

**London Borough of Southwark
Care at Home and in the Community
For Children & Young People (CYP)
Services Tender**

**Section 4:
Framework Agreement**

CONTRACT PARTICULARS

Commencement Date:	xx/xx/2020
Contract Year:	a period of 12 months, commencing on the Commencement Date.
Initial Term:	the period commencing on the Commencement Date and ending on xx/xx/2024.
Extension Period:	N/A
Specific Consents:	Shall include without limitation the following specific consents Care Quality Commission (Registration) Regulations 2009 (Part 4) (as amended)
The following clauses DO NOT APPLY	
Clause 14	Service Credits
Clause 11	Premises and Assets
Schedule 14	Premises and Assets

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1. DEFINITIONS AND INTERPRETATION

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

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

Annual Quality Assurance Report: A report reviewing the Service as set out in Schedule 6.

Annual Quality Assurance Review Date: [Date] and thereafter annually on the anniversary of this date.

Approval and Approved: means the prior written approval of the Council

Associated Company: any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Authorised Officer: means an officer of the Council authorised to act in respect of this Framework Agreement

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 6.

Authority Assets: any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services.

Authority's Premises: the premises which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this agreement.

Barred List: the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Continuity Plan: a plan which sets out the process involved in creating a system of prevention and recovery from potential threats to a company. The procedures to be adopted by the Supplier in the event that a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event), the Business Continuity Plan at the date of this agreement being set out in Schedule 8.

Care Quality Commission (CQC): The independent regulator of all health and social care services in England.

Catastrophic Failure

(a) a failure by the Supplier for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of a Disaster.

- (b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.
- (c) a failure by the Supplier to carry out all of the Services for 24 hours and/or a failure by the Supplier to carry out any part of the Services for 30 consecutive days or 60 non-consecutive days in any Contract Year (except where relieved of the obligation to do so by express provisions of the agreement).
- (d) A cancellation of the registration status of the provider by the Care Quality Commission that is required in order to lawfully and safely perform the duties required.

Change: any change to this agreement including to any of the Services.

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 9.

Channel: the programme which provides support to individuals who are at risk of being drawn into terrorism which was put on a statutory footing by Chapter 2 of Part 5 of the Counter-Terrorism and Security Act 2015 (CTSA15).

Charges: the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Commencement Date: the date included in the Contract Particulars.

Commercially Sensitive Information: information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

Community Protection Notice: Community Protection Notice as defined in the Anti-social Behaviour, Crime and Policing Act 2014.

Confidential Information: means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the GDPR.

Consistent Failure: shall have the meaning set out in Schedule 5.

Contract Period: means the period of the Framework Agreement from the Commencement Date to:-

- (a) the date of expiry set out in Clause 2 (Term of Framework Agreement); or
- (b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract

Contract Year: as set out in the Contract Particulars.

Convictions: other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.

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

Data Protection Legislation: the General Data Protection Regulation (Regulation (EU) 2016/679) (**GDPR**), 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.

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

Default: means any breach of the obligations of the relevant Party (including but not limited to 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 Email Referral and in respect of which such Party is liable to the other.

Default Notice: as defined in clause 5.2.

Disaster: an event defined as a disaster in the Business Continuity Plan.

Disclosure and Barring Scheme: the disclosure and barring scheme operated by the Disclosure and Barring Service.

Dispute Resolution Procedure: the procedure set out in clause 25.

Email Referral: means the Package submitted to the Provider by the Council in accordance with the Framework Agreement which sets out the description of the Services to be supplied including, where appropriate, the timeframe and any Quality Standards.

Equalities Legislation: all legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, sex, marital or civil partnership status, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any preceding, successor or amending Legislation concerning the same.

Equipment: means the Provider's equipment consisting items supplied and used by the Provider in the performance of its obligations under this Agreement.

Exit Management Plan: the plan set out in Schedule 10.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under such 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.

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

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

Framework Providers: means those providers (including the Provider) appointed by the Council to the "Framework" under a framework agreement on similar terms to this Framework Agreement

Framework Term: means the period commencing on the Commencement Date and ending on 30th September 2024 or on earlier termination of this Framework Agreement.

General Change in Law: any change in law which impacts on the performance of the Services and comes into force after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to the supply of services to another customer of the Supplier that are the same or similar to the Services.

Health and Safety Policy: the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

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

Information Legislation: the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004, the Aarhus Convention and Local Audit and Accountability Act 2014 and all applicable laws and regulations relating to Requests for Information and any subordinate legislation 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.

Initial Term: the period set out in the Contract Particulars.

Insolvency Event: where:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the 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 the Supplier with one or more other companies or the solvent reconstruction of that other party;
- (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 that other party (being a company) other than for the sole

purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (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; (i) 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;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);
- (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (j) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

Intellectual Property Rights or IPR : 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 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.

Key Personnel: those personnel identified in Schedule 6 for the roles attributed to such personnel, as modified pursuant to clause 15.

KPIs: the key performance indicators set out in Schedule 1 – Service Specification.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

London Living Wage (LLW): shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure.

Losses: any and all claims, fees, costs, expenses (including without limitation, legal costs on a solicitor and own client basis), loss, damages, demands and liabilities.

Material Default: means any material and/or substantial breach of this Framework Agreement.

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 22 and Schedule 6 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation all specific consents set out in the Contract Particulars.

Package: means a package of care served by the Council on the Provider in accordance with the Referral Process.

Party: means the Council and/or the Provider as appropriate and as the context permits and "Parties" shall be construed accordingly.

Payment Plan: the plan for payment of the Charges as set out in Schedule 4.

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

Process: has the meaning given to it under the Data Protection Legislation but, for the purposes of this agreement, it shall include both manual and automatic processing and "Processing" and "Processed" shall be construed accordingly.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under clause 1.1(c) if such activity, practice or conduct had been carried out in the UK.

Provider: means [] and shall have the same meaning as 'Supplier', if the context so permits, any of the Provider's officers, Staff, sub-contractors or agents, with whom the Council enters into this Framework Agreement.

Referral Period: means the period of the Email Referral from the Commencement Date to:-

- (a) the date of expiry set out in Clause 2 (Term of Framework Agreement); or
- (b) date of termination or partial termination of the Care and Support Package Email Referral in accordance with the Law or the provisions of the Framework Agreement.

Referral Process: means the procedure specified in Schedule 2.

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

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

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

Remediation Notice: a notice served by the Authority in accordance with clause 36.1(a).

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or partial termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Authority from time to time (or where the Authority is providing Replacement Services for its own account, the Authority).

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Information Legislation.

Service Credits: the sums attributable to a Service Failure as specified in Schedule 2.

Service Failure: a failure by the Supplier to provide the Services in accordance with any individual Target KPI measured on a monthly basis.

Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1 (Specification).

Specific Change in Law: a change in law which impacts on the performance of the Services which comes into force after the Commencement Date that relates specifically to the business of the Authority and would not affect the supply of services to another customer of the Supplier that are the same or similar to the Services.

Staff Vetting Procedures: means the Council's guidelines, procedures and departmental policies for the vetting of personnel whose role will involve contact with children and vulnerable adults (all of which are available on request by the Provider to the Council).

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 Suppliers that enter into a Sub-Contract with the Supplier.

Supplier Party: the Supplier's agents and contractors, including each Sub-Contractor.

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

Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in Schedule 3.

Target KPI: the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in Schedule 5.

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

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

Termination Payment Default: is defined in Schedule 4.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or other regulations implementing the Acquired Rights Directive.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

- 1.13 No review, comment or approval by the Authority under the provisions of the agreement shall operate to exclude or limit the Supplier's obligations or liabilities under the agreement or the Authority's rights under the agreement.
- 1.14 Where any statement is qualified by the expression **so far as [] is aware or to [] knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.15 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. TERM OF FRAMEWORK AGREEMENT

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

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Council and the Provider in respect of the provision of the Services by the Provider to the Council.
- 3.2 The council may at its absolute discretion and from time to time order Services from the Provider in accordance with the Referral Process (Schedule 2) during the Framework Term.
- 3.3 The Provider acknowledges that there is no obligation for the Council to purchase any Services from the Provider during the Framework Term.
- 3.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

PROVIDER'S STATUS

- 3.5 At all times during the Framework Term the Provider shall be an independent Provider and nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be

authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Framework Agreement.

MISTAKES IN INFORMATION

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

4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

- 4.1 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) it has received all information requested by it from the Authority pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.1(b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this agreement in reliance on its own due diligence.

- 4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

- 4.3 The Supplier:

- (a) as at the Commencement Date, warrants and represents that 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 Authority prior to execution of the agreement; and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- (c) warrants and represents to and undertakes with the Authority in the terms set out in the conditions of tendering.

- 4.4 The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 4.3(b) save where such additional

costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Warning Notice**) as detailed in Schedule 5 Part 4.
- 5.3 In the alternative, and depending on the severity of the breach of clause 5.1, the Authority may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**) as detailed in Schedule 5 Part 4. The Authority may also serve a Default Notice where the Provider does not comply with an issued Warning Notice.
- 5.4 The Council may inspect and examine the manner in which the Provider supplies the Services at the Provider's premises during normal business hours without giving prior notice.
- 5.5 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services does not meet the requirements of the Framework Agreement or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Council, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Council under the Framework Agreement within such reasonable time as may be specified by the Council.
- 5.6 Timely supply of the Services shall be of the essence of the Referral Process, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- 5.7 For the avoidance of doubt this agreement shall not be exclusive. The Authority shall be entitled at any time from the Commencement Date and thereafter throughout the Term to carry out any part of the Services or services of a similar nature itself or to procure a third party to do so.

6. KPIs

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

- 6.2 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Appendix 1 – Service Specification.
- 6.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 22.
- 6.4 In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have:-
- (a) where this amounts to a Consistent Failure, the Authority may serve a suspension notice upon the Supplier in accordance with the provisions of clause 36A; and
 - (b) the provisions of clause 14 shall apply.

7. SERVICE STANDARDS

- 7.1 Without prejudice to clause 6, the Supplier shall provide the Services, or procure that they are provided:
- (a) in accordance with this agreement including the Specification, any method statements and programme;
 - (b) in a good, safe and competent manner and free from dishonesty and corruption;
 - (c) with reasonable skill and care and in accordance with the Best Industry Practice applicable;
 - (d) in a manner which is not, and is not likely to become injurious to health or detrimental to the environment or to any property in the area where the Services are being performed;
 - (e) in a manner which shall promote and enhance the image and reputation of the Authority;
 - (f) in all respects in accordance with all the Authority's relevant rules, codes, policies (as set out in Schedule 12), procedures and standards notified from time to time during the Term by the Authority to the Supplier, including in particular the Authority's financial regulations and standing orders;
 - (g) in accordance with all Applicable Laws; and
 - (h) in a spirit of co-operation with the Authority and its other contractors to deliver a high quality service.

8. PROVISION OF EQUIPMENT

- 8.1 Unless otherwise stated in the Email Referral, the Provider shall provide all the Equipment necessary for the supply of the Services (e.g. disposable gloves etc.).
- 8.2 The Provider shall maintain all items of Equipment in a safe, serviceable, clean condition and in accordance with the relevant Quality Standard.

9. MANNER OF CARRYING OUT THE SERVICES AND COMPLAINTS HANDLING

- 9.1 The Provider shall at all times comply with the Quality Standards, and shall maintain their registration with the CQC.

- 9.2 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, equipment, skills and experience as are necessary for the proper supply of the Services.
- 9.3 The Provider shall deal with complaints from service users using the Services and their representatives in accordance with their complaints procedure..
- 9.4 Without prejudice to any rights and remedies that a complainant may have and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Framework Agreement, the Provider shall use its best endeavours to resolve the complaint within fifteen (15) Working Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.

10. COMPLIANCE

- 10.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 10.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 10.3 The Supplier shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) All applicable Law regarding health and safety; and
 - (b) The Health and Safety Policy whilst at the Authority's Premises
- 10.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 10.5 While on the Authority's Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 10.6 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.
- 10.7 Without limiting the general obligation set out in Clause 7 the Supplier shall (and shall procure that the Supplier's Personnel shall):
- (a) Perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) All applicable Equalities Legislation;

- (ii) The Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) Any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable Equalities Legislation; and
- (b) Takes all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation, and
 - (c) At all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
 - (d) Comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the Blacklists Regulations") and shall ensure that it will not during the Term be a party to or concur in any discriminatory employment practice which could be construed as blacklisting or boycotting any person who has sought employment with the Supplier in breach of the Blacklists Regulations.

10.8 The Supplier is aware of the Authority's obligations under CTSA15 (including any guidance, amendments and all subsequent regulations made pursuant to this Act) and in particular its obligation under s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "Prevent duty").

- (a) The Supplier will:
 - (i) co-operate with the Authority in ensuring the Authority's compliance with its obligations under CTSA15 and in particular the Prevent duty;
 - (ii) comply with any CTSA15 policy produced by the Authority;
 - (iii) demonstrate an awareness and understanding of the risk of radicalisation within the London Borough of Southwark through effective leadership, working in partnership with the Authority and the utilization of appropriate capabilities in relation to the delivery of the Services;
 - (iv) ensure appropriate frontline staff have a good understanding of the Prevent duty and are trained to recognise vulnerability to being drawn into terrorism, are aware of available programmes to deal with this issue and will make appropriate referrals to Channel;
 - (v) ensure that to the extent that any Authority-owned venues and resources are involved in the provision of the Services, as a result of that use they do not provide a platform for extremists and are not used to disseminate extremist views;
 - (vi) use filtering solutions on any IT equipment made available to the general public under this contract which limit access to terrorist and extremist material.

- (b) Where the Services provided relate to children, the Supplier must also ensure they are part of the Authority's safeguarding arrangements and that staff are aware of and know how to contribute to Prevent duty related activity in their area where appropriate.

11. PREMISES AND ASSETS (NOT USED)

12. BUSINESS CONTINUITY PLAN

- 12.1 The Supplier shall comply at all times with the relevant provisions of the Business Continuity Plan.
- 12.2 Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:
 - (a) implement the Business Continuity Plan;
 - (b) continue to provide the affected Services to the Authority in accordance with the Business Continuity Plan; and
 - (c) restore the affected Services to normal within the period laid out in the Business Continuity Plan.

To the extent that the Supplier complies fully with the provisions of this clause 12 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Supplier), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in clause 6 but shall be the KPIs set out in the Business Continuity Plan or (if none) the best KPIs which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

13. PAYMENT

- 13.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier in accordance with the Payment Plan.
- 13.2 The Supplier shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall be directed to the Authority's Authorised Representative and shall be in a format that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice. Any such invoices shall take into account any Service Credits which have been accrued in the previous period, identify any additions or deductions and the Services provided.
- 13.3 Where the Supplier submits an invoice to the Authority in accordance with clause 13.2 the Authority will consider and verify that invoice within 14 days.

- 13.4 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 13.5 Without prejudice to the Authority's rights under clause 13.7, where the Authority fails to comply with clause 13.3, the invoice shall be regarded as due 14 days from its submission.
- 13.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) Provisions having the same effect as clause 13.3 to clause 13.5 of this agreement; and
 - (b) A provision requiring the counterparty to that Sub-Contract, to include in any Sub-Contract, which it awards provisions having the same effect as clause 13.3 to clause 13.5 of this agreement.

In this clause 13.6, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

- 13.7 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 25. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the parties.
- 13.8 Subject to clause 13.7, interest may be payable on the late payment of any undisputed Charges properly invoiced under this agreement at four (4)% above the base rate of the National Westminster Bank plc in force at that time from the day following the end of the specified payment period until payment is made. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 36.4 for failure to pay undisputed charges.
- 13.9 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 13.10 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for twelve (12) years from the end of the Contract Year to which the records relate.
- 13.11 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.

13.12 If The Authority wishes to set off any amount owed by the Supplier the Authority against any amount due to the Supplier pursuant to clause 13.11 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

13.13 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

14. SERVICE CREDITS – (NOT USED)

14.1

STAFF

15. KEY PERSONNEL

15.1 Each party shall appoint the persons named as such in Schedule 6 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

15.2 The Supplier shall not remove or replace any of the Key Personnel unless:

- (a) requested to do so by the Authority;
- (b) the person is on long-term sick leave;
- (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
- (d) the person resigns from their employment with the Supplier; or
- (e) the Supplier obtains the prior written consent of the Authority.

15.3 The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 5 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

15.4 The Supplier shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 30 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall

be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.

15.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

15.6 If the Supplier replaces the Key Personnel as a consequence of this clause 15, the cost of effecting such replacement shall be borne by the Supplier.

16. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

16.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier's Personnel comply with all of the service policies including those that apply to persons who are allowed access to the applicable Authority's Premises.

16.2 The Authority may refuse to grant access to, and remove from the Authority's Premises, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

16.3 The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

16.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, shall provide information to the Authority as the Authority reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

16.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

16.6 The Supplier confirms that their Authorised Representative is authorised as a person to whom the Supplier's staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of the Supplier's Personnel making a protected disclosure (as defined by the said Act) shall not be subject to any detriment. The Supplier further declares that any provision in any agreement purporting to preclude a member of its staff from making a protected disclosure is void.

17. **LONDON LIVING WAGE/REAL LIVING WAGE/ZERO HOURS CONTRACTS**

17.1 For the purposes of this clause:

Relevant Staff: shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.

Equivalent Hourly Wage: shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act).

the London Living Wage: shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure.

the Real Living Wage: shall mean the most recently identified Real Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Living Wage Foundation or any successor body with responsibility for setting this figure.

17.2 The Supplier shall:

- (a) ensure that all Relevant Staff employed or engaged by the Supplier to provide services within London are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (b) ensure that all Relevant Staff employed or engaged by the Supplier to provide services outside of London are paid an Equivalent Hourly Wage which is equal to or exceeds the Real Living Wage;
- (c) ensure that all Relevant Staff employed or engaged by its Subcontractors (if any) are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage if providing services within London or the Real Living Wage if providing services outside London;
- (d) provide to the Authority such information concerning the London Living Wage and the Real Living Wage the performance of its obligations under this clause 17.2 as the Authority may reasonably require and within the deadlines it reasonably imposes;
- (e) co-operate and provide all reasonable assistance to the Authority in monitoring the effects of the London Living Wage and the Real Living Wage including without limitation assisting the Authority in conducting surveys and assembling data in respect of the affect of payment of London Living Wage or Real Living Wage to Relevant Staff.

17.3 For the avoidance of doubt, any breach by the Supplier of this clause 17 will be a breach of a material obligation in relation to which the Authority is entitled to rely upon its termination rights under clause 36.1 of this agreement.

18. SOUTHWARK ETHICAL CARE CHARTER (SECC)

- 18.1 The Supplier will comply with the Authority's Ethical Care Charter attached in Schedule 13 and will ensure that all employees and workers of the Supplier including those employed or engaged by sub-contractors:
- (a) are paid for the time taken to travel between their various Service User appointments (this does not include the time taken to travel to their first Service User appointment or away from their last Service User appointment);
 - (b) are paid for the time taken to travel to any meetings they are required by the Authority to attend;
 - (c) are paid for the time when they are required by the Authority to attend training sessions;
 - (d) are offered a contract of employment or worker's contract incorporating a reasonable level of guaranteed hours based on the Care Worker's existing work pattern as an alternative to a Zero Hours Contract (a Guaranteed Hours Contract);
 - (e) are provided with access to an occupational sickness scheme.
- 18.2 The Supplier will provide to the Authority such information on the performance of its obligations under this clause 18 as the Authority may reasonably require and within the deadlines it reasonably imposes.
- 18.3 For the avoidance of doubt, any breach by the Supplier of this clause 18 will be a breach of a material obligation in relation to which the Authority is entitled to rely upon its termination rights under clause 36 of this Agreement.
- 18.4 For the purposes of this condition a "Zero Hours Contract" shall mean a contract of employment or a worker's contract under which a worker undertakes to perform work when that work is offered by an employer, but there is no certainty of work as defined by the Small Business, Enterprise and Employment Bill published on 25th June 2014.

19. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS – DISCLOSURE AND BARRING

- 19.1 The parties acknowledge that the Supplier is a Regulated Activity Supplier with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 19.2 The Supplier shall procure that prior to carrying out any Regulated Activity any Supplier's Personnel or potential Personnel will be questioned as to whether he or she has any Convictions or Community Protection Notice and will be subject to a valid enhanced disclosure check under taken through the Disclosure and Barring Service ("DBS") including a check against the adult Barred List or the children's Barred List, as appropriate.
- 19.3 To the extent permitted by legislation, a copy of the results of the DBS checks shall be notified to the Authority.
- 19.4 The Supplier shall procure that:

- (a) no person who appears on a Barred List following the results of a DBS check shall be employed or engaged in the performance of Regulated Activity; and
- (b) it shall and shall procure that all sub-contractors shall comply with all reporting requirements to the DBS.
- (c) no person who discloses any Convictions or Community Protection Notices or who is found to have any Convictions or Community Protection Notices following the results of a DBS check, is employed or engaged in carrying out any part of any Regulated Activity without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- (d) In so far as permitted by law, the Supplier shall procure that the Authority is kept advised at all times of any Supplier's Personnel involved in the provision of the Regulated Activity who:
 - (i) is engaged in the carrying out of any Regulated Activity, and
 - (ii) subsequent to his/her commencement of employment, receives a Conviction or Community Protection Notice which becomes known to the Supplier or whose previous Convictions become known to the Supplier, or
 - (iii) in respect of which information is referred to the DBS by the Supplier pursuant to the Disclosure and Barring Scheme, or
 - (iv) is placed on a Barred List pursuant to the Disclosure and Barring Scheme which become known to the Supplier.
- (e) In the event that any Supplier's Personnel involved in the provision of a Regulated Activity is added to a Barred List, the Supplier shall procure that such Supplier's Personnel shall cease to be engaged in the Regulated Activity.
- (f) Save to the extent prescribed otherwise pursuant to the Disclosure and Barring Scheme, this clause 19 shall not apply to those individuals who shall be required by the Supplier to provide emergency reactive services. In the case of such individuals, the Supplier shall ensure that such individuals are accompanied at all times by Supplier's Personnel who have been properly employed or engaged in accordance with clause 19.

19.5 The Supplier shall also comply with the Authority's Safeguarding Policies, link in Schedule 12.

20. FAIRER FUTURE PROCUREMENT FRAMEWORK AND END VIOLENCE AT WORK CHARTER

20.1 The Supplier shall comply with the Authority's Fairer Future Procurement Framework and the End Violence at Work Charter, link in Schedule 12.

21. TUPE

The parties agree that the provisions of Schedule 11 shall apply generally and specifically to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

22. REPORTING AND MEETINGS

- 22.1 The Supplier shall provide the management reports in the form and at the intervals set out in Schedule 6.
- 22.2 The Supplier shall implement such systems as shall be necessary to eliminate, so far as practicable, and protect the Authority from fraud, corruption, error and mistake by the Supplier or its staff. The Supplier shall notify the Authority immediately if fraud, corruption or substantial errors are suspected, and shall permit the Authority to audit such systems and shall provide the Authority with all necessary access and facilities for that purpose.
- 22.3 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 6 and the Supplier shall, at each meeting, present its previously circulated Management Reports and Financial Reports (if required) in the format set out in that Schedule.

23. MONITORING

- 23.1 The Authority may monitor the performance of the Services by the Supplier.
- 23.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 23.1 at no additional charge to the Authority.

24. CHANGE CONTROL, BENCHMARKING, CONTINUOUS IMPROVEMENT AND CHANGE IN THE LAW

- 24.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 24.2 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
- 24.3 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 24.2 shall be addressed by the parties using the Change Control Procedure.

- 24.4 The Supplier is neither relieved of its obligations to supply the Services in accordance with the terms of this agreement nor entitled to an increase in the Charges as the result of a General Change in Law or a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- 24.5 If a Specific Change in Law occurs or will occur during the Term (other than those where the effect on the Services is known at the Commencement Date) the Supplier shall notify the Authority of the likely effects of that change, including:
- (a) whether any Change is required to the Services, the Charges or this agreement; and
 - (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to meet the Service Levels at any time.
- 24.6 As soon as practicable after any notification in accordance with clause 24.6 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change in Law including:
- (a) providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (b) demonstrating that a foreseeable Specific Change, had been taken into account by the Supplier before it occurred;
 - (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (d) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 24.3: Continuous Improvement, has been taken into account in amending the Charges.
- 24.7 Any increase in the Charges or relief from the Supplier's obligations agreed by the parties pursuant to clause 24.6 and 24.7 shall be implemented in accordance with the Change Control Procedure.

25. DISPUTE RESOLUTION

- 25.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Director of Commissioning and the Supplier's Company Director who shall attempt in good faith to resolve it; and
 - (c) If the Authority's Director of Commissioning and the Supplier's Company Director are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by

CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

- 25.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 51 which clause shall apply at all times.

26. SUB-CONTRACTING AND ASSIGNMENT

- 26.1 Subject to clause 26.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority.
- 26.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the agreement 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; and
 - (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
 - (d) provide, at no charge to the Authority, of any collateral warranty required by the Authority in the form included in the tender documents.
- 26.3 The Authority 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 Authority.
- 26.4 Provided that the Authority 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 the agreement;
 - (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 economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

LIABILITY

27. INDEMNITIES

The Supplier shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or

claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or Sub-Contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its representatives (excluding any Supplier's Personnel).

28. LIMITATION OF LIABILITY

28.1 Subject to clause 28.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

28.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

28.3 Subject to clause 28.5, the Supplier's total aggregate liability:

(a) Is unlimited in respect of:

- (i) The indemnities in Schedule 11 - TUPE
- (ii) any breach of clause 38 – Force Majeure
- (iii) the Supplier's wilful default
- (iv) any breach of clause 30 - Information requests
- (v) any breach of clause 31 - Data Protection
- (vi) any breach of clause 32 – Confidentiality

(b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed £5m in each Contract Year.

28.4 Subject to clause 28.5 the Authority's total aggregate liability to the Supplier for all claims arising in any Contract Year (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable) shall not in any circumstances exceed £2m.

28.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

29. INSURANCE

- 29.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- (the **Required Insurances**) The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 29.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 29.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 29.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 29.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

30. INFORMATION REQUESTS

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

- 30.2 The Supplier acknowledges that the Authority may be required under the Information Legislation to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority 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 Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the Information Legislation.
- 30.3 The Supplier shall ensure that all Information acquired or produced in the course of the agreement or relating to the agreement is safely retained and available for disclosure during the Term and for six (6) years afterwards and shall permit the Authority, its internal auditors and the District Auditor to inspect such records as requested from time to time. In default of compliance, the Authority may recover possession of such materials and the Supplier shall permit the Authority or its approved agents to enter for those purposes any premises of the Supplier where any such materials may be held.
- 30.4 Where the Authority requires any Information from the Supplier relating to any potential or actual claim by a third party against the Authority, the Supplier shall ensure that any Information requested by the Authority is supplied to the Authority in sufficient time to enable the Authority to comply with any relevant procedural rules.

31. DATA PROTECTION

- 31.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the GDPR and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the agreement.
- 31.2 Notwithstanding the general obligation in clause 31.1, where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier shall:
- (a) process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this agreement or as otherwise notified by the Authority to the Supplier during the Term);
 - (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;
 - (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and/or reputational damage which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (d) take all necessary steps to ensure the reliability of any Supplier's Personnel who have access to the Personal Data;

- (e) obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors for the provision of the Services;
- (f) ensure that all of the Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 31.2;
- (g) ensure that none of the Supplier's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- (h) notify the Authority (within two Working Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- (i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any information requested by the Authority;
- (j) permit the Authority or their Authorised Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's Data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this agreement;
- (k) provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Authority);
- (l) not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Supplier (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area the Supplier shall submit a request under the Change Control Procedure in Schedule 9;
- (m) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 31.2; and
- (n) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the GDPR.

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

32. CONFIDENTIALITY

- 32.1 Subject to clause 32.2 the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives and Personnel from making any disclosure to any person of any matters relating hereto.
- 32.2 Clause 32.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 30.1 shall apply to any disclosures required under the Information Legislation;
 - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this 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 32.1;
 - (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no Commercially Sensitive Information;
 - (e) to enable a determination to be made under clause 25;
 - (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (g) by the Authority to any other department, office or agency of the Government, including the District Auditor;
 - (h) by the Authority in accordance with any Authority or Government initiative or policy on open data, transparency and public accountability, including publishing a copy of the contract (redacting any Commercially Sensitive Information) following execution; and
 - (i) by the Authority relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.
- 32.3 The Supplier shall keep proper security arrangements against the destruction, loss or unauthorised use or alteration of Information. Such arrangements shall ensure that access to Information is only obtained by such officers of the Authority as are specifically designated by the Authority. The Supplier shall restore at its own expense Information which is destroyed or in respect of which an unauthorised alteration is made.
- 32.4 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

33. AUDIT, ENQUIRY OR INVESTIGATION

- 33.1 During the Term and for a period of six (6) years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the

Services at the level of detail agreed in Schedule 4 (Payment), or as otherwise required by the Authority;

- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Supplier's compliance with the Information Legislation, in accordance with clause 31 (Data Protection) and clause 30 (Information Requests) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

33.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 33 more than twice in any calendar year.

33.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

33.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and/or
- (c) access to the Supplier's Personnel.

33.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.

33.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

33.7 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges

or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 days.

33.8 The Supplier shall at all times during the Term and for a period of six (6) years afterwards fully co-operate with any enquiry or investigation (whether routine or specific) which in any way concerns, affects or relates to the Services. Such enquiry or investigation may include, inter alia:-

- (a) the Authority's Cabinet and the Authority's Overview and Scrutiny Committee and scrutiny sub-committee undertaking their respective functions;
- (b) an investigation by the Authority into a complaint about the acts or omissions of the Supplier, the Supplier's Personnel or agents made under the Equalities Legislation;
- (c) the Authority's auditors (whether internal or external);
- (d) the Local Government Ombudsman.

33.9 Such co-operation shall include (but not be limited to the following):-

- (a) providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relates to the subject or service under investigation;
- (b) providing access to the Supplier's premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Supplier in the performance of the Services;
- (c) providing access to the Supplier's Personnel (of whatever seniority) involved in the agreement (including management or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
- (d) maintaining the confidentiality of the enquiry or investigation when required to do so;
- (e) making such explanations as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of the agreement, the Authority's standing orders and financial regulations and statutory provisions relating to the agreement are being complied with.
- (f) attending meetings at the Authority's request, including meetings of the Authority's Cabinet or Overview and Scrutiny Committee to respond to questions regarding the Services and/or this agreement.

34. INTELLECTUAL PROPERTY

- 34.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier;
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 34.2 The Authority shall grant the Supplier a non-exclusive right to use the Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier;
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services.
- 34.3 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

35. COMPLAINTS AND CORRESPONDENCE

- 35.1 The Supplier shall maintain a register of any complaints and adverse comments received by the Supplier about the performance of the Services.
- 35.2 The Supplier shall provide to the Authority's Authorised Representative copies of all complaints and adverse comments relating to the performance of the Services by the Supplier and provide such statistical information as the Authority may from time to time reasonably require. Such information shall be provided within five (5) Working Days of receipt of the complaint or adverse comment.
- 35.3 The Supplier shall co-operate with the Authority in connection with any investigations undertaken by the Authority or a third party acting on its behalf.

TERMINATION AND SUSPENSION

36. TERMINATION FOR BREACH

- 36.1 The Authority may terminate this agreement in whole or part with immediate effect, or by such other period as the Authority determines, by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 36.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;

- (b) if a Consistent Failure has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if, in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the ability of the Supplier to supply the Services under this agreement. This may be evidenced by, inter alia, a proposed compromise with creditors or a proposed voluntary arrangement within the Insolvency Act 1986, the consideration by shareholders or presentation of a winding up petition or the application for the appointment of a provisional liquidator;
- (e) if a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;
- (f) if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
- (g) if there is an Insolvency Event;
- (h) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;
- (i) If any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

36.2 The Authority may terminate this agreement in accordance with the provisions of clause 38 (Force Majeure) and clause 39.6 (Prevention of Bribery).

36.3 If this agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

36.4 The Supplier may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

36A SUSPENSION

36A.1 Without prejudice to its right to terminate this agreement under clause 36, upon the occurrence of one or more of the events listed in clause 36.1, the Authority may do any one or more of the following:

36A.2 Issue a suspension notice to the Supplier stating that the Authority will provide or procure the provision of the whole or any part of the Services until such time as the Supplier's Authorised Representative shall demonstrate to the reasonable satisfaction of the Authority's Authorised Representative that the Supplier will be able to resume performance of such part of the Services to the Service Standards whereupon a resumption notice will be issued. During such period, the Supplier's performance of the whole or any part of the Services and the Authority's payment to the Supplier for such whole or part of the Services shall be suspended;

36A.3 The Authority may charge the Supplier any costs reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of any part of the Services by the Authority or a third party in the circumstances set out in this clause 36A, to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services;

36A.4 Suspend payment to the Supplier of any payments due under this agreement, retain any amount due to the Supplier from the Authority or make such deduction from any payment to be made to the Supplier under this agreement as may reasonably reflect sums paid or sums which would otherwise be payable in respect of such of the Services to which the Supplier's breach relates.

36A.5 The Authority shall have the right at any time to suspend the Agreement or any part of it by written notice (such notice having immediate effect) in the event that it wishes to investigate whether any of the events in clause 36.1 have occurred or to investigate whether the Supplier is in breach of its obligations under the Agreement.

37. TERMINATION ON NOTICE

The Authority may terminate this Agreement for breach in accordance with clause 36.1 at any time, and either party may terminate this Agreement for any other reason after the end of the first Contract Year by giving six (6) months' written notice to the other party.

38. FORCE MAJEURE

38.1 Subject to the remaining provisions of this clause 38, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

38.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

38.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

38.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.

38.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to

mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

38.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

38.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than sixty (60) Working Days.

39. PREVENTION OF BRIBERY

39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, 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.

39.2 The Supplier shall not during the term of this agreement:

- (a) Commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractor or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

39.3 The Supplier shall during the term of this agreement:

- (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 39.3(a) and make such records available to the Authority on request.

39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 39.1 and/or clause 39.2 or has reason to believe that it has or any of the Supplier's Personnel 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; and/or
- (c) Received a request or demand for any 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.

39.5 If the Supplier makes a notification to the Authority pursuant to clause 39.4, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with clause 33.

39.6 If the Supplier is in Default under clause 39.1 and/or clause 39.2, the Authority may by notice:

- (a) Require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or
- (b) Immediately (or such other period as the Council determines) terminate this agreement.

39.7 Any notice served by the Authority under clause 39.6 shall specify, the nature of the Prohibited Act; the identity of the Party who the Authority believes has committed the Prohibited Act; and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

40. CONSEQUENCES OF TERMINATION

40.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason:

- (a) the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier;
- (b) the Authority shall have the right to require the Supplier to provide free of charge for three (3) months following the date of termination of the agreement such advice, assistance and co-operation as the Authority may reasonably require to enable the Authority to provide or procure the provision of the Services or part of them;
- (c) the Authority shall have the right to require the Supplier to use its best endeavours to assign to the Authority or to any Replacement Supplier any contract to which the Supplier is a party and which relates to the Services or part of them.

40.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier's Authorised Representative shall certify full compliance with this clause.

- 40.3 The provisions of clause 27 (Indemnities), clause 28 (Insurance), clause 30 (Information Requests), clause 31 (Data Protection), clause 33 (Audit, Enquiry or Investigation), clause 36 (Termination for Breach), clause 41 (non-solicitation) this clause 40 (Consequences of termination) and any other clause which by implication should continue, shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

41. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this agreement, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open public recruitment and not specifically targeted at such staff of the other party.

42. WAIVER

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

43. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

44. SEVERABILITY

- 44.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 44.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

45. PARTNERSHIP OR AGENCY

- 45.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other.

45.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

46. THIRD PARTY RIGHTS

46.1 Except as expressly provided in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

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

47. PUBLICITY

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction without the prior written consent of the Authority[, which shall not be unreasonably withheld or delayed.

48. NOTICES

48.1 Any notice required to be given to the Authority under this agreement shall be in writing and may be served:

- by delivering the notice by hand to the Authority's Director of Commissioning at 160 Tooley Street, London, SE1 2QH; or
- by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Authority and marked clearly for the attention of the Director of Commissioning at London Borough of Southwark, PO Box 64529, London, SE1P 5LX.

48.2 Any notice required to be given to the Supplier under this agreement shall be in writing and may be served:

- by delivering the notice by hand to the Supplier at the Supplier's last know place or abode or business or, if the Supplier is a company, at the registered office of the company; or
- by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Supplier at the Supplier's last known place of abode or business or, if the Supplier is a company, at the registered office of the company.

48.3 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;

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

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

49. ENTIRE AGREEMENT

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

49.2 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 agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

50. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

51. GOVERNING LAW

51.1 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.

52. JURISDICTION

52.1 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 agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS the parties have entered into this Agreement by signature of their respective duly authorised representatives.

Signed by:

Signed by:

Position:

Position:

FOR AND ON BEHALF OF THE COUNCIL

FOR AND ON BEHALF OF THE PROVIDER

Signed by:

Signed by:

Position:

Position:

Signature:

Signature:

FOR AND ON BEHALF OF THE COUNCIL

FOR AND ON BEHALF OF THE PROVIDER

SCHEDULE 1: SERVICE SPECIFICATION

[SEE SPECIFICATION ATTACHED TO INVITATION TO TENDER]

SCHEDULE 2: REFERRAL PROCESS

1. BROKERAGE PROCESS AND AUTHORISATION

- 1.1 Framework Providers will be offered first refusal of a new package on a rotational basis.
- 1.2 The rotational basis will start with the highest ranked provider from the tender process and will continue with the second highest ranked provider and so on.
- 1.3 If a first refusal provider does not accept a new package within 2 hours it will be offered to the next provider on the rotational list who will have 2 hours to respond.
- 1.4 If a care package has not been accepted by the first and second provider, then the referral will be sent to all other providers on the Framework on a first responder basis.
- 1.5 If a new package is available on Friday after midday, the first refusal provider should respond as soon as possible but the package will not be offered to the second provider until 9am the following Monday.
- 1.6 The referral will be sent by email from Brokerage as set out in the Schedule 1 service Specification.

2. ACCEPTING AND DECLINING PACKAGES

- 2.1 Following receipt of a referral, the Provider shall promptly and in any event within the time specified in clause 1.3 above acknowledge receipt of the referral and either:
 - (a) notify Brokerage in writing that it is able to accept the referral; or
 - (b) notify Brokerage in writing with detailed reasons that it is unable to accept the referral.
- 2.2 If the Provider:
 - (a) notifies Brokerage that it is unable to accept the referral; or
 - (b) the time limit referred to in clause 1.3 has expired,then the referral shall lapse and Brokerage may then send the referral to another Framework Provider in accordance with the procedure set out in clause 1.4.
- 2.3 If the Provider modifies or imposes conditions on accepting the referral, then Brokerage may either:
 - (a) resend the referral incorporating the modifications or conditions; or
 - (b) treat the Provider's response as notification of it's inability to accept the referral and the provisions of clause 2.2 shall apply.

3. BREAKS AND SUSPENSION OF CARE AND SUPPORT PACKAGES

- 3.1 The Council shall have the right to terminate or suspend the Care and Support Package at any time by giving a minimum of 24 hours written notice to the Provider for such reasons as but not limited to;-
- (a) Service User admitted to Hospital/Respite Care
 - (b) Service User passed away
 - (c) Family cancel the Care and Support Package
 - (d) Safeguarding concern raised
 - (e) Unforeseen change in a family/caregiver arrangements
 - (f) Review and care and support no longer required
- 3.2 The Council shall have the right to suspend the delivery of the Services at any time by giving a minimum of 24 hours written notice to the Provider. In exceptional circumstances, e.g. in an emergency, notice shall be provided by telephone. During such a suspension period, the Provider shall be relieved of its obligation to provide the Services and the Council shall be relieved of its obligation to pay the Provider in respect of any Services due to be performed in the suspension period.
- 3.3 The Council shall have the right at any time to suspend calling off under the Framework Agreement by written notice (such notice having immediate effect) in the event that it wishes to investigate whether the Provider has committed a Default.
- 3.4 For the avoidance of doubt, in the event of a CQC embargo new referrals will be suspended until such time the CQC embargo is lifted.

SCHEDULE 3: SUPPLIER'S TENDER

[SUPPLIER'S TENDER TO BE INSERTED]

SCHEDULE 4: CHARGES AND PAYMENTS

1. CALCULATION OF THE CHARGES

The Charges shall be calculated on the basis of the prices set out in this Schedule.

Charges based on an hourly price

Service	Hourly Rate (£)
INSERT RELEVANT PART OF SERVICES	INSERT Hourly Rate TO BE CHARGED TO AUTHORITY

2. PAYMENT PLAN

INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE SUPPLIER AND WHEN THEY WILL BE DUE FOR PAYMENT

3. TERMINATION PAYMENT DEFAULT

In the event that at any time undisputed Charges of £50,000 have been overdue for payment for a period of 90 days or more, the Authority will have committed a Termination Payment Default.

4. CHANGES

Charges shall be fixed for the duration of the Framework Agreement, however the price will be adjusted to reflect any increases to the London Living Wage (LLW) plus an additional 37% increase on the LLW difference for “on costs”.

The Charges shall be subject to adjustment in line with any change in the London Living Wage which will become effective on or after November 2020 and for payment to Relevant Staff by the following April. The Supplier shall submit to the Authority all details which the Authority requires to be able to approve such adjustment to the Charges.

SCHEDULE 5: PERFORMANCE REGIME

PART 1: KPIs

1. THE KPIs

The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the Service Specification Schedule 1.

1.1 The Provider shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with Schedule 6.

PART 2: SERVICE CREDITS (NOT USED)

2. CALCULATION OF SERVICE CREDITS (NOT USED)

PART 3: CONSISTENT FAILURE

1.1 In this agreement, **consistent failure** shall mean a failure to;

- (a) meet 5 or more of the agreed Target KPIs in Year One – in two consecutive quarters.
- (b) meet 5 or more of the agreed Target KPIs in Year Two.
- (c) meet 5 or more of the agreed Target KPIs in Year Three.
- (d) meet 5 or more of the agreed Target KPIs in Year Four.
- (e) gain at least 90% overall satisfaction level with service users compiled via annual survey.

1.2 AND/OR

- (a) the Provider repeatedly breaching any of the terms of this 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 this agreement.

1.3 In the event of Provider failure as a result of poor performance, the council reserves the right to issue the Provider with 12 weeks notice of termination and explore any and all reasonable measures to ensure continuity of service which may include;

- (a) agreeing with any other Framework Providers to takeover the entirety of the care packages either on a temporary or permanent basis
- (b) seeking an interim Provider in the market to join the Framework as a replacement Framework Provider for the remainder of the contract
- (c) approaching the highest ranked bidder not to have been awarded on to the framework, to takeover the service on an interim or permanent basis

PART 4: WARNING, DEFAULT AND REMEDIATION NOTICE PROCEDURE

- 1.1. A Warning Notice (1) issued in accordance with clause 5.2 of this agreement shall be specific to a task or group of tasks, or a breach of this agreement and shall specify the failure or defect in performance or breach of agreement, the remedy required and the time within which it shall be carried out.
- 1.2. A Default Notice (1) issued in accordance with clause 5.3 of this agreement shall be specific to a task or group of tasks, or a breach of this agreement and shall specify the failure or defect in performance or breach of agreement, the remedy required and the time within which it shall be carried out.
- 1.3. The Provider shall notify the Authority's Authorised Representative when it considers it has complied with the Default Notice (1).
- 1.4. A Default Notice (2) may be issued by the Authority where the Provider has failed to comply with a Default Notice (1).
- 1.5. Where the Provider fails to comply with any Default Notice (2), the Authority shall be entitled to issue further Default Notice (1) and Default Notice (2) as appropriate.
- 1.6. The Authority shall be entitled to levy a £50.00 administration charge for each Default Notice (1) and (2) issued.
- 1.7. A Remediation Notice may be issued by the Authority in accordance with clause 36.1(a) of this agreement where the Provider is in breach of any material obligation and shall specify the failure or defect in performance, the remedy required and the time within which it shall be carried out.

SCHEDULE 6: CONTRACT MANAGEMENT

1. AUTHORISED REPRESENTATIVES

1.1 The Authority's initial Authorised Representative: **INSERT DETAILS**

1.2 The Provider's initial Authorised Representative: **INSERT DETAILS**

2. KEY PERSONNEL

INSERT DETAILS – include Supervisory Personnel

3. MEETINGS

3.1 Type - Details of Contract Monitoring Review Meetings

FREQUENCY	AGENDA ITEMS
Quarterly – unless otherwise advised.	<ul style="list-style-type: none">• Welcome and Introductions• Contract Management Feedback• Contract/Service review• Performance review• Complaints/Safeguarding/Serious Incidents• Provider Quality Assurance• AOB

3.2 Quorum - Key Personnel/Contract Managers

4. REPORTS

4.1 Type – Performance Reporting

4.2 Contents - Key Performance Indicators and any other relevant information with their performance returns which will demonstrate outcomes, achievements and/or any areas for improvement.

4.3 Frequency - Quarterly and Annual

4.4 Circulation list - Contract Management Team

4.5 The Provider must maintain a log of all incidents relating to any Service User which do not relate to safeguarding or quality alerts, which should be available to the Authority for inspection.

4.6 The Provider must notify the CQC under Regulation 18 of the Care Quality Commission (Registration) Regulations 2009 without delay of any incident affecting the health, safety and/or welfare of a Service User, or where there is a change in the Provider's circumstances that could compromise the wellbeing and/or safety of a Service User. Regulation 18 notifications must be made by the Registered Manager and notified to the Authorised Representative of the Authority within five [5] working days.

- 4.7 The Provider shall undertake and prepare a draft Annual Quality Assurance Report to be submitted to the Authority for consideration by the contracts Board on the Annual Quality Assurance Review Date which shall:
- (a) Review the Service against the performance indicators and targets,
 - (b) Detail any Regulation 18 notifications received and actions taken
 - (c) Report on number of warning and default notices issued and remedial action undertaken.

SCHEDULE 7: COMMERCIALLY SENSITIVE INFORMATION

[To be inserted here]

SCHEDULE 8: BUSINESS CONTINUITY PLAN

[FOR COMPLETION BY THE PROVIDER]

SCHEDULE 9: CHANGE CONTROL

1. GENERAL PRINCIPLES

- 1.1 Where the Authority or the Provider sees a need to change this agreement, the Authority may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 9.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 9, shall be undertaken entirely at the expense and liability of the Provider.

2. PROCEDURE

- 2.1 Discussion between the Authority and the Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Authority; or
 - (c) a recommendation to change this agreement by the Provider.
- 2.2 Where a written request for an amendment is received from the Authority, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;
 - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
 - (g) a schedule of payments if appropriate;
 - (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:

- (i) the timetable for the provision of the Change;
- (ii) the personnel to be provided;
- (iii) the Charges;
- (iv) the Documentation to be provided;
- (v) the training to be provided;
- (vi) working arrangements;
- (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Authority and the Provider; and
- (k) details of how the costs that would be incurred by the parties if the Change subsequently results in the termination of this agreement under clause 36.1(f) will be apportioned

2.5 For each Change Control Note submitted by the Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Provider; or
 - (iii) notify the Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Provider shall constitute an amendment to this agreement.

SCHEDULE 10: EXIT MANAGEMENT PLAN

SCHEDULE 11: TUPE

PART 1: TRANSFER OF EMPLOYEES

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Data Protection Legislation: the GDPR, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Directive: the EC Council Directive 2001/23 as amended.

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Third Party Employer to the Provider or Sub-Contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor.

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

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.

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

Replacement Provider: any third party supplier of services which are identical or substantially similar to the Services appointed by the Council following the termination or expiry of this agreement.

Provider's Final Staff List: the list of all the Provider'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.

Provider's Provisional Staff List: the list prepared and updated by the Provider of all the Provider'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.

Provider's Pension Scheme: the pension scheme[s] provided by the Provider or Sub-contractor in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services

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

Staffing Information: in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Council 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.

Third Party Agreement: an agreement between the Council and a Third Party Employer

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Provider or Sub-contractor by virtue of the application of TUPE as listed in **Table 1** of this Schedule 11.

Third Party Employer: a Provider engaged by the Council to provide all or some of the Services to the Council and whose employees will transfer to the Provider on the Effective Date.

2. TRANSFER OF EMPLOYEES TO THE PROVIDER

- 2.1 The Council and the Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment (and any collective agreement) of any Third Party Employees shall transfer to the Provider or Sub-Contractor. On the occasion of each Relevant Transfer the Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE and the Directive. The first Relevant Transfer shall occur on the Effective Date. Not used.
- 2.2 The Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against Employment Liabilities arising from or as a consequence of:
 - (a) any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;

- (b) any of the employees informing the Council and any Third Party Employer they object to being employed by the Provider or Sub-Contractor; and
- (c) any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Effective Date.

- 2.3 The Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
- 2.4 The Provider shall immediately on request by the Council and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Third Party Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact, and shall indemnify the Council and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.
- 2.5 The Provider shall, and shall procure that any Sub-Contractor shall, in accordance with TUPE recognise the trade unions representing the Relevant Employees after the transfer to the same extent as they were recognised by the Council, or Third Party Employer before the Effective Date.

3. **EMPLOYMENT EXIT PROVISIONS**

- 3.1 This agreement envisages that subsequent to the Commencement Date, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this 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 Council or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider 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 Council, including information as to the application of TUPE to the employees. The Provider shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Provider:
 - (a) the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees,
 - (b) Pay slip data for the most recent month,
 - (c) cumulative pay for tax and pension purposes,
 - (d) cumulative tax paid,

- (e) tax code,
- (f) voluntary deductions from pay,
- (g) bank or building society account details for payroll purposes.

- 3.4 The Council shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider'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.
- 3.5 The Provider warrants to the Council and the Replacement Provider that the Provider's Provisional Staff List, the Provider'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 Provider's Final Staff List.
- 3.6 The Provider 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.
- 3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them. This will include any changes to the make up and number of employees on the Provider's Provisional Staff List. In relation to employees already listed on the Provider's Provisional Staff List changes to be notified will include:
- a) Any changes to make up and number of employees,
 - b) Changes to terms and conditions of employment ,
 - c) Increasing the proportion of working time spent on the Services,
 - d) Introduction of any new contractual or customary practice concerning the making of a lump sum payment on termination of employment,
 - e) Termination of employment.
- 3.8 The Provider shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Provider against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Provider 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 (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),
- arising from or connected with any failure by the Provider 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.
- 3.9 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.

- 3.10 If any person claims or it is determined that his contract of employment has been transferred from the Provider or any Sub-Contractor to the Council or the Replacement Provider pursuant to a Relevant Transfer, or claims that his employment would have so transferred had he not resigned, the Council or the Replacement Provider will, within seven (7) days of becoming aware of that fact, give notice in writing to the Provider. The Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within twenty-one (21) days of the notification by the Council or the Replacement Contractor. If such offer is accepted, the Council or the Replacement Contractor shall immediately release the person from his employment. If after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Employer or the Replacement Provider may, within seven (7) days, give notice to terminate the employment of such person. Subject to the Council or the Replacement Provider acting in this way or in such other way as may be agreed between the Provider and the Council or the Replacement Provider, the Provider will indemnify the Council against all Employment Liabilities arising out of such termination. If such person is neither reemployed by the Provider or any Sub-Contractor within the time scales set out in this clause such person will be treated as a Relevant Employee.
- 3.11 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.10, 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 Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.12 Despite paragraph 3.11, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract 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.
- 3.13 In the event of a Subsequent Transfer to which TUPE does not apply, the following provisions shall apply:
- (a) The Council or the Replacement Provider can, at its discretion, make an offer, in writing of employment under a new contract of employment to take effect at the earliest reasonable opportunity to any of the employees listed on the Provider's Provisional Staff List or to any Provider's or Sub-Contractor's Personnel assigned to the Services,
 - (b) When the offer has been made by the Council or the Replacement Provider and accepted by any employee or worker, the Provider shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave his employment, as soon as practicable depending on the business needs of the Provider which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow.
 - (c) If the employee does not accept an offer of employment made by the Council or the Replacement Provider, the employee shall remain employed by the Provider (or Sub-Contractor as the case may be) and liability for all Employment Liabilities in relation to that employee shall remain with the Provider or the relevant Sub-Contractor,
 - (d) If the Council or the Replacement Provider does not make an offer to an employee on the Provider's Provisional Staff List or any Provider's Personnel, then those employees and all Employment Liabilities in relation to those employees remain with the Provider.
- 3.14 The Council regards compliance with this clause as fundamental to the agreement. In particular, failure to comply with clause 3.2 and clause 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this clause 3.14 shall not exceed an amount equivalent to the Charges that would be payable in the

[three] month period following the Service Provider's failure to comply with clause 3.2 or clause 3.3, as the case may be.

4. PENSIONS

- 4.1 The Provider shall or shall procure that any relevant Sub-Contractor shall comply with its obligations under the Pensions Act 2004 and the Pensions Act 2008 as amended, and any regulations made thereunder in relation to the Third Party Employees from the Effective Date up to and including the date of the termination or expiry of this agreement.

5. CLAIMS FROM EMPLOYEES OR TRADE UNIONS

- 5.1 The Provider hereby indemnifies the Council and/or any Replacement Provider and, in each case, their Sub-Contractors from and against all Employment Liabilities suffered or incurred by it or them which arise from claims by any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services of the Provider and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such person which losses:

- (a) Relate to pension rights in respect of periods of employment on or after the Effective Date or other relevant Transfer Date until the date of termination or expiry of this Agreement; or
- (b) Arise out of the failure of the Provider and/or any relevant Sub-Contractor to comply with the provisions of this Schedule before the date of termination or expiry of this Agreement,

Save to the extent that such losses have been caused by any act and/or omission of the Council.

6. PENSION ISSUES ON EXPIRY OR TERMINATION

- 6.1 The Provider shall and shall procure that any relevant Sub-Contractor shall:
- (a) Maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement,
 - (b) Promptly provide to the Council such documents and information mentioned in clause 9.1(a) which the Council may reasonably request in advance of the expiry or termination of this Agreement, and
 - (c) Fully co-operate (and shall use best endeavours to procure that the trustees of any Provider's Pension Scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement.

SCHEDULE 12: COUNCIL POLICIES AND PROCEDURES

1. SAFEGUARDING POLICIES

Southwark Council's Safeguarding Policies and Procedures can be found here:

<http://safeguarding.southwark.gov.uk/policies-procedures-guidance/>

2. SOUTHWARK COUNCIL'S FAIRER FUTURE PROCUREMENT FRAMEWORK

A copy of the framework can be viewed here:

<https://www.southwark.gov.uk/assets/attach/10851/Appendix-1-Southwark-Council-FFPS-2019-Update-v2.pdf>

3. END VIOLENCE AT WORK CHARTER

A copy of the charter can be viewed here:

<https://www.unison.org.uk/content/uploads/2018/04/24948.pdf>

SCHEDULE 13: SOUTHWARK ETHICAL CARE CHARTER (SECC)

The principles of the Southwark Ethical Care Charter (SECC) are set out below.

- (1)** Time allocated by care workers to visits will match the needs of clients (and visits will not be arbitrarily limited to 15mins).
- (2)** There will be no minute-by-minute task-based commissioning or provision of care.
- (3)** Domiciliary care workers will be paid for their travel time.
- (4)** Local authorities and service providers will be transparent in their price setting.
- (5)** Zero hour contracts will not be used in place of permanent contracts for care workers.
- (6)** Local authorities will monitor service providers, including monitoring the working conditions of staff in care.
- (7)** Clients will be allocated the same care worker wherever possible.
- (8)** Visits will be scheduled so that care workers are not forced to leave to get to a visit with another client.
- (9)** Those homecare workers eligible will be paid statutory sick pay.
- (10)** Domiciliary care workers will be covered by occupational sick pay schemes.
- (11)** Providers will have a clear procedure for following up concerns about clients.
- (12)** Homecare workers will be trained (at no cost to individual care workers).
- (13)** Homecare workers will be given time to meet co-workers to share best practice.
- (14)** Homecare workers will be paid at least the London Living Wage [LLW].

SCHEDULE 14: PREMISES AND ASSETS (NOT USED)