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| **Patch Replenishment Arrangement Deed (2021)** |
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| **Bromley Domiciliary Care** |
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| **Description of Patch: to be inserted on award** |

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| **Bromley Domiciliary Care** |
| **Patch Replenishment Arrangement Deed** |
| **Description of Patch: to be inserted on award** |

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| **Date of this Deed** | The execution date of the parties indicated below, or if the parties indicate different dates, on the later date |

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| **Parties** |  |

|  | **Council** | **Patch Provider** |
| --- | --- | --- |
| Name, including any company number or equivalent (as relevant) | The Mayor and Burgesses of the London Borough of Bromley |  |
| Address | People Department, Civic Centre, Stockwell Close, Bromley BR1 3UH, UK |  |

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| **Background to this Deed** |  |
| Why the Council wishes to operate this Patch Arrangement | * The council successfully appointed 8 Patch providers to deliver Domiciliary Care to residents in 2021. The contract period was for five years with one three-year extension (5+3) thus a whole life contract of eight (8) years. However, the council now has a requirement to replenish the Central Patch, as well as create a framework of reserve providers should additional Patches need replenishment for a potential period of 5 years.      * The council published an Invitation to Tender for:   i. The Central Patch provider and  ii. A reserve provider framework, of up to four (4) providers for the eventuality that the council is required to replenish any other patches during the next five years.   * These arrangements complement the contracts that are currently in place. The primary aim is create a framework of up to 4 other providers that could deliver the hours in any of the Patches (other than the Central Patch), should a termination notice be given by either the current provider or the council (the latter where there is a breach of contract). It is important to note that the need to call off the framework in the future is not guaranteed and is subject to the need. If an award of a call-off contract is granted, the provider will be required to adopt the same Contract, Specification and Pricing methodology that is currently in place for the Patch providers. * The Council is operating this Patch Arrangement in conjunction with a Framework Arrangement under which certain Framework Patch Providers have been allocated non-preferential access to Call-Off Contracts across the Borough. |
| How this Deed has been awarded by the Council to the Patch Provider | * As a result of a public procurement exercise intended to be compliant with relevant Law and the constitution of the Council. * In the course of that exercise, the Patch Provider successfully applied to become a Patch Replenishment Arrangement Provider. |
| On what the Council has relied in awarding this contract to the Patch Provider | The Council has relied on claims and promises which the Patch Provider has made in the Patch Replenishment Provider Tender Response. |
| **The agreement between the parties** Each party agrees as follows |  |
| Appointment | The Council appoints the Patch Provider as a reserve provider for the Patch described in item 2.3. |
| Acceptance | The Patch Provider accepts its appointment described in item 2.1. |
| Description of the Patch which the Council has awarded to the Framework Patch Provider under this Agreement | Any Patch excluding the Central Patch |
| Indicate whether the Patch Provider is eligible to participate on the Patch Arrangement  * For Call-Off Contracts for ordinary domiciliary care Services only; or * For Call-Off Contracts for ‘discharge to assess’ Services only; or * For both types of Call-Off Contracts described above | For both types of Call-Off Contracts. |
| How the Patch Provider is to provide the Services to the Council | Under   * Call-Off Contracts and/or * Miscellaneous Contracts   which the Council and the Patch Provider may enter from time to time according to this Deed. |
| Acknowledgements by each party | The terms of this Deed are to be legally binding upon the Council and the Patch Provider. |
| **Terms of this Deed:** the terms of this are Deed comprise **all** of the following  * As amended from time to time according to this Deed * According to the following priority if there are inconsistencies |  |
| Schedules etc. | Any schedules, appendices or the like to this Deed which are not described elsewhere in this item 2.7. |
| Schedule 1 | The terms and conditions of this Deed indicated in schedule 1. |
| Other documents | Other documents, websites identified by a link, or the like of any of these   * Which are cross-referenced elsewhere in this Deed; and * Which this Deed indicates are incorporated into this Deed; and * Which are communicated (or in the case of a website, the relevant link has been communicated) between the parties. |
| Patch Provider Tender Response | The Patch Provider Tender Response unless the Council at its discretion decides that this is more favourable and should override any other items in this list. |

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| Executed by the parties (or on their behalf by their respective authorised representatives) as a deed on the respective dates indicated below |

IN WITNESS WHEREOF THE Council and the Patch Provider have executed this deed the day and year set out above.

Executed as a DEED by affixing THE )

COMMON SEAL OF THE MAYOR AND )

BURGESSES OF THE LONDON BOROUGH OF )

BROMLEY in the presence of: )

Mayor/Councillor

Director of Corporate Services/Senior Solicitor

Executed as a DEED by the party identified as the Patch Provider

in the presence of:

Director

Director/Company Secretary]

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| **Schedule 1 – terms and conditions** |

# **Definitions and interpretation**

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| **Definitions** |
| Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Deed), the following capitalised words or expressions shall have the following meaning when used in this Deed  (a word or expression not defined below shall be defined according to 1) if there is a common meaning according to industry or trade, it shall have that meaning, or otherwise 2) it shall have the meaning given in the Oxford English Dictionary)  Any capitalised word or expression defined in the terms and conditions of the Call-Off Contracts has the same meaning in this Deed, except as indicated below, |

| **Defined term** | **Definition** |
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| **Affiliate** | * In relation to a person, any other entity which controls that person, is controlled by that person or is under the same common underlying control as of that person. * For this purpose, a person (**‘X’**) will be regarded as having control over another person (**‘Y’**) if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters. |
| **Call-Off Contract** | A contract   * For the spot purchase of services within the scope of the Patch Arrangement described in section 5: * For the benefit of a named Service User; * Between the Permitted Purchaser and the Patch Provider (and/or any other Patch Arrangement Provider, as the context indicates) under this Patch Arrangement. |
| **Call-Off Specification** | The specification applicable only to Call-Off Contracts and not to Miscellaneous Contracts (unless indicated in the Miscellaneous Contract). |
| **Confidential Information** | In relation to a Discloser, as indicated in section 29. |
| **Core Domiciliary Package** | A package for domiciliary care services in circumstances where the Council or other relevant Permitted Purchaser has indicated in the relevant Request for Package that it wishes to restrict the Patch Provider to the rates according to indicated in section 16. |
| **Corrupt Act** | An act described as such in item 41.2. |
| **Discloser** | A party to this Deed (and its relevant Affiliate where indicated) in relation to its respective Confidential Information. |
| **FOI Act** | The Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. |
| **FOI Party** | Each of the following to the extent relevant:   * The Council. * The Council’s Affiliate, but only if it is a public authority which is subject to a relevant FOI Act. * The Patch Provider, but only if it is a public authority which is subject to a relevant FOI Act. |
| **Framework Arrangement** | The framework arrangement operated by the Council under which Call-Off Contracts are offered to Framework Patch Providers after the Patch Provider (and any other Patch Arrangement Provider in relation to the relevant Patch) have not exercised their rights in relation to those Call-Off Contracts. |
| **Framework Patch Provider** | An operator which is a member of the Framework Arrangement from time to time. |
| **Intellectual Property** | Copyright, trade marks (whether registered or otherwise), service marks (whether registered or otherwise), patents, design rights (whether capable of registration or otherwise), registered designs, domain names, know how rights, rights in relation to databases, trade secrets, rights to take action for passing off, and all other relevant intellectual property rights as ordinarily recognised as such throughout and in any parts of the world, and in relation to the questions so listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights. |
| **Law** | Any of the following applicable to a party from time to time (to be read independently)   * Any statute, regulation, bye-law, order, subordinate legislation or the like of any of these. * Any treaty * Any judgement, rule of common law or equity * Any stock exchange rule * Any order of a competent court, tribunal, arbitrator or the like of any of these * Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or the like of any of these) required by law and affecting the relevant person and its activities in connection with this Deed from time to time. * Any guidance or the like issued by authorised government bodies (whether legally binding or not) * Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect on the respective activities of any party in connection with this Deed from time to time. |
| **Material Breach** | * In relation to a party to this Deed, a breach of this Deed by that party (including an anticipatory breach of this Deed by that party or a breach of any warranty or representation given by that party under this Deed) * Which has significant (and not trivial) consequences for the other party. |
| **Miscellaneous Contract** | * Any contract **other than a Call-Off Contract** for services within the scope of the Patch Arrangement described in section 5 (other than a Call-Off Contract) between the Permitted Purchaser and the Patch Provider (and/or any other Patch Arrangement Provider, as the context indicates) under this Patch Arrangement. * This may, for example, be for block contracts for the provision of such services. |
| **Non-Core Domiciliary Package** | Any packages for domiciliary care services in circumstances where the Council or other relevant Permitted Purchaser has indicated in the relevant Request for Package that it does not wish to restrict the Patch Provider to the rates according to indicated in section 16. |
| **Package Request** | Any request for services issued by a Permitted Purchaser from time to time   * Which is issued under this Deed, and * Which is wholly within the scope of the Patch Arrangement according to item 5.1. * Which meets the requirements of this Deed. |
| **Patch** | The specific postcode area within the Borough of Bromley to which the Patch Provider has been appointed as a Patch Arrangement Provider according to item 2.3. |
| **Patch Arrangement** | The patch arrangement for the services described in item 5.1. |
| **Patch Arrangement Provider** | * The Patch Provider, and * Another operator (if any) which has the same status as the Patch Provider in relation to the Patch. |
| **Patch Provider Bonus** | The amounts described as such in item 23.2. |
| **Patch Provider Tender Response** | * The Patch Provider’s response to the procurement process conducted by the Council leading to the award of this Deed by the Council to the Patch Provider. * This includes any and all written responses which the Patch Provider has given to any clarification questions or the like which were raised by the Council during any relevant procurement process to which this Deed or the specific Call-Off Contract relates. |
| **Permitted Purchaser** | As indicated in item 9.1 in relation to its Call-Off Contracts and Miscellaneous Contracts. |
| **Personnel** | In relation to a firm or other organisation:   * Any individual genuinely appointed or otherwise engaged by that firm or other organisation as an officer, employee, worker, consultant, trustee, elected member, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or the like of any of these but other than the other party to this Deed). * **If that firm or other organisation is the Patch Provider:** any individual genuinely appointed or otherwise engaged in any of the capacities described above **by a subcontractor** which is directly or indirectly appointed by the Patch Provider in connection with this Deed. This includes any such subcontractor who is a human being operating as a sole trader. * If a firm is a human being operating as a sole trader, it includes that human being. |
| **Recipient** | A party in relation to the Confidential Information of a relevant Discloser. |
| **Representative** | In relation to a party, the current person (and if more than one, each of them individually) who holds that role according to this Deed, or his/her replacement from time to time including:   * **Where the relevant individual is absent from time to time:** any other individual deputising for him/her, as decided by the relevant party. * **Where the position is vacant from time to time:** the Escalated Person of the relevant party as indicated in the terms and conditions of each Call-Off Contract. |
| **Required Accreditation** | Each licence, accreditation, registration, background check (or the like of any of these) which a relevant Participant is required to hold according to section 21. |
| **Service Specification** | * The specification annexed to (and forming part of) this Deed applying to all services within the scope of this Patch Arrangement according to section 5. * Including any other document which (according to this Deed) is deemed to form part of the Service Specification. |
| **Service User** | Any individual to whom Services are provided from time to time under any Call-Off Contract or under any Miscellaneous Contract. |
| **Services** | The services which the Patch Provider must provide under any Call-Off Contract and/or under any Miscellaneous Contract which the Patch Provider enters from time to time under this Patch Arrangement. |
| **Target** | * Any target or the like set by the Council and communicated to the Patch Provider in writing if the arrangement described in section 23 applies from time to time according to item 23.1. * It includes where relevant any time period (as set by the Council) over which the target or the like is to be measured to determine whether or not the Patch Provider has met that target or the like. * It includes where relevant any target or the like relating to o levels to which the Patch Provider accepts Call-Off Contracts over a particular period, service performance, and/or other targets or the like set by the Council from time to time. |
| **Termination Default Event** | In relation to the Patch Provider, each event or circumstance described in section 36. |

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| **Interpretation** |  |
| Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Deed), this Deed shall be interpreted as follows |  |
| Headings | Headings do not affect the interpretation of this Deed. |
| Consents, approvals | * Where consent, approval, permission or the like of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions. * Where consent, approval, permission or the like of a person is to be at that person’s discretion, that person * Shall not be obliged to respond to a request for it; and * Shall not be obliged to give reasons for its decision (including any decision not to respond); and * Excludes (to the fullest extent permitted by Law) that person’s liability to any person for any reason given for that decision (including any decision not to respond). |
| Definitions | If a word or phrase is defined in this Deed, its other grammatical forms have a corresponding meaning. |
| Statutes, codes etc. | Reference in this Deed to any statute, code or the like includes reference to any amending, replacing, modifying or consolidating statute, code or the like on substantially similar subject matter. |
| If any obligation of a party is indicated to be a ‘reasonable endeavours’ obligation | That party will be considered to have discharged that obligation if all of the following applies   * That party has chosen at least one path to carry out that obligation. * That path is reasonable in the circumstances (including any reasonable views of the other party expressed on the matter in good faith). * That party has used reasonable efforts to carry out the obligation using that path, regardless of whether the outcome necessarily met the requirements of this Deed. |
| ‘In writing’ | * Use of the expression ‘in writing’ (or a similar word) includes (but is not limited to) an e-mail or facsimile message or any other methods of representing words in a visible form. * It does not include communication by telephone text messages or communication via a social media site (or the like of any of these). |
| ‘Including’ | * Use of the word ‘including’, ‘in particular’, ‘for example’ (or a similar words or expressions) at the commencement of a list to illustrate a particular concept does not limit that concept in any way. * Use of the abbreviation ‘etc.’ at the end of a list to illustrate a particular concept does not limit that concept in any way. |
| Items etc. | Reference in this agreement to items, sections, schedules, appendices or annexures is reference to those in this Deed. |
| Other references | * Reference to one gender refers to all genders * Reference to the singular includes the plural and vice versa * Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity. |

# **Scope of activity**

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| **Scope of the Patch Arrangement** |  |
| Scope of activities within which the Council may enter Call-Off Contracts and Miscellaneous Contracts with the Patch Provider (and other Patch Arrangement Providers) and with Framework Patch Providers under the Patch Arrangement and the Framework Arrangement | * The scope of the Patch Arrangement and the Framework Arrangement is for care and support services that help people live independently in their own home. * This includes the regulated activity of Personal Care as defined in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Examples of activities include: * Personal care e.g. assistance with washing and dressing; assistance with continence care; assistance with meals * Prompting to take medication * Support to access and connect to the local community * Community reablement domiciliary services * Support during the day as well as support at night * Support for unpaid carers * Supporting Service Users to access the community * Anything else in the Service Specification. * **Excluding** the activities described in item 5.2. |
| Activities which **are not** within the scope of the Patch Arrangement even if otherwise within the scope described in item 5.1Each of the following | * Care and support services provided within extra care schemes (which are subject to a separate flexible purchasing system established by the Council) * Shared lives services * Supported living services. |

# **Duration**

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| **Commencement** |  |
| Commencement date of this Deed Any Permitted Purchaser described in item 9.1 may commence issuing Package Requests under the Patch Arrangement at any time on and from this date | **TBC** |

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| **Expiry** |  |
| Expiry date of this Deed No Permitted Purchaser may issue a Package Request under the Patch Arrangement after this date | **TBC (five years from commencement)** or (if the Council extends this Deed under section 8) at the end of the relevant extension period. |
| Consequence of the expiry of this Deed on any Call-Off Contracts then in place on the date indicated in item 7.1 | * Such Call-Off Contracts are unaffected by the expiry of this Deed. * They continue until they are terminated under their respective terms and conditions. |

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| **Extensions** |  |
| Periods for which the Council may extend this Deed | Not applicable |
| Any deadlines on the Council in exercising its right to extend this Deed | Not applicable |
| Changes to the terms of this Deed (as the terms stand at the expiry date) during the extension periodE.g. changes to amounts payable by one party to another | * Unchanged unless otherwise agreed by the parties in writing. * In any case, this section 8 shall not apply to this Deed in the final extension period (i.e. there shall be no further extension periods). |
| Procedure the Council must strictly follow if it wishes to extend this Deed under this section 8 | The Council must give the Patch Provider a notice as follows:   * Strictly according to section 47. * Subject to the deadlines and other time restrictions in item 8.2. * The Council must clearly indicate in the notice the extension period. |

# **Commissioning contracts**

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| **Right to commission contracts** |  |
| Who is entitled to enter into Call-Off Contracts and Miscellaneous Contracts under the Patch Arrangement (each of them is a **'Permitted Purchaser'**) | * Only the Council and its Affiliates from time to time. * At the date of this Deed, there is no Affiliate of the Council expected to enter Call-Off Contracts and/or Miscellaneous Contracts under this Patch Arrangement. |
| Liability of the Permitted Purchasers for their respective Call-Off Contracts and Miscellaneous Contracts | No Permitted Purchaser is liable to the Patch Provider in connection with a particular Call-Off Contract or a particular Miscellaneous Contract unless that Permitted Purchaser is a party to that Call-Off Contract or Miscellaneous Contract. |

# **Call-Off Contracts and Miscellaneous Contracts**

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| **Call-Off Contracts and Miscellaneous Contracts** |  | |
| When the Permitted Purchaser may enter into Call-Off Contracts and Miscellaneous Contracts with the Patch Provider under this Patch Arrangement | Any time:   * On or after the date of this Deed. * On or before the expiry or early termination of this Deed. | |
| How the Permitted Purchaser is to enter into **Call-Off Contracts** with the Patch Provider or other Patch Arrangement Providers under the Patch Arrangement | |  | |
| Direct award – by agreement with the relevant operator | | The Permitted Purchaser may directly award a Call-Off Contract to the Patch Provider or to another Patch Arrangement Provider under the Patch Arrangement or to a Framework Patch Provider or to any other operator if the Permitted Purchaser is permitted to do so under **both** of the following:   * The Law, particularly the Public Contracts Regulations 2015. * The Permitted Purchaser’s Constitution, particularly its Contract Procedure Rules or equivalent. | |
| Otherwise (if the Call-Off Contract is not awarded under item (a)) | | See section 11. | |
| The terms of a particular Call-Off Contract | | As indicated in the standard terms and conditions of the Permitted Purchaser in relation to Call-Off Contracts of the Patch Arrangement, as published by the Permitted Purchaser from time to time. | |
| How a Permitted Purchaser is to enter into **Miscellaneous Contracts** with the Patch Provider or other Patch Arrangement Providers under the Patch Arrangement | |  | |
| Direct award | | The Permitted Purchaser may directly award a Miscellaneous Contract to the Patch Provider or to another Patch Arrangement Provider under the Patch Arrangement or to a Framework Patch Provider or to any other operator if the Permitted Purchaser is permitted to do so under **both** of the following:   * The Law, particularly the Public Contracts Regulations 2015. * The Permitted Purchaser’s Constitution, particularly its Contract Procedure Rules. | |
| Otherwise (if the Miscellaneous Contract is not directly awarded under item (a)) | | * By a mini-competition conducted by the Permitted Purchaser according to the Law and the Permitted Purchaser’s Constitution. * The Permitted Purchaser will invite all Patch Arrangement Providers and Framework Patch Providers to take part in the mini-competition **other than** Patch Arrangement Providers and Framework Patch Providers who are suspended at the time. However, the Permitted Purchaser may from time to time (at its discretion) also invite all Patch Arrangement Providers to take part (other than those Patch Arrangement Providers who are suspended at the time). | |
| The terms of a particular Miscellaneous Contract | | As published by the Permitted Purchaser at the time. | |
| Relationship between this Deed and each Call-Off Contract and each Miscellaneous Contract between the Permitted Purchaser and the Patch Provider | | * They are separate contracts between them. * Nothing in this Deed in itself affects the rights and obligations of the parties under any Call-Off Contract or any Miscellaneous Contract, and vice versa. | |

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| **Mini-competitions for Call-Off Contracts** |  |
| Procedures which the relevant Permitted Purchaser must follow to award Call-Off Contracts to Framework Patch Providers and Patch Arrangement Providers on the Patch Arrangement for the purposes of item 10.2(b) These procedures only apply to Requests for Packages for the following:   * Core Domiciliary Packages; * Discharge to assess services  This procedure does not apply to Call-Off Contracts which a Permitted Purchaser may directly award under item 10.2(a) or to Non-Core Domiciliary Packages (to which item 11.2 applies) |  |
| First step - issuing the Package Request to Patch Arrangement Providers | * The tender concluded on the tender evaluation scores, and these were presented in descending order; resulting in the Provider that scores the highest score achieving first place. This first placed Provider was awarded the Central Patch contract. The Providers that scored second, third, fourth and fifth highest were ranked accordingly and now form the reserve framework. Should the need arise to replenish any Patch later or during the procurement, the providers that are ranked 2nd to 5th following the tender will be offered the vacant Patch in order of rank/position and will share the Patch with the other remaining (where applicable) providers. Where more than one Patch becomes available the same process will be applied resulting in the remaining highest ranked provider (who do not already have a Patch contract) being offered the opportunity. * A Patch Arrangement Provider with more than 3,000 hours per week at the time will not be eligible to apply for the relevant Call-Off Contract. This does not prevent the Council or other relevant Permitted Purchaser making a direct award to that Patch Arrangement Provider in the circumstances described in item 10.2(a). * The Patch Arrangement Providers have the following periods to accept the Package Request * **If the Package request relates to a discharge to assess:** 30 minutes (whether or not in the Council’s business hours). * **Otherwise:** 2 hours (whether or not in the Council’s business hours). * **If there is more than one Patch Arrangement Provider for the relevant Patch with 3,000 hours or less per week at the time:** the Permitted Purchaser shall (subject to its rights in item 11.3) award the Call-Off Contract to the first Patch Arrangement Provider to indicate to the Permitted Purchaser (in the manner indicated by the Council at the time) that it wishes to take the relevant Call-Off Contract. * The successful bidder’s initial charges under that Call-Off Contract shall be according to its rates in place at the time according to section 16, subject to any increases indicated in the Call-Off Contract terms and conditions. * If the need to allocate a contract for a vacant Patch place arises, Providers must demonstrate that they comply with the key contractual requirements as set out in the ITT. Assurance will be sought before a call off contract is activated. Failure to provide assurance will result in the next provider on the ranked list being offered the opportunity to deliver a service. Equally, where a Provider does not wish to deliver a service in a vacant Patch, they will reserve the right to do so, resulting in the next ranked provider being offered the opportunity. |
| Second step – if no Patch Arrangement Provider has accepted the Package Request by the relevant deadline indicated in item (a) | * The relevant Permitted Purchaser must (if it wishes to continue with the procedure) conduct a mini-competition for the relevant Package Request. * All Framework Patch Providers across the Borough will be eligible to participate other than any Framework Patch Provider who is suspended or otherwise ineligible to participate at the time according to its respective Deed. * The Permitted Purchaser must publish the relevant procedures (e.g. deadlines), award criteria and evaluation criteria at the time it conducts the mini-competition. * The successful bidder’s initial charges under that Call-Off Contract shall be according to its rates in place at the time according to its relevant contract, subject to any increases indicated in the Call-Off Contract terms and conditions. |
| Procedures which the relevant Permitted Purchaser must follow to award Call-Off Contracts to Framework Patch Providers and Patch Arrangement Providers on the Patch Arrangement for the purposes of item 10.2(b)  * This procedure only applies to Non-Core Domiciliary Packages. * Not required for Call-Off Contracts which a Permitted Purchaser may directly award under item 10.2(a) or for Requests for Packages (to which item 11.1 applies) | * The relevant Permitted Purchaser must conduct a mini-competition for the Package Request. * All Framework Patch Providers across the Borough (regardless of eligibility in item 2.4) and the Patch Arrangement Providers for the relevant Patch will be eligible to participate other than: * Any Patch Arrangement Provider or Framework Patch Provider who is suspended at the time according to its respective agreement. * A Patch Arrangement Provider who then has more than 3,000 hours per week (aggregated between the Framework Arrangement and the Patch Arrangement). * The Permitted Purchaser must publish the relevant procedures (e.g. deadlines), award criteria and evaluation criteria at the time it conducts the mini-competition. * The Patch Arrangement Provider or Framework Patch Provider will not be restricted to bidding the same rates as those which apply to Core Domiciliary Packages according to section 16.It may bid any higher or lower rates for the Non-Core Domiciliary Package. * The successful bidder’s initial charges under that Call-Off Contract shall be according to the rates which it has bid for the Non-Core Domiciliary Package in the course of the mini-competition (and not its rates according to section 16), and subject to any increases indicated in the Call-Off Contract terms and conditions. |
| Right of the Permitted Purchaser to amend or withdraw any Package Request before the relevant Call-Off Contract is entered with a Patch Arrangement Provider | * The Permitted Purchaser may do so, for any reason and without being required to give a reason. * The Permitted Purchaser is not liable to compensate any Patch Arrangement Provider for the Patch Arrangement Provider’s costs resulting from that amendment or withdrawal. |
| Character of a Package Request | It is an invitation of the relevant Permitted Purchaser, and does not constitute an offer capable of legally binding acceptance. |
| When the Patch Provider is **not** entitled to participate in the procedure described in item 11.1 | If the Patch Provider is suspended at the time under section 12. |

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| **Suspension of the Patch Provider** |  |
| The Council may (but shall not be obliged to) suspend the Patch Provider for the purposes ofTaking part in the procedures described in item 11.1 or 11.2 in relation to the award of any Call-Off Contract.Taking part in any mini-competition in relation to any Miscellaneous ContractIf and for as long as any of the following applies to the Patch Provider |  |
| Certain breaches | Where there is a failure and / or breach by the Patch Provider, and the Council considers that the failure and/or breach:   * May create an immediate and serious threat to the health and safety to any person including any Service User; * May expose risk that is not acceptable to the Council or to any person including Service Users; * May result in a material interruption in the provision of all or any part of the Services or may prevent, or will prevent the Contractor from providing the Services in accordance with a Call-Off Contract and/or a Miscellaneous Contract. |
| Certain failures | The following events may constitute a failure by the Patch Provider:   * The Care Quality Commission or any successor body has rated the Patch Provider as ‘Requires Improvement’ or ‘Inadequate’; and/or * As part of a quality assurance visit, the Council believes that the Service provided by the Contractor is not compliant with the Call-Off Contract or Miscellaneous Contract (as relevant), or the Services provided may constitute a risk to any person including Service Users or may raise a safeguarding concern. |
| Procedures the Council must follow if it wishes to suspend the Patch Provider if any of the circumstances in item 12.1 applies | * The Council must communicate the matter to the Patch Provider in writing. * No other formalities are required. |
| Whether the suspension of the Patch Provider under this section 12 in itself prevents the Council or other Permitted Purchaser entering into any Call-Off Contract or Miscellaneous Control with the Patch Provider **as a direct award** if permitted to do so under the Law and the Council’s Contract Procedure Rules | No. |
| Improvement plan | If the Patch Provider is suspended from the Patch Arrangement under this section 12:   * The Council may require the Patch Provider to prepare an improvement plan for the Council’s written approval (not to be unreasonably withheld). * The Council may delay reinstating the Patch Provider to the Patch Arrangement if and for as long as any of the following apply: * The Patch Provider has not provided a draft for the Council’s approval; or * The Patch Provider has not carried out its actions required in the plan to the Council’s reasonable satisfaction. * The Council may delegate any of the above activities in relation to the improvement plan to another local authority of the area in which the Patch Provider is registered. |
| Whether the Patch Provider’s suspension under this section 12 in itself affects Call-Off Contracts and Miscellaneous Contracts to which the Patch Provider is a party at the time | * Its suspension does not in itself affect those Call-Off Contracts and Miscellaneous Contracts. * The rights of the Council or other Permitted Purchaser under them are as indicated in their respective terms and conditions. |
| Arrangements for lifting the suspension of the Patch Provider | The Council shall communicate when the suspension is lifted, in writing.  The Council shall not unreasonably delay lifting the suspension when it is reasonably satisfied that the circumstances indicated in item 12.1 no longer apply. |

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| **Minimum volumes of Package Requests** |  |
| Whether the Council is obliged under this Deed to issue any **minimum volumes** of Package Requests | No obligation. |

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| **Obligation to accept Package Requests** |  |
| Extent to which the Patch Provider is contractually obliged to do any of the following:  * Accept any direct award of a Call-Off Contract and/or a Miscellaneous Contract * Participate in any particular mini-competition for a Call-Off Contract and/or a Miscellaneous Contract and/or any minimum number of such mini-competitions |  |
| In relation to the Patch Provider as a Patch Arrangement Provider | * The Patch Provider as a Patch Arrangement Provider must respond **within 2 hours** to at least **60%** of all Package Requests issued in relation to the relevant Patch in a **rolling 3-month period**. * The Council must not take into account (in determining whether the Patch Provider has met the above percentage) any failure by the Patch Provider to respond to a Package Request within that deadline due to any of the following factors: * The Patch Provider has more than 3,000 hours per week at the time (aggregated between the Framework Arrangement and the Patch Arrangement). * The Patch Provider is excused from responding to a Package Request with the permission of the Council, not to be unreasonably refused if the Patch Provider cannot respond to a relevant Package Request due to circumstances outside the Patch Provider’s reasonable control. |
| If the Patch Provider is a Framework Patch Provider | No contractual obligation. |
| If the Patch Provider as a Patch Arrangement Provider fails to meet the minimum requirements indicated in item 14.1 | * The Patch Provider must provide the Council with a first draft of a remedial plan in **30 days** of the Council’s written request for the Council’s approval. * The Council must not unreasonably refuse that approval. * **If the Patch Provider fails to carry out the actions contained in the approved remedial plan by any deadlines included in that approved remedial plan:** it shall be a Termination Default Event of the Patch Provider. |

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| **Entering Call-Off Contracts** |  |
| When a Call-Off Contract is deemed to be entered between a Permitted Purchaser and the Patch Provider under this Deed | * Where both parties have agreed in writing, which may include an exchange of e-mails. * For the purposes of this Deed, the Patch Provider is not deemed to have taken the Call-Off Contract until this step has been undertaken. |
| Where the procedures described in item 15.1 are **not** required | To the extent agreed in writing from time to time by the Representatives (or other appropriately authorised Personnel) of the Council and the Patch Provider. |

# **Rates**

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| **Rates** |  |
| The following rates apply to the Patch Provider in connection with any Call-Off Contract which it is awarded from time to time for a **Core Domiciliary Package** **or discharge to assess services** (as defined in the Service Specification) |  |
| Current rates | As indicated in the Patch Provider’s Patch Provider Response to becoming a member of the Patch Arrangement. |
| Regular uplift | The Patch Provider’s rates for **Core Domiciliary Packages** **or discharge to assess services** automatically change on each date in each April during this Deed (excluding 2021) on which benefits change according to the following   * **In relation to the ‘hourly wage’ component of the rates:** the percentage increase in the National Living Wage between the previous February and the February 12 months before that. * **In relation to the remaining component of the rates (i.e. other than the hourly wage):** that component of the rates shall increase or decrease annually on each 1st April by the same percentage increase or decrease (if any) as that between the published UK Consumer Price Index figure for the previous February and the that same figure but as published 12 months previously to that figure. |
| **Reduction in rates from time to time:** the Patch Provider may from time to time contact the Council to **reduce** its rates that apply at the time according to item (a) and item (b) for the purpose of applying for future Call-Off Contracts under item 11.1 for **Core Domiciliary Package** **or discharge to assess services** which it is awarded from time to time under this Deed according to the following rules. |  |
| When the Patch Provider may reduce its rates that apply at the time according to item (a) and item (b) | At any time during the Deed but not less than **6 months** after making the most contact with the Council to reduce its rates. |
| How the Patch Provider contacts the Council for this purpose | By e-mail to the relevant Representative of the Council, or as the Council reasonably instructs from time to time. |

# **Exclusivity**

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| **The Council’s exclusivity obligations** |  |
| Whether the Council is obliged under this Deed to deal with the Council **on an exclusive basis** | The Council must use the combined arrangement of the Patch Arrangement described in this Deed and the Framework Arrangement in relation to Call-Off Contracts on an exclusive basis for their respective durations within the scope of this Deed described in section 5.  The Council must also ensure its Affiliates do likewise.  The Council and its Affiliate are not obliged to use the Framework Arrangement and/or this Patch Arrangement for the following:   * Any Miscellaneous Contract within the scope described in section 5; or * Any Call-Off Contract for which the Council or its Affiliate has not received suitable offers from any Framework Patch Provider or Patch Arrangement Provider, after the Council and/or its Affiliate has followed the relevant procedures. * Any Call-Off Contract which the Council and/or its Affiliate may directly award to another operator who is neither a Framework Patch Provider or a Patch Arrangement Provider, but only in circumstances where the Council or its Affiliate is permitted to do so under regulation 32 of the Public Contracts Regulations. |

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| **The Patch Provider’s exclusivity obligations** |  |
| Whether the Patch Provider is obliged under this Deed to deal with the Council **on an exclusive basis** | No. |

# **Social value**

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| **Social value** |  |
| The current social value obligations of the Patch Provider under this Deed for the purposes of the Public Services (Social Value) Act 2012 | As indicated in the Patch Provider Tender Response |

# **Service continuity**

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| **Continuity plans** |  |
| Service continuity plans or the like which apply to the Patch Provider while it is a member of the Patch Arrangement | * The Patch Provider must have a suitable service continuity plan relevant to the Services in place at all times. * The Patch Provider must test that plan at regular intervals. * The Patch Provider must supply the Council with a copy of the Patch Provider’s up-to-date service continuity plan. The Patch Provider must do so promptly on the Council’s reasonable request. |

# **About the parties**

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| **Required Accreditations** |  |
| Licences, registrations, accreditations, permits, consents (or the like of any of these) which the Patch Provider must have in place at all times whilst it is providing the Services Each of them is a **‘Required Accreditation’** | As indicated in the Service Specification.If there are delays by the Care Quality Commission in rating the Patch Provider, it must operate to a standard which is (in the reasonable and professional opinion of the Council) the equivalent of a ‘good’ standard.Any other licences, registrations, accreditations, permits, consents (or the like of any of these) which the Patch Provider must hold according to Law to carry out the Services. |
| Obligation of the Patch Provider to provide the Council with evidence of its compliance with this section 21 | * The Patch Provider must provide the Council with appropriate evidence that the Patch Provider and/or relevant subcontractors have the relevant Required Accreditations in place. * The Patch Provider must do so promptly on the Council’s reasonable request from time to time. |

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| **Warranties and representations of the Patch Provider** |  |
| The Patch Provider warrants and represents   * To the Council and its Affiliates * That each of the following (to be read independently) is materially true and materially correct * At the date of this Deed and again each time it enters into any Call-Off Contract and/or any Miscellaneous Contract * Excluding any exceptions sufficiently disclosed by the Patch Provider to the Council in writing before the relevant date when the warranty and representation applies * In addition to other warranties and representations of the Patch Provider indicated elsewhere in this Deed |  |
| **About the Patch Provider generally** |  |
| Claims made by the Patch Provider | The claims the Patch Provider has made about itself or its subcontractors or their respective Personnel in the Patch Provider Tender Response are, to the best of the Patch Provider’s knowledge having made reasonably necessary inquiries:   * **True:** materially true; and * **Not misleading:** not reasonably likely to be misleading (whether by omission or otherwise) to a reasonable person. |
| No changes to the Patch Provider since the Patch Provider Tender Response | * There have been no significant changes to the circumstances of the Patch Provider compared to those disclosed in the Patch Provider Tender Response. * **Changes to the Patch Provider’s circumstances to which this applies:** only to those changes which would (on reasonable view) significantly and unfavourably affect the ability of the Patch Provider to meet its obligations under this Deed. |
| Not negligently or deliberately withheld information | There is no reasonably significant information about the Patch Provider, its Personnel and/or its subcontractors to which all of the following apply:   * The Patch Provider has negligently or deliberately withheld that information from the Council; and * If that information had been sufficiently disclosed, it would be reasonably likely to have significantly affected the decision of the Council (acting reasonably in the circumstances) to execute this Deed on these terms. |
| The Patch Provider is not  * Under any non-routine investigation by any law enforcement or regulatory body for any serious matter; and/or * Subject to any claims or disputes or other actions * which are reasonably likely to result in any of the following: |  |
| Affects carrying out its obligations | The Patch Provider being significantly and unfavourably affected in its ability to properly carry out its obligations under this Deed. |
| Publicity | Serious, unjustified and unfavourable publicity being brought to the Council and/or to its Affiliates. |
| **Public procurement procedure:** in any public procedure in which the Patch Provider was awarded this Deed, the Patch Provider has not done any of the following: |  |
| Collusion | Engaged in any collusive or other anti-competitive conduct with other bidders (or potential bidders). |
| Canvassing | Engaged in any canvassing activity. |
| Corrupt Act | Done any act that would breach item 41.1 in relation to Corrupt Acts if that act were done after this Deed is entered. |
| If the Patch Provider is a human being (e.g. a sole trader) | The Patch Provider is not aware of any serious issue relating to his/her health or other personal circumstances which is likely to prevent him/her carrying out his/her obligations as required under the terms of this Deed. |
| If the Patch Provider is a company or other type of entity other than a human being | The Patch Provider has the following to enter this Deed and to carry out its obligations under it this Deed   * The Patch Provider has the power to do so under its constituent document. * The Patch Provider has obtained the relevant resolutions and taken the required corporate action to do so. * The Patch Provider validly exists under the Law of the place where it was incorporated or otherwise constituted. |
| **Financial status of the Patch Provider** |  |
| Able to pay debts | The Patch Provider is able to pay its debts (taking into account its contingent and prospective liabilities) when they fall due. |
| If the Patch Provider is a human being (e.g. a sole trader) | * The Patch Provider is not an undischarged bankrupt; and * No procedure is currently underway to put the Patch Provider into bankruptcy. |
| If the Patch Provider is a company or other type of entity other than a human being | All of the following   * The Patch Provider is not subject to any outstanding order from a court (or equivalent) or resolution requiring it to be dissolved, wound up or the equivalent. * No liquidator, provisional liquidator, trustee, administrator, controller, receiver, or receiver and manager (or the equivalent to any of these in any other relevant jurisdiction) is currently appointed in relation to the Patch Provider and/or its assets. * The Patch Provider is not aware (and has no reasonable grounds to be aware) that any of the above is imminent. |
| **Ability to carry out obligations** |  |
| Third party consents, regulatory approvals etc. | The Patch Provider has obtained all necessary third party consents, regulatory approvals or the like to enable it to do the following   * To execute this Deed or the Package Request of the relevant Call-Off Contract; and * To carry out its obligations as required under it. |
| No breaches etc. | By executing this Deed and by carrying out its obligations under this Deed, the Patch Provider will not breach or infringe any of the following (to the best of its knowledge having made reasonably necessary inquiries)   * The Law. * Any duty it owes a third party (whether arising under tort, contract, statute, or otherwise). * The property rights (including rights in connection with Intellectual Property) of any third party. |
| **Miscellaneous** |  |
| If the Patch Provider is a consortium, partnership, joint venture or the like | Each warranty and representation in this section 22 applies to each member of that consortium, partnership, joint venture or the like, to the extent reasonably relevant to that member. |
| Not acting on behalf of a third party | The Patch Provider is not entering this Deed on behalf of any third party whose identity has not been sufficiently disclosed in writing to the Representative of the Council. |
| Valid execution | The Patch Provider has validly executed this Deed. |

# **Patch Provider Bonus**

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| **Patch Provider Bonus** |  |
| When does the arrangement described in this section 23 apply | * It only applies when and for as long as the Council from time to time indicates to the Patch Provider that it applies. * The Council is not obliged under this Patch Arrangement Agreement to have the arrangement in place at any particular time. * However, if the Council has communicated to the Patch Provider at a particular time that the arrangement applies (and the Council has not withdrawn it according to item 23.7), then the Council is liable to pay the Patch Provider the Patch Provider Bonus if the Patch Provider meets the relevant Target that applies under the arrangement in place at the time. |
| What is the **Patch Provider Bonus** | * It is an additional fee which the Council is liable to pay the Patch Provider if the Patch Provider achieves one or more relevant Targets in place at the time. * It is set according to item 23.4. * The Patch Provider Bonus is **in addition** to any charges or other remuneration with a Permitted Purchaser is liable to pay the Patch Provider under any Call-Off Contract and/or under any Miscellaneous Contract. |
| Which Package Requests and Call-Off Contracts count towards any Target in place from time to time | All of them, unless the Council otherwise clearly indicates otherwise at the time. |
| How the level of Patch Provider Bonus is set by the Council whenever the arrangement described in this section 23 applies from time to time | * It is as set by the Council and communicated to the Patch Provider from time to time at the time the Target is communicated by the Council to the Patch Provider. * The Council may set the level of the Patch Provider Bonus at its discretion. |
| Whether the Patch Provider is in breach of contract for the sole reason that it has failed to meet a Target in place from time to time | * Ordinarily no, unless it is a breach of any other contractual duty elsewhere in this Patch Arrangement Agreement. * The Council’s sole remedy is that it is not liable to pay the relevant Patch Provider Bonus attributable to that Target at that time. This does not exclude the Council’s rights if the failure also a breach of any other contractual duty of the Patch Provider elsewhere in this Patch Arrangement Agreement. |
| If the Patch Provider meets a Target in place at a particular time, when is the Council due to pay the relevant Patch Provider Bonus | * The Patch Provider may invoice the Council at any time after the end of the period to which the arrangement relates at the time for the relevant Patch Provider Bonus. * The Council must pay that Patch Provider Bonus no later than **30 days** after receipt of the invoice. * Arrangements in the terms and conditions of Call-Off Contracts then in place regarding invoicing, interest on late payment and rights of set off also apply here. |
| Withdrawal of or change to the arrangement | * The Council may withdraw or amend any existing arrangement of the kind described in this section 23 in place from time to time. * Any amendment may include for example changing the level of the Patch Provider Bonus (increasing or decreasing it), and/or changing the Targets, and/or changing the time period over which the Targets are measured. * The Council is not obliged to have or to give any reason for its withdrawal of or amendment to the arrangement. * If the Council amends or withdraws the arrangement, it must communicate the withdrawal or amendment to the Patch Provider in writing **not less than 2 months** before the date on which the withdrawal or amendment is to take effect. |

# **No TUPE**

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| **No transfers of employment** |  |
| Whether the employment of any individual is expected transfer under the Transfer of Undertakings (Protection of Employment) Regulations (2006) in connection with any service provision change on the **commencement or cessation** of any part of this Deed | * Such transfers are not expected in relation to the commencement or cessation of the Deed. * Arrangements regarding any such transfers on the commencement and cessation of Services under one or more Call-Off Contracts or under a particular Miscellaneous Contract are indicated in the terms and conditions of the Call-Off Contract or in the terms and conditions of the relevant Miscellaneous Contract. |

# **Location**

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| **Location of the Services** |  |
| Any specific location at which the Patch Provider must provide the Services (or such part of them as indicated) | As indicated in the Service Specification. |

# **Keeping informed**

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| **Keeping informed** |  |
| Events or circumstances on which the Patch Provider must keep the Representative of the Council informed under this section 26In writing where reasonably practicableIn a proper and timely manner when the Patch Provider first becomes aware of the matter  * The Patch Provider must keep the Representative (or other appropriate Personnel of the Council) informed in a proper and timely manner of significant progress of events as they occur in relation to the relevant matter |  |
| Any event or circumstance to which both of the following apply |  |
| Who it affects | The event or circumstance affects the Patch Provider, its subcontractors and/or any of their respective Personnel, regardless of whether or not in connection with this Deed and/or any Call-Off Contract. |
| Adverse publicity | If the event or circumstance were publicly known, it would create an unreasonable risk of serious, unjustified and unfavourable publicity to the Council and/or its Affiliates due to its association with the Patch Provider. |
| Loss of Required Accreditation | * The Patch Provider losings or having imposed on it any significant restrictions or conditions on, or being under a serious threat of losing or having imposed on it, any Required Accreditation which the Patch Provider must have under section 21. * Any of the above in relation to any relevant subcontractor which the Patch Provider has appointed in connection to the Services (to the extent relevant to its activities in connection with the Services). |
| Any of the following events or circumstances in relation to the Patch Provider if he/she is a human being acting as a sole trader |  |
| Bankruptcy | * His/her bankruptcy and/or * Any bankruptcy proceedings being commenced against him/her. |
| Charge, conviction | Him/her being charged or convicted of a crime of dishonesty or violence (regardless of the penalty) or a crime of any other kind resulting him/her receiving a prison sentence (whether served or suspended). |
| Right to remain | He/she no longer has right to remain in the United Kingdom (or such other country where his/her duties in connection with the Call-Off Contract are to be carried out). |
| Any of the following events or circumstances in relation to the Patch Provider if it is an entity other than a human being (e.g. a company) |  |
| Winding up | Any order of a court (or equivalent) being made or any resolution being passed requiring the Patch Provider to be dissolved and/or wound up. |
| Appointments | The appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Patch Provider and/or its assets. |
| Announcements | If the shares of the Patch Provider are listed on a stock exchange, any profit warnings in relation to the Patch Provider which are issued to that stock exchange. |
| Change in Control | Any change in Control of the Patch Provider, if it is a company. |
| If the Patch Provider is a consortium, partnership or the like, any of the following |  |
| Change | Any change in the composition of its membership. |
| Events affecting members | Any of the events or circumstances indicated elsewhere in this section 26 in relation to the Patch Provider applies to any of its members individually. |
| Investigations | * Any non-routine investigation of the Patch Provider by any regulatory or law enforcement body or the like (including the police) for any serious matter. * That is (on a reasonable view) likely to significantly and unfavourably affect its ability to accept further Call-Off Contracts. |
| Corrupt Acts | Any breach by the Patch Provider of item 41.1. |
| Whether this section 26 in itself limits the Patch Provider's obligations to keep the Council informed | No. |

# **Information**

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| **No warranties on accuracy of Council information** |  |
| In relation to information given by the Council to the Patch Provider in relation to this Deed |  |
| No warranty etc. | * The Council gives no person any warranty or representation in relation to the accuracy and/or the completeness of that information. * **Exception:** as otherwise indicated elsewhere in this Deed. |
| Exclusion of liability | The liability of the Council and its Affiliates in relation to the accuracy and/or completeness of that information **is excluded to the fullest extent permitted by Law.** |
| No relief | The Patch Provider is not entitled to any relief from its obligations under this Deed for the sole reason that any such information is inaccurate and/or incomplete. |
| No exclusion | Nothing in this item 27.1 excludes any person’s liability for fraudulent misrepresentation. |

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| **What is ‘Confidential Information’** |  |
| What is Confidential Information of the Council and/or its Affiliates respectively as a **‘Discloser’** Each of the following, to be read independently |  |
| Business activities | Information relevant to the Discloser’s business activities generally, including without limitation   * The Discloser’s operations, business strategies, plans, financial arrangements, financial information and third party disputes * The Discloser’s Personnel and human resources activities generally * The Discloser’s products or services * The Discloser’s research activities, know-how, trade secrets and other Intellectual Property which is not in the public domain. * The Discloser’s data, including personal data in relation to which it is the data controller or data processor for the purposes of the Data Protection Legislation * Details relating to the Discloser’s customers, clients or the like * Information relating to any other person to whom the Recipient knows (or reasonably ought to know) the Discloser owes a duty of confidentiality (whether under contract, by Law or otherwise) |
| Dispute resolution | Disclosures made in the course of any dispute resolution procedure described in section 42. |
| Rules regarding how the information must be disclosed etc. to be considered the Discloser’s Confidential Information |  |
| How the information must be disclosed or made or available to the Recipient | * In any manner or in any medium (e.g. in writing, verbally, by observation at the Discloser’s premises, contained in any device or material etc.) * But only in activities which are reasonably connected with the Call-Off Contract. |
| By whom must the information be disclosed or made available | It may be disclosed or made available by or on behalf of the Discloser to the Patch Provider (and/or anyone acting on its behalf) |
| Whether the information must be labelled as ‘confidential’ (yes/no) | Not required. |
| What is Confidential Information of the Patch Provider as a **‘Discloser’** Each of the following, to be read independently |  |
| Rates | Rates submitted by the Patch Provider to the Council in the Patch Provider Tender Response and/or from time to time under item 16.1(c). |
| Subcontractor, Personnel | Any information   * Relating to * Any Personnel of the Discloser, or * Any subcontractor appointed by the Discloser in connection with the Call-Off Contract * Disclosed or otherwise made available by the Discloser to the Recipient or to anyone acting on the Recipient’s behalf in connection with the Call-Off Contract. |
| Monitoring | Information of a confidential nature   * About the Discloser and/or its Affiliates (e.g. its financial condition, any significant incident, any prospective internal changes, its costs, etc.) * Given or made available to the Recipient from time to time * in connection with the Call-Off Contract * Whether in providing regular reports, at meetings, in the course of any inspection, audit or the like conducted by or on behalf of the Recipient, or otherwise. |
| Dispute resolution | Disclosures made in the course of any dispute resolution procedure described in section 42. |
| Patch Provider Tender Response | The contents of a genuinely confidential nature in the Patch Provider Tender Response. |
| Rules regarding how the information must be disclosed etc. to be considered the Patch Provider’s Confidential Information under the Call-Off Contract |  |
| How the information must be disclosed or made or available to the Recipient | * In any manner or in any medium (e.g. in writing, verbally, by observation at the Patch Provider’s premises, contained in any device or material etc.) * But only in activities reasonably connected with the Call-Off Contract. |
| By whom must the information be disclosed or made available | It may be disclosed or made available by or on behalf of the Patch Provider to the Council (and/or anyone acting on its behalf) |
| Whether the information must be labelled as ‘confidential’ (yes/no) | Not required. |
| A piece of information of the Discloser is not in any case Confidential Information of the Discloser if any of the following applies to that piece of information at the time |  |
| Public domain | * It is in the public domain from time to time * **Exception:** as a result of any breach of a duty of confidentiality owed by the Recipient under the Call-Off Contract. |
| Independently developed | The Recipient can reasonably prove it (or its Affiliates and/or their Personnel) had developed that information independently of its association with the Discloser. |
| Independently acquired | * The Recipient and/or its Affiliate and/or their respective Personnel receives that information in good faith from a third party in circumstances unconnected with the Call-Off Contract. * **Exception:** where the Recipient knows or has reasonable grounds to suspect that the third party is in breach of confidentiality obligations owed to the Discloser and/or its Affiliate. |
| Trivial | The information is of a trivial nature. |

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| **Confidentiality obligations** |  |
| **The Recipient’s obligations:** the Recipient must comply with all of the following obligations in relation to each piece of Confidential Information of the Discloser in the possession of the Recipient from time to time To continue for the period indicated in item 29.2 |  |
| Non-disclosure (subject to item 29.3) | The Recipient   * Must keep that Confidential Information strictly in confidence, and * Must not disclose it or make it available to third parties. |
| Not to misuse | * The Recipient must not copy, modify, reverse engineer or otherwise use that Confidential Information for any purpose other than for legitimate purposes connected with the relevant parts of the Services. * Without limiting the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser. |
| **Storage** The Recipient (where it is the Patch Provider) must store the Confidential Information as follows: |  |
| Reasonable standard | To a reasonable standard of security. |
| Comparable | In any case, not to a lower standard of security the Recipient uses to store its own information of comparable confidentiality. |
| Comply with the Law | The Recipient must comply with relevant Law in relation to the keeping, disclosure or use of that Confidential Information. |
| If Personnel breach | If any Personnel of the Recipient or those of its Affiliate or (if the Recipient is the Patch Provider) any subcontractor directly or indirectly appointed by the Recipient does anything in breach of the rest of this item 29.1, the onus shall lie with the Recipient to prove it was not done at the direction of, or with the assistance of the Recipient. |
| Not to direct others | The Recipient must not direct or assist any person to do anything in breach of the rest of this item 29.1. |
| Duration of the Recipient’s obligations in item 29.1 in relation to each piece of the Discloser’s Confidential Information The later of the following |  |
| Agreed period | **3 years** from the termination date of the Patch Provider’s last Call-Off Contract under the Patch Arrangement. |
| Other | Such longer period required by Law in relation to that piece of Confidential Information. |
| **Permitted disclosures:** the Recipient is permitted to disclose or make available any Confidential Information of the Discloser  * In any of the following circumstances * Regardless of item 29.1 |  |
| Consent | With the prior written consent of the Discloser, subject to the Recipient’s compliance with any conditions attached to that consent. |
| To any of the following |  |
| Personnel(subject to item 29.4) | To the genuine existing or prospective Personnel of the Recipient and/or its Affiliates. |
| Advisors etc.(subject to item 29.4) | To the Recipient’s genuine existing or prospective advisers, contractors, consultants, agents, insurers, funders, shareholders or other investors, or purchasers of the business of, and/or shares in, the Recipient, auditors and banks. |
| Public body(subject to item 29.4) | Any public body authorised to review this Deed. |
| Assignment, novation(subject to item 29.4) | Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of this Deed. |
| Disputes(subject to item 29.4) | Relevant third parties engaged for the purpose of resolving disputes under section 42. |
| Third parties(subject to item 29.4) | Third parties described in item 46.2 who have rights under the Call-Off Contract for the purpose of advising them of their rights, powers and benefits under the Call-Off Contract. |
| Required by Law (subject to item 29.5) | To the extent the Recipient is required to disclose or make available the Confidential Information by Law, including without limitation:   * A court, * A regulatory body, * A law enforcement body, * A stock exchange. * **If the Recipient is a public body in carrying out its normal public functions:** a genuine public auditor, the UK Parliament or other genuine public body, or as required under any FOI Act (as defined in section 30). |
| Rules regarding the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person indicated in item 29.3  * To the extent indicated in item 29.3 that this item 29.4 applies * All of the following |  |
| Need to know | The Recipient may only disclose (or make available) that Confidential Information to that person   * In good faith. * Only on a strict ‘need to know’ basis. |
| Treating unauthorised disclosures etc. | The Discloser may regard any unauthorised disclosure or other misuse of such Confidential Information by any such person as if it were the Recipient’s own act. |
| Separate confidentiality agreement | * The Recipient must require the relevant person to enter into a suitable written confidentiality agreement with the Discloser on reasonable terms. * But only if requested to do so by the Discloser, acting reasonably and proportionately in the circumstances. |
| The Recipient must comply with all of the following if it is compelled by Law to disclose or make available any Confidential Information of the Discloser |  |
| Inform | The Recipient must inform the Discloser of the circumstances  With sufficient detail and accuracy and  Promptly on becoming aware of the obligation to make the compelled disclosure. |
| Make person aware | The Recipient must make the person compelling the disclosures aware of the duty of confidentiality owed to the Discloser in relation to the relevant information. |
| Assist the Discloser to challenge | The Recipient must provide the Discloser with reasonable and timely assistance on the Discloser’s request if the Discloser wishes to challenge the compelled disclosure.  The Discloser must reimburse the Recipient for the Recipient’s reasonable and sufficiently evidenced costs in providing that assistance. |
| Keep to minimum | The Recipient must keep such disclosures to the minimum it is compelled to disclose or make available. |
| Exception to this item 29.5 | * If disclosure is required under any FOI Act. * This is covered in section 30. |

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| **Freedom of information** |  |
| **In relation to a particular FOI Party:** the extent to which the other party considers any of its information to be ‘commercially sensitive’ for the purposes of any FOI Act | * To the extent indicated by the other party to the FOI Party in writing from time to time. * This is for indicative purposes only and is not binding on the FOI Party. |
| Consequences if the FOI Party receives a request for information under any FOI Act involving information of the other party (all of the following) |  |
| Rights of the FOI Party | The FOI Party may make its own determination according to Law as to whether or not to provide that information to the person making the request. |
| Extent to which the FOI Party is required to consult etc. | The FOI Party is not obliged under the Call-Off Contract to consult the other party or anyone else in relation to that request for information. |
| Consequence if the FOI Party does consult the other party and/or anyone else | The FOI Party is not obliged under the Call-Off Contract to have regard to the views of the other party and/or anyone else. |
| To what this item 30.2 is subject | It is subject to the FOI Party’s compliance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 to the extent that compliance is permissible and reasonably possible. |

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| **Announcements and publicity** |  |
| Restrictions on the Patch Provider making announcements and/or giving publicity in connection with this Deed (e.g. press releases, public circulars, interviews etc.) | * The Patch Provider must not do so without the prior written consent of the Council. * The Council must not unreasonably withhold that consent. |
| Restrictions on the Patch Provider and/or its Affiliate using any reference to the Council and/or its Affiliates (including use of its logos or other branding) in the publicity materials of the Patch Provider and/or its Affiliate | * The Patch Provider must not do so without the prior written consent of the Council. * The Council must not unreasonably withhold that consent. |

# **Insurance**

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| **The Patch Provider’s insurance requirements** |  |
| The Patch Provider must have in place insurance of all of the following types  * To the minimum level indicated * With a reputable insurer |  |
| **Type of cover** | **Minimum level of cover required** |
| Employers' liability | £5 million or such higher level required by Law. |
| Public liability | £10 million |
| Professional indemnity | Not required |
| Duration for which the Patch Provider must ensure the insurances described in item 32.1 are in place for insurances **if the insurance is on a ‘claims occurred’ basis** | * For as long as the Patch Provider is providing any Services whatsoever under any Call-Off Contract whatsoever. * In any case, for as long as the Patch Provider is the Patch Provider |
| Duration for which the Patch Provider must ensure the insurances described in item 32.1 are in place for insurances **if the insurance is on a ‘claims made’ basis** | * For as long as the Patch Provider is providing any Services whatsoever under any Call-Off Contract whatsoever. * In any case, for as long as the Patch Provider is the Patch Provider * For a further **6 years** after the Patch Provider discontinues providing any Services whatsoever under the Patch Arrangement. |
| Obligations of the Patch Provider to provide evidence that the insurance cover required under this section 32 is in place | * The Patch Provider must provide the Council with evidence that it has that insurance properly in place. * It must do so promptly on the Council’s written request. That request must be made in good faith and not at unreasonable frequency. * Such evidence may include copies of insurance certificates, cover notes and/or a suitable letter from the Patch Provider’s insurance broker. |
| Other obligations of the Patch Provider in relation to the insurance cover required in this section 32 | The Patch Provider must not   * Do anything; and/or * Fail to take reasonable action to do anything within its reasonable power; and/or * Assist or instruct anyone else to do or fail to do any of the above   that results in **any** of the following   * Such insurance cover being wholly or partly rendered void, voidable, suspended, vitiated, impaired or unenforceable (or the like of any of these). * Any amounts paid under claims properly made under that insurance cover being wholly or partly repayable. |
| Exemptions where the Patch Provider or its relevant subcontractor is not required to have any particular insurance cover otherwise required in item 32.1 | * Only with the written consent of the Council. * Such consent cannot be unreasonably withheld where there are reasonable alternative arrangements in place (e.g. suitable self-insurance arrangements). |
| Consequences if the Patch Provider does not have any of the insurance cover required in this section 32 at any time whilst it is required to have it in place according to item 32.1 | * It shall be a Termination Default Event of the Patch Provider. * Even if the Patch Provider later obtains that insurance cover during that period. * This does not limit the rights and remedies of the Council. |

# **Liability issues**

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| **Liability of consortium members** |  |
| If a party is a consortium, partnership under the Partnership Act 1890, joint venture or the like: nature of the liability of its members in connection with this Deed | Their liability is ‘joint and several’. |

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| **Caps and exclusions of liabilities** |  |
| Arrangements regarding caps and exclusions of liability of the parties to each other in connection with this Deed | The arrangements in the terms and conditions of the Call-Off Contracts from time to time relating to caps and exclusion of the liability of the parties also apply to this Deed. |

# **Continuous improvement**

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| **Continuous improvement** |  |
| General | * The Patch Provider must identify and report to the Council improvements to the Services. * The Patch Provider must do so according to this section 35. |
| Examples of improvements which the Patch Provider must consider in its reports required under this section 35  * As follows * Where relevant * Not an exhaustive list of possible improvements |  |
| Technology | Improvements in technology and/or the use of technology in connection with the Services. |
| Work practices etc. | Improvements to work practices, business processes or the like. |
| Enjoyment of the Services by Service Users | Improvements in the way the Services are to be enjoyed by Service Users e.g.   * Satisfaction with the Services. * Improved outcomes. * Improvements in customer relations (e.g. complaint resolution). |
| Service User dependence | Reducing the dependence of Service Users on the Services. |
| Changes in Service User demand | Changes to the Services (including the way in which they are delivered) to take account changes in the needs of Service Users. |
| Use of resources, greater productivity | More efficient and productive use of resources (e.g. energy, premises, labour). |
| Interfacing with third party stakeholders | Improving relationships with public sector bodies and third sector obligations insofar as it affects the Services. |
| Benefits to the Council | Improvements to the benefits to the Council and its Affiliates from the Services. |
| Quality of outputs | Improved quality of outputs of the Services (e.g. improved features, customer or client benefits). |
| Performance measurement | Improvements in the way performance of the Patch Provider can be measured and/or monitored. |
| Uncontrollable Consequences | Improvements in the way the Patch Provider would deal with any disruptions to services due to circumstances outside its reasonable control. |
| Timing issues in relation to each report which the Patch Provider is required to provide the Council under this section 35 |  |
| Frequency of each report which the Patch Provider must deliver to the Representative of the Council | Once every 2 years. |
| Due date of each report which the Patch Provider must deliver to the Representative of the Council | Every alternate 1st March in an even-numbered year (e.g. 2024, 2026 etc.) until the expiry or early termination of this Deed. |
| The Patch Provider must comply with all of the following obligations in relation to each report required under this section 35 |  |
| Sufficient information | Ensure the report contains sufficient information to enable the Council to determine whether or not to implement the proposed improvements (or sufficient information on steps it should take to acquire such further information). |
| Further questions | The Patch Provider must provide the Council with reasonable and timely cooperation if the Council has further questions and/or requires further information in relation to any improvements identified in a particular continuous improvement report. |
| Extent to which the Patch Provider may impose further charges for carrying out its obligations in this section 35 | It may NOT do so. |
| Consequences if the Council wishes to implement a proposed improvement | * The parties shall regard it as a change to the Service Specification as requested by the Council. * In this case, the change procedures in the standard terms and conditions applicable to the Patch Arrangement at the time the Individual Placement is entered shall apply. |

# **Early termination**

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| **Patch Provider Termination Default Events** |  |
| Each of the following is a Termination Default Event of the Patch Provider   * To be read independently * For as long as the relevant circumstances continue to apply to the Patch Provider |  |
| **General breaches** |  |
| Material Breach not capable of being remedied | * The Patch Provider is in Material Breach of this Deed. * On a reasonable view, that Material Breach is **not capable of being remedied** by the Patch Provider. |
| Material Breach capable of being remedied | All of the following must apply   * The Patch Provider is in Material Breach of this Deed. * On a reasonable view the Material Breach is capable of being remedied by the Patch Provider. * For as long as the Patch Provider has still not remedied the Material Breach * To the reasonable satisfaction of the Council * At the Patch Provider’s own cost * More than **30 days** after the Council has requested the Patch Provider to do so * The Council must have issued its request by notice given strictly according to section 47. * The Council shall not unreasonably refuse consent to a written request by the Patch Provider to an extension of the above deadline if there are delays to the Patch Provider remedying the Material Breach which are significantly due to factors outside the reasonable control of the Patch Provider. |
| Fails to respond to a minimum percentage of Package Requests | In the circumstances described in item 14.2. |
| Insurance | * The Patch Provider does not have in place the insurance cover required in section 32 at any time (even if it subsequently obtains it). * But only to the extent this is a Termination Default Event according to item 32.7. |
| **General misconduct** |  |
| Serious misconduct | * The Patch Provider has engaged in serious misconduct * Such misconduct includes without limitation * The Patch Provider’s involvement in a serious public scandal (whether or not in connection with this Deed) * Where a reasonable person would not expect the Council to continue a commercial relationship of this kind with the Patch Provider. |
| **Misconduct in competitive exercise:** the Patch Provider has engaged in serious misconduct in any competitive exercise conducted by or on behalf of the Council in awarding to the Patch Provider the contract to which this Deed relatesRegardless of whether the misconduct occurred with the knowledge of the Patch Provider’s senior managementIncluding the following without limitation |  |
| Collusion | Engaging in any collusive or other anti-competitive conduct with other actual or potential bidders. |
| Corrupt Act | Doing any act in connection with that competitive exercise that would breach section 41 in relation to Corrupt Acts if that act were done after this Deed is entered. |
| Canvassing | Engaging in any canvassing activity. |
| Corrupt Act | * The Patch Provider’s breach of section 41. * But only if item 41.3 indicates that this is a Termination Default Event of the Patch Provider. |
| **About the Patch Provider** |  |
| Loss of Required Accreditation | * The Patch Provider ceases to hold any Required Accreditation which it is required to have under item 21. * **If the Patch Provider is required by Law to hold that Required Accreditation to provide any of the Services:** this shall be a Termination Default Event of the Patch Provider even if the Patch Provider later acquires that Required Accreditation. * **Otherwise:** this shall be a Termination Default Event only for as long as the Patch Provider has failed to acquire that Required Accreditation. |
| In relation to the Patch Provider’s capacity as a human being operating as a sole trader |  |
| Bankruptcy | The Patch Provider becomes bankrupt. |
| Certain convictions | The Patch Provider is convicted of any crime of violence or dishonesty, any crime relevant to safeguarding (where the activities in connection with the Services involve safeguarding issues) or any other offence resulting in a prison sentence (whether suspended or served). |
| Death | The Patch Provider dies. |
| Significant disability | The Patch Provider suffers total and permanent disability. |
| Mental Health Act (if the Patch Provider is a human acting as a sole trader) if relevant | The Patch Provider becomes a patient within the meanings of section 145(1) of the Mental Health Act 1983 or equivalent meanings in other similar replacement legislation or in equivalent legislation applying to the Patch Provider in his/her relevant jurisdiction. |
| Stage 6 CQC notification | The Patch Provider receives a stage 6 formal financial notification (or the equivalent) from the CQC. |
| Certain appointments (if the Patch Provider is not a sole trader – e.g. a company) | The Patch Provider is subject to a court order (or equivalent) or a resolution requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Patch Provider and/or its assets. |
| Right to operate | The Patch Provider is not permitted to operate in the UK, if a physical presence in the UK is reasonably necessary to enable the Patch Provider to meet its obligations under this Deed. |
| Winding up (if the Patch Provider is not a sole trader – e.g. a company) | The Patch Provider is subject to a court order (or equivalent) or a resolution requiring the Patch Provider to be dissolved and/or wound up.  **Exception:** in relation to a genuine solvent reconstruction where   * The replacement entity agrees in writing to become legally bound to the obligations of the Patch Provider under this Deed. * The replacement entity accepts in writing liability for the liabilities of the Patch Provider in connection with this Deed. * The replacement entity (and/or any third party guarantor it wishes to propose at the time) has at least equivalent financial standing as that which the Patch Provider had at the date of this Deed. * The replacement entity has the same underlying majority controlling ownership as the Patch Provider. |
| Unable to pay debts | * If and for as long as the Patch Provider is unable to pay its debts (taking into account its contingent and prospective liabilities) as defined in any applicable Law, including section 123 of the Insolvency Act 1986. * This applies whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time) as they fall due, and the Patch Provider has no reasonable prospect of paying such debts. |
| Composition with creditors | If and for as long as the Patch Provider is a party to a composition or other similar arrangement with its creditors, including any voluntary arrangement within Part I of the Insolvency Act 1986. |
| If the Patch Provider is a consortium, partnership or the likeIf and for as long as all of the following apply |  |
| Certain events apply to a member | Any of the events or circumstances described elsewhere in this section 36 applies to any member at the time of the consortium, partnership or the like. |
| If that member has not been removed from the consortium, partnership or the like: failure to take steps | * The Patch Provider has failed to remove that member from its involvement with the relevant part of the Services within **14 days** of the written request of the Council. * That request by the Council must be issued by a notice strictly according to section 47. |
| Arrangements | The Patch Provider has not taken appropriate steps (where necessary and to the reasonable satisfaction of the Council) to ensure continuity of the Services resulting from the removal of the member of the consortium, partnership or the like. |

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| **Termination due to a Termination Default Event** |  |
| Termination rights of the Council if and for as long as a Termination Default Event applies to the Patch Provider | The Council may terminate this Deed if and for as long as a Termination Default Event applies to the Patch Provider. |
| What are the Termination Default Events of the Patch Provider | See section 36. |
| How the Council terminates this Deed under this section 37 | By giving the Patch Provider a notice as follows:   * Strictly according to section 47. * Setting out in reasonable detail a description of the Termination Default Event of the Patch Provider. |
| Interpretation | If   * A Termination Default Event applies to a Patch Provider; and * That Termination Default Event is expressed to continue if and for as long as particular circumstances apply, and * Those circumstances cease to apply (e.g. the Patch Provider has remedied the Termination Default Event); and * The Council has not yet given the Patch Provider the notice described in item 37.3 in relation to that Termination Default Event   Then the Council is no longer entitled to give that notice to the Patch Provider in relation to that particular Termination Default Event. |
| Effective date on which this Deed is terminated if a notice is given by the Council under item 37.3 | * On the date the relevant notice is given, or * On any later date indicated in that notice. |
| Consequence for the Patch Provider if this Deed is terminated by the Council under this section 37 | It is no longer a Patch Arrangement Provider of the Patch Arrangement, whether as a Framework Patch Provider or a Patch Arrangement Provider. |
| If the Council terminates early this Deed as a whole under this section 37, whether the Call-Off Contracts and Miscellaneous Contracts then in place either continue or also terminate at the same time | They continue, unless those Call-Off Contracts or mc are also terminated separately according to the terms and conditions of the Call-Off Contracts. |
| Whether termination of this Deed under this section 37 in itself limits the rights and remedies of the Council | * No. * Without limiting this, if the Council is the Council, termination does not in itself limit the Council’s rights (if any) to compensation for its increased costs in appointing a replacement service provider on an emergency basis. |

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| **Early termination by the Council without Patch Provider Termination Default Event** |  |
| Whether the Council may terminate early this Deed where no Termination Default Event applies to the Patch Provider | * The Council may do so according to this section 38. * This section 38 does not limit the termination rights of the Council indicated elsewhere in this Deed. |
| **Initial period:** any initial period when the Council may not terminate this Deed early under this section 38 | The Council cannot give the notice described in item 38.5 in the first **12 months** from the commencement date of the Deed in item 6.1. |
| **Partial termination:** whether the Council may terminate early only part of this Deed under this section 38 | Not applicable. |
| If the Council terminates early this Deed as a whole under this section 38, whether the Call-Off Contracts then in place either continue or also terminate at the same time | They continue, unless those Call-Off Contracts are also terminated separately according to the terms and conditions of the Call-Off Contracts. |
| How the Council terminates this Deed if it wishes to do so under this section 38 | * By notice in writing given to the Patch Provider. * The notice must be given strictly according to section 47. |
| Notice period if the Council terminates this Deed under this section 38The termination of this Deed becomes effective at the end of this notice period | Either   * **3 months** after the date the notice described in item 38.5 is given; or * Any later date or event as indicated in the notice (not being later than the expiry date of this Deed indicated in item 7.1). |
| If the Council terminates this Deed under this section 38, whether it must also terminate the similar contract of each other Patch Arrangement Provider in relation to the relevant Patch | The Council must do so at or around the same time. |

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| **No early termination by the Patch Provider without Council Termination Default Event** |  |
| Whether the Patch Provider may terminate early this Deed where no Termination Default Event applies to the Council | * There is no obligation on the Patch Provider under this Deed to accept any specific Call-Off Contract or Miscellaneous Contract. * Accordingly, there is no need for the Patch Provider to have a formal right to terminate this Deed. * However, if the Patch Provider wishes to discontinue as a Patch Arrangement Provider of the Patch Arrangement at any time, the Council expects the Patch Provider to communicate this to the Council in a timely manner. |

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| **Consequences of termination etc.** |  |
| Consequences on the termination of this Deed |  |
| Discontinue | * The rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties in connection with this Deed shall discontinue. * This includes the Patch Provider’s right to a rights to participate in the award of any Call-Off Contracts or any Miscellaneous Contracts under the Patch Arrangement according to section 10 and section 11. * This is subject to item 40.2 in relation to those which continue after the termination date. |
| In relation to a particular Call-Off Contract | The rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the Council and the Patch Provider in connection with that Call-Off Contract shall **not** in themselves be affected. |
| **Continuing rights, obligations etc.:** the following rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties to this DeedShall continue until they are completed, until they expire, or indefinitely (as relevant according to this Deed)Regardless of the termination of this DeedEach of these are to be read independently |  |
| Already arisen, accrued | Those in connection with this Deed which had already arisen or accrued at the time of the termination of this Deed. |
| Relating to certain events or circumstances | Those which relate to events or circumstances   * Which are connected with this Deed; and * Which occurred on or before the termination date. |
| Interest | Any interest accruing on any debts in connection with this Deed which relate to events or circumstances which had already occurred or arisen on or before the termination date. |
| Continuing nature | * Those in connection with the Deed which are expressed (or which are reasonably implied) in this Deed to continue after the termination date. * This includes those under any Call-Off Contract which is to continue after expiry or early termination of this Deed, as indicated in this Deed. |

# **Miscellaneous**

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| **Corrupt Acts** |  |
| Obligations of the Patch Provider in relation to Corrupt Acts | The Patch Provider must not do any of the following in connection with this Deed   * Carry out any Corrupt Act * Assist or instruct another person to carry out any Corrupt Act. |
| Definition of a **‘Corrupt Act’**:Any of the following acts (to be read independently) |  |
| Certain offers | The act is a direct or indirect offer or promise to which all of the following apply   * It is made to any Personnel of the Council and/or its Affiliate * It offers or promises any benefit or advantage (whether or not financial) * The offer or promise is substantially for any of the following purposes * To encourage that Personnel to carry out his/her duties improperly. * To reward that Personnel for having carried out his/her duties improperly. |
| Policy | * Any act which breaches any policy of the Council from time to time regarding gifts to its Personnel * But only to the extent the policy is communicated in writing to the Patch Provider. |
| Certain offences | In relation to the Patch Provider’s dealings with the Council under this Deed   * Any offence under the Bribery Act. * Any other offence under any Law relating to fraud. |
| Serious attempts | Any serious attempt by any Personnel of the Patch Provider and/or its Affiliate to do anything indicated elsewhere in this item 41.2. |
| Consequence of the Patch Provider’s breach of item 41.1 | It shall be a Termination Default Event of the Patch Provider.  This applies   * Regardless of the size of the breach. * But only where the breach was done with the assistance or instruction of the Patch Provider’s Representative and/or any other member of the Patch Provider’s Personnel of at least equivalent seniority.   This does not limit the rights or remedies of the Council and/or its Affiliates. |

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| **Dispute resolution** |  |
| Arrangements in relation to dispute resolution | The arrangements in the terms and conditions of each Call-Off Contract relating to dispute resolution also apply to this Deed. |

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| **Relationship between the parties** |  |
| Relationship between the parties created by this Deed | The relationship of client and independent service provider. |
| Relationships between the parties **which are not created** by this Deed(each of the following) |  |
| Partnership | Any partnership between the parties. |
| Principal-agent | * Any relationship of principal and agent between the parties authorising one party to do anything (e.g. incur liabilities or obligations, make statements) on behalf of the other party. * **Exception:** to the extent otherwise clearly indicated or reasonably implied in this Deed. |
| Employment | Any employment relationship (or the like) between a party and/or its Affiliates and the Personnel of the other party and/or that other party’s separate contractors and/or Affiliates. |

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| **Assignment and novation** |  |
| If **the Council** wishes to assign, transfer or the like any of its rights, powers and benefits under this Deed to another person | * The prior written consent of the Patch Provider **is not** required. * The assignment, transfer or the like is not binding on the Patch Provider until the Council has communicated it in writing to the Patch Provider. |
| If **the Patch Provider** wishes to assign, transfer or the like any of its rights, powers and benefits under this Deed to another person | The prior written consent of the Council **is required**, not to be unreasonably withheld. |

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| **Entire agreement** |  |
| Status of this Deed | Subject to this section 45, this Deed represents the entire agreement between the parties on the subject matter of this Deed. |
| Status of any previous agreements entered between the parties on the subject matter of this Deed | They are fully extinguished immediately when this Deed is executed. |
| Liability of a party in relation to any statement, warranty, representation, opinion or prediction of the future which that party may have made which is not described in this Deed and/or any document clearly cross-referenced in it | To the fullest extent permitted by Law:   * These are excluded from this Deed. * That party’s liability in relation to any of these is excluded.   This does not exclude any party’s liability for fraudulent misrepresentation. |

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| **Third party rights** |  |
| Rights of third parties with rights under this Deed for the purposes of the Contracts (Rights of Third Parties) Act 1999 | These are excluded to the fullest extent permitted by Law, subject to item 46.2. |
| Third parties whose rights to directly enforce their rights under this Deed under the Contracts (Rights of Third Parties) Act 1999 **are retained** | * Affiliates of the Council. * Personnel of the Council and/or its Affiliates. |
| Rights of third parties to this Deed under the Contracts (Rights of Third Parties) Act 1999 which **are not specially retained** under item 46.2 | These are excluded to the fullest extent permitted by Law. |

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| **Notices** |  |
| Tender Response of this section 47 | It applies to all of the following:   * Communications between the parties described as ‘notices’ in this Deed. * Any other communications between the parties which are expressed in this Deed to be subject to this section 47.   The formalities in this section 47 are not required in relation to other communications between the parties. |
| To whose attention a notice or other communication described in item 47.1 is to be addressed if sent to a party | To the party’s Representative at the time. |
| Methods by which notices must be given to be valid (in at least one of the following ways) |  |
| **Method** | **When notice is deemed to have been given** |
| Hand delivery to the recipient’s Representative | On the date it is given to him/her. |
| By registered mail or courier to the recipient’s last known address (addressed to the recipient’s Representative unless otherwise indicated) | **2 business days** (a business day being any day other than a Saturday, Sunday or English public holiday) after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence), unless it is returned as undelivered. |
| By e-mail issued as follows:   * **If the relevant communication is given to the Council:** to an e-mail address as nominated by the Council to the Patch Provider from time to time for such communication. * **If the relevant communication is given to the Patch Provider:** to the usual work e-mail address of the Patch Provider’s Representative or such additional or replacement e-mail address as nominated by the Patch Provider to the Council from time to time for such communication. * **In any case:** with the sender being able to reasonably prove the relevant e-mail was sent to the relevant e-mail address. | On the date and at the time the e-mail is received by the recipient (as the recipient can reasonably prove) subject to the following   * If that date and time is before 9 am on a business day: it is deemed to have been received at 9 am on that business day. * If that date and time is after 5 pm on a business day or at any time on a day that is not a business day: it is deemed to have been received at 9 am on the next business day. |

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| **Amendments** |  |
| How this Deed is to be validly amended (no other way is valid) | By deed of variation entered between the Council and the Patch Provider. |

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| **Remedies** |  |
| If this Deed refers to a particular remedy in a particular circumstance | This does not in itself exclude the availability of any other remedy in that circumstance (unless otherwise clearly indicated). |
| Whether available remedies described in this Deed are cumulative | Yes. |
| If a person with rights under this Deed pursues a particular remedy in particular circumstances | That shall not in itself prevent that person from pursuing other available remedies in those circumstances (whether those remedies arise under common law, equity, statute or otherwise). |
| Acknowledgements of the parties in relation to seeking **remedies other than damages** | * Damages may not always be an adequate remedy of a person with rights under this Deed in particular circumstances. * Accordingly, that person may (without being required to prove special damage, and where permitted by Law) obtain other remedies available to that person (whether arising under common law, equity, statute or otherwise), including without limitation, injunctions and/or specific performance. |

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| **Severability** |  |
| If any part of this Deed is held by any court (or equivalent body) to be invalid or unenforceable for any reason | The parties to this Deed shall do the following   * **First step:** if reasonably possible, the parties shall use reasonable efforts to agree to modify the affected part to the minimum extent necessary to enable that part (and the rest of this Deed) to be valid and enforceable, whilst keeping the original intention of the parties intact as far as reasonably possible. * **Second step if the first step is not reasonably possible:** the entire part **shall be severed** from this Deed unless * It alters the fundamental nature of this Deed or * It is against public policy to do so. |
| About the remaining parts of this Deed **not** described in item 50.1 | They shall remain in full force and effect. |

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| **Waivers** |  |
| Strict requirements for a waiver of a party’s rights or powers in connection with this Deed to be binding on that party | Only if all of the following apply to the waiver (and not otherwise):   * It is clearly indicated to be a waiver of the relevant right or power. * It is in writing. * It is properly authorised by that party. |
| Other rules regarding waiver of any party’s right or power in connection with this Deed | * Delay or failure to exercise that right or power shall not in itself be a valid waiver of it. * A waiver of that right or power on one occasion does not (except to the extent otherwise indicated in that waiver) in itself constitute a waiver of the same right or power on a later occasion and does not affect any other right or power. |

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| **Governing law and jurisdiction** |  |
| Law under which this Deed is to be interpreted and generally governed | English law. |
| Jurisdiction to exclusively apply to disputes arising in connection with this Deed.This is subject to the dispute resolution arrangements in section 42 | English courts. |