DATED

FRAMEWORK AGREEMENT FOR THE PROVISION OF INDIVIDUALISED CARE AND SUPPORT SERVICES

This document is for information only and must not be used for responding to this tender

between

DEVON COUNTY COUNCIL

and

DEVON PARTNERSHIP NHS TRUST

and

[SUPPLIER]

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THIS AGREEMENT is dated ……..

PARTIES

(1) Devon County Council of County Hall, Topsham Road, Exeter EX2 4QD (**DCC**).

(2) Devon Partnership NHS Trust of Wonford House Hospital, Dryden Road, Exeter EX2 5AF (the **Trust**)

(3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).

BACKGROUND

(A) The Authorities placed a contract notice (ref: 2017/S 042-076945), dispatched on 1 March 2017, in the Official Journal of the European Union seeking expressions of interest from potential service providers for the provision of individualised care and support services (divided into Zones) under a framework agreement. The Authorities set out their requirements in the Invitation to Tender.

(B) On the basis of the Supplier's Tender, the Authorities selected the Supplier to enter a framework agreement to provide services to the Authorities who place Referrals within the Supplier's Zone, in accordance with the terms of this Framework Agreement.

(C) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Supplier under this Framework Agreement.

(D) It is the Parties' intention that:

i. the Authorities have no obligation to place Referrals with the Supplier under this Framework Agreement or at all; and

ii. the Supplier has no obligation to accept a Referral, if placed by the Authorities under this Framework Agreement.

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AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Approval: means the prior written approval of the Authorities.

Audit: means an audit carried out pursuant to clause 11.

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

Authorised Representative: means the persons respectively designated as such and notified to the other Parties by the Authorities and the Supplier.

Authority: means DCC or the Trust (as the context requires and interpreted in accordance with clause 3.7).

Authorities: means DCC and the Trust (interpreted in accordance with clause 3.7).

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

Call-off Schedule: means the process of calling off Services under this Framework as set out in Schedule 3.

Call-off Terms and Conditions: means the terms and conditions in Schedule 6.

Carer: a person who regularly supports a Service User.

Catastrophic Failure:

(a) any action by the Supplier, whether in relation to the Services and the Contract, the Framework Agreement or otherwise, which in the reasonable opinion of the Authority has or may cause significant harm to the reputation of the Authority;

(b) any action by the Supplier, whether in relation to the Services and the Contract or otherwise, which in the reasonable opinion of the Authority has or may cause significant harm to a Service User; or

(c) a failure of the Supplier to comply with its obligations at clause 8.2 of the Call-off Terms and Conditions or clause 9 of the Call-off Terms and Conditions.

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

Commencement Date: means 1 October 2017.

Complaint: means any formal complaint notified to the Supplier, raised by:

- either Authority in relation to the Supplier's performance under this Framework Agreement; or
- either Authority, a Service User or a Carer in relation to the Supplier's performance under any Contract.

Confidential Information: means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: means a legally binding agreement made pursuant to the provisions of this Framework Agreement for the provision of Services made between an Authority and the Supplier comprising an Order Form (which includes its appendix) signed on

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behalf of both Parties, which, by reference, incorporates the Call-off Terms and Conditions and the terms and conditions of the Framework Agreement.

Contract Price: is defined in the Call-off Terms and Conditions.

Consistent Failure: is the Supplier repeatedly breaching any of the terms of the Contract or the Framework Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract or Framework Agreement.

Data Protection Legislation: means the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

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

Direct Payment: the allocated budget given by DCC to a Service User to arrange and pay for his/her own care and support services instead of receiving care and support services via DCC.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

(a) the identity and age of the employee;

(b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);

(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;

(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor;

(e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

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Employment Liabilities: All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

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

Extended Term: has the meaning given under clause 2.1.

Flexible Packages: is defined in the Call-off Schedule.

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

Framework Agreement: means this agreement and all Schedules to this agreement.

Framework Agreement Variation Procedure: means the procedure set out in Schedule 5.

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

Framework Year: means a period of 12 months, commencing on the Commencement Date.

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

Hourly Rate: the hourly rate set out in the Pricing Matrix.

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

Initial Term: has the meaning given under clause 2.1.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer

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software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Invitation to Tender: means the Authorities' invitation to tender (reference: CP1329-16 Supporting Independence) which was made available, following the OJEU Notice, on the Supplying the South West Procurement Portal accessible at www.supplyingthesouthwest.org.uk.

Law: means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

Month: means a calendar month.

Multiple Hour Discount: a discount of 15% to the Hourly Rate which is applied to Scheduled Packages in the manner set out in the Call-off Schedule.

OJEU Notice: means the contract notice 2017/S 042-076945, dispatched on 1 March 2017, and published in the Official Journal of the European Union.

Order Form: means a document substantially in the form set out in Schedule 4, containing the details of a Referral which has been accepted by the Supplier following the procedure set out in the Call-off Schedule and clause 4 (Award procedures).

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

Party: means either Authority and/or the Supplier.

Parties: means the Authorities and the Supplier.

Pricing Matrix: means the pricing matrix set out in Schedule 2, as may be refreshed for Year 2, Year 3, and/or Year 4 in accordance with clause 7.

Prohibited Act: the following constitute Prohibited Acts:

(f) to directly or indirectly offer, promise or give any person working for or engaged by the Authorities a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

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(g) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;

(h) committing any offence:

(i) under the Bribery Act 2010;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authorities; or

(i) defrauding, attempting to defraud or conspiring to defraud the Authorities.

Referral: means a referral for Services, containing information about a Service User's needs and outcomes to be achieved, sent by either Authority to the Supplier in accordance with the procedure set out in the Call-off Schedule.

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

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

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authorities or a Replacement Provider by virtue of the application of TUPE.

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

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authorities receive in substitution for any of the Services following the termination or expiry of this Framework Agreement and/or Contracts, whether those services are provided by the Authorities internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Authorities from time to time.

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

Scheduled Packages: is defined in the Call-off Schedule.

Self-Funders: Service Users who are funding their own care without the involvement of statutory services or who are funding their care via Direct Payments.

Services: means the individualised care and support services detailed in the Specification.

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Service User: a user of the Services who is located within the administrative area of DCC.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Supplier or Sub-Contractor to the Authorities or any Replacement Provider.

Specification: means the Specification for Provision of Individualised Care and Support as contained in the Invitation to Tender.

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

Staffing Information: in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Authorities may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

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

Sub-Contractor: the contractors or service providers that enter into a Subcontract with the Supplier.

Subsequent Transfer: has the meaning given under clause 16.1.

Supplier's Accounts: the information requested in question 4.1 (Economic and Financial Standing) of Part 3 – Selection Questions of Section E1 (Selection Criteria) of the Invitation to Tender.

Supplier's Policies: the policies as described in section 9 (Quality Requirements) of the Specification.

Supplier's Final Staff List: the list of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Supplier's Provisional Staff List: the list prepared and updated by the Supplier of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Supplier's Ranking: means the Supplier's ranked position per Zone as set out in Schedule 1, as may be refreshed for Year 2, Year 3, and/or Year 4 in accordance with clause 7.

Supplier's Zones: means the Zones to which the Supplier has been appointed under this Framework Agreement as set out in Schedule 1, as may be refreshed for Year 2, Year 3, and/or Year 4 in accordance with clause 7.

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Tender: means the tender submitted on [DATE] by the Supplier to the Authorities in response to the Invitation to Tender.

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

(j) any extensions to this agreement which are made pursuant to clause 2.1; or

(k) the earlier termination of this Framework Agreement in accordance with its terms.

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

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

TUPE Information: has the meaning given under clause 16.5.

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

Year: means Year 1, Year 2, Year 3 or Year 4, as the context permits.

Year 1: the period commencing on the Commencement Date and ending on the first (1st) anniversary of the Commencement Date.

Year 2: the period commencing on the first (1st) anniversary of the Commencement Date and ending on the second (2nd) anniversary of the Commencement Date.

Year 3: the period commencing on the second (2nd) anniversary of the Commencement Date and ending on the third (3rd) anniversary of the Commencement Date.

Year 4: the period commencing on the third (3rd) anniversary of the Commencement Date and ending on the fourth (4th) anniversary of the Commencement Date.

Zones: means the Services divided into zones as referred to in the OJEU Notice and set out in the Specification.

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

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

(b) words importing the masculine include the feminine and the neuter;

(c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

(d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order,

regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

(g) the Specification forms part of this Framework Agreement and shall have effect as if set out in full in the body of this agreement.

(h) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;

(i) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;

(j) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and

(k) reference to a clause is a reference to the whole of that clause unless stated otherwise.

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FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

2.1 This Framework Agreement shall take effect on the Commencement Date and shall continue, unless terminated earlier in accordance with the terms of this Framework Agreement, until 30 September 2018 (**Initial Term**), when it shall terminate automatically without notice unless, no later than four (4) Months before the end of the Initial Term (or any Extended Term agreed under this clause), the Authorities provide notice in writing to the Supplier that the term of this Framework Agreement shall be extended for a further one (1) year period (**Extended Term**), at which point the provisions of clause 7 shall apply. Unless this Framework Agreement is further extended under this clause or terminated earlier in accordance with its terms, this Framework Agreement shall terminate automatically without notice at the end of an Extended Term.

3. SCOPE OF FRAMEWORK AGREEMENT

3.1 This Framework Agreement governs the relationship between the Authorities and the Supplier in respect of the provision of the Services by the Supplier to the Authorities.

3.2 The Authorities appoint the Supplier as a Framework Provider of the Services in the Supplier's Zone and the Supplier shall be eligible to receive Referrals for such Services from the Authorities during the Term in respect of the Supplier's Zone. The Supplier acknowledges that this is a multi-supplier Framework Agreement and that new suppliers may become Framework Providers during the Term, as more particularly set out in clause 7 (Supplier's Tender Refresh).

3.3 Each Authority may at their absolute discretion and from time to time order Services from the Supplier in the Supplier's Zone in accordance with the ordering procedure set out in clause 4 (Award Procedure) during the Term.

3.4 If and to the extent that any Services under this Framework Agreement are required by an Authority, that Authority shall:

(a) comply with the ordering procedure in *clause 4*; and

(b) enter into a Contract with the Supplier for these Services.

3.5 The Supplier acknowledges and accepts that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authorities for the Services in respect of the Supplier's Zone or otherwise and that each Authority is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

Supplier's Status

3.6 At all times during the Term the Supplier shall be an independent service provider and nothing in the Framework Agreement or any Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither the Supplier nor the Authorities shall be authorised to act in the name of, or on behalf of, or otherwise bind the other except as expressly permitted by the terms of the Framework Agreement or any Contract.

Authorities' Status and Liability

3.7 The Supplier acknowledges and accepts that each Authority is entitled to act independently of the other with respect to its rights and obligations under this Framework Agreement and all references to "the Authority" and "the Authorities" shall be interpreted accordingly.

3.8 The liability of the Authorities for their obligations under this Framework Agreement and any Contracts shall be several and extend only to any loss or damage arising out of their own breaches, and in particular:

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(a) DCC shall not under any circumstances be liable to the Supplier for payment or otherwise or incur any liabilities in respect of any Services provided by the Supplier to the Trust; and

(b) the Trust shall not under any circumstances be liable to the Supplier for payment or otherwise or incur any liabilities in respect of any Services provided by the Supplier to DCC.

Direct Payments and Self-Funders

3.9 For the avoidance of doubt, individuals using Direct Payments and Self-Funders are outside the scope of this Framework Agreement. The Authorities shall not in any circumstances be liable to the Supplier, any individuals using Direct Payments or any Self-Funders for payment or otherwise in respect of any such services provided by the Supplier to any individuals using Direct Payments or Self-Funders. The Authorities shall have no responsibility to the Supplier in relation to any arrangements the Supplier may make with individuals using Direct Payments or Self-Funders.

4. AWARD PROCEDURES

Awards under the Framework Agreement

4.1 Either Authority ordering Services under the Framework Agreement shall:

(a) identify the relevant Zone which its Services requirements fall into; and

(b) follow the procedure set out in the Call-off Schedule.

4.2 For the avoidance of doubt, the Supplier is not obliged to accept a Referral. The Parties acknowledge and agree that the placement of a Referral is an "invitation to treat" by the Authority.

4.3 If, in accordance with the procedure set out in the Call-off Schedule, the Supplier is selected to provide the Services and accepts the Referral, the relevant Authority and Supplier shall enter into the Contract.

4.4 If, in accordance with the procedure set out in the Call-off Schedule, one or more Framework Providers is selected to provide the Services but does not accept the Referral, then the relevant Authority may (but shall not be obliged to) repeat the process set out in clause 4.1 until the Referral is accepted or there are no further Framework Providers qualified to fulfil it.

4.5 Notwithstanding the fact that an Authority has followed the procedure set out above in clause 4.1, the Authority may cancel, postpone, delay or end the procedure without placing a Referral or awarding a Contract. Nothing in this Framework Agreement shall oblige either Authority to place a Referral or enter into a Contract.

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Responsibility for awards

4.6 The Supplier acknowledges that each Authority is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that each Authority is not responsible or accountable for and shall have no liability to the Supplier whatsoever in relation to:

(a) to the conduct of the other Authority in relation to the Framework Agreement; or

(b) the performance or non-performance of any Contracts between the Supplier and the other Authority entered into pursuant to the Framework Agreement.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

5.1 The Supplier shall perform all Contracts entered into with an Authority in accordance with:

(a) the requirements of this Framework Agreement;

(b) the terms and conditions of the respective Contracts; and

(c) the requirements of the Specification.

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

(a) the Order Form;

(b) the appendix to the Order Form;

(c) the Call-off Terms and Conditions (including the Annexes);

(d) the terms of the Framework Agreement,

(e) the Call-off Schedule;

(f) the Specification;

(g) the remaining Schedules to the Framework Agreement; and

(h) any other document referred to in the clauses of the Contract and Framework Agreement.

6. PRICES FOR SERVICES

6.1 Subject to clause 6.4 below, in each relevant Year, the prices offered by the Supplier for Contracts to the Authorities for Services shall be the prices listed in the Pricing Matrix for the relevant Zone.

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6.2 From Year to Year, the Supplier may adjust the Pricing Matrix in accordance with clause 7 (Supplier's Tender Refresh); however any changes made to the Pricing Matrix will not affect the Contract Price for Contracts already entered into. For the avoidance of doubt, subject to clause 13.3 of the Call-off Terms and Conditions and clause 6.4 below, the Contract Price for a Contract entered into in:

(a) Year 1 shall be as set out in the Tender;

(b) Year 2 shall be as set out in the Pricing Matrix, as may have been refreshed by the Supplier in accordance with clause 7 for Year 2;

(c) Year 3 shall be as set out in the Pricing Matrix, as may have been refreshed by the Supplier in accordance with clause 7 for Year 3; and

(d) Year 4 shall be as set out in the Pricing Matrix, as may have been refreshed by the Supplier by the Supplier in accordance with clause 7 for Year 4.

6.3 The Hourly Rate shall apply to both Flexible Packages and Scheduled Packages.

6.4 The Multiple Hour Discount will apply to Scheduled Packages. For the avoidance of doubt, the Multiple Hour Discount will not apply to Flexible Packages.

7. SUPPLIER'S TENDER REFRESH

7.1 If the Authorities provide written notice to the Supplier that the term of this Framework Agreement shall be extended by a further one (1) year period in accordance with clause 2.1, then the procedure set out in the remainder of clause 7 shall apply.

7.2 At the time of providing written notice to the Framework Providers that the term of this Framework Agreement shall be extended pursuant to clause 2.1, the Supplier shall be:

(a) invited to re-submit the Invitation to Tender coversheet indicating which Zone(s) it wishes to provide Services in;[1]

(b) invited to re-submit the Pricing Matrix;[2] and

(c) required to confirm that its responses to sections E1 (Selection Criteria Questions) and E2 (Award Criteria Questions) of its Tender remain true, accurate and not misleading (or if the Supplier is unable to provide this confirmation it shall submit new answers to the relevant questions, which

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[1] *This information is optional. If the Supplier does not return this information, then there will be no change to the Supplier's Zones for the following Year.*

[2] *This information is optional. If the Supplier does not return this information, then there will be no change to the Pricing Matrix for the following Year.*

shall in turn by evaluated by the Authorities in the manner set out in the Invitation to Tender),[3]

within a specified timescale notified to the Framework Providers by the Authorities (the "**Timescale"**). The Authorities shall provide written instructions as to the return of this documentation ("**Instructions**").

7.3 The Supplier acknowledges that new suppliers may bid to become Framework Providers by submitting a tender to the Authorities by the Timescale and, if successful, shall be permitted to enter into a Framework Agreement with the Authorities to commence on the next relevant Year. The Supplier also acknowledges that the Supplier's Ranking may change due to:

(a) new Framework Providers joining the Framework Agreement;

(b) the Supplier amending its Pricing Matrix; and/or

(c) other Framework Providers amending their Pricing Matrix.

7.4 Failure by the Supplier to:

(a) comply with the Instructions; or

(b) provide the information set out in clause 7.2(c) within the Timescale,

may result in the Authorities terminating this Framework Agreement (in respect of the Supplier but not the other Framework Providers), with written notice, effective at the end of the Initial Period (if within Year 1) or (if within Year 2, Year 3, or Year 4) at the end of the relevant Extended Period. In such circumstances, the Supplier may reapply to join the Framework Agreement at a later opening point.

7.5 If the Supplier does not wish to remain a Party to the Framework Agreement and chooses not to respond to the process set out in clause 7.2, then this Framework Agreement shall expire (in respect of the Supplier but not the other Framework Providers) at the end of the Initial Period, if within Year 1, or if within Year 2, Year 3, or Year 4, at the end of the relevant Extended Period. In such circumstances, the Supplier may reapply to join the Framework Agreement at a later opening point.

7.6 Except where clause 7.4 or clause 7.5 applies, approximately one (1) month before the end of the Initial Term or Extended Term (as applicable), the Authorities shall issue to the Supplier a variation to this Framework Agreement containing the revised Pricing Matrix, and revised Supplier's Zones and revised Supplier's Ranking, which shall apply to any Contracts that may be awarded within the next Year.

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[3] *This information is mandatory if the Supplier wishes to remain a Party to the Framework Agreement.*

SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS

8. WARRANTIES AND REPRESENTATIONS

8.1 The Supplier warrants and represents to the Authorities that:

(a) as at the Commencement Date (and at the commencement of each Extended Term), all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authorities prior to execution of the Framework Agreement;

(b) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;

(c) this Framework Agreement, and any Order Form entered into, is executed by a duly authorised representative of the Supplier;

(d) in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;

(e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authorities;

(f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and

(g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

9. SERVICE PRE-REQUISITES

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

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SUPPLIER'S INFORMATION OBLIGATIONS

10. REPORTING AND MEETINGS

10.1 The Supplier shall comply with the reporting requirements as set out in the Specification (including, for the avoidance of doubt, the Performance Management Framework appended to the Specification).

10.2 At the Authorities' request, the Supplier shall meet with the Authorities as set out in section 4.2.7 of the Specification.

11. RECORDS AND AUDIT ACCESS

11.1 The Supplier shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with the Authorities, and the amounts paid by each Authority. Such records shall be retained for inspection by the Authorities for six (6) years from the period to which the records relate.

11.2 If requested by the Authorities during the Term, the Supplier shall promptly make available to the Authorities the Supplier's Policies and the Supplier's Accounts.

11.3 The Supplier shall keep the records and accounts referred to in clause 11.1 and clause 11.2 above in accordance with good accountancy practice.

11.4 The Supplier shall afford the Authorities or the Auditor (or both) such access to such records and accounts as may be required from time to time.

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

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

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

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(a) all information requested by the Auditor within the scope of the Audit;

(b) reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services; and

(c) access to the Staff.

11.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 11, unless the Audit reveals a Default equating to a breach of a fundamental term by the Supplier in which case the Supplier shall reimburse the Authorities for the Authorities' reasonable costs incurred in relation to the Audit.

12. CONFIDENTIALITY

12.1 Subject to clause 12.2 and clause 12.3, the Parties shall keep confidential the Confidential Information of the other Party and shall use reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

12.2 Clause 12.1 shall not apply to any disclosure of information:

(a) required by any applicable law (the Parties note that clause 14 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations);

(b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;

(c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 12.1;

(d) by the Authorities of any document to which it is a Party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;

(e) to enable a determination to be made under clause 21 (Dispute resolution);

(f) which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;

(g) by the Authorities to each other or any other department, office or agency of the government, provided that the Authorities informs the recipient of any duty of confidence owed in respect of the information; and

(h) by the Authorities relating to this Framework Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

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12.3 Clause 12.1 shall not apply to any disclosure by the Authorities of information contained in the Pricing Matrix (including, for the avoidance of doubt any refreshed or updated pricing information submitted pursuant to clause 7) to Service Users or their Carers.

12.4 The Supplier acknowledges that:

(a) the Authorities may need to divulge the information referred to in clause 12.3, to fulfil its responsibilities under the Care Act 2014 and/or to enable Service Users and their Carers to best meet their needs within the confines of their personal budgets; and

(b) it has submitted its Tender in full knowledge that the information referred to in clause 12.3 may be divulged as therein described and that this was also made explicitly clear in the Invitation to Tender.

13. DATA PROTECTION

13.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of any Contracts shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

13.2 Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data as a Data Processor for the Authorities, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

(a) provide the Authorities with such information as the Authorities may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;

(b) promptly notify the Authorities of any breach of the security measures required to be put in place pursuant to clause 13.2; and

(c) ensure it does not knowingly or negligently do or omit to do anything which places the Authorities in breach of the Authorities' obligations under the DPA.

14. FREEDOM OF INFORMATION

14.1 The Supplier acknowledges that the Authorities are subject to the requirements of the FOIA and the EIRs. The Supplier shall:

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(a) provide all necessary assistance and cooperation as reasonably requested by the Authorities to enable the Authorities to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Authorities all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Authorities with a copy of all Information belonging to the Authorities requested in the Request For Information which is in its possession or control in the form that the Authorities requires within 5 Working Days (or such other period as the Authorities may reasonably specify) of the Authorities' request for such Information; and

(d) not respond directly to a Request For Information unless authorised in writing to do so by the Authorities.

14.2 The Supplier acknowledges that the Authorities may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authorities shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authorities shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

15. PUBLICITY

15.1 Unless otherwise directed by the Authorities, the Supplier shall not make any press announcements or publicise this Framework Agreement or any Contracts in any way without the Authorities' prior written consent.

15.2 The Authorities shall be entitled to publicise this Framework Agreement and any Contracts in accordance with any legal obligation on the Authorities, including any examination of this Framework Agreement or Contracts by the Auditor or otherwise.

15.3 The Supplier shall not do anything that may damage the reputation of the Authorities or bring the Authorities into disrepute.

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TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006

16. EMPLOYMENT EXIT PROVISIONS

16.1 This Framework Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination of this Framework Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part ("**Subsequent Transfer"**). If a Subsequent Transfer is a Relevant Transfer then the Authorities or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

16.2 The Supplier shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Framework Agreement or otherwise, on request from the Authorities and at such times as required by TUPE, provide in respect of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authorities, including information as to the application of TUPE to the employees. The Supplier shall notify the Authorities of any material changes to this information as and when they occur.

16.3 At least 28 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the Authorities and/or, at the direction of the Authorities, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-Contractor's personnel named are Relevant Employees.

16.4 The Authorities shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.

16.5 The Supplier warrants to the Authorities and the Replacement Provider that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information ("**TUPE Information"**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.

16.6 The Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

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16.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the three (3) Months prior to termination of this Framework Agreement shall not (so far as reasonably practicable) take place without the Authorities' prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Sub-contractor shall supply to the Authorities full particulars of such proposed changes and the Authorities shall be afforded reasonable time to consider them.

16.8 In the three (3) Months prior to termination of this Framework Agreement, the Supplier shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Authorities' prior written consent (such consent not to be unreasonably withheld or delayed).

16.9 The Supplier shall indemnify and keep indemnified in full the Authorities and any Replacement Provider against all Employment Liabilities relating to:

(a) any person who is or has been employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of any of the Services; or

(b) any trade union or staff association or employee representative,

arising from or connected with any failure by the Supplier and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

16.10 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

16.11 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from clause 16.2 to clause 16.10, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

16.12 Despite clause 16.11, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

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FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

17. TERMINATION

Termination on Default

17.1 Either Authority may terminate the Framework Agreement and/or any Contracts by serving written notice on the Supplier with effect from the date specified in such notice in any of the following circumstances:

(a) if the Supplier is in breach of any material obligation under this Framework Agreement provided that if the breach is capable of remedy, the Authority may only terminate this Framework Agreement under this clause 17.1 if the Supplier has failed to remedy such breach within 30 days of receipt of notice from the Authorities (a **Remediation Notice**) to do so;

(b) if a Consistent Failure has occurred;

(c) if a Catastrophic Failure has occurred;

(d) where either Authority terminates a Contract awarded to the Supplier under this Framework Agreement as a consequence of a material breach by the Supplier;

(e) any warranty given by the Supplier in clause 8 of this Framework Agreement is found to be untrue or misleading; or

(f) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

Termination on insolvency and Change of Control

17.2 Without affecting any other right or remedy available to it, the Authorities may terminate this Framework Agreement and/or any Contracts with immediate effect by giving written notice to the Supplier if:

(a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

(b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier;

(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

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(d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);

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

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

(g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;

(h) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2(a) to clause (g) (inclusive); or

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

17.3 The Supplier shall notify the Authorities immediately if the Supplier undergoes a Change of Control. The Authorities may terminate the Framework Agreement by giving notice in writing to the Supplier with immediate effect within six Months of:

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Authorities becomes aware of the Change of Control;

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

Termination by for convenience

17.4 The Authorities shall have the right to terminate this Framework Agreement, at any time by giving one (1) Month's written notice to the Supplier and all other Framework Providers.

17.5 The Supplier shall have the right to terminate this Framework Agreement, at any time by giving three (3) Month's written notice to the Authorities. For the avoidance of doubt, such termination shall not affect the framework agreements made with other Framework Providers.

18. SUSPENSION OF SUPPLIER'S APPOINTMENT

Without prejudice to the Authorities' rights to terminate the Framework Agreement in clause 17 above, if a right to terminate this Framework Agreement arises in

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accordance with clause 17, the Authorities may suspend the Supplier's right to receive Referrals from the Authorities in any or all Supplier's Zones by giving notice in writing to the Supplier. If the Authorities provide notice to the Supplier in accordance with this clause 18, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authorities in writing from time to time.

19. CONSEQUENCES OF TERMINATION AND EXPIRY

19.1 For the avoidance of doubt, and in accordance with clause 3.7, if one Authority ("**Authority A**") terminates this Framework Agreement but the other Authority ("**Authority B**") does not, then this Framework Agreement shall continue to subsist in so far as it relates to the Supplier and Authority B. Unless the Framework Agreement expires, the Supplier terminates this Framework Agreement or both Authorities terminate this Framework Agreement, any references in the remainder of this clause 19 to "the Authorities" or to "the Authority" shall be interpreted as applying to the Supplier in relation to Authority A only.

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

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

19.4 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Supplier shall return or destroy (at the request of the Authorities) any data, personal information relating to the Authorities or its personnel or Confidential Information belonging to the Authorities in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authorities (in which event the Authorities will reimburse the Supplier's reasonable data conversion expenses), together with all related documentation owned by the Authorities.

19.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.

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19.6 The provisions of clause 8, clause 11, clause 12, clause 13, clause 14, clause 15, clause 16, clause 19, and clause 32 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

20. COMPLAINTS HANDLING AND RESOLUTION

20.1 Within five (5) Working Days of receiving a Complaint, the Supplier shall provide full details of the Complaint to the Authorities, together with details of the steps the Supplier has subsequently taken, to date, to lead to its resolution and any other steps the Supplier plans to take in order to fully resolve the Complaint. The Supplier shall provide additional updates to the Authorities with regard to the Complaint as may be reasonably requested by the Authorities.

20.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Contract, the Supplier shall use its best endeavours to fully resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint in its entirety, expeditiously and fairly.

21. DISPUTE RESOLUTION

21.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the Parties shall follow the procedure set out in this clause:

(a) any Party shall give to the other Party or Parties written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

(b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 10 Working Days of service of the Dispute Notice, the Dispute shall be referred to the senior representatives of the Parties who shall attempt in good faith to resolve it; and

(c) if the senior representatives of the Parties are for any reason unable to resolve the Dispute within 10 Working Days days of it being referred to them then, if all Parties involved in the Dispute agree, these Parties may attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties involved in the Dispute, the mediator shall be nominated by CEDR Solve and the costs of mediation shall be borne in equal parts between the participating Parties.

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21.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 32 (Governing Law and Jurisdiction) which clause shall apply at all times.

GENERAL PROVISIONS

22. CONFLICTS OF INTEREST

22.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Authorities), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Authorities and Service Users under the provisions of the Framework Agreement and/or Contracts.

22.2 The Supplier shall promptly notify the Authorities (providing full particulars) if any conflict referred to in clause 22.1 above arises or is reasonably foreseeable.

22.3 The Authorities reserve the right to terminate the Framework Agreement and any Contracts immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authorities, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authorities and Service Users under the provisions of the Framework Agreement and/or Contracts. The actions of the Authorities under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authorities.

23. PREVENTION OF BRIBERY

23.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Staff or Sub-Contractors, have at any time prior to the Commencement Date:

(a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

23.2 The Supplier shall not during the term of this Framework Agreement or any Contracts:

(a) commit a Prohibited Act; and

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(b) do or suffer anything to be done which would cause the Authorities or any of the Authorities' employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act 2010 or otherwise incur any liability in relation to the Bribery Act 2010.

23.3 The Supplier shall during the term of this Framework Agreement or any Contracts:

(a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

(b) keep appropriate records of its compliance with its obligations under clause 23.3(a) and make such records available to the Authorities on request.

23.4 The Supplier shall immediately notify the Authorities in writing if it becomes aware of any breach of clause 23.1 and/or clause 23.2, or has reason to believe that it has or any of the Staff have:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

23.5 If the Supplier makes a notification to the Authorities pursuant to clause 23.4, the Supplier shall respond promptly to the Authorities' enquiries, co-operate with any investigation, and allow the Authorities to audit any books, records and/or any other relevant documentation in accordance with clause 11 (Records and audit access).

23.6 If the Supplier is in Default under clause 23.1 and/or clause 23.2, the Authorities may by notice:

(a) require the Supplier to remove from performance of any Contract any Staff whose acts or omissions have caused the Default; or

(b) immediately terminate this Framework Agreement and/or any Contracts.

23.7 Any notice served by the Authorities under clause 23.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authorities believe has committed the Prohibited Act and the action that the Authorities have elected to take (including,

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where relevant, the date on which this Framework Agreement and/or any Contracts shall terminate).

24. SUBCONTRACTING AND ASSIGNMENT

24.1 Subject to clause 24.2 and clause 24.4, none of the Parties shall assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement or any Contract without the prior written consent of the other Parties.

24.2 The Supplier may sub-contract any part of its obligations under this Framework Agreement and any Contracts, provided that the provisions of clause 24.3 shall apply.

24.3 In the event that the Supplier sub-contracts any part of its obligations under this Framework Agreement or any Contracts, the Supplier shall enter into a Sub-Contract and the Supplier shall:

(a) remain responsible to the Authorities for the performance of its obligations under the Framework Agreement or Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

(b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms;

(c) notwithstanding its other obligations under this clause, ensure that the Sub-Contractor has complied with its responsibilities under clause 8 (Safeguarding Children and Vulnerable Adults) and clause 9 (Medication) of the Contract;

(d) monitor the performance of its Sub-Contractors; and

(e) provide a copy, at no charge to the Authorities, of any such Sub-Contract on receipt of a request for such by the Authorities' Authorised Representative.

24.4 The Authorities shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authorities.

24.5 Provided that the Authorities has given prior written consent, the Supplier shall be entitled to novate the agreement where:

(a) the specific change in contractor was provided for in the procurement process for the award of this Framework Agreement; or

(b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the

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criteria for qualitative selection applied in the procurement process for the award of this agreement.

25. VARIATIONS TO FRAMEWORK AGREEMENT

25.1 Subject to clause 25.2, any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 5.

25.2 Notwithstanding clause 25.1, the Framework Agreement Variation Procedure shall not apply to any of the matters dealt with in clause 2 (Term of Framework Agreement) or clause 7 (Supplier's Tender Refresh).

26. THIRD PARTY RIGHTS

26.1 Except as provided in clause 3, clause 4, and clause 16, a person who is not a party to this Framework Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement or any Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

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

27. SEVERANCE

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

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

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28. RIGHTS AND REMEDIES

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

29. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Framework Agreement or any Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

30. ENTIRE AGREEMENT

30.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it, and any Contracts made under it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 30 shall operate to exclude any liability for fraud.

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

31. NOTICES

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

31.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or e-mail. Such letters or e-mails shall be addressed to the other Party in the manner referred to in clause 31.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or sooner where the other Party acknowledges receipt of such letters or e-mail.

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31.3 For the purposes of clause 31.2, the address of each Party shall be:

(a) For DCC:

Rebecca Hudson

Address: 1st Floor, The Annexe, County Hall, Topsham Road, Exeter, Devon EX2 4QD

Tel: 01392 383000

E-mail: rebecca.hudson@devon.gov.uk

(b) For the Trust:

Dr Sherrie Hitchen

Address: Wonford House, Dryden Road, Exeter, EX2 5AF

Tel: 01392 208689

E-mail: sherrie.hitchen@nhs.net

(c) For the Supplier:

as set out in response to question 1.3 of Section E1 (Selection Criteria) of the Tender.

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

32. GOVERNING LAW AND JURISDICTION

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

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

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

SIGNED BY FOR AND ON BEHALF OF **DEVON COUNTY COUNCIL**

Name: ……..

Position: ……..

Signature: ……

SIGNED BY FOR AND ON BEHALF OF **DEVON NHS PARTNERSHIP TRUST**

Name: ……..

Position: ……..

Signature: ……

SIGNED BY FOR AND ON BEHALF OF **[SUPPLIER]**

Name: ……..

Position: ……..

Signature: ……

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Schedule 1 Supplier's Zones

The Supplier has been appointed to the following Zones for Year [1] [2] [3] [4]:

LOT 2 (INDIVIDUAL)		
Zone	**Description of Zone**	**Supplier's Ranking for Year [1] [2] [3] [4]**

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Schedule 2 Pricing Matrix

Pricing Matrix – Lot 2 Individualised Care and Support for Year [1] [2] [3] [4]	
Supplier:	
Zone	**Hourly Rate* (excluding VAT)**
1 Bideford/Northam, Great Torrington and Holsworthy	£
2 Ilfracombe, Lynton/Lynmouth, Barnstaple, South Molton	£
3 Tiverton, Crediton, Cullompton	£
4 Exeter	£
5 Honiton, Sidmouth, Exmouth, Seaton	£
6 Newton Abbot, Totnes, Dartmouth	£
7 Tavistock, Ivybridge	£
8 Okehampton, Moretonhampstead	£
* The Hourly Rate for Scheduled Packages will be subject to the Multiple Hour Discount. For the avoidance of doubt, the Hourly Rate for Flexible Packages will not be subject to the Multiple Hour Discount.	

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Pricing revisions

The prices contained in the Pricing Matrix are subject to revision in accordance with clause 7. No other amendments to the Pricing Matrix are permitted.

Schedule 3 Call-off Schedule

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Devon County Council

CP1329-16

OJEU REF – 2017/S 042-076945

Call Off Schedule Lot 2 - Individualised Care and Support Open Framework Agreement

CP1329–16 Supporting Independence.

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This schedule defines how to Call Off Packages of Care and Support from Lot 2 - Individualised Care and Support Open Framework Agreement.

Definitions

Authorised Officer(s) shall mean:	A member of DCC or DPT care management staff who is making a Referral and/or arranging a Package of Care and Support.
Available shall mean:	When the Provider affirms that they are competent to and have availability to meet the needs of the Service User following their receipt of the Referral but before the Package of Care and Support has been awarded to them.
Best Ranked Provider shall mean:	The Provider in a Zone who has declared themselves Available to take a Package of Care and Support following receipt of the Referral and who has the Ranked Position of or nearest to 1st place out of those Providers that declared themselves Available.
Best Value shall mean:	Shall mean the most appropriately costed Package of Care and Support to enable a Service Users eligible need(s) to be met.
Call(s)/Called Off(s) shall mean:	The process used to purchase a Package of Care and Support by the Commissioner under CP1329-16 Supporting Independence. Lot 2 - Individualised Care and Support Open Framework Agreement without the need for open competition.
Carer(s) shall mean:	A paid, or unpaid, person who supports the Service User.
(the) Commissioner shall mean:	Either Devon County Council or Devon Partnership Trust, responsible for administering the budget in relation to social care services.
Core Competencies shall mean:	The abilities of the Provider to deliver the Service User specific objectives described in the Referral and/or My Care and Support Plan (these objectives are described within sections 4.2.1 to 4.2.10 Schedule 4 of the ITT.
Eligible Need(s) shall mean:	There is a process by which an individual's eligibility for social care services is determined, following an assessment of need. The national eligibility criteria set a minimum threshold to ensure that all local authorities meet the same minimum level of needs.
Entry Point(s) shall mean:	The point at which new providers can tender to join CP1329 – 16 Supporting Independence. Lot 2 - Individualised Care and Support Open Framework Agreement. Entry points will amount to 4 entry points in total – one at the initial Procurement Process, and a further 3. See Section A4.1.11 of the ITT.
Flexible Package(s) shall mean:	Where the Commissioner Calls Off a Package of Care and Support in volumes of hours to be delivered to the Service User by the Provider flexibly over a given period (e.g. 10 hours per week or 40 hours per month etc.). The Authorised Officer will determine if appropriate to use a Flexible Package in conjunction with the Service User and /or Carer and this will be indicated in any Referral and My Care and

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	Support Plan.
Invitation to Tender (ITT) shall mean:	Invitation to Tender for CP1329-16 Supporting Independence.
Multiple Hour Discount(s) shall mean:	Regarding Scheduled Packages (Multiple Hour Discount(s) does not apply to Flexible Package(s)), a discount of 15% will be applied to the price detailed by the Provider in Section E3 – Pricing Schedule – Lot 2 Individualised Care and Support for the appropriate Zone of the ITT. The 15% discount will not apply to the first hour of each scheduled visit and will only apply to any subsequent hour(s) (or part thereof) within that scheduled visit. (e.g. for example –a Package of Care and Support is provided on Monday for 1 hour and Tuesday for 2 hours, the first hour on Monday and Tuesday will be priced at the price detailed in Section E3 – Pricing Schedule – Lot 2 Individualised Care and Support for the appropriate Zone and the subsequent hour on Tuesday shall be subject to a 15% discount).
My Care and Support Plan(s) shall mean:	For DCC a document which contains personal information, the individual needs of the Service User and what Outcomes need to be achieved through the provision of a Package of Care and Support. For this purpose DPT use a Community Care Plan instead of a My Care and Support Plan, however for the purposes of the Specification, ITT or this schedule shall be referred to as a My Care and Support Plan.
New Business shall mean:	A Service User who has not had a Package of Care and Support commissioned on their behalf for the last 30 days at the time of Referral will be classed as a new Referral and their package as New Business, even though they may have had other types of support commissioned. This includes people who have been in hospital for more than 30 days.
Order Form shall mean:	See Schedule 4 of Schedule 6 of the ITT (Framework Agreement for Lot 2 Individualised Care and Support Open Framework Agreement).
Outcomes shall mean:	As defined in a Service User's My Care and Support Plan.
Package(s) of Care and Support shall mean:	The services required by a Service User(s) following social care assessment to determine if there is Eligible Need. A Package of Care and Support can be either a Flexible Package(s) or Scheduled Package(s).
Personal Budget(s) shall mean:	The monetary sum allocated via social care eligibility assessment. For more information on assessment and eligibility see: https://new.devon.gov.uk/adultsocialcareandhealth/assessments-for-care/ For more information on Personal budgets see: https://new.devon.gov.uk/adultsocialcareandhealth/assessments-for-care/after-your-assessment/personal-budgets/ .
Provider(s) shall mean:	The organisation that has successfully passed selection and quality standards as defined in the ITT and any Associated Documents and has been approved to supply Lot 2 – Individualised Care and Support Open Framework Agreement under the contract CP1329-16 Supporting

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	Independence.
Provider Failure shall mean:	where a Provider 'hands back' Packages of Care and Support the Commissioner will be able to Call Off from CP1329-16 Supporting Independence Lot 2 - Individualised Care and Support Open Framework Agreement using methods 3.2 (a) or 3.2 (b) as detailed in this document.
Ranked Position shall mean:	There will be a Ranked Position determined for each Zone and as a result Providers may be ranked differently within the Zones for which they have tendered. As part of the tender process Providers required to state their hourly rate for providing Individualised Care and Support. The prices submitted will be used to determine a Ranked Position in each Zone. The rank of 1st place will be the Provider who has submitted the lowest monetary price across each Zone, remaining positions will be determined in ascending price order with the highest monetary price submitted by a Provider assuming the last placed position. Price will be the determining factor in arriving at the Ranked Position, except in the following circumstance where two or more Providers submit the same price in the same Zone, in this instance the overall quality score as defined in Section E2 Award Criteria Questions of the ITT will be used in order to determine the rank order of those Providers submitting the same price. The Provider with the highest quality score will assume the higher ranked position of the Providers submitting the same price and further place(s) will be determined in descending quality score order with the provider who has achieves the lowest quality score assuming the last placed position out of those providers submitting the same price.
Referral(s) shall mean:	A Referral gives information about the Service User and will provide enough information to enable the Provider to be able to make a decision on whether they have the Core Competencies to meet the needs of the Service User and enable the Service User to achieve their outcomes.
Service User(s) shall mean:	Any person using the service supplied by a Provider of Lot 2 – Individualised Care and Support Open Framework Agreement under the contract CP1329-16 Supporting Independence, irrespective of which Service User group they may be classified as.
Scheduled Package(s) shall mean:	Where the Commissioner Calls Off a Package of Care and Support in volumes of hours to be delivered to the Service User by the Provider in a predetermined and scheduled manner (e.g. 1 hour Monday, Tuesday, Thursday and Friday and 4 hours on a Wednesday). Scheduled Packages will be subject to a Multiple Hour Discount. A Scheduled Package can be where the Commissioner describes the scheduling or where the scheduling is agreed between the Provider and Service User, regardless of who describes the scheduling.
Working Day(s) shall mean:	Monday – Friday 09:00 – 17:00.
Zone(s) shall mean:	As detailed in the specification Section 2.2 of Schedule 4, of the ITT.

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1. Assessment Process

Call Off of a Package of Care and Support will only be made where a Service User has been assessed as eligible for social care and allocated a Personal Budget to meet that need.

2. Zones

The Call-Off process can apply to any Zone.

At each Entry Point providers are free to select the Zone(s) in which they can operate. Providers will not be expected or approached to supply services outside the Zones in which they operate.

3. Call Off process

Best Ranked Available Provider

3.1 The Call Off processes detailed below will apply to New Business only and existing Service Users as per Section 2.1 of the Specification for Lot 2 – Individualised Care and Support Open Framework (Schedule 4 of the ITT).

- Service User undergoes a social care assessment to determine eligibility and allocate a Personal Budget if appropriate.
- If Service User is eligible the Authorised Officer will construct a My Care and Support Plan and Referral. The Authorised Officer will determine if appropriate to use a Scheduled Package or Flexible Package in conjunction with the Service User and /or Carer and this will be indicated in any Referral and My Care and Support Plan.
- The Service User's Package of Care and Support will be offered to all of the Providers who operate, within the required Zone, simultaneously by sending the Referral.
- Providers, if Available must respond to the Referral within 2 Working Days for standard Call Offs or 4 hours (within Working Days) for emergency Call Offs.
- Of the Providers that state they are Available the Ranked Position will be used to determine who will be awarded the Package of Care and Support. The Best Ranked Provider will be awarded the Package of Care and Support.

Providers are not required to respond to any Referral sent to them if they do not feel competent to meet the individual care and support needs of the Service User or do not have capacity to accommodate the number of hours required by the Service User.

Commissioners will work with Providers as part of contract monitoring to review the reasons for refusal(s) to jointly address any issues arising and help increase capacity and sufficiency in the market.

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3.2 Call Off process in the event of Provider Failure.

In instances of Provider Failure the Commissioner will be able to Call Off from CP1329-16 Supporting Independence Lot 2 - Individualised Care and Support Open Framework Agreement by using (at its discretion) either 3.2 (a) or 3.2 (b) detailed below:

Best Ranked Available Provider

3.2 (a) ***Multiple Service User Call Off using Ranked Position***

Multiple Service User Call Off using Ranked Position and The Best Ranked Provider to determine the Provider:

- All Packages of Care and Support that require re-allocation due to Provider failure will be offered to all of the Providers who operate, within the required Zone(s), simultaneously by sending the a 'Multiple Service User – Ranked Position' Referral.
- Providers, if Available must respond to the 'Multiple Service User – Ranked Position' Referral within 2 Working Days for standard 'Multiple Service User – Ranked Position' Call Offs or 4 hours (within Working Days) for emergency 'Multiple Service User – Ranked Position' Call Offs.
- Of the Providers that state they are Available the Ranked Position will be used to determine who will be awarded the Package(s) of Care and Support. The Best Ranked Provider will be awarded the Package(s) of Care and Support contained in the 'Multiple Service User – Ranked Position' Referral.

Mini Competition

3.2 (b) ***Multiple Service User Call Off using Mini Competition***

Multiple Service User Call Off using Mini Competition to determine the Provider:

- All Packages of Care and Support that require re-allocation due to Provider failure will be offered to all of the Providers who operate, within the required Zone(s), simultaneously by sending the a 'Multiple Service User – Mini Competition' Referral.
- Providers, if Available must respond to the 'Multiple Service User – Mini Competition'' Referral within 2 Working Days for standard 'Multiple Service User – Mini Competition' Call Offs or 4 hours (within Working Days) for emergency 'Multiple Service User – Mini Competition' Call Offs.
- Of the Providers that state they are Available the Provider who submits the best bespoke hourly price for delivering all of the Packages of Care and Support contained in the 'Multiple Service User – Mini Competition' Call Off will be awarded the Packages of Care and Support. Providers must note that any bespoke price offered for

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'Multiple Service User – Mini Competition' cannot exceed any hourly rate that have already submitted for the Zone(s) contained in Section E3 – Pricing Schedule of the ITT.

Personal Brokerage

3.3 ***Call Off of high cost Packages of Care and Support***

- Call Off process will be integrated into the Commissioner's existing business processes, which may change during the term of the Open Framework Agreement.

- For any high cost packages of care and support, packages over £500 per week for DCC or £300 per week for DPT, the Commissioner reserves the right to utilise the Personal Brokerage function and not to use the Call Off arrangement as described.

4. Meeting the assessed needs / outcomes of the Service User

If a Provider indicates it is Available to deliver a Package of Care and Support, it is required to ensure it has the necessary Core Competencies to deliver the Service User specific objectives described in the My Care and Support Plan. These objectives are described within sections 4.2.1 to 4.2.10 of Schedule 4 of the ITT.

The Provider must apply safe, reasonable and informed judgement to the degree to which their attainment of Core Competencies, required for the overall contract award, is used to develop areas of strength and experience that may be new to them.

The Commissioner will apply the Performance Indicators as defined in – Appendix E of the ITT within this contract to assure itself that reasonable and informed judgements are being made by the Provider in this respect.

5. Call Off across Lots

In some instances, the Authorised Officer may approach both Providers on Lot 1 - Group Based Care Open Framework Agreement and Lot 2 - Individualised Care and Support Open Framework Agreement, in order to maximise the choice in how a Service User's needs and outcomes may be met. When the Authorised Officer has determined whether Lot 1 or Lot 2 would be the best option, the appropriate Call Off will be followed.

6. Giving Service Users Choice of Provider

When a Service User is assessed as eligible for a social care service, careful discussion will take place with them about the best way in which to arrange their Service through their Personal Budget, including the option of taking a 'Direct Payment'.
The process of arranging care and support may take place across a number of different teams and departments, but the Call Off arrangements (described above) for Lot 2 - Individualised Care and Support will be consistently applied wherever the Commissioner purchases a Package of Care and Support.

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The Commissioners Choice policy states that choices that Service Users are offered about how their eligible needs are met must only include the Best Value options where the Package of Care and Support will be funded by the Commissioner.

Package of Care and Support that achieve the best possible outcomes will not necessarily be funded without due regard to cost.

Providers will market their services widely; this will increase the Service Users ability to make independent choices.

7. Price and Commercial Sensitivity

Providers will have already submitted a price (as part of the tender process) as an hourly rate, please see Section E3 – Pricing Schedule of the ITT for more information.

To select the most appropriate service type or Provider to meet their needs within a Service Users Personal Budget, the Authorised Officer may need to divulge the price the Provider has submitted. This is because the Service User may request knowledge of the cost in order to work out how much of a particular service they can afford in line with their Personal Budget. Please see: A4.1.5 of the ITT and Schedule 6 of the ITT that covers this issue.

Lot 2 - Individualised Care and Support Open Framework Agreement will be open to new entrants on an annual basis known as Entry Points, see Section A4.1.11 of the ITT for more information. Providers may use Entry Points as an opportunity to re-submit their price. Providers will have no further opportunities for submitting or negotiating their price outside of the Entry Points (except in the Call Off process detail at 3.2 (b) Multiple Service User Call Off using Mini Competition). For further information see section 12 below.

8. Private Payment Arrangements

If a Service User wishes to purchase more support than their Personal Budget allows, or choose a service which charges more than their Personal Budget will allow, they will be free to pay more than their Personal Budget. This additional amount will be agreed in a private arrangement between the Service User and the Provider.

The 'Fair and Affordable Care' policy ' (https://new.devon.gov.uk/adultsocialcareandhealth/policies-and-procedures) will apply when Service Users choose not to accept the service offered to meet their needs within their Personal Budget, and decide to purchase a more expensive service.

Further choice can be achieved, by the Service User adding to the value of their Personal Budget, via their own funds, or purchasing less service from a higher priced Provider on the Open Framework. However, if the Service Users chose to purchase less service, their Care Manger would have to determine whether the Service Users My Care and Support Plan and Outcomes requirements will be achieved with a lesser amount of service.

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Alternatively a Service User could take a Direct Payment to choose from Providers who are not on the framework or a Lot 2 Individualised Care and Support Open Framework Provider, but this will be a separate direct contract between the Provider and Service User.

9. Out of hours call off

It is not envisaged that any out of hours call off will be required.

10. Awarding the Support Package

When a Provider has stated they are Available and has been determined as the Best Ranked Provider the Authorised Officer will confirm the start date with Service User. The Order Form (Schedule 4 of Schedule 6 of the ITT) and the My Care and Support Plan will then be sent to the Provider (and Service User if appropriate) by the Authorised Officer and this will form the contract between the Commissioner and the Provider.

11. Flexible Package(s), Scheduled Package(s) and Multiple Hour Discount.

Within the Definitions section of this schedule the Commissioner has defined the terms Scheduled Package and Flexible Package to describe the two different ways that Packages of Care and Support could be requested by the Commissioner.

11.1 Flexible Package(s)

For Flexible Packages, the Authorised Officer in conjunction with the Service User and /or Carer will determine whether there is a need to deliver individualised care and support in a way that is not fixed to an agreed schedule. In some circumstances the use of a Flexible Package could provide the best opportunity to achieve the Service User's outcomes because their needs are such that a Scheduled Package would not be appropriate or that the Service User would find it difficult to engage with a Scheduled Package. Where a Flexible Package is commissioned, the Provider will agree with the Service User how the Flexible Package is deployed in order to meet the outcomes within the My Care and Support Plan. The Provider will use the Flexible Packages to work proactively and creatively with the Service User (and others supporting the overall care arrangements) to deliver the outcomes of the My Care and Support plan. Providers will adopt an Enabling approach when working with the Service User.

Flexible Packages may be commissioned where it is recognised that a Flexible Package provides the best opportunity to achieve the Service User's outcomes because their needs are such that a Scheduled Package would not be appropriate or that the Service User would find it difficult to engage with a Scheduled Package.
Each hour of a Flexible Package will be paid in full as per the price specified by the Provider in Section E3 – Pricing Schedule – Lot 2 Individualised Care and Support. However, providers should note that in determining whether a package is a Scheduled Package or a Flexible Package the Commissioner will apply the principles described in the Figure 1 below:

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11.2 (a) Scheduled Package(s)

For Scheduled Packages, the Authorised Officer in conjunction with the Service User and /or Carer will determine a schedule for delivering the Schedule Package (e.g. 1 hour Monday, Tuesday, Thursday and Friday and 4 hours on a Wednesday). Unless the daily timings of the visits are critical to enable the Service User to achieve the outcomes of their My Care and Support Plan Providers will be given scope to agree the actual daily timings with the Service User and / or their Carer. Providers will adopt an Enabling approach when working with Service Users.

11.2(b) Multiple Hour Discount

Multiple hour discount will only applies to Scheduled Package(s).

A discount of 15% will be applied to the price detailed by the Provider in Section E3 – Pricing Schedule of the ITT – Lot 2 Individualised Care and Support for the appropriate Zone. The 15% discount will not apply to the first hour of each scheduled visit and will only apply to any subsequent hour(s) (or part thereof) within that scheduled visit. (e.g. for example –a Package of Care and Support is provided on Monday for 1 hour and Tuesday for 2 hours, the first hour on Monday and Tuesday will be priced at the price detailed in Section E3 – Pricing Schedule – Lot 2 Individualised Care and Support for the appropriate Zone and the subsequent hour on Tuesday shall be subject to a 15% discount).

Figure 1

Scenario	Description	Pricing determination
1	At Call Off the Commissioner describes the scheduling that will apply to the delivery of a Scheduled Package.	The hourly rate **would be** subject to the Multiple Hour Discount
2	At Call Off the Commissioner describes the requirement that scheduling will apply to the delivery of the Scheduled Package, but this scheduling is left to the Provider and Service User to agree on an individual basis.	The hourly rate **would be** subject to the Multiple Hour Discount
3	At Call Off the Commissioner describes the requirement that flexibility is a required feature to the delivery of the Flexible Package and is to be arranged between the Provider and Service User on an individual basis.	The hourly rate **would not be** subject to the Multiple Hour Discount – at least until the package was reviewed

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Schedule 4 Order Form

ORDER FORM

Framework Agreement for the Provision of Individualised Care and Support Services (OJEU Notice reference: [xxxxx])

This Order Form incorporates the Call-off Terms and Conditions and the terms and conditions of the Framework Agreement.

Unless otherwise defined in this Order Form, terms defined in the Framework Agreement and Contract shall have the same meaning when used in this Order Form.

The rules of interpretation of the Framework Agreement shall apply to this Order Form as if set out in this Order Form.

The [My Care and Support Plan] [Community Care Plan] form part of this Order Form and is attached as Appendix 1.

Any amendments to this Order Form must be made in accordance with clause 22 of the Call-off Terms and Conditions (Variation).

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FROM:

Authority:	[AUTHORITY'S NAME]
Service address:	
Invoice address:	
Authorised Representative for the Contract:	Ref: Phone: E-mail:
Order number:	To be quoted on all correspondence relating to this Order:
Order date:	

TO:

Supplier:	[SUPPLIER'S NAME]
Authorised Representative for the Contract:	Ref: Phone: E-mail:
Address:	

1. SERVICES REQUIREMENTS
(1.1) Services and outcomes required: As per the [My Care and Support Plan] [Community Care Plan].

(1.2) Service Commencement Date: As per the [My Care and Support Plan] [Community Care Plan].
(1.3) Completion date: An initial contract period of [INSERT FIXED DATE], as may be extended pursuant to clause 4 of the Call-off Terms and Conditions **OR** [The Service shall continue until terminated in accordance with the Call-off Terms and Conditions.]

2 ADDITIONAL REQUIREMENTS
(2.1) Additional requirements (if any): As per the [My Care and Support Plan] [Community Care Plan].
(2.2) Equipment to be supplied by the Authority (if any): As per the [My Care and Support Plan] [Community Care Plan].
(2.3) Trial Period (if applicable): As per the [My Care and Support Plan] [Community Care Plan].

3. PERFORMANCE OF THE SERVICES AND OUTCOMES
(3.1) Performance standards: As set out in the Specification (including, for the avoidance of doubt, the Performance Management Framework appended to the Specification).
(3.2) Location(s) at which the Services are to be provided (Premises): As per the [My Care and Support Plan] [Community Care Plan].
(3.3) Management Information and meetings: As set out in the Specification (including, for the avoidance of doubt, the Performance Management Framework appended to the Specification).

4. CONTRACT PRICE
(4.1) Contract Price (exclusive of VAT): As per the [My Care and Support Plan] [Community Care Plan] (which unless otherwise stated, is a weekly cost).

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5. CONFIDENTIAL INFORMATION
(5.1) The following information shall be deemed Confidential Information: The Referral and [My Care and Support Plan] [Community Care Plan].

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES that this Order Form (which includes Appendix 1) constitutes a legally binding contract with the Authority to provide to the Authority the Services specified in this Order Form incorporating the rights and obligations in the Call-off Terms and Conditions and the Framework Agreement entered into by the Supplier and the Authorities.

For and on behalf of the Supplier:

Name and title	
Signature	
Date	

For and on behalf of the Authority:

Name and title	
Signature	
Date	

Appendix 1: [My Care and Support Plan] [Community Care Plan]

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Schedule 5 Framework Agreement Variation Procedure

1. INTRODUCTION

1.1 Schedule 5 details the scope of the variations permitted and the process to be followed where the Authorities proposes a variation to the Framework Agreement.

2. VARIATIONS THAT ARE NOT PERMITTED

2.1 The Authorities may not propose any variation that:

(a) would amount to a material change in the Framework Agreement or the Services and contravene Regulation 72 of the Regulations;

(b) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or

(c) is in contravention of any Law.

3. PROCEDURE FOR PROPOSING A VARIATION

3.1 Except where paragraph 2 applies, the Authorities may propose a variation using the procedure contained in this paragraph 3.

3.2 In order to propose a variation, the Authorities shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**"Notice of Variation"**).

3.3 The Notice of Variation shall:

(a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrix are necessary; and

(b) require each Framework Provider to notify the Authorities within 10 Working Days of any proposed changes to its prices set out in its Pricing Matrix that it would require as a direct result of the variation (together with reasons and any supporting evidence);

(c) require that if any Framework Provider objects to the Notice of Variation, it must respond in writing with its objections, together with reasons, within 10 Working Days.

3.4 Where the Authorities:

(a) do not receive any written objections to the variation within the timescales detailed in paragraph 3.3(c); and

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(b) do not receive any proposed changes to the Framework Providers' prices set out in their Pricing Matrix within the timescales detailed in paragraph 3.3(c); or

(c) receive proposed changes to one or more Framework Provider's prices set out in their Pricing Matrix, together with reasons and supporting evidence, within the timescales detailed in paragraph 3.3(c) and such proposed changes are acceptable to the Authorities,

then the Authorities may serve each Framework Provider with a written agreement detailing the variation to be signed. Each Framework Provider shall sign and return the written agreement within 5 Working Days of receipt.

4. OBJECTIONS TO A VARIATION

In the event that the Authorities receive one or more written objections to a proposed variation, the Authorities may:

(a) withdraw the proposed variation; or

(b) propose an amendment to the variation, repeating the procedure at paragraph 3.

5. CHANGES TO THE PRICING MATRIX

5.1 Where the Authorities have not received any written objections to a proposed variation but the Authorities have received, from one or more Framework Providers, proposed changes to the prices set out in their Pricing Matrix in accordance with paragraph 3.3(b) and such proposed price changes, in the Authorities' view, would not be a direct result of the proposed variation and/or are not supported with sufficient evidence, then the Authorities may require:

(a) further evidence from the Framework Provider(s); and/or

(b) the Framework Provider to meet and discuss any proposed changes to the Pricing Matrix that would result from the proposed variation.

5.2 Where a change to a Framework Provider's Pricing Matrix is agreed by the Authorities, the Authorities shall notify its acceptance of the change to the Framework Provider in writing. The Authorities may then serve each Framework Provider with a written agreement detailing the variation to be signed. Each Framework Provider shall sign and return the written agreement within 5 Working Days of receipt.

5.3 In the event that the Authorities and the Framework Provider(s) cannot agree to the changes to the Pricing Matrix, the Authorities may:

(a) withdraw the variation; or

(b) propose an amendment to the variation, repeating the procedure at paragraph 3.

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Schedule 6 Call-off Terms and Conditions

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