

DATED

FRAMEWORK AGREEMENT FOR THE PROVISION OF
A HOME CARE SUPPORT SERVICE

between

CITY OF DONCASTER COUNCIL

and

[PROVIDER]

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This agreement is dated [DATE]

Parties

- (1) **CITY OF DONCASTER COUNCIL** whose principal place of business is at Civic Office, Waterdale, Doncaster DN1 3BU (**Council**)
- (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 Council placed a tender notice [REFERENCE] on [DATE] (the "**Tender Notice**") on the UK e-notification service seeking expressions of interest from potential providers for the provision of Services to People under a light touch framework agreement, as described in section 9(5) of the Procurement Act 2023.
- (B) Following receipt of expressions of interest, the Council invited potential providers (including the Provider) to tender for the provision of home care support services.
- (C) On the basis of the Provider's Tender, the Council selected the Provider to enter a framework agreement to provide the Services 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 there shall be no obligation to place Orders with the Provider under this Framework Agreement or at all.
- (F) As a light touch framework, this Framework Agreement is not subject to a maximum term under the Procurement Act 2023. However, the Council wishes to allow new Providers to join the framework at specific points during the Term, subject to satisfying the Council in relation to their ability to provide the Services to the Contract Standard.

Agreed terms

1. Definitions and interpretation

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

Approval: means the prior written approval of the Council.

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 Provider, the first such persons being set out in clause 37.

Call-Off Agreement: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Council and the Provider comprising an Order Form and the Call-off Terms and Conditions.

Call-off Terms and Conditions: means the terms and conditions in Schedule 4.

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 Council or any Person in relation to the Provider's performance under the Framework Agreement or under any Call-Off Agreement.

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, 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, 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 Standard: means the standard of delivery of Services as set out in the Specification, the Call-Off Agreement and this Framework Agreement.

Controller: as defined in the Data Protection Legislation.

Default: means any breach of the obligations of the relevant Party under a Call-Off Agreement (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 Workers in connection with or in relation to the subject matter of the Call-Off Agreement 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 Council and applicable to a party.

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

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

Environmental Information Regulations or EIRs: 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.

Excludable Supplier: has the same meaning as set out in the Procurement Act 2023.

Excluded Supplier: has the same meaning as set out in the Procurement Act 2023.

Exit Plan: means the plan produced and updated by the Provider during the Term in accordance with clause 23.6.

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.

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 5.

Framework Providers: means the Provider and other Providers appointed as framework providers under this Framework Agreement.

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

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

- Abuse
- Fraud and theft from People
- Sexual misconduct or sexual exploitation
- Improper inducements, including inducements offered to employees of the Council
- Conspiracy with officer or officers of the Council to defraud or disadvantage People
- Financial malpractice
- Business continuity failure.

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.

ITT: means the invitation to tender issued by the Council to all potential providers who were selected to submit a tender in response to the Tender Notice.

KPIs: mean the key performance indicators set out in the Performance Management Framework.

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 Provider is bound to comply.

Month: means a calendar month.

Order: means an order for Services sent by the Council to the Provider in accordance with the award procedures in clause 4.

Order Form: means a document setting out details of an Order in the form set out in Schedule 3 or as otherwise agreed in accordance with clause 4.2.

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 Council and/or the Provider.

People or Person: means the individual or individuals who is or are the beneficiary or beneficiaries of the Services and named in an Order Form.

Performance Management Framework: means the framework that describes, amongst other things, the KPIs, performance measures and targets (which framework was included in the ITT), as amended from time to time.

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

Pricing Schedule: means Schedule 2.

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

Procurement Rules: means the Procurement Act 2023 (as amended from time to time) and any regulations made under the Procurement Act 2023 from time to time, including the Procurement Regulations 2024.

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 Provider 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.

PSQ Response: means the response to the procurement specific questionnaire submitted by the Provider to the Council on [DATE].

Publishable Performance Information: means any of the information that the Council is permitted or required to publish by the Procurement Rules, relating to the performance of the Provider.

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.

Services: means the home care support services detailed in the Specification.

Social Value Obligations: means those obligations described in Schedule 7.

Specification: means the specification attached as [Section 1, Part B] to the ITT, as amended from time to time.

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.

Supplemental Tender: means the documents submitted to the Council in response to an invitation to Framework Providers for formal offers to supply it with Services as part of a competitive selection procedure in accordance with Schedule 4.

Tender: means the tender submitted by the Provider to the Council on [DATE] and set out in Schedule 1.

Tender Notice: means the tender notice [REFERENCE AND DATE] published in the UK e-notification service.

Term: means the period commencing on the Commencement Date and ending on [DATE] or such later date as may be determined in accordance with clause 2.2 or on earlier termination of this Framework Agreement.

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

Transparency Information: means (a) and information or notices, permitted or required to be published by the Procurement Rules, subject to any exemptions set out in sections 94 and 99 of the Procurement Act 2023, which shall be determined by the Council; (b) any information about this Framework Agreement, including the content of this Framework Agreement requested and required to be disclosed under FOIA or the EIRs and any changes to this Framework Agreement agreed from time to time, subject to any exemptions, which shall be determined by the Council; and (c) the Publishable Performance Information, subject to any exemptions set out in sections 94 and 99 of the Procurement Act 2023, or under the provisions of FOIA, which shall be determined by the Council.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

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

Worker(s): 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 Call-Off Agreements.

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 shall include 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;

- (k) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (l) reference to writing or written includes email; and
- (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 and Re-opening

- 2.1 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, unless extended in accordance with clause 2.2.
- 2.2 At its sole discretion the Council may, by giving notice in writing no later than 6 (six) months before the end of the Term, extend the Term. Then Term may be extended a maximum of three times in the following manner:
 - (a) The first extension shall be for a further period of 1 (one) year;
 - (b) The second extension shall be for a period of 1 (one) year; and
 - (c) The third extension shall be for a period of 1 (one) year.

If extended, these conditions shall apply equally to the extended Term.
- 2.3 At any time during the Term the Council shall, at its discretion, open the framework to new providers. This will be achieved by publishing a new tender notice inviting expressions of interest from potential providers for the provision of the Services under the existing framework. The framework will continue on the same or substantially the same terms as this Framework Agreement and the competition will adopt the same or substantially the same conditions of participation and award criteria as those followed for the appointment of the Framework Providers. The Provider shall not be required to submit a tender and shall remain on the framework unless otherwise agreed between the parties.

3. Scope of Framework Agreement

- 3.1 This Framework Agreement governs the relationship between the Council and the Provider in respect of the provision of the Services by the Provider to the Council.
- 3.2 The Council appoints the Provider as a Framework Provider of the Services, and the Provider shall be eligible to receive Orders for such Services from the Council during the Term.
- 3.3 The Council 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 4 during the Term. The Parties acknowledge and agree that the Council have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with the

Procurement Rules and the ordering procedure in clause 4. If there is a conflict between clause 4 and the Procurement Rules, the Procurement Rules shall take precedence.

- 3.4 If and to the extent that any Services under this Framework Agreement are required, the Council shall:
- (a) enter into a contract with the Provider for those Services materially in accordance with the terms of the Call-Off Agreement; and
 - (b) comply with the ordering procedure in clause 4.
- 3.5 The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Council for the Services and that the Council is at all times entitled to enter into other contracts and arrangements with other Providers for the provision of any or all services which are the same as or similar to the Services.

Innovation

- 3.6 The Council wishes, throughout the Term, to demonstrate continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness. This may require changes or variations to the Specification from time to time, but in order to determine the most appropriate way in which to achieve that improvement the Council may, at its discretion, choose to test any such changes or variations through the award of one or more Call-Off Agreements to the Provider and collate information about the success of such changes before varying the Specification for all Framework Providers.
- 3.7 The Provider acknowledges the Council's aims as described in clause 3.6 and agrees to co-operate with the Council in the fulfilment of the intent and purpose of those aims.

4. Award procedures

Awards under the Framework Agreement

- 4.1 If the Council decides to source Services through the Framework Agreement, then it shall follow the procedure set out in Part 1 of Schedule 3.

Form of Order

- 4.2 Once the Council has selected a Provider in accordance with Schedule 3 it shall place an Order with the Provider by serving an order in writing in substantially the form set out in Schedule 3 or such similar or analogous form agreed with the Provider.

Accepting and declining Orders

- 4.3 Following receipt of an Order, the Provider shall promptly and in any event within a reasonable period determined by the Council and notified to the Provider in writing at the same time as the submission of the Order 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 by electronically acknowledging the Order Form.
- 4.4 If the Provider:
 - (a) notifies the Council that it is unable to fulfil an Order; or
 - (b) the time limit referred to in clause 4.3 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 Schedule 4.
- 4.5 If the Provider 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 Provider's response as notification of its inability to fulfil the Order.
- 4.6 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Council. Accordingly, the Provider shall electronically acknowledge the Order Form which shall constitute its offer to the Council. The Council shall signal its acceptance of the Provider's offer by issuing a purchase order, at which point the Call-Off Agreement is entered into.
- 4.7 The Council may exclude the Provider from participating in any process described in this Clause 4 if it is an Excluded Supplier or has, since the award of this Framework Agreement, become an Excludable Supplier.
- 4.8 In accordance with Section 45(6) of the Procurement Act 2023, nothing in this Framework Agreement:
 - (a) Permits the award of a Call-Off to an Excluded Supplier; or
 - (b) Prevents the Council from requesting additional information from the Provider before awarding a Call-Off Agreement.
- 5. Precedence of documents**
- 5.1 The Provider shall perform all Call-Off Agreements in accordance with:
 - (a) the requirements of this Framework Agreement; and
 - (b) the terms and conditions of the respective Call-Off Agreements.
- 5.2 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 Call-Off Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
 - (a) the Call-Off Terms and Conditions;

- (b) the Order Form;
- (c) the terms of the Framework Agreement and the Schedules to the Framework Agreement, except Schedule 1, part 2, (the Provider's Tender);
- (d) Schedule 1, part 2 of the Framework Agreement (the Provider's Tender), and any Supplemental Tender (if applicable).

6. Prices for Services

- 6.1 The prices offered by the Provider for Call-Off Agreements to the Council for Services shall be based on the price listed in the Schedule 2 (Pricing Schedule).
- 6.2 Invoices shall be issued, managed and aid in accordance with section 14 of the Specification.

Provider's general framework obligations

7. Warranties and representations

- 7.1 The Provider warrants and represents to the Council that:
 - (a) it has full capacity and Council 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 Call-Off Agreement, the Provider, the Workers and Subcontractor(s) have not committed any Prohibited Act;
 - (d) to the best of its knowledge, the Provider, the Workers 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 Provider, the Workers 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 Commencement Date, all information, statements and representations contained in the Tender and the PSQ Response, including any information contained on the Central Digital Platform (as applicable) 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 Call-Off Agreement which may be entered into pursuant to this Framework Agreement;
 - (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 Call-Off Agreement; 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 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.
- 7.2 The Provider 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 7.1 at the relevant time.
- 7.3 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 Call-Off Agreement.
- 7.4 Within its Tender the provider has offered to deliver the Social Value Obligations. The provider therefore agrees to deliver the Social Value Obligations in accordance with its Tender and Schedule 7.
- 8. Workers**
- 8.1 At all times during the Term the provider shall:
- (a) Ensure that it employs an adequate number of sufficiently qualified and experienced Workers to provide the Services to the standards set out in the Tender and Specification and shall ensure that all of its Workers are properly and sufficiently trained and instructed with regard to all aspects of the provision of the Services including enabling approaches, safe movement and handling, maintaining and preserving the dignity of People detailed in Clause 14 (Safeguarding).
 - (b) Ensure that it has sufficient Workers to provide the Service to the Contract Standard for the Term during periods of staff absence due to sickness, maternity leave, staff holidays and otherwise. In the event of industrial disputes or action by any Workers, it remains the Provider's responsibility to meet the requirements of this Framework Agreement. The Provider shall inform the Council immediately of impending or actual industrial disputes or action which may affect the Provider's ability to deliver the Services.
 - (c) Ensure that the Workers employed in and about the provision of the Services shall at all times exercise due care and diligence in the execution of their duties and the Provider shall ensure that such persons are properly and sufficiently

instructed and supervised with regard to the provision of Services, particularly in relation to the vulnerability of the People.

- (d) Confirm the applicant's legal right to work in the UK.
 - (e) Notify the Council immediately if any Worker who, subsequent to his/her commencement of employment as a Worker, receives a conviction or whose previous convictions become known to the Provider (or any employee of a Sub-Contractor involved in the provision of the Services).
 - (f) Assist in the design of an overarching workforce plan that seeks to address shared issues of recruitment and retention as well as to look at joint solutions to attract workforce.
- 8.2 For the avoidance of doubt, the Parties acknowledge that Workers shall have no contractual or agency relationship with the Council and the Provider agrees to indemnify and keep indemnified the Council in respect of any claim made by a Worker arising from the performance of its obligations under this Framework Agreement.
- 8.3 Any proven Improper Conduct on the part of the Provider or a Worker shall be considered to be a breach of this Framework Agreement and may result in the immediate termination of the Framework Agreement. The Council take Improper Conduct very seriously and if the Framework Agreement is not terminated, the Provider agrees to any measures instigated by the Council, including the appointment of a Replacement Provider to provide some or all of the Services, subject to such measures being instigated to protect People.
- 8.4 The Provider shall obtain a full employment history and 2 (two) satisfactory references for all applicants prior to the commencement of employment. The references should be one satisfactory employment reference from the applicant's preceding employer and one satisfactory and independent character reference, validated and checked. 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 Council for purposes of inspection and audit. If a prospective employee is currently or has previously been employed by the Council within the last 6 (six) years, the Provider must seek a reference from the Council, regardless of whether or not the Council are the preceding employers and in addition to other references sought.
- 8.5 All Workers shall be notified and instructed by the Provider about the Provider's obligations under the terms of this Framework Agreement and about Law.
- 8.6 The Provider shall at all times comply with its obligations pursuant to Law relating to employment.
- 8.7 Without prejudice to the other provisions of this Clause 12, the Provider shall comply with any requirements set out in the Specification regarding the recruitment and ongoing employment of Workers and in particular but not limited to Section 11 of the Specification (Workforce and Leadership).

- 8.8 The Council may, acting reasonably and to the extent reasonably necessary to protect People and the standards and reputation of the Council, following consultation with the Provider, instruct the Provider to remove a Worker from the provision of the Services (which, for the avoidance of doubt, may include any contract manager engaged by the Provider).
- 8.9 The Provider shall replace any Worker who the Council reasonably decides to have failed to carry out their duties with reasonable skill and care. Following the removal of any Worker for any reason, the Provider shall ensure such person or persons is replaced promptly with another person or persons with the necessary training and skills to meet the requirements of the Services.
- 8.10 The Provider shall maintain up-to-date personnel records of the Workers engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Workers. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 8.11 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Workers engaged in the provision or management of the Services is at least as good as Best Industry Practice for similar services, locations and environments.
- 8.12 Where the Provider has initiated an investigation or disciplinary proceedings against any Worker on grounds of harming or posing a harm to People, and such person subsequently ceases to carry out the Services, the Provider shall continue with the investigation / disciplinary proceedings, concluding them as if the person had not ceased to carry out the Services and shall notify the Council of the outcome of such investigation / disciplinary proceedings and follow safeguarding proceedings including informing any and all appropriate regulatory bodies.
- 8.13 The Provider acknowledges and confirms that it is aware of the Council's policy on zero-hour contracts and is committed to reducing the use of (with a view to eventually eliminating) zero hour contracts. The Provider further confirms that it shall offer all Workers fixed term contracts stipulating the number of hours the Worker is expected to work. The Council reserves the right to require the Provider to offer fixed term contracts to particular Workers who may request the same.
- 8.14 The Provider shall ensure that all Workers are paid in full for travel time and travel expenses when delivering the Services to People is at least at the rate of National Living Wage.
- 8.15 The Parties acknowledge and agree that the Agreement constitutes a contract for the provision of Services and not a contract of employment. The Provider 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 been assumed or imposed with the liability or responsibility for the Workers (or any of them) as an employer of the Workers and/or any liability or responsibility to HM Revenue or Customs as an employer of the Workers whether during the Term or arising from termination or expiry of the Agreement.

9. Disclosure and barring

9.1 The Provider shall implement and maintain a recruitment and selection policy and procedure, which at the very least meets the requirements of appropriate regulatory bodies and shall ensure that it takes due precautions and has due regard to the vulnerabilities of People when recruiting and selecting or appointing Workers in relation to the provision of the Services and in particular, whether persons who are or are proposed to be involved in the provision of Services:

- (a) have prior criminal convictions of any nature subject always to the provisions of the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; and
- (b) and who will have contact with vulnerable adults will be subject to a Disclosure and Barring (DBS) Check.

The Provider shall ensure that all such checks have been carried out and provide proof of the same to the Council on the reasonable request of the latter. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

9.2 Any failure of the Provider to comply with this Clause 9 shall be treated as a fundamental breach of the Framework Agreement and the Council shall have the right to terminate this Framework Agreement with immediate effect in accordance with Clause 21.1 (Termination on Breach).

9.3 All DBS Checks shall be in line with the DBS Guidance (current guidance at [DBS checks: guidance for employers - GOV.UK](#)).

9.4 The Provider will ensure that until the DBS Check is obtained, the following safeguards will be put in place:

- (a) an appropriately qualified and experienced Worker is appointed to supervise a new Worker; and
- (b) wherever it is possible, this supervisor is on duty at the same time as a new Worker, or is available to be consulted; and
- (c) a new Worker is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing Services; and
- (d) any other reasonable requirement of the Council.

9.5 The Provider shall inform all prospective and current Workers in writing that undeclared criminal convictions that subsequently come to light may result in the individual being dismissed or withdrawn from all Services provided under this Framework Agreement and additionally, that information may be shared with the Council as necessary and appropriate.

10. Safeguarding

- 10.1 The Provider shall have a procedure approved by the Council for dealing with allegations or suspicions of abuse, which shall be reviewed and updated at least annually.
- 10.2 All Workers must be 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.
- 10.3 The Provider shall:
- (a) Work fully within the South Yorkshire's Adult Safeguarding Policy and Procedures - <http://www.doncaster.gov.uk/services/adult-social-care/safeguarding-adults-policy-and-procedures>.
 - (b) operate within the overarching workforce plan jointly designed and implemented by strategic lead providers that seeks to address shared issues of recruitment and retention as well as to look at joint solutions to attract workforce.
 - (c) Adhere to rigorous recruitment practices to deter those who actively seek vulnerable people to exploit or abuse.
 - (d) Have robust systems in place so that Workers are familiar with and follow the safeguarding adults policy and procedures as may be specified by the Council from time to time.
 - (e) Ensure that all Workers attend any training offered by the Council or its partners on Safeguarding and other issues.
 - (f) Notify the Council's Authorised Representative immediately of all instances of suspected Abuse and / or Safeguarding as detailed in the Safeguarding Adults Policy (current policy at <http://www.doncaster.gov.uk/services/adult-social-care/safeguarding-adults-policy-and-procedures>).
 - (g) Maintain a proactive approach to safeguarding.
 - (h) Address issues around bullying and have in place an anti-bullying policy which should be linked to safeguarding procedures as appropriate. It is expected that Workers and People will be made aware of this policy and that relevant training will be given to Workers.
- 10.4 The Provider shall comply with the Mental Capacity Act 2005 including Deprivation of Liberty safeguards and related Codes of Practice.
- 10.5 At the reasonable written request of the Council and by no later than 24 (twenty-four) hours, or whatever other timescale the Council requires, following receipt of such request, the Provider must provide evidence to the Council that it is addressing any safeguarding concerns.

11. TUPE

- 11.1 The parties agree that the provision of the Services pursuant to this Agreement may constitute a relevant transfer for the purposes of TUPE and accordingly agree that the contracts of employment of any employees who transfer to the employment of the Provider in accordance with TUPE, shall be transferred to the Provider pursuant to TUPE with effect from the completion date of the transfer ("Completion Date").
- 11.2 The Provider undertakes to the Council that it has complied with all obligations required of an incoming employer in relation to the Employees who transfer as set out in TUPE.
- 11.3 The Provider shall indemnify the Council against any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty and proceeding (including legal and other professional fees and expenses) which the Council may suffer, sustain, incur or pay arising from or in connection with:
- (a) the change in identity of any employee's employer or any measures the Provider may consider taking on or after the Completion Date, including claims for constructive dismissal or pursuant to regulations 4(9) or 4(11) of TUPE;
 - (b) any employees being or ceasing to be employees of the Provider after the Completion Date; and
 - (c) any failure by the Provider to comply with its obligations under regulation 13 of TUPE, including providing the Council with such information as is necessary in order to allow it to perform its own obligations under regulation 13(2) of TUPE and of any relevant legislation.
- 11.4 Within 21 (twenty one) days of being so requested by the Council, the Provider will provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary, in the opinion of the Council, to enable the Council to issue tender documents for the future provision of the Services in such form as the Council may require.
- 11.5 Where TUPE is likely to apply on the termination or expiration of this Framework Agreement, in the opinion of the Council, the Provider agrees to, within 21 (twenty one) days of being so requested by the Council, ensure all obligations contained in TUPE in relation to any affected Workers are carried out in accordance with the relevant legislative provisions in TUPE. The Provider also agrees to provide information relating to the Workers who would be transferred under TUPE upon request at any time within the last 12 (twelve) months of the duration of this Framework Agreement, including but not limited to:-
- (a) the number of Workers who would be transferred, but with no obligation on the Provider to specify their names;
 - (b) in respect of each of those Workers their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
 - (c) the general terms and conditions applicable to those Workers, including probationary periods, retirement age, periods of notice, current pay agreements,

working hours, entitlement to annual leave, maternity and special leave, terms of mobility any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.

- (d) any other information that may reasonably be requested in such form as the Council may require.

11.6 The Council shall take all necessary precautions to ensure that the information referred to in Clauses 11.4 and 11.5 is given only to those who have qualified to tender for the future provision of the Services. The Council shall request that those to whom the information is given:

- (a) shall treat that information in confidence;
- (b) shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Council; and
- (c) shall not use it for any other purpose.

11.7 The Provider shall indemnify the Council against:

- (a) any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty and proceeding (including legal and other professional fees and expenses) made against the Council at any time by any person in respect of any liability incurred by the arising from any deficiency or inaccuracy in information which the Service Provider is required to provide under Clauses 11.4 and 11.5 and
- (b) any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty and proceeding (including legal and other professional fees and expenses) made against the Council arising out of or in connection with TUPE including but not limited to claims from Workers in relation to a failure to consult or unfair dismissal.

Provider's information obligations

12. Records and audit access

- 12.1 The Provider shall keep and maintain until 6 (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.
- 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 Council or the Auditor (or both) such access to such records and accounts as they may require 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 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 Provider or delay the provision of the Services pursuant to the Call-Off 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 Council.
- 12.6 Subject to the Council'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 Workers.
- 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 Provider in which case the Provider 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 Council, or to any disclosures required under the Procurement Act 2023, FOIA or the Environmental Information Regulations (provided that clause 15 shall apply to disclosures required under the Procurement Rules, the FOIA and/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 26 (Dispute Resolution);
 - (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 Provider 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 Provider is the Processor..~~

~~14.3~~ 14.2 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 Provider for the duration and purposes of this agreement.

~~14.4~~ 14.3 Without prejudice to the generality of Clause 14.1, the Provider shall, in relation to any Personal Data processed by it as Data Processor in connection with the performance by the Provider of its obligations under this agreement:

- (a) process that Personal Data only on the instructions of the Council as set out in this Agreement, or as otherwise notified by the Council, unless the Provider is required by Domestic Law to otherwise process the Personal Data. Where the Provider is relying on Domestic Law as the basis for processing Personal Data, the Provider shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Provider 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 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 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 Framework Agreement;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer 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 (Records and Audit Access) and immediately inform the Customer if, in the opinion of the Provider, 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 Provider's obligations under this clause 14, provided that the Provider shall not be responsible for any loss, damage, costs or expenses if and to the extent caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Agreement.

~~14.5~~14.4 Where the Provider intends to engage a Sub-Contractor pursuant to clause 28 (Subcontracting and Assignment) 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~~14.5 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~~14.6 The provisions of this clause shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

15. Transparency and Freedom of information

15.1 The Parties acknowledge that Transparency Information is not Confidential Information.

15.2 Notwithstanding any other provision of this agreement, the Provider hereby gives its consent for the Council to publish to the general public the Transparency Information in its entirety (but with any information redacted which is exempt from disclosure in accordance with the provisions below). The Council shall, prior to publication, use reasonable endeavours to consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

15.3 At no additional cost, the Provider shall assist and co-operate with the Council to enable the Council to publish the Transparency Information.

15.4 Subject to, and in accordance with, its obligations under the Procurement Act 2023, if the Council believes that publication of any element of the Transparency Information would be contrary to the public interest, the Council shall be entitled to exclude such information from publication. The Council acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Council acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Provider.

- 15.5 The Council shall publish the Transparency Information in accordance with its obligations under the Procurement Act 2023, and in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Framework Agreement is being performed.
- 15.6 The Provider acknowledges that the Council is subject to the requirements of the Procurement Act 2023, FOIA and the EIRs. The Provider shall, at no additional cost:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the Procurement Act 2023, 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.
- 15.7 The Provider acknowledges that the Council may be required under the Procurement Act 2023, FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider 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 Procurement Act 2023, FOIA and the EIRs.

16. Publicity

- 16.1 Unless otherwise directed by the Council, the Provider 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 Provider shall not do anything that may damage the reputation of the Council or bring the Council into disrepute.

Performance Management

17. Contract review meetings

- 17.1 The Authorised Representatives shall meet at least once a quarter and at any other time as reasonably requested by any of the parties at a date and time to be agreed between the Parties ("Review Meeting").
- 17.2 The Review Meetings may be attended by other representatives of the Provider and the Council as mutually agreed between the Parties.
- 17.3 The Review Meeting agenda shall include, but shall not be limited to, the following:
- (a) the level of improvement achieved in respect of the Contract Standard, key performance indicators and the outcomes for People;
 - (b) a general review of the performance of the Services and the Social Value Obligations;
 - (c) People complaints;
 - (d) policy and practice issues relating to this Framework Agreement;
 - (e) the Provider's processes for monitoring equality in employment and service delivery;
 - (f) safeguarding;
 - (g) management reports and financial reports (if applicable); and
 - (h) any other items included by either party.

18. Strategic meetings

- 18.1 Key personnel identified by the Provider shall meet with the Council Authorised Representative at least once a month and at any other time as reasonably requested by any of the parties ("Strategic Meeting").
- 18.2 The purpose of Strategic Meetings shall be to work in conjunction with the Council for Service Development as more fully set out in the Specification.
- 18.3 The Provider shall cooperate and work constructively in conjunction with the Council, its partners and other providers in developing the Council's Strategic Leads Service Specification, sharing innovations and developments, best practice and any other items that may be identified by the Council, the Provider or any other person.

19. Monitoring

- 19.1 The Council will monitor the performance of the Services and the Social Value Obligations by the Provider. The Provider will comply with the performance management criteria set out in the Performance Management Framework.
- 19.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in Clause 19.1 at no additional charge to the Council.

20. Remedies in the event of inadequate performance

- 20.1 If the Provider fails to supply any of the Services or the Social Value Obligations in accordance with the provisions of the Framework Agreement or any Call-Off Agreement and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 24 hours of the Council's instructions or such other period of time as the Council may direct.
- 20.2 Without prejudice to clause 20.1, if any of the events described in Appendix C of the Specification (Risk Management Process) occur, the escalation process described in the Specification shall, at the Council's discretion, apply.
- 20.3 If the Council requires clarification regarding delivery under the Framework Agreement or any Call-Off Agreement, it may request to hold a Review Meeting with the Provider:
- 20.3.1 At the Review Meeting the Council and the Provider can agree either:
- (a) to provide information to clarify the issue/s causing concern;
 - (b) to conduct a joint investigation ('Joint Investigation'); or
 - (c) to implement an appropriate Remedial Action Plan.
- 20.3.2 If a Joint Investigation is to be undertaken:
- (a) the Council and the Provider must agree the terms of reference and the timescale for the Joint Investigation;
 - (b) the Council and the Provider may agree a Remedial Action Plan to be implemented concurrently with the Joint Investigation.
- 20.3.3 The Council and the Provider must agree the contents of the Remedial Action Plan, which must set out:
- (a) the issues for performance to be remedied;
 - (b) the date by which the evidence that the issue has been addressed should be submitted.
- 20.3.4 Following the implementation of a Remedial Action Plan -
- (a) If the matters that gave rise to the relevant concern have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed to the satisfaction of the Council;
 - (b) If any matter that gave rise to the relevant concern remains in the reasonable opinion of the Council or the Provider unresolved, either may make further enquiry regarding the matter.
- 20.4 Without prejudice to the foregoing or the provisions of Clause 21 if at any time the Council, taking into account both the information provided by the Provider in accordance

with Clause 19 (Monitoring) and the Performance Management Framework, and any other information available to it, reasonably concludes that the Provider has materially failed to achieve the performance levels set out in the Performance management Framework the Council may, at its sole discretion:

- 20.4.1 Require the Provider to submit a Performance Improvement Plan detailing why the failure has occurred and how it will be remedied within such period of time as the Council may direct;
- 20.4.2 step-in to carry out the obligations of the Provider (by itself or through its nominee) until such time as the Provider demonstrates to the Council's reasonable satisfaction that it is now in a position to achieve the performance objectives and indicators;
- 20.4.3 without terminating the whole of the Framework Agreement, terminate the Framework Agreement in respect of part of the Services only (whereupon a corresponding reduction in the price shall be made) and thereafter, itself supply or procure a third party to supply such part of the Services;
- 20.4.4 terminate the Framework Agreement in accordance with Clause 21.1;
- 20.4.5 charge the Provider for and the Provider 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 Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services;
- 20.4.6 call a meeting between the Chief Executive of the Provider and the Director of Adults, Health and Wellbeing or any other person notified by the Council to discuss the failure to achieve the performance criteria.

Framework Agreement Termination and Suspension

21. Termination

Termination on breach

- 21.1 Without affecting any other right or remedy available to it, the Council 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 which is not capable of remedy or, if it is capable of remedy, the Provider has not remedied the material breach to the satisfaction of the Council within 20 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied;
 - (b) where Point Five in the section 'Risk Management Plan Outcomes, in Appendix C to the Specification (Risk management Process) has been triggered;

- (c) where the Council terminates a Call-Off Agreement awarded to the Provider under this Framework Agreement as a consequence of a default by the Provider;
- (d) where the Provider persistently fails to accept Offers to enter into Call-Off Agreements made to it under this Framework Agreement;
- (e) where in the Council's reasonable belief the Provider shall not be able to continue the delivery of the Services either pursuant to existing Call-Off Agreements or for future Call-Off Agreements;
- (f) where any of the Provider's necessary registrations are cancelled, or otherwise, by the CQC or any other regulatory body as applicable;
- (g) where the rating awarded by the CQC or any other regulatory body as applicable to the Provider for these Services falls below the level of 'Good' rating or equivalent;
- (h) where the Provider is in persistent or repetitive breach of this Framework Agreement (including in relation to delivery of its Social Value Obligations) and/or persistently fails to achieve the necessary KPIs, or where the circumstances that are described in Appendix C to the Specification (Risk Management Process) as leading to possible termination, occur;
- (i) where any warranty given in clause 7 of this agreement is found to be untrue or misleading;
- (j) if any of the provisions of Section 78 of the Procurement Act 2023 apply.

Termination on insolvency and Change of Control

21.2 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 Provider if:

- 21.1.1 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 (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 **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 IA 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];
- 21.1.2 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 any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;

- 21.1.3 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, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 21.1.4 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 Provider (being a company, partnership or limited liability partnership), or the Provider applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - 21.1.5 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;
 - 21.1.6 a person becomes entitled to appoint a receiver over all or any of the assets of the Provider or a receiver is appointed over all or any of the assets of the Provider;
 - 21.1.7 the Provider (being an individual) is the subject of a bankruptcy petition, application or order;
 - 21.1.8 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;
 - 21.1.9 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 21.1.1 to clause 21.1.8 (inclusive) above; or
 - 21.1.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 21.3 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control. The Council may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six Months of:
- 21.3.1 being notified that a Change of Control has occurred; or
 - 21.3.2 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

- 21.4 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 6 (six) months' written notice to the Provider and all other Framework Providers. The Parties

acknowledge that if the Council exercises its rights under this clause 21.4 it shall exercise its equivalent rights under all agreements with the Framework Providers.

22. Suspension of Provider's appointment

Without prejudice to the Council's rights to terminate the Framework Agreement in clause 21 (Termination), if a right to terminate this Framework Agreement arises in accordance with clause 21 (Termination) or if any of the circumstances described in Appendix C of the Specification (Risk Management Process), which may result in a pause in new packages, occur, the Council may suspend the Provider's right to receive Orders by giving notice in writing to the Provider. If the Council provides notice to the Provider in accordance with this clause 22, 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 Council in writing from time to time.

23. Consequences of termination and expiry

23.1 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 23.

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

23.3 On termination or expiry of the Framework Agreement, the Provider shall:

23.3.1 Immediately 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 Provider'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 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 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;

23.3.2 Immediately deliver to the Council all property (including materials, documents, information and access keys) provided to the Provider. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

23.3.3 Assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to any replacement provider and/or completion of the work in progress (and in the case of expiry of this Framework Agreement this

obligation to assist and co-operate shall commence no later than 12 months before the end of the Term);

- 23.3.4 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 a replacement provider to conduct due diligence; and
- 23.3.5 In addition to the above, comply with the provisions of any current Exit Plan in relation to the orderly transition of the Services to the Council or a replacement provider.
- 23.4 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.
- 23.5 The provisions of clause 7, clause 11, clause 13, clause 14, clause 16, clause 23, clause 27, and clause 38 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.

Exit Plan

- 23.6 The Provider shall, within 6 (six) months after the Commencement Date, deliver to the Council an Exit Plan which:
 - 23.6.1 sets out the Provider's proposed methodology for achieving an orderly transition of the relevant Services from the Provider to the Authority and/or a replacement provider on the expiry or termination of this Framework Agreement or the termination of a Call-Off Agreement;
 - 23.6.2 complies with the requirements of clause 23.7 below.
- 23.7 The Exit Plan shall set out, as a minimum:
 - 23.7.1 separate mechanisms for dealing with exit either in the event of a termination in accordance with clause 21.1 or clause 21.2, or termination which occurs where the notice period given by the party serving notice is greater than or equal to 6 (six) months or as a result of the expiry of the Term;
 - 23.7.2 the management structure to be employed during both the transfer and cessation of the Services;
 - 23.7.3 a detailed description of the transfer and cessation processes, including timetable;
 - 23.7.4 How the Services will transfer to a replacement provider and/or the Council, including details of the processes, documentation, data transfer and security.

- 23.8 The parties shall use reasonable endeavours to agree the contents of the Exit Plan. If they are unable to agree the contents within 40 Working days of its submission, then such dispute shall be resolved in accordance with clause 26 (Dispute Resolution)
- 23.9 The Provider shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each anniversary of the Commencement Date, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Provider shall submit the revised Exit Plan to the Council for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with clause 26 (Dispute Resolution).

24. Disruption

- 24.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Framework Agreement it does not disrupt the operations of the Council, its employees or any other provider employed by the Council.
- 24.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Framework Agreement.
- 24.3 In the event of industrial action by the Workers, the Provider 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 Framework Agreement. If the Provider's proposals referred to in this Clause 24.3 are considered insufficient or unacceptable by the Council acting reasonably then the Framework Agreement may be terminated with immediate effect by the Council by notice in writing.
- 24.4 If the Provider is temporarily unable to fulfil the requirements of the Framework Agreement 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 Provider as a direct result of such disruption.
- 24.5 Within 6 (six) weeks of the Commencement Date or any period agreed with the Council, the Provider will furnish to the Council a detailed written Business Continuity Plan setting out how business continuity will be maintained in the event of any natural or other disaster, industrial action or any other set of circumstances that may actually or have the potential to disrupt the delivery of Services.

25. Force majeure

- 25.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Framework Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in

excess of 6 Months, either Party may terminate the Framework Agreement with immediate effect by notice in writing.

25.2 Any failure or delay by the Provider in performing its obligations under the Framework Agreement which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.

25.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 25.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

26. Dispute resolution

26.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the relevant chief officer, finance director or equivalent of each Party.

26.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

26.3 If the dispute cannot be resolved by the Parties pursuant to Clause 26.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 26.5 unless:-

(a) the Council considers that the dispute is not suitable for resolution by mediation;
or

(b) the Provider does not agree to mediation.

26.4 The obligations of the Parties under the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Workers shall comply fully with the requirements of the Agreement at all times.

26.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

26.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution to appoint a Mediator;

26.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant

information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Dispute Resolution to provide guidance on a suitable procedure;

- 26.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 26.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 26.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties; and
- 26.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

General provisions

27. Prevention of bribery

- 27.1 The Provider shall (and shall procure that the Workers and Subcontractor(s) shall):
 - 27.1.1 not, in connection with this Framework Agreement and any Call-Off Agreement made under it, commit a Prohibited Act;
 - 27.1.2 not do, suffer or omit to do anything that would cause the Council or the Workers, Subcontractor(s) and Provider Personnel to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
 - 27.1.3 comply with the Council's Anti-Bribery and Anti-Corruption Policy as updated from time to time OR have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
 - 27.1.4 notify the Council (in writing) if it becomes aware of any breach of sub-clause 0 or sub-clause 0, 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 Call-Off Agreement made under it.
- 27.2 The Provider shall maintain appropriate and up to date records showing all payments made by the Provider in connection with this Framework Agreement and any Call-Off Agreement made under it and the steps taken to comply with its obligations under clause 27.1.

- 27.3 The Provider shall allow the Council and its Auditor to audit any of the Provider's records and any other relevant documentation in accordance with clause 12.
- 27.4 If the Provider, the Workers, Subcontractor(s) or Provider Personnel breaches this clause 27, the Council may by notice:
- 27.4.1 require the Provider to remove from performance of this Framework Agreement and any Call-Off Agreement made under it any Worker or Subcontractor(s) whose acts or omissions have caused the breach; or
 - 27.4.2 immediately terminate this Framework Agreement and any Call-Off Agreement made under it.
- 27.5 Any notice served under clause 27.4 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 Framework Agreement and any Call-Off Agreement made under it shall terminate).
- 27.6 Despite clause 26, any dispute relating to:
- 27.6.1 the interpretation of this clause 27; or
 - 27.6.2 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.

28. Subcontracting and assignment

- 28.1 Subject to clause 28.2 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 Provider subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Council, such consent not to be unreasonably withheld. The Provider shall not at any time during the Term enter into a sub-contract with (a) any supplier that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the Procurement Rules, or (b) any supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Rules, unless the Provider has obtained the Council's prior written consent.
- 28.2 The Council shall be entitled to novate this Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

29. 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 5**.

30. Exclusions

- 30.1 During the Term the Provider shall notify the Council as soon as reasonably practicable if:

- (a) The Provider considers that an exclusion ground within the Procurement Rules applies to the Provider, including where the Provider is put on the debarment list or becomes an excluded or excludable supplier by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the Procurement Act 2023; and/or
 - (b) There are any changes to the Provider's associated persons within the meaning of the Procurement Act 2023.
- 30.2 If the Provider notifies the Council in accordance with Clause (a) then the Provider must promptly provide any information the Council reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion ground are continuing or likely to occur again.
- 30.3 If the Provider notifies the Council in accordance with Clause (b) above then the Provider must promptly provide any information requested by the Council in relation to the change to the Provider's associated persons, including any information set out in the Procurement Rules.
- 30.4 The Council may terminate this Framework Agreement in accordance with Clause 21.1 if:
 - 30.4.1 The Provider has failed to provide notification under Clause (a) as soon as reasonably practicable after the Provider becoming aware that an exclusion ground within the Procurement Rules does or may apply to the Provider;
 - 30.4.2 The Provider has failed to provide notification under Clause (b) as soon as reasonably practicable after the Provider becoming aware of any changes to the Provider's "associated persons" within the meaning of the Procurement Act 2023; and/or
 - 30.4.3 Any notification or information provided by the Provider under Clause 30.1, 30.2 and/or 30.3 is incomplete, inaccurate or misleading.
- 30.5 Clause 30.4 is without prejudice to the Council's rights to terminate the Framework Agreement in accordance with Clause 21.1.

31. Third party rights

- 31.1 Unless it expressly states otherwise, 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.
- 31.2 The rights of the parties to rescind or vary this Framework Agreement are not subject to the consent of any other person.

32. Severance

- 32.1 If any provision or part-provision of this Framework 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.

- 32.2 If one party gives notice to the other of the possibility that 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.

33. 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.

34. Interest

- 34.1 Each party shall pay interest on any sum due under this Framework Agreement, calculated as follows:

34.4.1 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%.

34.4.2 Period: From when the overdue sum became due, until it is paid.

35. Waiver

- 35.1 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.
- 35.2 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.

36. Entire agreement

- 36.1 Each party acknowledges that in entering into this Framework Agreement 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 Framework Agreement.
- 36.2 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.
- 36.3 Nothing in this clause shall limit or exclude any liability for fraud.

37. Notices

- 37.1 A notice given to a party under or in connection with this Framework Agreement shall be in writing and sent to the party at the address or email address given in this agreement or as otherwise notified in writing to the other party.
- 37.2 This clause 37.2 sets out the delivery methods for sending a notice to a party under this Framework Agreement and, for each delivery method, the date and time when the notice is deemed to have been received:

- 37.2.1 if delivered by hand, at the time the notice is left at the address;
- 37.2.2 if sent by pre-paid first class post or other next Working Day delivery service providing proof of postage OR delivery, at 9.00am on the second Working Day after posting; or
- 37.2.3 if sent by email, at the time of transmission.
- 37.3 If deemed receipt under clause 37.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. Business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 37.4 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.
- 37.5 For the purposes of clause 37.1, the address of each Party shall be:
- 37.5.1 For the Council:
- [NAME OF COUNCIL'S REPRESENTATIVE]
- Address: [ADDRESS]
- For the attention of: [POSITION OF CONTACT]
- Email address: [EMAIL ADDRESS]
- 37.5.2 For the Provider:
- [NAME OF PROVIDER'S REPRESENTATIVE]
- Address: [ADDRESS]
- For the attention of: [POSITION OF CONTACT]
- Email address: [EMAIL ADDRESS]
- 37.6 Either Party may change its address for service by serving a notice in accordance with this clause.

38. Governing law and jurisdiction

- 38.1 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.
- 38.2 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 by [NAME]

for and on behalf of **City of Doncaster Council**

.....
[Title]

Signed by [NAME]

for and on behalf of [NAME OF PROVIDER]

.....
[Title]

Schedule 1 - Provider's Tender

Schedule 2 - Pricing Schedule

1. The price at the Commencement date shall be £[XXXX] per hour.
2. The Council has the option to enter into good faith negotiations with the Provider on any anniversary of this Framework Agreement nor any other date agreed between the parties with a view to varying the Price set out in paragraph 1 above. Negotiations will run for a maximum period of 30 (thirty) Working days.
3. If a change to the price is agreed between the parties, the revised price and the date on which it shall come into effect shall be agreed in writing according to the variation procedure in Schedule 5.
4. If the parties are unable to agree a variation in the price or the date on which such revised price is to be implemented between the Parties, the price shall remain unchanged.

Schedule 3 - Call Off Procedure and Order Form

PART 1: CALL OFF PROCEDURE

1. Brokerage

- 1.1 The care package will be offered to approved providers through the Council Brokerage System. This process is described below:
- 1.1.1. Brokerage will tender out for a package of care, with essential information to all providers on the framework.
 - 1.1.2. An 'Expression of Interest - Offer of Care' will initially be made by any provider if they are able to meet the specific needs, wants and wishes of the Provider.
 - 1.1.3. Brokerage will then send a document to each provider who has expressed an interest, requesting further detail on how they intend to deliver care.

Please note, responding and accepting at this stage does not guarantee the work is allocated to you and does not form a Call-Off Agreement.

- 1.1.4. Where there are multiple offers, The Council will assess each provider's Response to the "Offer" and all suitable offers will be reviewed by the social worker and where appropriate the Individual, the family and/or advocate to express a preference as to the provider which will provide the service.
- 1.1.5. Where there is only one appropriate response to the offer that one provider able to meet the needs of the Person, this will be offered to the Person.
- 1.1.6. Brokerage will contact the successful provider and a completed and send all relevant paper work needed for care to commence.
- 1.1.7. Providers accepting care packages must have capacity to comply with all requirements, including but not limited to; start date, compatibility visits or special requirements. Providers accepting care packages, and subsequently withdrawing without an agreed and justifiable reason may be excluded from further opportunities.
- 1.1.8. Should the Council be unable to award the care package(s), the Council will add the information to a waiting list until a provider is able to meet the needs of the Person.
- 1.1.9. When considering whether the Provider is able to meet the specific needs of the Person, the following factors, of equal importance, will be considered by the Council:
 - The Person's personal choice
 - The nature of the Services to be supplied is such that only one Provider is capable of providing them.

2. Further Competition

- 2.1 Award work following a Further Competition process between providers capable of providing the required Services. For the avoidance of doubt, the right is reserved to use different criteria including the price: quality evaluation, than in the tender

3. Direct Award

- 3.1 Award work without reopening competition or without issuing an offer through the Council's Brokerage System if any service specific factors or operational reason apply including but not limited to, where:
- 3.1.1 At the sole determination of the Council, it would be significantly detrimental to the health or well-being of one or more People to have a change in provider, a direct award may be made to their existing provider for the Services that concern their care and support. It is anticipated that generally, a Person may exercise their rights to personal choice of provider but in the event that they do not, the Council reserves the right to directly appoint a provider, acting reasonably at all times.
 - 3.1.2 A provider has previous knowledge of the Person.
 - 3.1.3 A provider's specialism means it can be evidenced there is only one provider that is capable of meeting the Person's requirements.
 - 3.1.4 Location of a provider's Service means it can be evidenced there is only one provider that is capable of meeting the Person's requirements.
 - 3.1.5 A provider is chosen in line with a Court Order or Best Interests Decision made by the active professional(s) involved, with regards to a Best Interests Decision
 - 3.1.6 When it has been established in accordance with the Mental Capacity Act that the Person lacks capacity to make an informed choice about their specific care provider; and the Best Interests Decision must take all relevant factors into account and be recorded formally (including justifiable reasons for choosing a specific Provider and evidence as to why other Providers are unable to meet the Individual's needs) and in accordance with the definition for Best Interests Decisions.
 - 3.1.8 Where a Further Competition Selection Procedure has taken place and the successful provider has withdrawn from the Call-Off Agreement, or the successful provider fails to commence the Call-Off Agreement, the Council reserves the right to directly award the Call-Off Agreement.
 - 3.1.9 Where no response, or no suitable response, has been submitted in response to a Further Competition, provided that the initial conditions of the Call-Off Agreement are not substantially altered; and/or, insofar as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the Council, there is insufficient time to undertake a Further Competition.
 - 3.1.10

4. User Choice

4.1 For the avoidance of doubt the Individual's personal choice includes a consideration by the Council of:

4.1.1 the choice of placement by the Individual their family, or a recognised advocate or guardian of the Individual; and:

4.1.2 where an Individual or group of Individuals have indicated a choice of Provider to supply all or an element of the Services, whether the Council is satisfied that the proposed Call-Off Agreement.

4.1.2.1 Will be held by a Provider that will meet the needs of the Individual (s);

4.1.2.2 Delivers Services which in the absolute discretion of the Council are proportionate to the needs of the Individual.

PART 2: ORDER FORM

[INSERT TEMPLATE]

Schedule 4 - Call-off Terms and Conditions

Schedule 5 - 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 Council proposes a variation to the Framework Agreement.
- 1.2. The Council may propose a variation to the Framework Agreement 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 Schedule 55 applies, the Council may propose a variation using the procedure contained in this paragraph Schedule 52.
- 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 the Pricing Schedule are necessary; and
 - (b) require each Framework Provider to notify the Council within 10 (ten) Working Days of any proposed changes to the prices set out in the Pricing Schedule.
- 2.4. On receipt of the Notice of Variation, each Framework Provider has 10 (ten) Working 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 Schedule 52.4, 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 10 (ten) Working 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 Schedule

- 4.1. Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in the Pricing Schedule, 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 Schedule that would result from a variation.
- 4.3. Where a change to the Pricing Schedule 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 Schedule, the Council may:
 - (a) withdraw the variation; or
 - (b) propose an amendment to the variation.

5. **Variations that are not permitted**

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 6 - Social Value Obligations

[To be inserted from the Provider's Tender]