

DATED

**FRAMEWORK AGREEMENT FOR THE PROVISION OF
A MANAGED SERVICE FOR DAY OPPORTUNITIES**

between

[CONTRACTING BODY]

and

[PROVIDER]

CONTENTS

CLAUSE

1.	Definitions and interpretation	1
2.	Term of Framework Agreement	6
3.	Extending the initial term.....	6
4.	Scope of Framework Agreement	6
5.	Award procedures.....	7
6.	Contract performance and precedence of documents	8
7.	Prices for Services	9
8.	Warranties and representations.....	9
9.	Service pre-requisites and quality & performance standards.....	10
10.	Safeguarding children and vulnerable adults.....	10
11.	Reporting and meetings.....	13
12.	Records and audit access	13
13.	Confidentiality	14
14.	Data protection	15
15.	Freedom of information	17
16.	Publicity	17
17.	Termination	18
18.	Termination on Notice	19
19.	Suspension of Provider's appointment	20
20.	Consequences of termination and expiry	21
21.	Complaints handling and resolution	21
22.	Dispute resolution	22
23.	Prevention of bribery	23
24.	Subcontracting and assignment	24
25.	Variations to Framework Agreement	25
26.	Third party rights	25
27.	Severance	25
28.	Rights and remedies.....	25
29.	Interest.....	25
30.	Waiver.....	26
31.	Entire agreement.....	26
32.	Notices.....	26
33.	Governing law and jurisdiction	27

SCHEDULE

SCHEDULE 1 SERVICES AND LOTS	29
SCHEDULE 2 SERVICE PROVIDER'S TENDER.....	30
LOTS AND AWARD CRITERIA.....	31
Part 1. Standard Services Award Criteria	31
SCHEDULE 3 FEE STRUCTURE.....	32
SCHEDULE 4 ORDER FORM AND INDIVIDUAL AGREEMENT CALL - OFF TERMS AND CONDITIONS	33

SCHEDULE 5 NOTICE PERIODS..... 34

SCHEDULE 6 FRAMEWORK AGREEMENT VARIATION PROCEDURE 35

- 1. Introduction 35
- 2. Procedure for proposing a variation 35
- 3. Objections to a variation 35
- 4. Changes to the Fee Structure/Pricing..... 36
- 5. Variations that are not permitted..... 36

SCHEDULE 7 INFORMATION SHARING AGREEMENT..... 37

SCHEDULE 8 COMMERCIALY SENSITIVE INFORMATION..... 38

SCHEDULE 9 SAFEGUARDING POLICIES 39

THIS AGREEMENT is dated [DATE]

PARTIES

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

BACKGROUND

- (A) The Contracting Body placed a contract notice [REFERENCE] on [DATE] in the Find a Tender service seeking expressions of interest from potential service providers for the provision of Services (divided into Lots) to itself and the Other Contracting Bodies identified in the contract notice under a framework agreement.
- (B) Following receipt of expressions of interest, the Contracting Body invited potential service providers (including the Provider) on [DATE] to tender for the provision of a Managed Service for Day Opportunities services.
- (C) On the basis of the Provider's Tender, the Contracting Body selected the Provider to enter a framework agreement to provide services to the Contracting Body or Other Contracted Authorities who place Orders for Lots in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Provider under this Framework Agreement.
- (E) It is the Parties' intention that the Contracting Body or Other Contracted Authorities have no obligation to place Orders with the Provider 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.

Approval: means the prior written approval of the Contracting Body.

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

Auditor: means the Contracting Body's internal and external auditors, including the Contracting Body'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 Contracting Body 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 Contracting Body and the Provider, the first such persons being set out in clause 31.

Award Criteria: means the Standard Services Award Criteria and/or the Competed Services Award Criteria as the context requires.

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

Commencement Date: means [DATE].

Complaint: means any formal complaint raised by the Contracting Body or any Contracted Body in relation to the performance under the Framework Agreement or any Contract in accordance with clause 21.

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Providers 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 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.

Contracting Body: means the Council and any other Contracting Body (as defined in regulation 2 of the Regulations) described in the Find a Tender Notice.

Customer: means an individual service user.

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

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

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

Fee Structure: means the payments the Contracting Body will make for services delivered and as set out in Schedule 3

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/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

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 6.

Framework Providers: means the Provider and other Providers appointed as 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 Regulations.

Individual Agreement: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Contracting Body or any Contracted Body and the Provider comprising an Order Form, its appendices, and the Individual Agreement Call-off Terms and Conditions (as may be amended pursuant to clause 5.2).

Individual Agreement Call-off Terms and Conditions: means the terms and conditions in schedule 4.

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

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

Intellectual Property Rights: means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

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

Lots: means the Services divided into lots as referred to in the Find a Tender notice and set out in Schedule 1.

Management Information: means the management information specified in clause 11 and Schedule.

Month: means a calendar month.

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 5.5.

Other Contracting Bodies: means all Bodies except the Contracting Body.

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

Party: means the Contracting Body and/or the Provider.

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

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or

- (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Contracting Body; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Contracting Body.

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

Quality & Performance Standards: means the Framework Provider's standards of quality of Service provision as assessed by the Contracting Body in accordance with the provisions of the quality and performance standards and amended from time to time in accordance with clause 9.

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

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

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

Services: means the services detailed in Schedule 1.

Staff: means all persons employed by the Provider together with the Provider's servants, agents, Providers and subcontractors used in the performance of its obligations under this Framework Agreement or Individual Agreements.

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

Standard Services Award Criteria: means the award criteria to be applied for the award of Individual Agreements for Standard Services as set out in Schedule 2.

SQ Response: means the response to the standard selection questionnaire submitted by the Provider to the Contracting Body on [DATE].

Subcontract: any contract between the Provider and a third party pursuant to which the Provider 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 Provider.

Tender: means the tender submitted by the Provider to the Contracting Body on [DATE].

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

- (a) any Extension Period; 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 Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) 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;
- (h) 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;
- (i) 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
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

The Framework Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Framework Agreement or is otherwise lawfully terminated) shall terminate at the end of the Term.

3. EXTENDING THE INITIAL TERM

3.1 The Contracting Body may extend this agreement beyond the Initial Term by a further period or periods of up to five years (each such extension together with any such extensions, being the “**Extension Period**”). If the Contracting Body wishes to extend this agreement, it shall give the Service Provider at least three months' written notice of such intention before the expiry of the Initial Term or Extension Period.

3.2 If the Contracting Body gives such notice, then the Term shall be extended by the period set out in the notice.

3.3 If the Contracting Body does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 19 shall apply.

4. SCOPE OF FRAMEWORK AGREEMENT

4.1 This Framework Agreement governs the relationship between the Contracting Body and the Provider in respect of the provision of the Services by the Provider to Customers.

4.2 The Contracting Body appoints the Provider as a Framework Provider of the Services and the Provider shall be eligible to receive Orders for such Services from the Contracting Body or other Contracting Authorities during the Term.

4.3 The Contracting Body may at its absolute discretion and from time to time order Services from the Provider in accordance with the ordering procedure set out in clause 5 during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the ordering procedure in *clause 5.1*. If there is a conflict between *clause 5* and the Regulations, the Regulations shall take precedence.

4.4 If and to the extent that any Services under this Framework Agreement are required each and every Contracting Body shall:

- (a) enter into a contract with the Provider for these Services materially in accordance with the terms of the Individual Agreement; and
- (b) comply with the ordering procedure in *clause 5*.

- 4.5 The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Contracting Body or any other Contracted Body for the Services and that the Contracting Body and other Contracted Bodies is at all times entitled to enter into other contracts and arrangements with other Providers for the provision of any or all services which are the same as or similar to the Services.
- 4.6 The Council not in any circumstances be liable to the Provider or any Other Contracting Body for payment or otherwise in respect of any Services provided by the Provider to any Other Contracting Body.

5. **AWARD PROCEDURES**

Awards under the Framework Agreement

- 5.1 If the Contracting Body or any other Contracted Body decides to source Services through the Framework Agreement then it will:
- (a) satisfy its requirements for the Standard Services by awarding a Individual Agreement in accordance with the terms laid down in this Framework Agreement without re-opening competition;

Standard Services (awards without re-opening competition)

- 5.2 The Contracting Body or any other Contracted Body ordering Standard Services under the Framework Agreement without re-opening competition shall:
- (a) identify the relevant Lot which its Standard Services requirements fall into;
 - (b) send an Order to the Framework Provider(s) that best meets the needs of the individual customer as set out in Schedule 4;
 - (c) if the Framework Provider(s) who are initially selected are not able to provide the Services, repeat the process set out in clause 5.2(b) until the Order is fulfilled or there are no further Framework Providers qualified to fulfil it.

- 5.3 Nothing in this Framework Agreement shall oblige any Contracted Body to place any Order for Services.

Responsibility for awards

- 5.4 The Provider acknowledges that each Contracting Body is independently responsible for the conduct of its award of Individual Agreements under the Framework Agreement and that the Contracting Body is not responsible or accountable for and shall have no liability whatsoever in relation to:
- (a) the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
 - (b) the performance or non-performance of any Individual Agreements between the Provider and Other Contracting Bodies entered into pursuant to the Framework Agreement.

Form of Order

- 5.5 Subject to clause 5.1 to clause 5.4 above, each Contracting Body may place an Order with the Provider by serving an order in writing in substantially the form set out in Schedule 4 **Error! Reference source not found.** or such similar or analogous form agreed with the Provider including systems of ordering involving fax, e-mail or other online solutions.

Accepting and declining Orders

- 5.6 Following receipt of an Order, the Provider shall promptly and in any event within a reasonable period determined by the relevant Contracting Body and notified to the Provider in writing at the same time as the submission of the Order (which in any event shall not exceed three Working Days) acknowledge receipt of the Order and either:

- (a) notify the Contracting Body in writing and with detailed reasons that it is unable to fulfil the Order; or
- (b) notify the relevant Contracting Body that it is able to fulfil the Order by signing and returning the Order Form.

- 5.7 If the Provider:

- (a) notifies the Contracting Body that it is unable to fulfil an Order; or
- (b) the time limit referred to in clause 5.6 has expired;

then the Order shall lapse and the relevant Contracting Body then send that Order to another Framework Provider in accordance with the procedure set out in clause 5.2 (c).

- 5.8 If the Provider modifies or imposes conditions on the fulfilment of an Order, then the Contracting Body may either:

- (a) reissue the Order incorporating the modifications or conditions; or
- (b) treat the Provider's response as notification of its inability to fulfil the Order and the provisions of clause 5.7 shall apply.

- 5.9 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Contracting Body. Accordingly, the Provider shall sign and return the Order Form which shall constitute its offer to the Contracting Body. The Contracting Body shall signal its acceptance of the Provider's offer and the formation of a Contract by counter-signing the Order Form.

6. INDIVIDUAL AGREEMENT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 6.1 The Provider shall perform all Individual Agreements entered into with the Contracting Body in accordance with:

- (a) the requirements of this Framework Agreement; and

- (b) the terms and conditions of the respective Individual Agreements.

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

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

7. PRICES FOR SERVICES

7.1 The prices offered by the Provider for Individual Agreements to the Contracting Body for Standard Services shall be the prices listed in the Pricing Matrix for the relevant Lot in accordance with the provisions of Schedule 3 (Fee Structure).

PROVIDER'S GENERAL FRAMEWORK OBLIGATIONS

8. WARRANTIES AND REPRESENTATIONS

The Provider warrants and represents to the Contracting Body and to each of the Other Contracting Bodies 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 Provider;
- (c) in entering into this Framework Agreement or any Individual Agreement it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Contracting Body before the execution of this Framework Agreement and it will promptly advise the Contracting Body 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;

- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Individual Agreement which may be entered into with the Contracting Body or Other Contracting Bodies;
- (f) 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 Individual Agreement; and
- (g) 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 Provider 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 Provider's assets or revenue.

9. SERVICE PRE-REQUISITES AND QUALITY & PERFORMANCE STANDARDS

- 9.1 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Individual Agreement.
- 9.2 The Provider shall at all times throughout the Term maintain and comply with the Quality and Performance Standards
- 9.3 The Quality and Performance Standards may from time to time be varied by the Contracting Body on thirty (30) days' notice to the Provider

10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 10.1 The parties acknowledge that the Provider is carrying out a Regulated Activity 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.
- 10.2 The Provider shall ensure that all individuals or Staff engaged in the provision of the Services are, without limitation:
 - (a) subject to a valid Enhanced DBS & Barred List Check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - (b) the Provider shall monitor the level and validity of the checks under this clause 10.2 for each of the Provider Personnel and shall be subscribed to the DBS Update Service in accordance with Schedule 1 of this Framework Agreement.
- 10.3 The Provider shall not engage a person in an Enhanced DBS position pending the receipt of the Enhanced DBS Check or Enhanced DBS & Barred List Check.

- 10.4 The Provider warrants that at all times for the purposes of this agreement and any Individual Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider 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, as amended from time to time.
- 10.5 The Provider shall immediately notify the Contracting Body of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 10 have been met.
- 10.6 The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service 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 any Customers/children/vulnerable adults.
- 10.7 The Provider shall 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 Customers.
- 10.8 The Provider will comply with the Safeguarding Adults Policy and the Safeguarding Children Policy and will ensure all Staff are aware of their duty to comply with such policies (Schedule 11).
- 10.9 The Provider shall co-operate and provide all necessary assistance to the Contracting Body in relation to any safeguarding issues that arise in relation to or in connection with this agreement or any Individual Agreement or the Services.
- 10.10 Any proven Improper Conduct on the part of the Staff shall be considered to be a breach of this Framework Agreement and/or any Individual Agreement and may result in the immediate termination of this Framework Agreement and any or all Individual Agreements. If this agreement is not terminated, the Provider agrees to any measures instigated by the Contracting Body, including:
- (a) the transfer of some of all of the Services to another Framework Provider; or
 - (b) suspension of the Provider or any Provider Personnel subject to appropriate measures (to be agreed by the Contracting Body at its absolute discretion) being implemented to protect Customers; or
 - (c) the termination of any arrangement between the Provider and any Subcontractor.
- 10.11 The Provider acknowledges and understands the Contracting Body's duties under section 26 and 29 of the Counter Terrorism and Security Act 2015 and shall co-operate and provide all necessary assistance to the Contracting Body to enable it to comply with such duties. For the avoidance of doubt no provision of this agreement (including but not limited to clause 13 (Confidentiality) and clause 14 (Data Protection)) shall prevent the Provider from sharing all

relevant information pertinent to the safety of any vulnerable adult or child with the Contracting Body and the Provider shall ensure that all Staff are aware of the primary importance of information sharing in order to prevent harm and ensure the safety of any vulnerable adult or child.

10.12 The parties recognise the importance of information sharing in the context of keeping vulnerable adults and children safe. For the avoidance of doubt no provision of this Framework Agreement (including but not limited to clause 13 (Confidentiality) and clause 14 (Data Protection)) shall prevent the Provider from sharing all relevant information pertinent to the safety of any vulnerable adult or child with the Contracting Body and the Provider shall ensure that all Provider Personnel are aware of the primary importance of information sharing in order to prevent harm and ensure the safety of any vulnerable adult or child.

10.13 The Provider must:

- (a) obtain two written satisfactory references for all Provider Personnel prior to any involvement in the delivery of the Services. Where the applicant has no previous employment, two satisfactory independent character references must be obtained validated and checked. The Provider will make the references available to the Contracting Body for purposes of inspection and audit. If a prospective Provider Personnel is to be engaged purpose of delivering the Services is currently or has previously been by employed by the Contracting Body at any time, the Provider must seek a reference from the Contracting Body, regardless of whether or not the Contracting Body are the preceding employers and in addition to other references sought; and
- (b) confirm the applicants legal right to work in the UK; and
- (c) notify the Contracting Body immediately if any Provider Personnel receives a conviction or a previous conviction become known to the Provider; and
- (d) have in place a regularly updated workforce development plan that includes appropriate competencies for Staff in relation to all competencies and training requirements, including safeguarding children and vulnerable adults at work; and
- (e) comply with any other reasonable requirement of the Contracting Body.

10.14 The Provider shall:

- (a) have a procedure approved by the Contracting Body for dealing with allegations or suspicions of Abuse;
- (b) ensure that all Provider Personnel are trained at induction in the proactive prevention of Abuse, in the identification of relevant incidents, in following the reporting procedures and training should be updated at least annually;
- (c) maintain a proactive approach to prevent Abuse;
- (d) adhere to rigorous recruitment practices to deter those who actively seek vulnerable people to exploit or abuse;
- (e) have robust systems in place so that Staff are familiar with and follow the Safeguarding Adults Policy and Safeguarding Children Policy;

- (f) address issues around bullying and have in place an anti-bullying policy which should be linked to their safeguarding procedures as appropriate. Provider Personnel and Service User Customers shall be made aware of this policy and that relevant training will be given to Provider Personnel.

PROVIDER'S INFORMATION OBLIGATIONS

11. REPORTING AND MEETINGS

- 11.1 The Provider shall submit Management Information to the Contracting Body in the form set out in Schedule 1 throughout the Term.
- 11.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule 1 and the Provider shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.
- 11.3 The Council may share the Management Information supplied by the Provider with any Other Contracting Body.
- 11.4 The Contracting Body may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least one month's written notice of any changes.

12. RECORDS AND AUDIT ACCESS

- 12.1 The Provider 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 Individual Agreements entered into with the Contracting Body and the amounts paid by the Contracting Body or other contracted Body.
- 12.2 The Provider shall keep the records and accounts referred to in clause 12.1 above in accordance with good accountancy practice.
- 12.3 The Provider shall afford the Contracting Body or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 12.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of six years after expiry of the Term to the Contracting Body (or relevant Contracted Body) and the Auditor.
- 12.5 The Contracting Body shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Individual Agreements, save insofar as the Provider accepts and

acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Contracting Body.

- 12.6 Subject to the Contracting Body's rights of confidentiality, the Provider 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 Provider 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 Material Default by the Provider in which case the Provider shall reimburse the Contracting Body for the Contracting Body's reasonable costs incurred in relation to the Audit.

13. CONFIDENTIALITY

- 13.1 Subject to clause 13.2, the Parties shall keep confidential all matters relating to this Framework Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 13.2 Clause 13.1 shall not apply to any disclosure of information:
- (a) required by any applicable law or to any disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
 - (c) that is reasonably required by Other Contracting Bodies;
 - (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 Contracting Body of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
 - (f) to enable a determination to be made under clause 22;
 - (g) 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;
 - (h) by the Contracting Body to any other department, office or agency of the government, provided that the Contracting Body informs the recipient of any duty of confidence owed in respect of the information; and
 - (i) by the Contracting Body relating to this Framework Agreement and in respect of which the Provider has given its prior written consent to disclosure.

14. DATA PROTECTION

- 14.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 13, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Contracting Body is the data controller and the Provider is the data processor. Schedule 7 sets out the scope, nature and purpose of processing by the Provider, 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 13.1, the Contracting Body will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.
- 14.4 Without prejudice to the generality of clause 13.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Contracting Body (as set out in Schedule 7), unless the Provider is required by the **Applicable Laws** to otherwise process the Personal Data. Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Contracting Body of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Contracting Body;
 - (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Contracting Body, 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 European Economic Area unless the prior written consent of the Contracting Body has been obtained and the following conditions are fulfilled:

- (i) the Contracting Body or the Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Provider 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 Provider complies with the reasonable instructions notified to it in advance by the Contracting Body with respect to the processing of the Personal Data;
- (d) notify the Contracting Body 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 Contracting Body in responding to any request from a Data Subject and in ensuring compliance with the Contracting Body'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 Contracting Body 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 Contracting Body, delete or return Personal Data and copies thereof to the Contracting Body on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Contracting Body or the Contracting Body's designated auditor pursuant to clause 10 and immediately inform the Contracting Body if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation;
- (i) indemnify the Contracting Body against any losses, damages, cost or expenses incurred by the Contracting Body arising from or in connection with any breach by the Provider of its obligations under this clause 13.

14.5 Where the Provider intends to engage a Sub-Contractor pursuant to clause 23 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Contracting Body in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Contracting Body 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 13.

- 14.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 13 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).
- 14.7 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

15. FREEDOM OF INFORMATION

- 15.1 The Provider acknowledges that the Contracting Body is subject to the requirements of the FOIA and the EIRs. The Provider shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Contracting Body to enable the Contracting Body to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Contracting Body 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 Contracting Body with a copy of all Information belonging to the Contracting Body requested in the Request for Information which is in its possession or control in the form that the Contracting Body requires within 5 Working Days (or such other period as the Contracting Body may reasonably specify) of the Contracting Body's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Contracting Body.
- 15.2 The Provider acknowledges that the Contracting Body may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Contracting Body shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Contracting Body shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

16. PUBLICITY

- 16.1 Unless otherwise directed by the Contracting Body, the Provider shall not make any press announcements or publicise this Framework Agreement in any way without the Contracting Body's prior written consent.

- 16.2 The Contracting Body shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Contracting Body, including any examination of this Framework Agreement by the Auditor or otherwise.
- 16.3 The Provider shall not do anything that may damage the reputation of the Contracting Body or bring the Contracting Body into disrepute.

FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

17. TERMINATION

Termination on Default

- 17.1 The Contracting Body may terminate the Framework Agreement by serving written notice on the Provider with effect from the date specified in such notice:
- (a) where the Provider commits a material breach and the Provider has not remedied the material breach to the satisfaction of the Contracting Body within 20 Working Days, or such other period as may be specified by the Contracting Body, after issue of a written notice specifying the material breach and requesting it to be remedied;
 - (b) where the Contracting Body or Other Contracted Body terminates a Individual Agreement awarded to the Provider under this Framework Agreement as a consequence of a material breach by the Provider;
 - (c) any warranty given by the other party in clause 8 of this agreement is found to be untrue or misleading;
 - (d) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
 - (e) If the Provider is rated as inadequate by the Contracting Body in accordance with the quality and performance standards
- 17.2 For the purposes of clause 17.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Contracting Body would otherwise derive from:
- (a) a substantial portion of this Framework Agreement or Individual Agreement

Termination on insolvency and Change of Control

- 17.3 Without affecting any other right or remedy available to it, the Contracting Body may terminate this agreement with immediate effect by giving written notice to the Provider if:
- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either

case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];

- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors.
- (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 Provider (being a company).
- (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 Provider (being a company, partnership or limited liability partnership);
- (e) the holder of a qualifying floating charge over the assets of the Provider (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 the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (g) the Provider (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.3(a) to clause 17.3(h) (inclusive); or
- (j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.4 The Provider shall notify the Contracting Body immediately if the Provider undergoes a Change of Control. The Contracting Body may terminate the Framework Agreement by giving notice in writing to the Provider 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 Contracting Body becomes aware of the Change of Control;

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

18. TERMINATION ON NOTICE

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

- (a) 30 days written notice to the Service Provider

(b) any other period of notice as agreed in writing by the Parties.

18.2 In the event that the Service Provider gives notice to the Contracting Body in accordance with the term of an Individual Agreement and does so for multiple Individual Agreements in a 30-calendar day period, the notice provision in those Individual Agreements shall be as details in Schedule 5 (Notice Periods).

18.3 The Contracting Body may terminate this Framework Agreement by giving not less than 30 days written notice to the Service Provider in the event that:

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

19. SUSPENSION OF PROVIDER'S APPOINTMENT

19.1 The Contracting Body may suspend a Provider if the suspension provisions of the Quality & Performance Standards arise in the course of the Provider's provision of the Services

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

19.3 Following any suspension, the Contracting Body shall use reasonable endeavours to investigate the cause of concern as soon as possible, and the Service Provider shall give the Contracting Body all assistance that it requires.

19.4 In the event that the Contracting Body is satisfied that the cause of the concern did not occur or will not re-occur or is otherwise satisfied, it may remove the suspension and so inform the Service Provider in writing.

19.5 In the event that the Contracting Body is satisfied, following an investigation, that the cause of concern is well founded it may terminate this Agreement and/or all Individual Agreements made under it and the terms of clauses 19 (Consequences of Termination and Expiry) shall apply.

20. CONSEQUENCES OF TERMINATION AND EXPIRY

20.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider 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 20.

20.2 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 Individual Agreement made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Individual Agreements to terminate automatically. For the avoidance of doubt, all Individual Agreements shall remain in force unless and until they are terminated or expire in accordance with their own terms.

20.3 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Provider shall return or destroy at the request of the Contracting Body any data, personal information relating to the Contracting Body or its personnel or Confidential Information belonging to the Contracting Body in the Provider's possession, power or control, either in its then current format or in a format nominated by the Contracting Body (in which event the Contracting Body will reimburse the Provider'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 Contracting Body, 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.

20.4 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.

20.5 The provisions of clause 8, clause 12, clause 13, clause 14, clause 15, clause 16, clause 20, clause 23, and clause 33 shall 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.

21. COMPLAINTS HANDLING AND RESOLUTION

21.1 The Provider shall notify the Contracting Body of any Complaint made by Other Contracting Bodies within two Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint

21.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Individual Agreement, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Framework Agreement or a Individual Agreement, the Provider shall use its best endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

22. DISPUTE RESOLUTION

22.1 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 [EMPLOYEE TITLE] of the Contracting Body and [EMPLOYEE TITLE] of the Provider shall attempt in good faith to resolve the Dispute;
- (b) if the [EMPLOYEE TITLE] of The Contracting Body and [EMPLOYEE TITLE] of the Provider are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Contracting Body and [SENIOR OFFICER TITLE] of the Provider who shall attempt in good faith to resolve it; and
- (c) if the [SENIOR OFFICER TITLE] of the Contracting Body and [SENIOR OFFICER TITLE] of the Provider are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.

22.2 No party may commence any court or arbitration proceedings under clause 33 in relation to the whole or part of the Dispute until 28 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

22.3 If the Dispute is not resolved within 14 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 14 days, or the mediation terminates before the expiration of the said period of 14 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 33 in this Agreement.

GENERAL PROVISIONS

23. PREVENTION OF BRIBERY

23.1 The Provider:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Individual Agreement made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Contracting Body, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Contracting Body before execution of this Framework Agreement.

23.2 The Provider shall:

- (a) if requested, provide the Contracting Body with any reasonable assistance, at the Contracting Body's reasonable cost, to enable the Contracting Body to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 28 Working Days of the Commencement Date, and annually thereafter, certify to the Contracting Body in writing (such certification to be signed by an officer of the Provider) compliance with this clause 23 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Provider shall provide such supporting evidence of compliance as the Contracting Body may reasonably request.

23.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Contracting Body) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

23.4 If any breach of clause 23.1 is suspected or known, the Provider must notify the Contracting Body immediately.

23.5 If the Provider notifies the Contracting Body that it suspects or knows that there may be a breach of clause 23, the Provider must respond promptly to the Contracting Body's enquiries, co-operate with any investigation, and allow the Contracting Body to audit books, records and any other relevant documents. This obligation shall continue for six years following the expiry or termination of this Framework Agreement.

23.6 The Contracting Body may terminate this Framework Agreement by written notice with immediate effect if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 23.1. In determining whether to exercise the right of termination under this clause 23.6, the Contracting Body shall give all due consideration, where appropriate, to action other than termination of this Framework Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the

Provider or by an employee, Sub-Contractor or Provider not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority or with the actual knowledge of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or
- (b) in circumstances where any one or more of the directors of the Provider ought reasonably to have had such knowledge.

23.7 Any notice of termination under clause 23.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Contracting Body believes has committed the Prohibited Act; and
- (c) the date on which this Framework Agreement will terminate.

23.8 Despite clause 22, any dispute relating to:

- (a) the interpretation of this clause 23; or
- (b) the amount or value of any gift, consideration or commission,
shall be determined by the Contracting Body and its decision shall be final and conclusive.

23.9 Any termination under this clause 23 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Body.

24. SUBCONTRACTING AND ASSIGNMENT

24.1 Subject to clause 24.2 and clause 24.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Provider subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Contracting Body].

24.2 The Contracting Body 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 Contracting Body.

24.3 Provided that the Contracting Body has given prior written consent, the Provider shall be entitled to novate the agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
- (b) there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or

insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

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 6

26. THIRD PARTY RIGHTS

26.1 Except as provided in clause 4 and clause 5 a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

26.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

27. SEVERANCE

27.1 If any provision or part-provision of this agreement 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 agreement.

27.2 If one party gives notice to the other of the possibility that any provision or part-provision of this 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

Except as expressly provided in this agreement, the rights and remedies provided under this 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 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

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall 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 contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this clause 31 shall operate to exclude any liability for fraud.

31.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Framework Agreement.

32. NOTICES

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

32.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, pre-paid first class post, or other next Working Day delivery service), or by e-mail. Such letter, or e-mail shall be addressed to the other Party in the manner referred to in clause 32.3. Any notice or communication shall be deemed to have been received:

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

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

(c) if sent by email, at the time of transmission, or, if this time falls outside working hours in the place of receipt, when working hours resume. In this clause 31.2(c), working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

32.3 For the purposes of clause 32.2, the address of each Party shall be:

(a) For the Contracting Body:

[NAME OF CONTRACTING BODY'S REPRESENTATIVE]

Address:

For the attention of:

Tel:

Fax:

E-mail:

(b) For the Provider:

[NAME OF SERVICE PROVIDER'S AUTHORISED REPRESENTATIVE]

Address:

For the attention of:

Tel:

Fax:

E-mail:

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

33. **GOVERNING LAW AND JURISDICTION**

33.1 This 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 **OR** non-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 by
for and on behalf of Derby City Council

.....
Director

Signed by
for and on behalf of Derby City Council

.....
Director

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

.....
Director

Schedule 1 Services and Lots

[SPECIFICATIONS FOR ALL STANDARD SERVICES AND COMPETED SERVICES]

[DESCRIPTION OF LOTS]

Schedule 2 Service Provider's Tender

Lots and Award Criteria

The Lots have been awarded as follows:

NAME OF LOT	FRAMEWORK PROVIDERS
Lot 1 - Low - Group support, 1:1	
Lot 2 - Medium – Small Group support, 1:1	
Lot 3 - High – Small Group support, 1:1	

Part 1. Standard Services Award Criteria

Please refer to clauses 5.1 – 5.9

Schedule 3 Fee Structure

Schedule 4 Order Form and Individual Agreement Call - Off Terms and Conditions

Schedule 5 Notice Periods

With reference to clause 18.2 in the event that the Service Provider gives notice to the Contracting Body in accordance with the term of an Individual Agreement, and does so for multiple Individual Agreement in 30 calendar day period, the notice provision in those Individual Agreements shall be amended to be the following Notice Period, dependant on the number of Individual Agreements on which notice is served;

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

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

Schedule 6 Framework Agreement Variation Procedure

1. INTRODUCTION

- 1.1 Schedule 6 details the scope of the variations permitted and the process to be followed where the Contracting Body proposes a variation to the Framework Agreement.
- 1.2 The Contracting Body may propose a variation to the Framework Agreement under Schedule 6 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 Contracting Body may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Contracting Body 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 Contracting Body within [NUMBER] 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 [NUMBER] days to respond in writing with any objections to the variation.
- 2.5 Where the Contracting Body does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Contracting Body may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within [NUMBER] days of receipt.
- 2.6 On receipt of a signed agreement from each Framework Provider, the Contracting Body shall notify all Framework Providers in writing of the commencement date of the variation.

3. OBJECTIONS TO A VARIATION

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

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

4. CHANGES TO THE FEE STRUCTURE/PRICING

- 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 Contracting Body 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 Contracting Body 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 Contracting Body, the Contracting Body shall notify its acceptance of the change to the Framework Provider in writing.
- 4.4 In the event that the Contracting Body and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Contracting Body 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 Contracting Body 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 7 Information Sharing Agreement

Schedule 8 Commercially Sensitive Information

Schedule 9 Safeguarding Policies

1. Children's

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

2. Adults

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

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