audit:** an audit carried out pursuant to clause 25.

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

**Authorised Representative:** the persons respectively designated as such by the Council and the Supplier in the Order Form.

**Confidential Information:** means any information of either Party, however it is conveyed, that relates to the business, assets, affairs, developments, trade secrets, operations, processes, product information, know-how, designs or software, personnel and customers, clients, 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 agreement, the terms of this 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.

**Contract:** the written agreement between the Council and the Supplier consisting of the Order Form, Service Request Form and these clauses (except that, for the purposes of clause 49.5 only, reference to "Contract" shall not include the Order Form) as varied from time to time.

**Contract Period:** the period from the Service Commencement Date to:

- a) the date of expiry set out in clause 4; or
- b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

**Contract Price:** the price (exclusive of any applicable VAT), payable to the Supplier by the Council under the Contract, as set out in clause 15 , for the full and proper performance by the Supplier of its obligations under the Contract.

**Contract Variation:** has the meaning given to it in clause 33.

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

**Controller:** as defined in the Data Protection Legislation.

**Council:** DERBY CITY COUNCIL of the Council House, Corporation Street, Derby DE1 2FS

**Customer:** any individual for whose benefit the Services of this agreement are ordered and performed.

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**Data Subject:** shall have the same meaning as set out in the Data Protection Legislation.

**Default:** any breach of the obligations of the relevant Party under the Contract (including fundamental breach or breach of a fundamental term or material breach) 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 Contract and in respect of which such Party is liable to the other.

**Deliverables:** those deliverables listed in the Order Form.

**Dispute Resolution Procedure:** the dispute resolution procedure in clause 47.

**Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

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

**Equipment:** the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

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

**Framework Agreement:** the framework agreement for the provision of Home Care Services between the Council and the Supplier dated [*FRAMEWORK DATE*]

**Good Industry Practice:** using the standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**Individual Agreements:** the contracts, including this Contract, entered into between the Council and the Supplier under the Framework Agreement for the provision of Home Care services for the benefit of individuals and **Individual Agreement** shall mean any one of them as context shall so require.

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

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

**Management Information:** the management information specified in ANNEX B and the Order Form.

**Month:** calendar month.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.

**Order:** the order placed by the Council to the Supplier in accordance with the Framework Agreement, which sets out the description of the Services to be supplied including, where appropriate, the Premises, the timeframe, the Deliverables and the Quality Standards.

**Order Form:** the document used to place an Order.

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

**Party:** the Supplier or the Council and Parties shall mean both the Supplier and the Council.

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

**Processor:** as defined in the Data Protection Legislation.

**Premises:** the location where the Services are to be supplied, as set out in the Order Form.

**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 as an inducement or reward for any 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 Contract;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts relating to this Contract or any other contract with the Council;
  - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
  - (iv) of defrauding attempting to defraud or conspiring to defraud the Council (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017).
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) if such activity, practice or conduct had been carried out in the UK.

**Quality Standards:** the quality standards (or equivalent) published by BSI, the British Standards Institution, ISO, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulatory Bodies:** 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 the Contract or any other affairs of the Council.

**Relevant Requirements:** all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**Relevant Transfer:** a relevant transfer for the purposes of TUPE.

**Replacement Supplier:** any third party service provider appointed by the Council to supply any services that are substantially the same as or similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**Request for Information:** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

**Safeguarding Adults Policy:** the Council's policy for safeguarding vulnerable adults as set out in ANNEX C.

**Safeguarding Children Policy: the Council's policy for safeguarding children adults as set out in ANNEX C.**

**Service Commencement Date:** the service commencement date set out in the Order Form.

**Service Delivery Form:** the form sent to the Supplier and forming part of the Order, detailing the specifics of the Services required, as may be varied from time to time in accordance with clause 33.

**Service Variation:** has the meaning given to it in clause 33.

**Services:** the Home Care services to be supplied as specified in the Order Form.

**SQ Response:** the response to the selection questionnaire issued by the Council and submitted by the Supplier as part of the tender process for the Framework Agreement.

**Staff:** all employees, staff, other workers, agents suppliers and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Staff Vetting Procedures:** the Council's procedures and departmental policies for the vetting of personnel for:

- a) eligibility to work in the UK;
- b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure;
- c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

**Sub-Contract:** any contract between the Supplier and a third party under which the Supplier 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 Supplier.

**Supplier:** the supplier identified in the Order Form.

**Tender:** the document(s) submitted by the Supplier to the Council for admission onto the Framework Agreement (as supplemented by the documents submitted to the Council in response to the Council's Order, including the Supplier's Supplemental Tender where applicable).

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

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Variation:** has the meaning given to it in clause 33.

**VAT:** value added tax or any equivalent tax chargeable in the UK.

**Working Day:** any day other than a Saturday or Sunday or public holiday in England and Wales.

## 2. Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time;
- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- (g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (h) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (i) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
- (j) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and
- (k) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered;
- (l) reference to writing or written excludes fax [and email OR but not email];
- (m) any obligation on a party not to do something includes an obligation not to allow that thing to be done.

### **3. Formation of Contract**

- 3.1 This Contract shall be agreed by the parties and come into force in accordance with the provisions of clause [5.14] of the Framework Agreement.

### **4. Contract Period**

The Contract shall take effect on the Service Commencement Date and shall continue until terminated in accordance with the provisions of the Contract.

### **5. Supplier's status**

At all times during the Contract Period the Supplier shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or

on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

## **6. Council's obligations**

Except as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Supplier.

## **7. Mistakes in Information**

The Supplier shall be responsible for the accuracy of all drawings, documents and information supplied to the Council by the Supplier in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

### **Supply of services**

## **8. Services**

- 8.1 The Supplier shall supply the Services during the Contract Period in accordance with the Council's requirements as set out in the Contract in consideration for the payment of the Contract Price. The Council may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.
- 8.2 The Supplier acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 8.3 The Supplier shall:
- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
  - (b) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Council);
  - (c) ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
  - (d) allocate sufficient resources to provide the Services in accordance with the terms of this Contract;
  - (e) to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Council before the supply of the Services; and
  - (f) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice; and

- (g) provide such reasonable co-operation and information in relation to the Services to such of the Council's other suppliers as the Council may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Council.

8.4 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

8.5 Subject to the Council providing Approval in accordance with clause 10, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

## **9. Safeguarding children and vulnerable adults**

9.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

9.2 The Supplier shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
- (b) monitor the level and validity of the checks under this clause 9.2 for each member of staff;
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

9.3 The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.

9.4 The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 9 have been met.

9.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children or vulnerable adults.

9.6 The Supplier shall at all times comply with the Safeguarding Adults Policy and the Safeguarding Children Policy. Failure to comply with either of these policies or any other breach of this clause 9 shall be a material breach of this agreement.

## **10. Provision and removal of Equipment**

- 10.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.
- 10.2 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.
- 10.3 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 10.4 The Supplier shall, at the Council's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment that in the reasonable opinion of the Council is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- 10.5 On completion of the Services, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

## **Staffing**

### **11. Supplier's Staff**

- 11.1 The Council may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable. The Supplier shall replace any such Staff and procure the replacement of any such person employed or engaged by any member of the Staff. The Supplier shall ensure such persons are replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- 11.2 At the Council's written request, the Supplier shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

- 11.3 If the Supplier fails to comply with clause 11.2 within two Months of the date of the request then the Council may exclude Supplier Staff from entry to the Premises. Exercise of the Council's rights under this clause shall not excuse the Supplier from any attributable failure to perform the Services.
- 11.4 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Supplier from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 11.5 The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Supplier at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.
- 11.6 The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

## **12. TUPE**

- 12.1 The parties agree that the provisions of ANNEX F shall apply to any Relevant Transfer of Staff under this agreement.

### **Premises**

## **13. Health and safety**

- 13.1 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 13.2 While on the Premises, the Supplier shall comply with the Council's health and safety policy and any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 13.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 13.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 13.5 The Supplier shall ensure that its health and safety policy (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

### **Payment and Contract Price**

## **14. Contract Price**

- 14.1 In consideration of the Supplier's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with clause 15.
- 14.2 The Contract Price shall be based on the actual hours of Services provided under the Contract for each relevant 4-week period and shall be calculated using the pricing in [*Schedule 3*] of the Framework Agreement as amended from time to time.
- 14.3 The Contract Prices may be adjusted in accordance with the provisions of [*Schedule 3*] of the Framework Agreement.
- 14.4 The Council shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

## **15. Payment and VAT**

- 15.1 The Supplier shall ensure that each invoice is submitted in accordance with the payment profile set out in the Order Form and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Council to substantiate the invoice. If it is an electronic invoice it must also comply with the standard on electronic invoicing. For these purposes "electronic invoice" means an invoice which has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. An electronic invoice complies with the standard on electronic invoicing where it complies with the standard and any of the syntaxes approved and issued by the British Standards Institution from time to time.
- 15.2 Where the Supplier submits an invoice (including an electronic invoice) to the Council in accordance with clause 15.1, the Council will consider and verify that invoice within [7] days.
- 15.3 Where the Supplier submits an invoice, if the number of hours of Services provided to the Customer in the relevant period is more than 10% above the amount of hours identified in the Order Form (as varied from time to time in accordance with the provisions of the Contract) and this has occurred two or more consecutive times, then no payment shall be due from the Council until there has been a review of the Services (in accordance with the provisions of clause 27) and any additional amount has been approved by the Council at its sole discretion.
- 15.4 Where the Supplier submits an invoice, if the number of hours of Services provided to the Customer in the relevant period is more than 10% below the amount of hours identified in the Order Form (as varied from time to time in accordance with the provisions of the Contract) and this has occurred two or more consecutive times, then the Council may call for a review of the Services in accordance with the provisions of clause 27.
- 15.5 The Council shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

- 15.6 Where the Council fails to comply with clause 15.5, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Council.
- 15.7 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 15.2 to clause 15.6 of this agreement; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 15.2 to clause 15.6 of this agreement.

In this clause 15.7, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

- 15.8 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 15.9 The Supplier shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 15.9 shall be paid by the Supplier to the Council not less than five Working Days before the date on which the tax or other liability is payable by the Council.
- 15.10 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under clause 41 for failure to pay undisputed sums of money.
- 15.11 The Council shall not be obligated to pay the Contract Price for any period where the Services were not being provided (whether as a result of Force Majeure or otherwise).

## **16. Recovery of sums due**

- 16.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Council.
- 16.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 16.3 The Supplier shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.
- 16.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **Statutory obligations and regulations**

### **17. Conflicts of interest**

- 17.1 The Supplier shall take appropriate steps to ensure that neither the Supplier 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 Supplier or Staff and the duties owed to the Council under the provisions of the Contract.
- 17.2 The Supplier shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in clause 17.1 arises or is reasonably foreseeable.
- 17.3 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier 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 Supplier 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.

### **18. Prevention of bribery**

- 18.1 The Supplier shall (and shall procure that the Staff and Subcontractor(s) shall):
- (a) not, in connection with this Contract, commit a Prohibited Act;
  - (b) not do, suffer or omit to do anything that would cause the Council or the Staff and Subcontractor(s) to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
  - (c) comply with the Council's Anti-Bribery and Anti-Corruption Policy as updated from time to time;
  - (d) notify the Council (in writing) if it becomes aware of any breach of clause 18.1(a) or clause 18.1(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Contract.
- 18.2 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this Contract and the steps taken to comply with its obligations under clause 18.1.
- 18.3 The Supplier shall allow the Council and its Auditor to audit any of the Supplier's records and any other relevant documentation in accordance with clause 25.
- 18.4 If the Supplier, Staff or Subcontractor(s) breach this clause 18, the Council may by notice:
- (a) require the Supplier to remove from performance of this Contract any Staff or Subcontractor(s) whose acts or omissions have caused the breach; or
  - (b) immediately terminate this Contract.

18.5 Any notice served by the Council under clause 18.4 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).

18.6 Despite clause 47, any dispute relating to:

- (a) the interpretation of this clause 18; or
- (b) the amount or value of any gift, consideration or commission,

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

18.7 Any termination under this clause 18 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## 19. Discrimination

The Supplier shall (and shall procure that the Staff and Sub-Contractor(s) shall) perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Council's equality and diversity policy as provided to the Supplier from time to time;
- (c) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law;

## Information

### 20. Confidentiality

20.1 Subject to clause 20.2, the Parties shall keep confidential the Confidential Information of the Parties and shall use all reasonable endeavours to prevent their employees, officers, representatives, contractors, subcontractors or advisers from making any disclosure to any person of any matters relating thereto.

20.2 clause 13.1 shall not apply to any disclosure of information:

- (a) required by any applicable Law, a court of competent jurisdiction or regulatory authority, or to any disclosures required under the FOIA or the Environmental Information Regulations or which was available to the receiving party on a non-confidential basis before disclosure;
- (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
- (c) that is reasonably required by the Council;
- (d) 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 13.1;
- (e) by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;

- (f) to enable a determination to be made under clause 47;
- (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Council relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure.

20.3 The Parties shall not use the Confidential Information of the Parties for any purpose other than to exercise their rights and perform their obligations under or in connection with this Contract.

20.4 On or before the termination or expiry of the Contract, the Supplier shall ensure that all documents and computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Council's employees, tax-payers or service users, are delivered up to the Council or securely destroyed.

## **21. Data Protection**

21.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 21 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

21.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. ANNEX D sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

21.3 Without prejudice to the generality of clause 21.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

21.4 Without prejudice to the generality of clause 21.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the written instructions of the Council (as set out in ANNEX D), unless the Supplier is required by Domestic Law to otherwise process the Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Council;
- (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction

of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
  - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council 's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 21 and allow for audits by the Council or it's designated auditor pursuant to clause 25 and immediately inform the Council if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;

- (i) indemnify the Council against any losses, damages, cost or expenses suffered by the Council arising from or in connection with any breach by the Supplier of its obligations under this clause 21.

21.5 Where the Supplier intends to engage a Sub-Contractor pursuant to clause 31 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Council to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 21.

21.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 21 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 incorporated by attachment to this agreement).

21.7 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **22. Freedom of Information**

22.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Council.

22.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Council shall be responsible for determining in its absolute discretion whether any Confidential Information and any other Information is exempt from disclosure in accordance with FOIA and the EIRs.

**23. Publicity, media and official enquiries**

- 23.1 Unless otherwise directed by the Council, the Supplier shall not make any press announcements or publicise the Contract in any way without the Council's Approval.
- 23.2 The Council shall be entitled to publicise the Contract in accordance with any legal obligation on the Council or otherwise, including any examination of the Contract by the Auditor.
- 23.3 The Supplier shall not do anything, or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

**24. Intellectual Property Rights**

- 24.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Supplier, the Staff or Sub-contractors:
- (a) in the course of performing the Services; or
  - (b) exclusively for the purpose of performing the Services,
- shall vest in the Council on creation.

- 24.2 The Supplier shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

**25. Records and audit access**

- 25.1 The Supplier shall keep and maintain until six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Council and the amounts paid by the Council.
- 25.2 The Supplier shall keep the records and accounts referred to in clause 25.1 in accordance with good accountancy practice.
- 25.3 The Supplier shall on request afford the Council, the Council's representatives and the Auditor such access to such records and accounts as they may require from time to time.
- 25.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of six years after the expiry of the Contract Period to the Council, the Council's representatives and the Auditor.
- 25.5 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services, except insofar as the Supplier

accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.

25.6 Subject to the Council's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

- (a) all information requested by the Auditor within the scope of the Audit;
- (b) reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
- (c) access to Staff.

25.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 25, unless the Audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

## **26. Replacement of corrupted data**

If, through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

## **Control of the contract**

### **27. Provision of information and meetings**

27.1 The Supplier shall submit Management Information to the Council throughout the Contract Period at the frequency set out in ANNEX B as well as before any meeting required under the terms of the Contract.

27.2 The Authorised Representatives shall meet as required by the Council and the Supplier shall, at each meeting, present its previously circulated Management Information.

### **28. Monitoring of Contract performance**

The Supplier shall comply with the monitoring arrangements including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

### **29. Remedies in the event of inadequate performance**

29.1 If the Council is of the reasonable opinion that there has been a Default in respect of the Contract by the Supplier, then the Council may, without prejudice to its rights under clause 41 and in its sole discretion and acting reasonably:

- (a) Subject to clause 29.4, withhold a sum; or
- (b) deduct a sum,

in each case equal to a maximum of 10% of the Contract Price payable in respect of the Month in which the complaint arose.

- 29.2 The parties agree that a deduction made pursuant to clause 29.1(b) represents a genuine, reasonable and proportionate pre-estimate of the loss likely to be suffered by the Council.
- 29.3 Where the Council withholds a sum pursuant to clause 29.1(a) then that sum shall be paid to the Supplier when, in the reasonable opinion of the Council, the matters complained of have been rectified and there has been no repeat of those matters for six Month(s).
- 29.4 If the Council is of the reasonable opinion that there has been a Default in respect of the Contract by the Supplier, then the Council may, without prejudice to its rights under clause 41, do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Council that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
  - (c) charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 29.5 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [ten] Working Days of the Council's instructions or such other period of time as the Council may direct.
- 29.6 If the Supplier:
- (a) fails to comply with clause 29.5 and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory function; or
  - (b) persistently fails to comply with clause 29.5,

the Council may terminate the Contract with immediate effect by giving the Supplier notice in writing.

### **30. Rights and remedies**

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

### **31. Transfer and sub-contracting**

- 31.1 Subject to clause 36.2 neither party shall be entitled to assign, novate, transfer, mortgage, charge or otherwise deal in any other manner with or dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other party, neither may the Supplier subcontract the whole or any part of its obligations under this Contract except with the express prior written consent of the Council, such consent not to be unreasonably withheld.
- 31.2 The Council shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council.

### **32. Waiver**

- 32.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 32.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

### **33. Variation**

- 33.1 Subject to the provisions of this clause 33, the Council may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order or is not in contravention of any Law. Such a change is hereinafter called a "Service Variation".
- 33.2 The Council may request a Service Variation by sending the Supplier an updated Service Delivery Form. The Service Delivery Form may be sent out electronically or by any other means which the Council deems reasonable and which it notifies the Supplier of in writing (including, but not limited to, via any online system or 'portal' set up or used by the Council).
- 33.3 The Service Variation shall be deemed to have been accepted by the Supplier from the earlier of:
- (a) the Supplier communicating its acceptance of the Service Variation to the Council (including, but not limited to, by signing and returning the Service Delivery Form);
  - (b) the Supplier commencing performance of the updated Services; or
  - (c) upon the passing of the period of 3 Working Days without the Supplier confirming to the Council that it does not accept the proposed variation.
- 33.4 Subject to the provisions of this clause 33, the Council may request a variation to this Contract (being any variation which is not directly related to the specifics of the Services) provided that such variation does not amount to a material change to the Order or is not in contravention of any Law. Such a change is hereinafter called a "Contract Variation".
- 33.5 The Council may request a Contract Variation by completing and sending the Contract Variation form attached at ANNEX A (the **Variation Form**) to the Supplier, giving sufficient information for the Supplier

to assess the extent of the Contract Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Contract Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

- 33.6 For the purposes of this clause 33, "Variation" shall refer to a Service Variation or a Contract Variation so context shall so require.
- 33.7 If the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Council may:
- (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
  - (b) terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 33.8 If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

#### **34. The Contracts (Rights of Third Parties) Act 1999**

- 34.1 This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 34.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

#### **35. Severance**

- 35.1 If any provision or part-provision of this Contract is 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 Contract.
- 35.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Contract is deemed deleted under clause 35.1, 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.

#### **Liabilities**

**36. Liability, indemnity and insurance**

36.1 Nothing in this Contract shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under clause 15.9;
- (e) any claim under clause 38; or
- (f) any claim under the indemnity in clause 24.2;
- (g) any claim under the indemnity in clause 21.4(i);

36.2 Subject to clause 36.3, the Supplier shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, fraud or fraudulent misrepresentation, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

36.3 Subject to clause 36.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of revenue;
- (e) loss of or damage to goodwill;
- (f) loss of savings (whether anticipated or otherwise); or
- (g) any indirect or consequential loss or damage.

36.4 The Council may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Supplier's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Supplier's Default;
- (c) sums paid by the Council to the Supplier pursuant to the Contract in respect of any Services not provided in accordance with the Contract;

- (d) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier;
- (e) additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include consultancy costs and additional costs of management time.

36.5 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.

### **37. Insurances**

37.1 The Supplier shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

37.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

37.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

37.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

37.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

### **38. Taxation, National Insurance and employment liability**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have assumed or been imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

### **39. Warranties and representations**

39.1 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 perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Supplier;
- (c) in entering the Contract the Supplier, the Staff and Subcontractor(s) have not committed any Prohibited Act;
- (d) the Supplier, the Staff and Subcontractor(s) have not been nor are subject to any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act;
- (e) the Supplier, the Staff and Subcontractor(s) have not been nor are listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts on the grounds of a Prohibited Act;
- (f) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the SQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Council before execution of the Contract and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;
- (g) 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 its assets which will or might affect its ability to perform its obligations under the Contract;
- (h) 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 the Contract;
- (i) 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;

(j) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

(k) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

39.2 The Supplier shall promptly notify the Council if, at any time during the Contract Period, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 39.1 at the relevant time.

#### **Default, disruption and termination**

#### **40. Termination on insolvency and change of control**

40.1 Without affecting any other right or remedy available to it, the Council may terminate this agreement with immediate effect by giving written notice to the Supplier if:

(a) the Supplier 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 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

(b) the Supplier 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 any of its creditors;

(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 Supplier (being a company, limited liability partnership or partnership);

(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 Supplier (being a company, partnership or limited liability partnership), or the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(e) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over all or any of the assets of the Supplier or a receiver is appointed over all or any of the assets of the Supplier;

(g) a creditor or encumbrancer of the Supplier 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 Supplier'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 Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 40.1(a) to clause 40.1(g) (inclusive); or
- (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

40.2 The Supplier shall notify the Council immediately if the Supplier 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 Contract by giving notice in writing to the Supplier 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.

#### **41. Termination on Default**

41.1 Without affecting any other right or remedy available to it, the Council may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a material breach and (if such breach is, in the reasonable opinion of the Council, remediable) the Supplier fails to remedy that 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.

41.2 Without affecting any other right or remedy available to it, the Council may terminate the Contract by giving written notice to the Supplier with immediate effect if:

- (a) the Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- (b) any warranty given by the Supplier in clause 39 of this Contract is found to be untrue or misleading;
- (c) the Customer is admitted to hospital or respite care for a period of two or more continuous weeks;
- (d) there are serious safeguarding concerns;
- (e) the Supplier is unable to provide the care required under the Care Standards Act 2000 and associated regulations and standards;
- (f) the Supplier, in the reasonable opinion of the Council, fails to meet the needs of the Customer;
- (g) the needs of the Customer changes and the Supplier is unable to provide the Services

- (h) any right (other than the right to terminate for convenience by notice) for the Council to terminate the Framework Agreement arises, regardless of whether or not the Council exercises such right in respect of the Framework Agreement.

41.3 Where notice is served under clauses 41.1 or 41.2 the Council may choose to select a specific date for the Contract to terminate and shall identify this in the notice, rather than terminating with immediate effect.

41.4 The Council may give the Supplier written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies. A notice of an intention to terminate under this clause must:

- (a) set out which termination ground the Council considers applies pursuant to section 78(2) of the Procurement Act 2023 together with the Council's reasons for deciding to terminate on this basis;
- (b) invite the Supplier to make representations to the Council about the existence of the termination ground and the Council's decision to terminate;
- (c) specify the means by which, and the time by which, such representations must be made; and
- (d) insofar as it states the Council's intention to terminate by reference to the status of a Subcontractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time by which the Supplier may terminate the Subcontract and, if necessary, appoint an alternative Subcontractor.

41.5 On expiry of the time for the Supplier to make representations under clause 17.2(c), if, after considering any representations, the Council is satisfied that the termination ground applies, it may terminate the agreement with immediate effect by giving final written notice to the Supplier.

41.6 If the Council fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within [90] Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause 16.

## **42. Termination on the death of the Customer**

42.1 This Contract shall terminate automatically upon the death of the Customer.

## **43. Termination for convenience**

43.1 Without affecting any other right or remedy available to it, the Council may terminate this Contract or terminate the provision of any part of this Contract at any time by giving no less than thirty days' written notice to the Supplier.

43.2 The Notice period set out in clause 43.1 may be reduced to fourteen days' notice in the following circumstances:

- (a) the mental and/or physical condition of the Customer deteriorates, or the needs of the Customer change, to the extent that the Order can no longer provide the appropriate care to meet that Customer's needs;
- (b) the Customer is in breach of the Individual Agreement breach to an extent that the Contract is terminated;
- (c) the needs of the Customer change such that the Services are no longer required; or
- (d) the Supplier is not able to meet the needs of the Customer due to objections raised by the Customer about the Services delivered;

43.3 The circumstances set out at clause 43.2 and may be amended from time to time by the Council notifying the Supplier of any such amendments in writing.

43.4 The Notice period set out in clause 43.1 may be reduced to seven days' notice where Services were provided by the Supplier in error, due to insufficient notice being provided to affirm that no Services were required.

43.5 Without affecting any other right or remedy available to it, the Supplier may terminate the whole of this Contract at any time by giving the written notice as set out at ANNEX E.

**44. Consequences of termination or expiry**

44.1 Where the Council terminates the Contract under clause 29.6 ,clause 40, clause 41 and then makes other arrangements for the supply of Services, the Council may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 29.6 ,clause 40, clause 41, no further payments shall be payable by the Council to the Supplier until the Council has established the final cost of making those other arrangements.

44.2 Except as otherwise expressly provided in this Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) the provisions of clause 14, clause 15, clause 16, clause 17, clause 18, clause 20, clause 21, clause 22, clause 24, clause 25, clause 26, clause 36, clause 37, clause 38, clause 39, clause 44, clause 45, clause 46, clause 47 and clause 51 shall remain in full force and effect and survive the termination or expiry of the Contract, together with any other provision which is either expressed to or by implication is intended to survive termination or expiry.

## **45. Disruption**

- 45.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Supplier employed by the Council.
- 45.2 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 45.3 In the event of industrial action by the Staff, the Supplier shall seek the Council's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 45.4 If the Supplier's proposals referred to in clause 45.3 are considered insufficient or unacceptable by the Council acting reasonably then the Council may:
- (a) require the Supplier to provide alternative proposals; or
  - (b) undertake the Services itself or procure the supply of the Services and charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- Subject to clause 45.5, nothing in this clause shall release the Supplier from the proper performance of its obligations under the Contract.
- 45.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **46. Recovery on termination**

- 46.1 On the termination of the Contract for any reason or the expiry of the Contract, the Supplier shall:
- (a) immediately return to the Council all Confidential Information, Personal Data and all information and documents relating to the Council's Intellectual Property Rights in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Supplier by the Council to enable the performance of the Services. Such Property shall be handed back in good condition and working order (allowance shall be made for reasonable wear and tear);

- (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to any Replacement Supplier and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Supplier to conduct due diligence.

46.2 If the Supplier fails to comply with clause 46.1(a) and clause 46.1(b), the Council may recover possession thereof and the Supplier grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

46.3 The Supplier shall provide all assistance under clause 46.1(c) and clause 46.1(d) free of charge.

#### **47. Dispute resolution**

47.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this agreement, 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 Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Council's Head of Adult's Commissioning, Integration & Market Development and the Supplier's [*INSERT SUPPLIER SENIOR OFFICER TITLE*] who shall attempt in good faith to resolve it;
- (c) if the Council's Head of Adult's Commissioning, Integration & Market Development and the Supplier's [*INSERT SUPPLIER SENIOR OFFICER TITLE*] are for any reason unable to resolve the Dispute within 30 Working 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 within 10 Working Days of referral of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR;
- (d) Unless otherwise agreed between the parties, the mediation will start not later than 30 Working Days after the date of the ADR notice.

47.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

47.3 If for any reason the Dispute is not resolved within 30 Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 51.

**48. Force majeure**

Neither Party shall be in breach of this Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 8 weeks, the party not affected may terminate this Contract by giving seven days' written notice to the affected party.

**49. Entire agreement**

49.1 This Contract, the annexes and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

49.2 Each Party acknowledges that in entering into this Contract it does not rely on, and 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 Contract.

49.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

49.4 Nothing in this clause shall limit or exclude any liability for fraud.

49.5 In the event of and only to the extent of any conflict between the Order Form, the clauses of this Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;
- (b) the Order Form except Appendices 2 (Supplier's Tender) and 3 (Supplemental Tender) to the Order Form;
- (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix 2 (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender);
- (d) any other document referred to in the clauses of the Contract; and
- (e) Schedule 1, part 2 of the Framework Agreement and Appendix 2 to the Order Form (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender).

49.6 This Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## 50. Notices

50.1 Any notice given to a party under or in connection with this Contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
  - (i) Council: [carebrokerage.duty@derby.gov.uk](mailto:carebrokerage.duty@derby.gov.uk) or [contact.support@derby.gov.uk](mailto:contact.support@derby.gov.uk)
  - (ii) Supplier: [*INSERT SUPPLIER EMAIL ADDRESS*].

50.2 Any notice 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; or
- (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.

50.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 51. Governing law and jurisdiction

51.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

51.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into in accordance with the provisions of clause

**ANNEX A      Variation Form**

**Variation Form**

**Call-off terms and conditions for services**

[NAME OF LOT]

.....

**No of Order Form being varied:**.....

**Variation Form No:**.....

**BETWEEN:**

[NAME OF CONTRACTING AUTHORITY] (**the Council**)

and

[NAME OF SERVICE PROVIDER] (**the Supplier**)

1.      The Order is varied as follows: [LIST DETAILS OF THE VARIATION INCLUDING ANY IMPACT ON THE CONTRACT PRICE].
2.      Words and expressions in this Variation shall have the meanings given to them in the Contract.
3.      The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Council**

Signature.....

Date.....

Name in capitals.....

Address.....

.....

**Authorised to sign for and on behalf of the Supplier**

Signature.....

Date.....

Name in capitals.....

Address.....

.....

## **ANNEX B      Management Information**

### **Reports**

#### **1. Contents**

Amount of hours of Services delivered in previous 4 weeks

#### **2. Frequency**

Every 4 weeks

The Council, acting reasonably, may require additional reporting information in addition to that listed above and the Supplier shall be obligated to provide this upon being notified by the Council of any such requirement in writing.

**ANNEX C      Safeguarding Policies**

**Safeguarding Children Policy**

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

**Safeguarding Adults Policy**

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

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

**ANNEX D      Data processing**

1.      The Supplier shall comply with any further written instructions in respect of processing by the Council.
2.      Any such further instructions shall be incorporated into this Annex.
3.      **Processing by the Supplier**
- 3.1    Scope
- 3.2    Nature
- 3.3    Purpose of processing
- 3.4    Duration of processing
- 3.5    Types of Personal Data
- 3.6    Categories of Data Subject.

## **ANNEX E      Notice Periods**

In the event that the Supplier terminates the Contract in accordance with the provisions of clause 43.5, and does so or has done for multiple Individual Agreement in a rolling thirty 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 (including the Contract for which notice is to be served) on which notice is or has been served in that rolling thirty day period;

- a) Individual Agreements with a cumulative total of one to two customers, the notice period is no less than thirty calendar days;
- b) Individual Agreements with a cumulative total of three to five customers, the notice period is no less than ninety calendar days;
- c) Individual Agreements with a cumulative total of six or more customers, the Notice Period is no less than one hundred and eighty calendar days; or
- d) as agreed between the Council and Service Provider in writing.

**1. Definitions**

In this Annex, the following definitions shall apply:

**Acquired Rights Directive:** the Contracting Body Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, 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 11 pm on 31 January 2020.

**Admission Agreement:** the agreement to be entered into by which the Service Provider agrees to participate in the Schemes as amended from time to time;

**Eligible Employee:** any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

**Employee Liabilities:** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**Fair Deal Employees:** those Transferring Former Service Provider Employees who originally transferred pursuant to a Relevant Transfer under TUPE (or the predecessor legislation to TUPE), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

**Former Service Provider:** a Service Provider supplying services to the Contracting Body before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the

Services) and shall include any sub-contractor of such Service Provider (or any sub-contractor of any such sub-contractor);

**New Fair Deal:** the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for staff pensions: staff transfer from central government*" issued in October 2013;

**Notified Sub-contractor:** a Sub-contractor identified in ANNEX H to whom Transferring Former Service Provider Employees will transfer on a Relevant Transfer Date;

**Replacement Services:** any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Contracting Body internally and/or by any third party;

**Replacement Sub-contractor:** a sub-contractor of the Replacement Service Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

**Replacement Service Provider:** any third party service provider of Services appointed by the Contracting Body from time to time (or where the Contracting Body is providing replacement Services for its own account, the Contracting Body);

**Relevant Transfer:** a transfer of employment to which TUPE applies;

**Relevant Transfer Date:** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**Schemes:** the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Service Provider by the Minister for the Cabinet Office);

**Service Transfer:** any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-contractor to a Replacement Service Provider or a Replacement Sub-contractor;

**Service Transfer Date:** the date of a Service Transfer;

**Staffing Information:** in relation to all persons identified on the Service Provider's Provisional Personnel List or Service Provider's Final Personnel List, as the case may be, such information as the Contracting Body may reasonably request (subject to all applicable provisions of the Data Protection Legislation, but including in an anonymised format:

Schedule 1 their ages, dates of commencement of employment or engagement and gender;

Schedule 2 details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;

Schedule 3 the identity of the employer or relevant contracting Party;

Schedule 4 their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;

Schedule 5 their wages, salaries and profit sharing arrangements as applicable;

Schedule 6 details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

Schedule 7 any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

Schedule 8 details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

Schedule 9 copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

Schedule 10 any other "employee liability information" as such term is defined in regulation 11 of TUPE;

**Service Provider's Final Personnel List:** a list provided by the Service Provider of all Service Provider Personnel who will transfer under TUPE on the Relevant Transfer Date;

**Service Provider Personnel:** all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or any Sub-contractor engaged in the performance of the Service Provider's obligations under this Agreement;

**Service Provider's Provisional Personnel List:** a list prepared and updated by the Service Provider of all Service Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider;

**Transferring Former Service Provider Employees:** in relation to a Former Service Provider, those employees of the Former Service Provider to whom TUPE will apply on the Relevant Transfer Date as contained in ANNEX G and accurate as at the date on which this Agreement is signed by both Parties; and

**Transferring Service Provider Employees:** those employees of the Service Provider and/or the Service Provider's Sub-contractors to whom TUPE will apply on the Service Transfer Date.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

## 2. Interpretation

- 2.1 Where a provision in this Annex imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, the Service Provider shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Contracting Body, Former Service Provider, Replacement Service Provider or Replacement Sub-contractor, as the case may be.
- 2.2 References to paragraphs in this annex shall be interpreted as references to the relevant paragraph within this annex unless otherwise stated.

## **Transferring Former Service Provider Employees at commencement of Services**

### **3. Relevant Transfers**

3.1 The Contracting Body and the Service Provider agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Service Provider Employees; and
- (b) as a result of the operation of TUPE, the contracts of employment between each Former Service Provider and the Transferring Former Service Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of TUPE) shall have effect on and from the Relevant Transfer Date as if originally made between the Service Provider and/or Notified Sub-contractor and each such Transferring Former Service Provider Employee.

3.2 The Contracting Body shall procure that each Former Service Provider shall comply with all its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Former Service Provider Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Service Provider shall make, and the Contracting Body shall procure that each Former Service Provider makes, any necessary apportionments in respect of any periodic payments.

### **4. Former Service Provider indemnities**

4.1 Subject to paragraph 4.2, the Contracting Body shall procure that each Former Service Provider shall indemnify the Service Provider and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Service Provider Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

- (a) any act or omission by the Former Service Provider arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Service Provider arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Service Provider Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Service Provider Employees which the Former Service Provider is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Former Service Provider Employee and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Service Provider to the Service Provider and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Service Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Service Provider Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Service Provider other than a Transferring Former Service Provider Employee for whom it is alleged the Service Provider and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or TUPE and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee relating to any act or omission of the Former Service Provider in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Service Provider or any Sub-contractor to comply with regulation 13(4) of TUPE.

4.2 The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Service Provider Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Service Provider or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Service Provider and/or any Sub-contractor to comply with its obligations under TUPE.

4.3 If any person who is not identified by the Contracting Body as a Transferring Former Service Provider Employee claims, or it is determined in relation to any person who is not identified by the Contracting Body as a Transferring Former Service Provider Employee, that his/her contract of employment has been transferred from a Former Service Provider to the Service Provider and/or any Notified Sub-contractor pursuant to TUPE or the Acquired Rights Directive then:

- (a) the Service Provider shall, or shall procure that the Notified Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Contracting Body and, where required by the Contracting Body, to the Former Service Provider; and
- (b) the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Service Provider

and/or the Notified Sub-contractor or take such other reasonable steps as the Former Service Provider considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

4.4 If an offer referred to in paragraph 4.3(b) is accepted, or if the situation has otherwise been resolved by the Former Service Provider and/or the Contracting Body, the Service Provider shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

4.5 If by the end of the 15 Working Day period specified in paragraph 4.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Service Provider and/or any Notified Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

4.6 Subject to the Service Provider and/or any Notified Sub-contractor acting in accordance with the provisions of paragraph 4.3 to paragraph 4.5 and in accordance with all applicable proper employment procedures set out in Law, the Contracting Body shall procure that the Former Service Provider indemnifies the Service Provider and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 4.5 provided that the Service Provider takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.7 The indemnity in paragraph 4.6:

- (a) shall not apply to:
  - (i) in any case in relation to any alleged act or omission of the Service Provider and/or any Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
  - (ii) any claim that the termination of employment was unfair because the Service Provider and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 4.3(a) is made by the Service Provider and/or any Notified Sub-contractor (as appropriate) to the Contracting Body and, if applicable, the Former Service Provider, within six months of the Effective Date.

4.8 If any such person as is described in paragraph 4.3 is neither re-employed by the Former Service Provider nor dismissed by the Service Provider and/or any Notified Sub-contractor within the time scales set out in paragraph 4.5, such person shall be treated as having transferred to the Service Provider or Notified

Sub-contractor and the Service Provider shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

## **5. Service Provider indemnities and obligations**

5.1 Subject to paragraph 5.2, the Service Provider shall indemnify the Contracting Body and/or the Former Service Provider against any Employee Liabilities in respect of any Transferring Former Service Provider Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

- (a) any act or omission by the Service Provider or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Service Provider or any Sub-contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Service Provider Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Service Provider Employees which the Service Provider or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Service Provider Employees arising from or connected with any failure by the Service Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Service Provider or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Service Provider Employees to their material detriment on or after their transfer to the Service Provider or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Service Provider or a Sub-contractor to, or in respect of, any Transferring Former Service Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contracting Body and/or the Former Service Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Former Service Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Service Provider to the Service Provider or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
  - (g) a failure of the Service Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Service Provider Employees in respect of the period from (and including) the Relevant Transfer Date; and
  - (h) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee relating to any act or omission of the Service Provider or any Sub-contractor in relation to obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Former Service Provider's failure to comply with its obligations under regulation 13 of TUPE.
- 5.2 The indemnities in paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Service Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Service Provider's failure to comply with its obligations under TUPE.
- 5.3 The Service Provider shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under TUPE (including without limitation its obligation to inform and consult in accordance with regulation 13 of TUPE) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Service Provider Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Service Provider and the Former Service Provider.
- 5.4 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Paragraph 5, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Contracting Body in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 5.5 Despite Paragraph 5.4, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

## **6. Information**

The Service Provider shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Body and/or at the Contracting Body's direction, the Former Service Provider, in writing such information as is necessary to enable the Contracting Body and/or the Former Service Provider to carry out their respective duties under regulation 13 of TUPE. The Contracting Body shall procure that the Former Service Provider shall promptly provide to the Service Provider and each Notified Sub-contractor in writing such information as is necessary to enable the Service Provider and each Notified Sub-contractor to carry out their respective duties under regulation 13 of TUPE.

## **7. Principles of good employment practice**

7.1 The Service Provider shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Contracting Body relating to pensions in respect of any Transferring Former Service Provider Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2013;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

7.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 7.1 shall be agreed in accordance with the Change Control Procedure.

## **8. Procurement obligations**

Notwithstanding any other provisions of this Annex, where in this Annex the Contracting Body accepts an obligation to procure that a Former Service Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Body's contract with the Former Service Provider contains a contractual right in that regard which the Contracting Body may enforce, or otherwise so that it requires only that the Contracting Body must use reasonable endeavours to procure that the Former Service Provider does or does not act accordingly.

### **Pensions**

## **9. Protection of pensions**

9.1 The Service Provider shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in paragraph 10 to paragraph 16 in respect of any Transferring Former Service Provider Employees who transfer from the Former Service Provider to the Service Provider.

## **10. Participation in public sector pension scheme**

- 10.1 The Service Provider undertakes to enter into the Admission Agreement.
- 10.2 The Service Provider and the Contracting Body undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Service Provider to participate in the Schemes in respect of the Fair Deal Employees.
- 10.3 The Service Provider shall bear its own costs and all costs that the Contracting Body reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Service Provider participating in the Schemes.

## **11. Future service benefits**

- 11.1 If the Service Provider is rejoining the Schemes for the first time, the Service Provider shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 11.2 If staff have already been readmitted to the Schemes, the Service Provider shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Service Provider shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 11.3 The Service Provider undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Contracting Body, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Contracting Body in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 11.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

## **12. Funding**

- 12.1 The Service Provider undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

12.2 The Service Provider shall indemnify and keep indemnified the Contracting Body on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Service Provider to or in respect of the Schemes.

### **13. Provision of information**

The Service Provider and the Contracting Body respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **14. Indemnity in respect of Fair Deal Employees**

The Service Provider undertakes to the Contracting Body to indemnify and keep indemnified the Contracting Body on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### **15. Employer obligation under pensions legislation**

The Service Provider shall comply with the requirements of [Part 1 of] the Pensions Act 2008, sections 257 and 258 of the Pensions Act 2004, and the Transfer of Employment (Pension Protection) Regulations 2005.

### **16. Subsequent transfers**

The Service Provider shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Service Provider and/or the Contracting Body may reasonably require to enable the Replacement Service Provider to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is [two (2) years] prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Service Provider or the Contracting Body, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Contracting Body (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **Employment exit provisions**

### **17. Pre-service transfer obligations**

17.1 The Service Provider agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Contracting Body of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Contracting Body at any time (provided that the Contracting Body shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Service Provider's Provisional Personnel List, together with the Staffing Information in relation to the Service Provider's Provisional Personnel List and it shall provide an updated Service Provider's Provisional Personnel List at such intervals as are reasonably requested by the Contracting Body.

17.2 At least 28 Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Contracting Body or at the direction of the Contracting Body to any Replacement Service Provider and/or any Replacement Sub-contractor:

- (a) the Service Provider's Final Personnel List, which shall identify which of the Service Provider Personnel are Transferring Service Provider Employees; and
- (b) the Staffing Information in relation to the Service Provider's Final Personnel List (insofar as such information has not previously been provided).

17.3 The Contracting Body shall be permitted to use and disclose information provided by the Service Provider under paragraph 17.1 and paragraph 17.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-contractor.

17.4 The Service Provider warrants, for the benefit of the Contracting Body, any Replacement Service Provider, and any Replacement Sub-contractor that all information provided pursuant to paragraph 17.1 and paragraph 17.2 shall be true and accurate in all material respects at the time of providing the information.

17.5 From the date of the earliest event referred to in paragraph 17.1(a), paragraph 17.1(b) and paragraph 17.1(c), the Service Provider agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Service Provider's Provisional Personnel List and shall not without the approval of the Contracting Body (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Service Provider Personnel listed on the Service Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Service Provider Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Service Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Contracting Body or, at the direction of the Contracting Body, any Replacement Service Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Service Provider or relevant Sub-contractor or received from any persons listed on the Service Provider's Provisional Personnel List regardless of when such notice takes effect.

17.6 During the Term, the Service Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Body any information the Contracting Body may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

17.7 The Service Provider shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Contracting Body, any Replacement Service Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Service Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the

Transferring Service Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five Working Days following the Service Transfer Date, the Service Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Body or, at the direction of the Contracting Body, to any Replacement Service Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Service Provider's Final Personnel List who is a Transferring Service Provider Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **18. TUPE exit provisions**

- 18.1 The Contracting Body and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Service Provider and/or a Replacement Sub-contractor. Such change in the identity of the Service Provider of such services may constitute a Relevant Transfer to which TUPE and/or the Acquired Rights Directive will apply. The Contracting Body and the Service Provider further agree that, as a result of the operation of TUPE, where a Relevant Transfer occurs, the contracts of employment between the Service Provider and the Transferring Service Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Service Provider Employee.
- 18.2 The Service Provider shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Service Provider Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Service Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Service Provider and/or the Sub-contractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Sub-contractor.
- 18.3 Subject to paragraph 18.4, the Service Provider shall indemnify the Contracting Body and/or the Replacement Service Provider and/or any Replacement Sub-contractor against any Employee Liabilities

in respect of any Transferring Service Provider Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

- (a) any act or omission of the Service Provider or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Service Provider or any Sub-contractor occurring on or before the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Service Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Service Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Service Provider to the Contracting Body and/or Replacement Service Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Service Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-contractor other than a Transferring Service Provider Employee for whom it is alleged the Contracting Body and/or the Replacement Service Provider and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or TUPE and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the

failure by the Contracting Body and/or Replacement Service Provider to comply with regulation 13(4) of TUPE.

18.4 The indemnities in paragraph 18.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Service Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Service Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under TUPE.

18.5 If any person who is not a Transferring Service Provider Employee claims, or it is determined in relation to any person who is not a Transferring Service Provider Employee, that his/her contract of employment has been transferred from the Service Provider or any Sub-contractor to the Replacement Service Provider and/or Replacement Sub-contractor pursuant to TUPE or the Acquired Rights Directive, then:

- (a) the Contracting Body shall procure that the Replacement Service Provider shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Service Provider; and
- (b) the Service Provider may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Service Provider and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

18.6 If such offer is accepted, or if the situation has otherwise been resolved by the Service Provider or a Sub-contractor, the Contracting Body shall procure that the Replacement Service Provider shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

18.7 If after the 15 Working Day period specified in paragraph 18.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Contracting Body shall advise the Replacement Service Provider and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

- 18.8 Subject to the Replacement Service Provider and/or Replacement Sub-contractor acting in accordance with the provisions of paragraph 18.5 to paragraph 18.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Service Provider shall indemnify the Replacement Service Provider and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 18.7 provided that the Replacement Service Provider takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 18.9 The indemnity in paragraph 18.8:
- (a) shall not apply to:
    - (i) in any case in relation to any alleged act or omission of the Replacement Service Provider and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
    - (ii) any claim that the termination of employment was unfair because the Replacement Service Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in paragraph 18.5(a) is made by the Replacement Service Provider and/or Replacement Sub-contractor to the Service Provider within six months of the Service Transfer Date.
- 18.10 If any such person as is described in paragraph 18.5 is neither re-employed by the Service Provider or any Sub-contractor nor dismissed by the Replacement Service Provider and/or Replacement Sub-contractor within the time scales set out in paragraph 18.5 to paragraph 18.7, such person shall be treated as a Transferring Service Provider Employee and the Replacement Service Provider and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 18.11 The Service Provider shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under TUPE and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Service Provider Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Service Provider and/or any Sub-contractor; and
  - (b) the Replacement Service Provider and/or the Replacement Sub-contractor.
- 18.12 The Service Provider shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Body and any Replacement Service Provider and/or Replacement Sub-contractor, in writing

such information as is necessary to enable the Contracting Body, the Replacement Service Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of TUPE. The Contracting Body shall procure that the Replacement Service Provider and/or Replacement Sub-contractor, shall promptly provide to the Service Provider and each Sub-contractor in writing such information as is necessary to enable the Service Provider and each Sub-contractor to carry out their respective duties under regulation 13 of TUPE.

18.13 Subject to paragraph 18.14, the Contracting Body shall procure that the Replacement Service Provider indemnifies the Service Provider on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Service Provider Employee (or, where applicable any employee representative (as defined in TUPE) of any Transferring Service Provider Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Service Provider and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Service Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Service Provider Employees which the Replacement Service Provider and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Replacement Service Provider and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Service Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Service Provider Employees on or after their transfer to the Replacement Service Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Service Provider or Replacement Sub-contractor to, or in respect of, any Transferring Service Provider Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Service Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Service Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Service Provider or Sub-contractor, to the Replacement Service Provider or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Service Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Replacement Service Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of TUPE.

18.14 The indemnities in paragraph 18.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Service Provider and/or any Sub-contractor (as applicable) to comply with its obligations under TUPE.

**ANNEX G      Transferring Former Service Provider Employees**

**ANNEX H      List of Notified Sub-contractors**



## Schedule 6 Contract management

### 1. Reporting Information

Information	Frequency
Quality self-assessment form <sup>1</sup>	Annually
Capacity Tracker <sup>2</sup>	Monthly
Skills for Care workforce data set <sup>3</sup>	Quarterly
Home Care Contract Management and Quality Monitoring Framework <sup>4</sup>	Quarterly

- 1.1 The Council may adjust the frequency of any reporting requirements from time to time by notifying the Supplier of any such adjustment.
- 1.2 The Council, acting reasonably, may require additional reporting information in addition to that listed above and the Supplier shall be obligated to provide this upon being notified by the Council of any such requirement in writing.

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<sup>1</sup> See the form at Schedule 9

<sup>2</sup> See <https://capacitytracker.com/>

<sup>3</sup> See <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/publications/Topics/Monthly-tracking/Monthly-tracking.aspx>

<sup>4</sup> See

[https://forms.office.com/pages/responsepage.aspx?id=luY6DQY3LEKkaZK4USX8TmWf3vJu\\_\\_VNhw7FgmMusWFURE9ZU0hOQkRaMDdER0dBQUgwSkFFSk9XQSQIQCN0PWcu&route=shorturl](https://forms.office.com/pages/responsepage.aspx?id=luY6DQY3LEKkaZK4USX8TmWf3vJu__VNhw7FgmMusWFURE9ZU0hOQkRaMDdER0dBQUgwSkFFSk9XQSQIQCN0PWcu&route=shorturl)



## **Schedule 7 Framework Agreement Variation Procedure**

### **1. Introduction**

- 1.1 Schedule 7 details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Framework Agreement.
- 1.2 The Council may propose a variation to the Framework Agreement under Schedule 7 only where the variation does not amount to a material change in the Framework Agreement or the Services.

### **2. Procedure for proposing a variation**

- 2.1 Except where paragraph 5 applies, the Council may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Council shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Notice of Variation**).
- 2.3 The Notice of Variation shall:
  - (a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
  - (b) require each Framework Provider to notify the Council within 21 days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 On receipt of the Notice of Variation, each Framework Provider has 21 days to respond in writing with any objections to the variation.
- 2.5 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within 14 days of receipt.
- 2.6 On receipt of a signed agreement from each Framework Provider, the Council shall notify all Framework Providers in writing of the commencement date of the variation.

### **3. Objections to a variation**

In the event that the Council receives one or more written objections to a variation, the Council may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

#### **4. Changes to the Pricing Matrices**

- 4.1 Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Council may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.
- 4.2 The Council may require the Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.
- 4.3 Where a change to a Framework Provider's Pricing Matrices is agreed by the Council, the Council shall notify its acceptance of the change to the Framework Provider in writing.
- 4.4 In the event that the Council and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Council may:
  - (a) withdraw the variation; or
  - (b) propose an amendment to the variation.

#### **5. Variations that are not permitted**

In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation that:

- (a) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or
- (b) is in contravention of any Law.



## **Schedule 8 Data Processing**

### **1. Data processing**

1.1 The Supplier shall comply with any further written instructions with respect to processing by the Council.

1.2 Any such further instructions shall be incorporated into this Schedule.

### **2. Processing by the Supplier**

2.1 Scope

2.2 Nature

2.3 Purpose of processing

2.4 Duration of processing

2.5 Types of Personal Data

2.6 Categories of Data Subject



**Schedule 9 Quality self-assessment form**

**Derby City Council**

**Quality Audit for**

**Home Care**

**Provider Self-Assessment**

**Review Date: July 2025**

## Notes

Dear Provider

- Please complete Part One of this form in full detail and return via email to your allocated Quality Monitoring Officer (QMO).
- Please ensure the information you provide is accurate.
- If a section is not applicable to your provision, please indicate this.
- Your allocated QMO will then complete an announced or unannounced Quality Audit Visit. The visit may be a joint visit with colleagues from the Integrated Care Board (ICB).
- If you are having difficulty accessing or completing this form, please contact your QMO directly or email on [Qualitymonitoring.duty@derby.gov.uk](mailto:Qualitymonitoring.duty@derby.gov.uk)
- Your QMO will record any observations in the comments box of each section.
- The Self-assessment form is designed to follow the Domiciliary Care National Minimum Standards as set out by the Department of Health, Care Standards Act 2000.

## Contents

No	Section
1.	Provider Information
2.	Staffing
3.	Recruitment / Selection / Induction / Retention - Managers and Staff (National Minimum Standards 17-21)
4.	Staff Training, Development & Supervision
5.	Medication
6.	Dignity (National Minimum Standards 7-10)
7.	Safeguarding & Safe Working Practices (Protection Standards 11-16)
8.	Customer Focused Service (National Minimum Standards 1-6)
9.	Assessment and Care Plans
10.	Organisation & Operating of the Business (Standards 22-27)
11.	Communication
12.	Quality Assurance
13.	Financial Procedures (Safe Management of Customer's Money)
14.	Complaints / Compliments / Feedback
15.	Policy and Procedures
16.	Financial Procedures / Record Keeping

**Provider Self-Assessment**

<b>1</b>	<b>Provider Information</b>											
<b>1.1</b>	<b>Provider Name (as per CQC registration, if applicable)</b>											
<b>1.2</b>	<b>Provider Name</b>											
<b>1.3</b>	<b>Provider Address (Local Office)</b>											
	<b>Provider Address (Registered Office)</b>											
<b>1.4</b>	<b>Telephone Number</b>											
<b>1.5</b>	<b>Email</b>											
<b>1.6</b>	<b>Name of Business Owner(s)</b>											
<b>1.7</b>	<b>Service Name</b>											
<b>1.8</b>	<b>Telephone Number</b>											
<b>1.9</b>	<b>Email</b>											
<b>1.10</b>	<b>Date of completing this form</b>											
<b>1.11</b>	<b>Date of last CQC Inspection (if applicable)</b>											
<b>1.12</b>	<b>Rating from last CQC Inspection – Green (G) Requires Improvement (RI) (if applicable)</b>											
	<table border="1"> <tr> <td>Safe</td> <td><input type="checkbox"/></td> <td>Effective</td> <td><input type="checkbox"/></td> <td>Caring</td> <td><input type="checkbox"/></td> <td>Responsive</td> <td><input type="checkbox"/></td> <td>Well Led</td> <td><input type="checkbox"/></td> </tr> </table>		Safe	<input type="checkbox"/>	Effective	<input type="checkbox"/>	Caring	<input type="checkbox"/>	Responsive	<input type="checkbox"/>	Well Led	<input type="checkbox"/>
Safe	<input type="checkbox"/>	Effective	<input type="checkbox"/>	Caring	<input type="checkbox"/>	Responsive	<input type="checkbox"/>	Well Led	<input type="checkbox"/>			
<b>1.13</b>	<b>CQC Inspection outcome published on your website?</b> If yes, please insert hyperlink to page: Http	Yes <input type="checkbox"/> No <input type="checkbox"/>										

<b>2</b>	<b>Staffing</b>	
<b>2.1</b>	<b>Registered Manager Name</b>	
	<b>Nominated Individual</b>	
	<b>Deputy Manager Name</b>	
	<b>Other Management</b>	
	<b>Finance</b>	

<b>2</b>	<b>Staffing</b>	
	<b>Administration</b>	
	<b>Other</b>	
	Please provide a copy of your Management Structure, including names and contact details	
<b>2.2</b>	<b>Total number of staff employed – Give numbers.</b>	
	<b>Senior Care Workers</b>	
	<b>Care Workers</b>	
	<b>Other</b>	
<b>2.3</b>	<b>Hours of Operation</b>	
	<b>Days of Operation</b>	
<b>2.4</b>	<b>Number of staff who require Permission to work Documentation / Certificate of Sponsorships (CoSs)?</b> Have the international recruits been made aware of Northeast Lincolnshire Citizen Advice. Email us: <a href="mailto:immigration@advicene1.org.uk">immigration@advicene1.org.uk</a> / call on: 01472 252516. They can get impartial information, advice, and guidance in safe place.	
<b>2.5</b>	<b>Staff Rates of Pay</b> <b>Are Care staff on:</b> The Minimum Wage: Yes <input type="checkbox"/> No <input type="checkbox"/>	The Living Wage (or above): Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>2.6</b>	<b>Quality Monitoring Officer's Comments:</b>	

<b>3</b>	<b>Recruitment / Selection / Induction / Retention - Managers and Staff (Standards 17-21)</b>	
<b>3.1</b>	What is your recruitment process and initiatives? (E.g., Where, and how do they advertise?)	
<b>3.2</b>	How do you retain staff? (E.g., how do they empower staff? Are there opportunities for progression?)	
<b>3.3</b>	Who is responsible for screening applications and interviewing candidates?	
<b>3.4</b>	Who is responsible for screening references and how are references checked?	
<b>3.5</b>	What is your Safer Recruitment process?	
<b>3.6</b>	What is the induction process for a new member of staff?	
<b>3.7</b>	How long is the shadowing process?	
<b>3.8</b>	How long is the probationary period for new members of staff?	

<b>3.9</b>	Are staff members issued with a staff handbook or induction programme? Is there evidence of this being signed for by staff to confirm they have read/received it? Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>3.10</b>	To protect the welfare of vulnerable customers when care staff are ill, how do you ensure staff are able to take time off sick?		
<b>3.11</b>	How many staff are on Zero-hour contracts?		
<b>3.12</b>	Are care staff paid for their travel time, travel costs and other necessary expenses? Yes <input type="checkbox"/> No <input type="checkbox"/>		
	Please provide details:		
<b>3.13</b>	Number of staff suspended in the last 12 months.	Number of staff who have left in the last 12 months.	Number of staff dismissed in the last 12 months.
<b>3.14</b>	<b>Quality Monitoring Officer's Comments:</b>		

<b>4.</b>	<b>Staff Training, Development &amp; Supervision</b>		
<b>4.1</b>	Staff Training Matrix available? Yes <input type="checkbox"/> No <input type="checkbox"/>		
	Please attach / include a copy.		
<b>4.2</b>	Frequency of staff supervisions?		
<b>4.3</b>	Who is responsible for staff supervisions?		
<b>4.4</b>	Do staff receive a copy of their supervision notes? Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>4.5</b>	Do you hold regular staff team meetings? Yes <input type="checkbox"/> No <input type="checkbox"/>		
	How often?		
<b>4.6</b>	Copy of staff meeting minutes available on request? Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>4.7</b>	Are staff paid for attending training? Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>4.8</b>	Have managers attended DCC Medication Training for Managers? Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>4.9</b>	Number of staff who have attended DCCs Safeguarding Train		
<b>4.10</b>	Number of staff who have attended DCCs MCA Training		
<b>4.11</b>	Number of staff who have attended DCCs DOLS Training		
<b>4.12</b>	Number of staff who have attended Behaviour Management Training i.e., SCIP (2 yearly)		
<b>4.13</b>	All Care Staff NVQ 2 or Equivalent	Yes <input type="checkbox"/> No <input type="checkbox"/>	
<b>4.14</b>	Seniors/Assistant Managers NVQ 3 or equivalent	Yes <input type="checkbox"/> No <input type="checkbox"/>	

<b>4.</b>	<b>Staff Training, Development &amp; Supervision</b>	
<b>4.15</b>	Managers NVQ 5 or equivalent	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>4.16</b>	Are staff paid to attend training	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>4.17</b>	All care staff have completed the following:	Dip test at quality audit visit:
	Assisting & Moving (2 yearly)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Autism	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Basic Food Hygiene (Level 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Continence Care	Yes <input type="checkbox"/> No <input type="checkbox"/>
	COSHH	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Dementia	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Dignity and Respect	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Emergency First Aid (3 yearly)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	End of Life	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Epilepsy	Yes <input type="checkbox"/> No <input type="checkbox"/>
	GDPR / Data Protection	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Infection Control	Yes <input type="checkbox"/> No <input type="checkbox"/>
	MCA and DoLs (3 yearly)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Medication Management (2 yearly)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Nutrition/Fluid	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Oliver McGowan (Autism / Learning Disability)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Person centred care / support	Yes <input type="checkbox"/> No <input type="checkbox"/>
	RIDDOR	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Safeguarding (3 yearly)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Skin Integrity & Pressure Ulcers	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Working Safely (Annually)	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Working with people with a Learning Disability	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>4.18</b>	<b>Quality Monitoring Officer's Comments:</b>	

<b>5</b>	<b>Medication &amp; Health Related Activities</b>	
	<b>Can you show evidence of the following?</b>	
<b>5.1</b>	Medication risk assessments for all customers.	Yes <input type="checkbox"/> No <input type="checkbox"/>
	<input type="checkbox"/>	
<b>5.2</b>	Is the level of support needed clearly identified?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	<input type="checkbox"/>	
<b>5.3</b>	Is there a system in place to audit MAR sheets?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	<input type="checkbox"/>	
<b>5.4</b>	What is the system in place to collect the completed MAR sheets?	

5.5	How often is this done and who does it?	
5.6	Is there a process in place to follow up errors?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.7	What is this process and who does it?	
5.8	Are medication errors submitted to DCC?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.9	Are competency checks done on staff at least annually?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.10	<b>Quality Monitoring Officer's Comments:</b>	

<b>6.</b>	<b>Dignity – (Personal Care National Minimum Standards 7-10)</b>	
6.1	Dignity Award Completed?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Date of award: If 'No', Providers can find more information and apply for the Dignity Award on the Derby Safeguarding Adult's Board website <a href="http://derbysab.org.uk">Dignity and Community Respect Awards - Derby Safeguarding Adults Board (derbysab.org.uk)</a> and / or at <a href="https://www.dignityincare.org.uk/Dignity-Champions/">https://www.dignityincare.org.uk/Dignity-Champions/</a>	
6.2	Number of Dignity Champions	
	Staff / volunteers can register as Dignity Champions at the Dignity in Care website - <a href="https://www.dignityincare.org.uk/register/">https://www.dignityincare.org.uk/register/</a>	
6.3	Details of Dignity Champions displayed?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Details:	
6.4	Customers are treated with Dignity & Respect.	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Give examples:	
6.6	What is the staff understanding of Dignity?	
6.6	<b>Quality Monitoring Officer's Comments:</b>	

<b>7</b>	<b>Safeguarding &amp; Safe Working Practices (Protection Standards 11-16)</b>	
7.1	Copy of Safeguarding Policy attached	Yes <input type="checkbox"/> No <input type="checkbox"/>
7.2	Does the Safeguarding Policy make references to and provide guidance on requirements of the Care Act 2014?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Details:	
7.3	How do you make safeguarding personal?	
	Details:	
7.4	How do you report a safeguarding concern?	
	Details:	
	How do you record / log Safeguarding referrals?	

<b>7.5</b>	Details:			
<b>7.6</b>	How are safeguarding enquiries investigated and by whom?			
	Details:			
<b>7.7</b>	Who is responsible for Safeguarding?			
	Details:			
<b>7.8</b>	Number of current open safeguarding referrals			
<b>7.9</b>	How do you make safeguarding personal?			
<b>7.10</b>	How do you ensure the health, safety and welfare of Customer's and care staff? Is Personal Protection Equipment (PPE) provided to the carers?			
<b>7.11</b>	How do you ensure carers are not put on rotas for customers with active complaints or safeguarding's against them, or for the safety of the carers regarding particular customers?			
<b>7.12</b>	What procedures are in place to enable care staff to report changes to the care needs and circumstances of customers, so that a re-assessment of care needs can be undertaken if necessary?			
<b>7.13</b>	Who is responsible in the organisation for undertaking any risk assessments?			
<b>7.14</b>	Are risk assessments undertaken on any care staff with additional needs, health conditions or who consider themselves to have a disability?			
<b>7.15</b>	Are care staff provided with a weekly rota?			
	How do you ensure compliance with the Data Protection Act when providing rotas to the staff?			
	Yes <input type="checkbox"/> No <input type="checkbox"/>			
<b>7.17</b>	If customers have a Key Safe – how is this sensitive information passed on to care staff?			
<b>7.17</b>	What is your policy around handling customer finances e.g., shopping calls/cash/debit card use?			
<b>7.18</b>	What is your policy for Food Safety?			
<b>7.19</b>	Detailed care logs should be kept within the customers' home; how often are these checked for quality of record keeping/accuracy? By whom?			
<b>7.20</b>	Do care staff, office staff and managers have their own individual log-in for computers/systems?			
	Yes <input type="checkbox"/> No <input type="checkbox"/>			
<b>7.21</b>	Employers Liability Insurance displayed?			
	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Expiry Date:</b>		<b>Cover Level:</b>
<b>7.22</b>	Public Liability Insurance displayed?			
	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Expiry Date:</b>		<b>Cover Level:</b>
<b>7.23</b>	<b>Quality Monitoring Officer's Comments:</b>			

<b>8</b>	<b>Customer Focused Services - The needs of the customer(s) lie at the heart of the service provision. (National Minimum Standards 1-6)</b>		
<b>8.1</b>	Total number of customers:		
<b>8.2</b>	Zones Covered: Central / West / South / East		
<b>8.3</b>	No. Customers requiring 1:1	No. Customers requiring 2:1	Other
<b>8.4</b>	Total of DCC Funded:	Total on Direct Payment:	Total who Self Fund:
<b>8.5</b>	Do you have customers from other Local Authorities?		Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>8.6</b>	If yes – which Local Authorities?		
<b>8.7</b>	The Statement of Purpose and the Customer’s Guide are written in plain English and are available in appropriate formats e.g., large print, braille. Where services are or may be provided to people for whom English is not their first language, the documents are made available in the language of their choice. What are the aims and objectives of your Organisation? Include at least 7.		
<b>8.8</b>	Please provide a copy of your Customer’s Guide and Statement of Purpose. Copies provided: Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>8.9</b>	<b>Quality Monitoring Officer’s Comments</b>		

<b>9</b>	<b>Assessment / Care Plans</b>		
<b>9.1</b>	Assessment visits to customers are carried out prior to commencing a service (or within 2 working days in exceptional circumstances)		Yes <input type="checkbox"/> No <input type="checkbox"/>
	Details:		
<b>9.2</b>	What is your process for same day start for hospital discharges on new customers?		
<b>9.3</b>	Current and up to date Service Delivery Plans are in place for each Local Authority customer?		Yes <input type="checkbox"/> No <input type="checkbox"/>
	Details:		
<b>9.4</b>	Hours of operation and 24hr contact details are provided to customers?		Yes <input type="checkbox"/> No <input type="checkbox"/>
	Details:		
<b>9.5</b>	Care plans are completed fully		Yes <input type="checkbox"/> No <input type="checkbox"/>
	Details:		
<b>9.6</b>	Care plans are outcome focused		

		Yes <input type="checkbox"/> No
9.7	Is there evidence of the outcomes being reviewed within 6 weeks of the care package starting, and then at least annually after that?	Yes <input type="checkbox"/> No
9.8	How do care staff members assist customers in achieving independence where possible?	Yes <input type="checkbox"/> No
9.9	When services are provided for specific minority ethnic communities, social/cultural or religious groups, their requirements and preferences are identified, understood, and detailed in the customer's care. Can you provide an example of this?	
9.10	<b>Quality Monitoring Officer's Comments</b>	

<b>10</b>	<b>Organisation &amp; Operating of the Business (Standards 22-27)</b>	
	<b>Planning</b>	
10.1	Are visits scheduled so that carers do not rush their time with customers or leave early to get to the next one on time?	Yes <input type="checkbox"/> No <input type="checkbox"/> Details:
10.2	How do you allow for travel time between calls?	
10.3	Are efforts made to ensure customers receive continuity of care with the same carers?	
10.4	How can you evidence what times the carers turn up for their calls?	
10.5	How do you evidence the duration of the call?	
10.6	What is your process when a call has been missed?	
10.7	Where timesheets are used, do customers sign these? If they are unable to sign is this recorded anywhere?	
10.8	If there is a query, how can it be proved that a call took place?	
10.9	<b>Quality Monitoring Officer's Comments</b>	

<b>11</b>	<b>Communication</b>	
11.1	Is there an on-call worker from the local office?	Yes <input type="checkbox"/> No <input type="checkbox"/> Details:
11.2	Do customers and all staff have the 24hr contact number	Yes <input type="checkbox"/> No <input type="checkbox"/> Details:
11.3	Is there a record kept in the office of all out of hour's calls taken and the outcomes?	

	Yes <input type="checkbox"/> No <input type="checkbox"/> Details:
<b>11.4</b>	Is there a process to deal with out of hours concerns?
	Yes <input type="checkbox"/> No <input type="checkbox"/> Details:
<b>11.5</b>	Can you show evidence of team meetings with support workers? How often are these carried out?
	Yes <input type="checkbox"/> No <input type="checkbox"/> Details:
<b>11.6</b>	Can you show evidence of annual observation visits on care staff?
	Yes <input type="checkbox"/> No <input type="checkbox"/> Details:
<b>11.7</b>	Can you show evidence of any information sharing or updates sent to support workers to provide guidance when changes occur? How is this done?
<b>11.8</b>	<b>Quality Monitoring Officer's Comments</b>

<b>12</b>	<b>Quality Assurance</b>
<b>12.1</b>	What is the policy for quality assurance for customers?
<b>12.2</b>	Do you contact customers regularly for feedback on the quality of their service provision? Yes <input type="checkbox"/> No <input type="checkbox"/> <b>Copy of feedback questionnaire included</b> Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>12.3</b>	How many customers do you contact?
<b>12.4</b>	How does your service meet the following outcomes for customers? <b>The Department of Health's Adult Social Care Outcomes Framework (ASCOF).</b> 1. Enhancing quality of life for people with care and support needs 2. Delaying and reducing the need for care and support 3. Ensuring that people have a positive experience of care 4. Safeguarding adults whose circumstances make them vulnerable and protecting them from avoidable harm
<b>12.5</b>	Is there an annual survey sent out to customers? Yes <input type="checkbox"/> No <input type="checkbox"/> Copy included Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>12.6</b>	<b>Quality Monitoring Officer's Comments</b>

<b>13</b>	<b>Financial Procedures / Safe Management of Customer's Money.</b>
<b>13.1</b>	As part of a customer's package carers may have to undertake tasks that require the use of the customers money for example weekly shopping, purchasing other goods, paying bills. Do any of your packages require this as part of the care and support assessment and plan? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes how many?
<b>13.2</b>	Do carers and customers sign a Handling Money for Customers protocol? Yes <input type="checkbox"/> No <input type="checkbox"/> Please include a copy.
<b>13.3</b>	Are carers aware to avoid using the customers cash and to always obtain copies of any receipts for their records?

<b>13.4</b>	Are you able to arrange pre-payment bank cards with customers?
<b>13.5</b>	What policies and procedures do you have in place to ensure that safeguards are in place to protect the financial interests of the customers?
<b>13.6</b>	What policies and procedures do you have in place to protect the carers who have to handle customers money / bank card?
<b>13.7</b>	<b>Quality Monitoring Officer's Comments:</b>

<b>14</b>	<b>Complaints and Compliments</b>
<b>14.1</b>	Do you have a process for recording and managing complaints?
<b>14.2</b>	Please evidence that complaints are addressed in a timely manner?
<b>14.3</b>	How many complaints have you received in the last 12 months?
<b>14.4</b>	Give an example of a recent complaint.
<b>14.5</b>	Do you have a process for recording and managing compliments?
<b>14.6</b>	How many compliments have you received in the last 12 months?
<b>14.7</b>	Give an example of a recent compliment.
<b>14.8</b>	<b>Quality Monitoring Officer's Comments:</b>

<b>15</b>	<b>Policy and Procedure.</b>	<b>In Place</b>	<b>Review Date</b>
<b>15.1</b>	Does your organisation have the following. Please provide a review date.		
	CCTV Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Clinical Waste Disposal Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Complaints Procedure	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Confidentiality Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Consent to use photographs of customers.	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Customer's Handbook	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Employee Handbook	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	End of Life Care Planning	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Environmental Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	First Aid Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Food & Nutrition Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	

	Health & Safety Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Infection Protection Control Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Jewellery Policy (Staff)	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Medication Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Mobile Phone Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Moving & Positioning Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Overseas Recruitment Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Recruitment Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Safeguarding Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Smoking Policy (Customer's)	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Smoking Policy (Staff)	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Social Media Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Visitors Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	Whistleblowing Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	
<b>15.2</b>	Do staff sign that they have read and understood policies?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
<b>15.3</b>	<p><b>Accessible Information Standard (AIS)</b> Does the home understand that the Law aims to make sure people with a disability or sensory loss are given information they can understand, and the communication support they need, how is this achieved?</p>	<p>Large Print? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Picture? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Easy Read? Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<b>15.4</b>	<b>Quality Monitoring Officer's Comments:</b>		

<b>16</b>	<b>Financial Procedures / Record Keeping</b>
<b>16.1</b>	Are you compliant with the deadline for Actuals to be returned to DCC (Weekly for Framework, monthly for non-framework)?
<b>16.2</b>	Are Variations sent in to DCC in a timely manner for all hospital admissions?
<b>16.3</b>	Invoicing is up to date and without issue?
<b>16.4</b>	Do you regularly review outstanding / old contracts?
<b>16.5</b>	Is there a process in place for amendments of care packages?
<b>16.6</b>	<b>Quality Monitoring Officer's Comments:</b>

**Quality Monitoring Officer's Rag Rating and Comments:**

RAG Rating:	Red	<input type="checkbox"/>	Amber	<input type="checkbox"/>	Green	<input type="checkbox"/>
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