DATED                                                    2024

|  |  |
| --- | --- |
| (1) | CORNWALL COUNCIL |
| (2) | PARTY 1 |
| (3) | PARTY 2 |
| (4) | PARTY 3 |
| (5) | PARTY 4 |
| (6) | Party 5 |

|  |  |  |
| --- | --- | --- |
|  | alliance agreement in respect of the provision of home care services in [insert geographical ZONE] |  |



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**THIS DEED** is dated 2024

**BETWEEN**

1. **CORNWALL COUNCIL** of County Hall, Treyew Road, Truro, Cornwall TR1 3AY (the “**Council**”);
2. [●] a [company incorporated and registered in England and Wales (Company number [●])] whose [address][registered office] is at [●] (the “**Strategic Provider**”);
3. [●] a [company incorporated and registered in England and Wales (Company number [●])] whose [address][registered office] is at [●]; and
4. [●] a [company incorporated and registered in England and Wales (Company number [●])] whose [address][registered office] is at [●],

each a “**Party**” and together the “**Parties**”.

**RECITALS**

1. The Council published a contract notice [INSERT REFERENCE] on [INSERT DATE] (the "**Contract Notice**") on the Find a Tender Service inviting providers of home care and support services to form an alliance and to submit a tender for the collaborative delivery of the Services and the Care Services to Persons as commissioned by the Council.
2. The Alliance Providers formed an Alliance and submitted a Tender in response to the Contract Notice and the Invitation to Tender.
3. In their response to the Invitation to Tender, the Alliance Providers represented to the Council that they are capable of delivering the Services and the Care Services and, in particular, the Alliance Providers made representations to the Council in their response to the Invitation to Tender in relation to the suitability, economic and financial standing and technical and professional ability of every Alliance Provider within the Alliance.
4. On the basis of the Alliance Provider’s responses to the Invitation to Tender, and subject to the Conditions Precedent, the Council has selected the Alliance Providers to provide the Services and the Care Services under an alliance arrangement in the Geographical Zone.
5. This Agreement governs the roles, responsibilities, rights and obligations of each Party for the enabling and facilitating of the collaborative delivery of the Care Services to Persons through the provision of the Services to the Council.
6. The Parties have agreed to enter into this Agreement incorporating the terms and conditions set out herein which are agreed between them.
7. Each Alliance Provider shall be required to enter into the ISP Agreements which will govern the terms of the provision of Care Services from each Alliance Provider to Persons as ordered and allocated to the relevant Alliance Provider pursuant to Schedule 5 (Ordering Procedure) of this Agreement.

# DEFINITIONS AND INTERPRETATION

## In this Agreement, the following words and expressions shall have the following meanings:

|  |  |
| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Action Plan”** | has the meaning given to it in the Alliance Specification; |
| **“Adjustment Date”** | has the meaning given to it in Clause 12.7; |
| **“Affected Party”** | means the Party seeking to claim relief in respect of a Force Majeure Event; |
| **“Affiliate”** | means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and “holding company” and “subsidiary” shall have the meaning given to them in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one (1) entity is an Affiliate of another, any transfer of shares by way of security or to a nominee of the transferor shall be disregarded; |
| **“Agency Staff”** | means those individuals registered with a staffing agency and engaged by an Alliance Provider to deliver the Care Services on a temporary basis; |
| **“Agreement”** | means this agreement concluded between the Council and the Alliance Providers including its Schedules; |
| **“Alleged New Employer”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Alliance”** | means the collective term for the Alliance Providers who have grouped together to collaboratively perform the obligations under this Agreement and deliver the Services and the Care Services; |
| **“Alliance Agreement Communications”** | means the communications that the Parties will make to the public in relation to the Agreement, as shall be agreed in writing between the Parties from time to time; |
| **“Alliance Capacity”** | means the total number of hours of the Care Services being provided by the Alliance Providers, not including any hours sub-contracted to Sub-Contractors in accordance with the provisions of Clause 49.5 of this Agreement, in the Geographical Zone calculated by the Council at the point in time when this measure is applied under the provisions of this Agreement; |
| **“Alliance Default Sum”** | means:   1. the Council’s Losses incurred in respect of termination for Alliance Default; and 2. if the Council carries out the Services and/or Care Services itself, or engages a Replacement Provider or the SPoLR to carry out the Services and/or the Care Services, the cost:    1. to which the Council has put in to procuring and engaging such Replacement Provider; and    2. the amount by which the costs payable under any replacement contract(s) with the Replacement Provider and/or the SPoLR or the cost of the Council providing the Services and/or Care Services itself (as applicable) exceed the estimated total Care Package Payments under all ISP Agreements up to and including the date of expiry; and 3. any other costs, losses or liabilities which are provided as being recoverable by the Council under this Agreement as a result of the relevant Alliance Default, whether by way of indemnity or otherwise, provided that there shall be no double recovery on the part of the Council; |
| **“Alliance Default”** | means any one of the following events:   1. the occurrence of a Provider Default in respect of the Strategic Provider; 2. without prejudice to the Strategic Provider’s obligations under Clause 11.3, all Alliance Providers in the Alliance abandon the delivery of the Care Services or otherwise cease to provide the Care Services for more than fourteen (14) days; |
| **“Alliance Dispute”** | means a dispute arising out of or in connection with this Agreement between any Alliance Provider and the Council (including any dispute, difference or question of interpretation relating to the Services), including any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure and shall exclude, for the avoidance of doubt, any Care Package Dispute; |
| **“Alliance Provider’s Safeguarding Policy”** | has the meaning given to it in Clause 19.2; |
| **“Alliance Provider”** | means either the Strategic Provider or any Individual Provider as the context dictates and shall include any New Provider admitted to the Alliance pursuant to Clause 6 (Joining the Alliance) and **“Alliance Providers**” shall be interpreted accordingly; |
| **“Alliance Representative”** | has the meaning given to it in Clause 15.1; |
| **“Alliance Services”** | means the services to be delivered by each Alliance Provider as set out in the Alliance Specification; |
| **“Alliance Specification”** | means the specification of requirements at Part A (Alliance Specification) of Schedule 2 (Specifications); |
| **“Alliance’s Environmental Policy”** | means the environmental policy drafted by the Strategic Provider covering its responsibilities relating to environmental matters, including but not limited to: emission reductions, biodiversity and waste management; |
| **“Allocated Care Package”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Allocated Care Packages”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Alternative Provider”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Alternative Provider”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Amended Care Package”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Announcement Date”** | means the date the Living Wage Foundation, Citizens UK registered charity number 1107264 (or any relevant replacement organisation) announces the living wage rates to be applied in the following year; |
| **“Anti-Slavery Laws”** | has the meaning given to it in Clause 20.2.1; |
| **“Assessment”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Assigned Employees”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Assimilated Law”** | has the meaning given to it in the European Union (Withdrawal) Act 2018 as amended by the Retained EU Law (Revocation and Reform) Act 2023; |
| **“Associated With”** | shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 and guidance published under it; |
| **“Auditors”** | has the meaning given to it in Clause 47.3; |
| **“Award Criteria”** | has the meaning given to it in Schedule 11 (New Provider Competition); |
| **“Background IPR”** | means any Intellectual Property Rights, other than Foreground IPR, that are provided by one Party to the another Party in connection with this Agreement and/or the Services; |
| **“Best Value Duty”** | means the duty imposed on the Council by section 3 of the Local Government Act 1999; |
| **“Bill”** | means a proposal for a new law or an amendment to an existing law that has been presented to Parliament for consideration; |
| **“Business Continuity Plan”** | means a written document prepared by the Alliance Providers detailing the procedures to be followed and actions to be undertaken by the Alliance Providers where an event occurs to interrupt the normal business activities, including business functions, operations, or processes of any of the Alliance Providers or the Council, (whether anticipated or unanticipated); |
| **“Business Failure”** | means:   1. the meaning given to it in the Care and Support (Business Failure) Regulations 2014; and/or 2. any other failure which leads to an Alliance Provider being unable to deliver the Care Services; |
| **“Caldicott Principles”** | means those principles identified in the Department of Health report on the review of patient identifiable information December 1997 (or as updated from time to time) and as set out in Schedule 15 (Caldicott Principles); |
| **“Care and Support Plan”** | has the meaning given to it in the Alliance Specification; |
| **“Care Package Change”** | means any change to the nature, extent or frequency of the Care Services to a Person under an Allocated Care Package; |
| **“Care Package Charges”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Care Package Dispute”** | means any dispute between the Council and an Alliance Provider in connection with the provision of Care Services by the Alliance Provider under an Allocated Care Package; |
| **“Care Package Payments”** | has the meaning given to it in the ISP Agreement; |
| **“Care Package Services”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Care Package”** | means the package of Care Services to be provided to an individual Person to meet the needs and outcomes set out in their Care and Support Plan; |
| **“Care Services Specification”** | means the specification of requirements set out in the ISP Agreement; |
| **“Care Services”** | means those services set out in the Care Services Specification; |
| **“CEDR”** | means the Centre for Effective Dispute Resolution; |
| **“Change Authorisation Notice”** | has the meaning given to it in Schedule 9 (Change of Control Procedure); |
| **“Change Control Procedure”** | has the meaning given to it in Schedule 9 (Change of Control Procedure); |
| **“Change in Control”** | means:   1. in the case of a corporation with share capital, any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the beneficial ownership of fifty percent (50%) or more of the issued share capital of that corporation, the ability to control the exercise of fifty percent (50%) or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters and/or the legal power to direct or cause the direction of the management of that corporation), provided that a Change in Control will be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation; 2. in the case of a company limited by guarantee or other corporation without share capital, any transfer of or change in membership (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the legal power to direct or cause the direction of the management of that corporation and/or the ability to control the exercise of fifty percent (50%) or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change in Control will be deemed not to have occurred if after any such transfer or change the same entities directly or indirectly exercise the same degree of control over the relevant corporation; 3. in the case of any corporation, any transfer to or acquisition by a third party of all or substantially all of the business and assets of that corporation; or 4. in respect of an NHS Trust, NHS Foundation Trust or NHS Body, any change in the ability to control an NHS Foundation Trust, NHS Trust or NHS Body by virtue of the entering into of any franchise, management or other agreement or arrangement, under the terms of which the control over the management of the relevant NHS Foundation Trust, NHS Trust or NHS Body is conferred on another person without the Council’s prior written consent; |
| **“Change in Law”** | means the coming into effect after the Effective Date of:   1. any new Law, other than any law which on the Effective Date has been published:    1. in a draft Bill as part of a Governmental Departmental Consultation Paper;    2. in a Bill;    3. in a draft statutory instrument; 2. any new Guidance; or 3. any applicable judgment of a relevant court of law which substantially and materially changes a binding precedent; |
| **“Change Request”** | has the meaning given to it in Schedule 9 (Change of Control Procedure); |
| **“Change”** | means any change to this Agreement and/or the Services and/or the Care Services and/or the arrangements constituted by it but does not include a Care Package Change; |
| **“Choice Policy”** | shall mean the Council’s policy in relation to Person choice which shall be notified to the Alliance Providers, as shall be updated from time to time; |
| **“Choice Protocol”** | shall mean the protocol to be agreed between the Parties from time to time to successfully implement the Choice Policy; |
| **“Clause”** | means a clause of this Agreement and any modification thereof; |
| **“Code of Practice for International Recruitment”** | means the United Kingdom’s Code of Practice for International Recruitment which can be accessed at: [Code of practice for the international recruitment of health and social care personnel in England - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel-in-england); |
| **“Commencement Date”** | means [INSERT]; |
| **“Commercially Sensitive Information”** | means the information listed in Schedule 8 (Commercially Sensitive Information) comprising information of a commercially sensitive nature relating to any Alliance Provider, its Intellectual Property Rights or its business or which the Alliance Provider has indicated to the Council that, if disclosed by the Council, would cause the Alliance Provider significant and material commercial disadvantage and financial loss; |
| **“Competition”** | means a competition undertaken by the Council for the admittance of a New Provider(s) to the Alliance and this Agreement pursuant to Schedule 11 (New Provider Competition); |
| **“Conditions Precedent”** | means the conditions to be satisfied by the each Alliance Provider pursuant to Clause 3.1 as the same are set out in Schedule 1 (Conditions); |
| **“Conditions Subsequent”** | means the conditions to be satisfied by each Alliance Provider pursuant to Clause 3.2 as the same are set out in Schedule 1(Conditions); |
| **“Confidential Information”** | means any information or data in whatever form disclosed, which by its nature is confidential or which a disclosing Party acting reasonably states in writing to a receiving Party is to be regarded as confidential, or which the disclosing Party acting reasonably has marked ‘confidential’ (including, financial information, or marketing or development or workforce plans and information, and information relating to services or products) but which is not Personal Health Records or information relating to a particular Person, or Personal Data, or information which is disclosed in accordance with Clause 27 (Freedom of Information) in response to a Request for Information, or information which is published as a result of Government policy in relation to transparency; |
| **“Conflicted Party”** | shall have the meaning given to it in Clause 22.2 below; |
| **“Contract Year”** | means a period of twelve (12) Months commencing on the Commencement Date; |
| **“Contracting Authority”** | has the meaning given to it in the Regulations; |
| **“Controller”** | has the meaning given to it in the Data Protection Laws; |
| **“Corruption Default”** | means a default under the provisions of Clause 23 (Prevention Against Bribery and Corruption) and Clause 24 (Safeguard Against Fraud and Anti-Tax Evasion) of this Agreement; |
| **“Council Policies”** | means the Council’s internal standards, documents, guidance, policies and procedures in relation to safeguarding adults and children in force or issued to the Alliance Providers from time to time; |
| **“Council Related Party”** | means the Council, a Council’s Affiliate, contractor (of any tier) and agent and its or their directors, officers and employees in relation to the provision of the Services (excluding the Alliance Providers and the Provider Related Parties) and “**Council Related Parties**” shall be interpreted accordingly; |
| **“Council Representative”** | has the meaning given to it in Clause 15.6; |
| **“Council Safeguarding Policies”** | means the Council’s internal standards, documents, guidance, policies and procedures in force or issued to the Alliance Providers from time to time; |
| **“Council Termination Notice”** | has the meaning given to it in Clause 38.1; |
| **“CQC Inspector”** | means an inspector appointed by the CQC; |
| **“CQC”** | means the Care Quality Commission and any replacement thereof or successor thereof; |
| **“Crown”** | means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies; |
| **“CS Completion Date”** | means the date which falls six (6) Months from the Commencement Date; |
| **“Data Protection Act”** | means the Data Protection Act 2018; |
| **“Data Protection Communication”** | has the meaning given to it in Clause 30.13; |
| **“Data Protection Laws”** | means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; |
| **“Data Security and Protection Toolkit”** | means the NHS Data Security and Protection Toolkit means the online system at (<https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/data-security-and-protection-toolkit>); |
| **“Data Subject”** | has the meaning given to it in the Data Protection Laws; |
| **“Date of Removal”** | the meaning given to it in Clause 7.5.2; |
| **“DBS”** | has the meaning given to it in Clause 19.5.2.1; |
| **“Deadline”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Debt Securities”** | means debentures, debenture or loan stock, bonds and notes, whether secured or unsecured; |
| **“Defaulting Provider Default Sum”** | means:   1. the Council’s Losses incurred in respect of the removal of the Defaulting Provider from the Alliance and this Agreement; and 2. if the Council carries out a Competition for a New Provider as a result of the removal of the Defaulting Provider from the Alliance and this Agreement, the cost to which the Council has put in procuring and engaging such New Provider; and/or 3. if the Defaulting Provider is the Strategic Provider, and the Council engages the SPoLR (or any other provider) to carry out the Services and/or Care Services:    1. the cost to the Council of procuring and engaging the SPoLR (or any other provider); and    2. the amount by which the costs payable under any replacement contract(s) with the SPoLR (or any other provider) or the cost of the Council providing the Services and/or Care Services itself (as applicable) exceed the Defaulting Provider’s Provider Proportion of the estimated total Care Package Payments under all ISP Agreements up to and including the date of expiry; and 4. any other costs, losses or liabilities which are provided as being recoverable by the Council under this Agreement as a result of the relevant Provider Default, whether by way of indemnity or otherwise, provided that there shall be no double recovery on the part of the Council; |
| **“Defaulting Provider”** | has the meaning given to it in Clause 7.2; |
| **“Direct Losses”** | means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses which have been incurred) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands; |
| **“Disclosed Data”** | means information relating to the Services and Care Services disclosed to the Alliance and any Alliance Provider by the Council; |
| **“Dispute Resolution Procedure”** | means the dispute resolution procedure described in Clause 37 (Dispute Resolution Procedure); |
| **“Disputing Party”** | has the meaning given to it in Clause 37.1 and “**Disputing Parties**” shall be interpreted accordingly; |
| **“Draft Exit Plan”** | has the meaning given to it in Schedule 13 (Exit Requirements); |
| **“ECM System”** | means the system implemented by each Alliance Provider for the purpose of ECM; |
| **“ECM”** | means electronic call monitoring; |
| **“Effective Date”** | means the date of this Agreement; |
| **“EIRs”** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations; |
| **“Employee Information”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Employee Liability Information”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Employee List”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“E-Referral Platform”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“E-referral Platform”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Ethical Recruiters List”** | means the list maintained by the National Health Service of those organisations which operate in accordance with the Code of Practice for International Recruitment which can be accessed at:  <https://www.nhsemployers.org/articles/ethical-recruiters-list>; |
| **“Exceptional Event”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Existing Care Packages”** | means those care packages which are being delivered by an Alliance Provider within the Geographical Zone immediately prior to the Commencement Date; |
| **“Exit Period”** | has the meaning given to it in Schedule 13 (Exit Requirements); |
| **“Exit Plan”** | has the meaning given to it in Schedule 13 (Exit Requirements); |
| **“Exit Requirements”** | has the meaning given to it in Schedule 13 (Exit Requirements); |
| **“Expiry Date”** | has the meaning given to it in Schedule 13 (Exit Requirements); |
| **“Expiry Trigger Date”** | has the meaning given to it in Schedule 13 (Exit Requirements); |
| **“Final Employee List”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Find a Tender Service”** | has the meaning given to it in Schedule 11 (New Provider Competition); |
| **“First Employee List”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“First Extended Term”** | means, subject to the earlier termination of this Agreement in accordance with its terms, a period of six (6) years from the Commencement Date, as such period may be extended in accordance with the provisions of Clause 4 (Council’s Option to Extend); |
| **“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 Event”** | means the occurrence after the Effective Date of:   1. war, civil war, armed conflict, rebellion or terrorism; or 2. nuclear, chemical or biological contamination unless in any case the Party claiming the benefit of relief (or a Provider Related Party or a Council Related Party as the case may be) is the source or cause of the contamination; 3. lightning, earthquake, fire, explosions, flood, storm or extreme weather condition; 4. pandemic or epidemic;   which directly causes any Party to be unable to comply with all or a material part of its obligations under this Agreement, unless occurrence of any of the events listed in paragraphs (a)-(c) (above) are caused by the act or omission of any of the Parties; |
| **“Force Majeure Notice”** | means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event; |
| **“Foreground IPR”** | means any Intellectual Property Rights that arise or are developed by any Party:   1. in the course of performing the Services; or 2. exclusively for the purposes of the Services; |
| **“Foreign Tax Evasion Offence”** | shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 and guidance published under it; |
| **“Fraud”** | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown, including any offence under the Criminal Finances Act 2017, and “**Fraudulent**” shall be construed accordingly; |
| **“Gainshare Funding”** | means the funding to be paid by the Council to the Strategic Provider in accordance with the provisions of Clause 12 (Gainshare and Invoicing) as set out in Schedule 14 (Gainshare Funding); |
| **“General Change in Law”** | means a Change in Law which is not a Specific Change in Law; |
| **“Geographical Zone Capacity Shortfall”** | means the Geographical Zone Capacity Threshold minus the Alliance Capacity at the point in time when this measure is applied under the provisions of this Agreement, provided always that if this number is a negative number the Geographical Zone Capacity Shortfall will be zero (0); |
| **“Geographical Zone Capacity Threshold”** | means the total number of hours of the Care Services which the Council has a need to have met (whether met or unmet at the time of the calculation) in the Geographical Zone calculated by the Council at the point in time when the threshold is applied under the provisions of this Agreement; |
| **“Geographical Zone”** | means [●] which covers those areas in Cornwall with the following post codes: [●]; |
| **“Good Industry Practice”** | means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as that Party under the same or similar circumstances; |
| **“Guidance”** | means any applicable guidance, code of practice or directions issued by a Relevant Authority or a Regulatory Body which each Alliance Provider is bound to comply pursuant to the requirements of any Law; |
| **“Handover Meeting”** | has the meaning given to it in Schedule 13 (Exit Requirements); |
| **“Health and Safety Accreditation”** | means [Health and Safety accreditation submitted by the Alliance/Alliance Providers in its Tender to be inserted here.] |
| **“Impact Assessment”** | has the meaning given to it in Schedule 9 (Change of Control Procedure); |
| **“Index”** | means the Consumer Price Index (however such index might be termed) issued by the Office for National Statistics or any other government department upon which duties in connection with the compilation and maintenance of such index shall have devolved or in the absence of any such index such other index as the Council may reasonably specify; |
| **“Indirect Losses”** | means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature, save to the extent that such losses are addressed in the definition of Direct Losses; |
| **“Individual Providers”** | means all the Parties to this Agreement excluding:   1. the Council; and 2. the Strategic Provider,   but including any New Provider admitted to the Alliance pursuant to Clause 6 (Joining the Alliance) where that New Provider is not intended to replace the Strategic Provider, and reference to an “**Individual Provider**” shall mean any one of them; |
| **“Information Commissioner”** | means the United Kingdom’s independent authority set up to uphold information rights in the public interest and data privacy for individuals; |
| **“Initial Term”** | means, subject to the earlier termination of this Agreement in accordance with its terms, a period of three (3) years from the Commencement Date as such period may be extended in accordance with the provisions of Clause 4 (Council's Option to Extend); |
| **“Insurances”** | means the required insurance policies set out in paragraph 2 of Schedule 16 (Insurances); |
| **“Intellectual Property Rights”** | means:   1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; 2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and 3. all other rights having equivalent or similar effect in any country or jurisdiction; |
| **“Invitation to Tender”** | means the tender documentation issued by the Council through the Contract Notice; |
| **“IPR Claim”** | means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Right used to provide the Services and/or Care Services or as otherwise provided by an Alliance Provider (or to which an Alliance Provider has provided access) to the Council in the fulfilment of its obligations; |
| **“ISP Agreement”** | means a legally binding agreement made between the Council, and each Alliance Provider for the delivery of Services which have been ordered and allocated to the Alliance Provider pursuant to Schedule 5 (Ordering Procedure), the form of which is annexed at Schedule 4 (Form of ISP Agreement) of this Agreement and “**ISP Agreements**” shall be interpreted accordingly; |
| **“ISP Termination Date”** | means the date the ISP Agreement terminates pursuant to GC17.5 or GC17.4.1 of the ISP Agreements; |
| **“ISP Termination Notice”** | has the meaning given to it in Clause 7.7.1; |
| **“Joint Controller”** | has the meaning given to it in the Data Protection Laws; |
| **“Know-How”** | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services; |
| **“Law”** | means:   1. any applicable Act of Parliament which has been issued, declared, passed or given effect; 2. any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978; 3. any exercise of the Royal Prerogative; 4. any Assimilated Law; and 5. any regulatory policy, binding guidance or binding industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body; |
| **“LGA Overseas Recruitment Bite-Size Guide for Social Care Providers in England”** | means the Local Government Association’s overseas recruitment bite-size guide for social care providers in England which can be accessed here:  [Overseas recruitment bite-size guide for social care providers in England | Local Government Association](https://www.local.gov.uk/our-support/partners-care-and-health/care-and-health-improvement/adult-social-care-workforce/overseas-recruitment#a-note-about-employing-social-workers) |
| **“Longstop Date”** | means 23:59 hours on the day prior to the date falling three (3) Months from the Effective Date; |
| **“Losses”** | means all Direct Losses and Indirect Losses; |
| **“Mediator”** | has the meaning given to it in Clause 37.3.1; |
| **“Minimum Requirements”** | has the meaning given to it in Schedule 11 (New Provider Competition); |
| **“Mobilisation Period”** | means the period commencing on the Effective Date and ending on the Longstop Date; |
| **“Mobilisation Plan”** | means the Alliance’s mobilisation plan set out in Schedule 3 (Alliance Tender); |
| **“Modern Slavery Policy”** | means the Council’s anti-slavery and human trafficking policy as updated by the Council and notified to the Alliance from time to time; |
| **“Month”** | means a calendar month and “**Monthly**” shall be interpreted accordingly; |
| **“Most Economically Advantageous Tender”** | has the meaning given to it in Schedule 11 (New Provider Competition); |
| **“MSA Offence”** | has the meaning given to it in Clause 20.1.1.2; |
| **“Necessary Consents”** | means all approvals, permissions, consents, licences, certificates and authorisations (whether statutory or otherwise) and including any CQC registration consents or other registration consents under any Law which are required for the purposes of carrying out the obligations of each Alliance Provider in connection with this Agreement, whether required in order to comply with Law or as a result or as a result of the rights of any third party or otherwise; |
| **“New Care Package”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“New Provider”** | means any person which joins the Alliance and this Agreement during the Term pursuant to Clause 6 (Joining the Alliance); |
| **“Non-Regulated Care”** | means those Care Services which are not Regulated Care; |
| **“Notice of Dispute”** | has the meaning given to it in Clause 37.1; |
| **“Ombudsman”** | has the meaning given to it in Clause 47.3; |
| **“Opening Triggers”** | has the meaning given to it in Clause 6.1; |
| **“Operational Meeting”** | has the meaning given to it in Schedule 10 (Monitoring and Reporting); |
| **“Operational Provider of Last Resort”** | has the meaning given to it in the Strategic Provider Specification; |
| **“Optimisation Reallocation”** | has the meaning given to it in Clause 10.5; |
| **“Ordering Procedure”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Out of Hours”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Performance Monitoring Workbook”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“Permitted Purpose”** | means the Processing and sharing of Shared Personal Data for the purposes of allocating Care Packages and optimising the provision of Services under Care Packages; |
| **“Person Outcomes”** | has the meaning given to it in the Alliance Specification; |
| **“Person”** | means a patient or person for whom a Council has statutory responsibility and who receives Services commissioned pursuant to this Agreement; |
| **“Personal Data Breach”** | has the meaning given to it in the Data Protection Laws; |
| **“Personal Data”** | has the meaning given to it in the Data Protection Laws; |
| **“Potential Hand Back”** | shall have the meaning given to it in Clause 10.2; |
| **“Prevention Procedures”** | shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 and guidance published under it; |
| **“Priority Care Package”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Processing”** | has the meaning given to it in the Data Protection Laws, and “**Processed**” and “**Process**” shall be interpreted accordingly; |
| **“Procurement Minimum Requirements”** | means the minimum requirements set out in the Council’s Invitation to Tender, adjusted to reflect an in-Term appointment of a Sub-contractor; |
| **“Prohibited Act”** | means:   1. to directly or indirectly offer, promise or give any person working for or engaged by the Council or the Council’s Affiliates a financial or other advantage to:    1. induce that person to perform improperly a relevant function or activity; or    2. reward that person for improper performance of a relevant function or activity; or 2. committing any offence:    1. under the Bribery Act 2010; or    2. under legislation creating offences concerning fraudulent acts; or    3. at common law concerning fraudulent acts,   in relation to this Agreement or any ISP Agreement or any other contract with the Council or the Council’s Affiliates; or   1. defrauding, attempting to defraud or conspiring to defraud the Council, the Council’s Affiliates and/or the Crown; |
| **“Provider Associated Person”** | means all or any of the following:   1. persons Associated With any of the Alliance Providers (“**Provider Associates**”); or 2. persons Associated With the Provider Associates,   in each case, involved in performing the Services for or on behalf of any Alliance Provider in connection with the Services and this Agreement; |
| **“Provider Compliance Certificate”** | has the meaning given to it in the ISP Agreement; |
| **“Provider Default”** | means:   1. any breach or default under the ISP Agreement by an Alliance Provider which gives rise to a right for the Council to terminate under GC17.5 of the ISP Agreement; 2. a Corruption Default; 3. the Council is entitled to remove the Alliance Provider from the Alliance and this Agreement pursuant to:    1. Clause 17.2.3; or    2. Clause 17.2.4;    3. Clause 22.4;    4. Clause 46.11.1; and/or 4. any material breach which has not been remedied within twenty (20) Working Days by an Alliance Provider of its obligations under this Agreement; |
| **“Provider Dispute”** | means a dispute arising out of or in connection with this Agreement between any of the Alliance Providers (including any dispute, difference or question of interpretation relating to the Services); |
| **“Provider Disputing Parties”** | has the meaning given to it Clause 37.4; |
| **“Provider Fragility”** | means any situation in which there are indications that an Alliance Provider’s viability may be at risk owing to financial, legal, governance or other factors; |
| **“Provider KPI Targets”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“Provider KPIs”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“Provider Notice of Dispute”** | has the meaning given to it Clause 37.4; |
| **“Provider Payment Portal”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Provider Payment Portal”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Provider Performance Measures”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“Provider Policies”** | means the policies and procedures which each Alliance Provider is required to implement, maintain and keep updated in accordance with Good Industry Practice throughout the Term in relation to the delivery of the Services; |
| **“Provider Proportions”** | means the proportions in which each Alliance Provider is liable under this Agreement to make payment of the Alliance Default Sum and any Defaulting Provider Default Sum which shall be a percentage calculated as follows:  one hundred (100)/total number of Alliance Providers in the Alliance at the point at which the liability was incurred (rounded to the nearest whole number); |
| **“Provider Related Party”** | means an Alliance Provider’s Affiliates, any sub-contractors and agents and its or their directors, officers, employees and workmen in relation to the provision of the Services and **“Provider Related Parties”** shall be interpreted accordingly; |
| **“Provider Removal Notice”** | has the meaning given to it in Clause 7.4; |
| **“Provider Representative”** | has the meaning given to it in Clause 15.4; |
| **“Public Company”** | means a company which:   1. has shares that can be purchased by the public; and 2. has an authorised share capital of at least fifty thousand pounds sterling (£50,000.00) with each of the company’s shares being paid up at least to one quarter of the nominal value of the share and the whole of any premium on it; and 3. has securities listed on a stock exchange in any jurisdiction; |
| **“Purchase Order”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Quarter”** | with effect from the Commencement Date, each period of three (3) months or part thereof ending 30 June, 30 September, 31 December or 31 March and “Quarterly” will be construed accordingly; |
| **“Reassessment”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Regulated Activity Provider”** | has the meaning given to it in the SVGA 2006; |
| **“Regulated Activity”** | has the meaning given to it in the SVGA 2006; |
| **“Regulated Care”** | means those elements of the Care Services listed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014); |
| **“Regulations”** | means the Public Contracts Regulations 2015 (as amended); |
| **“Regulatory Body”** | means those Government departments and regulatory, statutory and other entities, communities, ombudsmen and bodies, which whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence the matters dealt with in this Agreement or the ISP Agreements or any other affairs of the Council or the Alliance Providers, as applicable, including, for the avoidance of doubt, the CQC, NHS England, the Department of Health and Social Care, NICE, Healthwatch England and Local Healthwatch, the UK Health Security Agency, the General Pharmaceutical Council, the Healthcare Safety Investigation Branch, and the Information Commissioner; |
| **“Related Parties”** | means either the Council Related Parties or the Provider Related Parties, as the context may require; |
| **“Relevant Authority”** | means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Government of the United Kingdom; |
| **“Relevant Person”** | means any employee, agent, servant, or representative of the Council or the Council’s Affiliates; |
| **“Relevant Transfer”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Repeat SP Performance Failure”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“Replacement Provider”** | means any person appointed by the Council to provide services the same as or similar to any of the Services in place of the Alliance Providers; |
| **“Request for Information”** | means a Request for Information or an apparent request under the FOIA or the EIRs; |
| **“Required Action”** | has the meaning given to it in Clause 14.3; |
| **“Restricted Person”** | means:   1. any person, other than an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity fund, private equity firm, venture capitalist, insurance company or investment trust who has a material interest in the production of tobacco products or alcoholic beverages; or 2. any person who the Council otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in an Alliance Provider or in a Sub-Contractor; |
| **“Return Date”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Returning Employees”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Schedules”** | means a schedule to this Agreement and any modifications thereof and “**Schedule**” means any one or other of the schedules; |
| **“Second Extended Term”** | means, subject to the earlier termination of this Agreement in accordance with its terms, a period of eight (8) years from the Commencement Date; |
| **“Security”** | means Shares, Debt Securities, unit trust schemes (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing Debt Securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company; |
| **“Selection Questionnaire”** | means the Alliance Providers response to the selection questionnaire in respect of the suitability of each Alliance Provider which was submitted by the Alliance Providers during the procurement process for the Agreement; |
| **“Service Provision Change”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Service Request Response”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Service Request”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Service Standard”** | has the meaning given to it in Clause 11.7; |
| **“Service Visit”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Services”** | means the Alliance Services and the Strategic Provider Services, but does not include the Care Services; |
| **“Shared Personal Data”** | the Personal Data (including special category data) to be shared between the Parties in connection with this Agreement; |
| **“Shares”** | has the meaning given in section 540 of the Companies Act 2006, including preference shares; |
| **“Social Value Obligations”** | means the commitments the Alliance Providers have made in their responses to the Social Value TOMs Calculator set out in Schedule 17 (Social Value Obligations); |
| **“SP KPI Targets”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“SP KPI Targets”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“SP KPI”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“SP KPIs”** | means the key performance indicators set out in Appendix 3 (KPIs) of Schedule 7 (Performance Monitoring); |
| **“SP Performance Failure”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“SP Performance Measures”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“SP Performance Report”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“SP Persistent Performance Failure”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“SP Rectification Notice”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“SP Rectification Plan”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“Specific Change in Law”** | means any Change in Law which specifically refers to the provision of services the same or similar to the Services and/or the Care Services and which was not foreseeable at the Effective Date; |
| **“Specifications”** | means the Alliance Specification, the Strategic Provider Specification and the Care Services Specification; |
| **“SPoLR”** | means Corserv Care Limited a company incorporated and registered in England and Wales (Company number 13055619) whose registered office is at Western Group Centre Radnor Road, Scorrier, Redruth, Cornwall, England, TR16 5EH; |
| **“Staff”** | means any individual or individuals directly engaged by any of the Alliance Providers in respect of the provision of the Services and/or the Care Services to Persons and such terms shall include the staff of any Sub-Contractor and any Agency Staff; |
| **“Start Date”** | has the meaning given to it in Schedule 5 (Ordering Procedure); |
| **“Step-In Action Notice”** | has the meaning given to it in Clause 14.2; |
| **“Strategic Meeting”** | has the meaning given to it in Schedule 7 (Performance Monitoring); |
| **“Strategic Provider Services”** | means the services to be provided by the Strategic Provider (or any such replacement provider as shall be identified in accordance with the terms of this Agreement) as set out in the Strategic Provider Specification; |
| **“Strategic Provider Specification”** | means the specification of requirements for the role of the Strategic Provider set out in Part B (Strategic Provider Specification) of Schedule 2 (Specifications); |
| **“Sub-Contract”** | means the sub-contract entered into by the Strategic Provider and a Sub-Contractor pursuant to the provisions of Clause 49 (Subcontracting); |
| **“Subcontracting Request”** | has the meaning given to it in Clause 49.2; |
| **“Sub-Contractor Minimum Requirements”** | has the meaning given to it in Clause 49.3; |
| **“Sub-Contractor”** | means any person the Strategic Provider intends to sub-contract the provision of the Care Services to pursuant to Clause 49 (Subcontracting); |
| **“Suspension”** | has the meaning given to it in Clause 7.7; |
| **“SVGA”** | means the Safeguarding Vulnerable Groups Act 2006; |
| **“Tender”** | means the tender submitted by the Alliance Providers in response to the Council’s Invitation to Tender and annexed at Schedule 3 (Alliance Tender); |
| **“Term”** | means subject to the earlier termination of this Agreement in accordance with its terms, the period from the Commencement Date to the expiry of the Initial Term, the First Extended Term or the Second Extended Term, as applicable, but which shall be no longer (in total) than eight (8) years from the Commencement Date; |
| **“Terminated Service”** | has the meaning given to it in Schedule 6 (TUPE); |
| **“Termination Trigger Date”** | has the meaning given to it in Schedule 13 (Exit Requirements); |
| **“Time Critical Service Visits”** | has the meaning given to it in Schedule 2G of the ISP Agreement; |
| **“TUPE”** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006; |
| **“UK GDPR”** | has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; |
| **“UK Sponsor Licence”** | means the applicable licence granted by UK Visas and Immigration for employing individuals from outside the UK, as further detailed in the UK Government guidance below and as amended from time to time;  <https://www.gov.uk/uk-visa-sponsorship-employers> |
| **“UK Sponsorship Licence Rating”** | means the rating allocated to the UK Sponsor Licence by UK Visas and Immigration, as further detailed in the UK Government guidance below and amended from time to time;  <https://www.gov.uk/uk-visa-sponsorship-employers> |
| **“UK Tax Evasion Offence”** | shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 and guidance published under it; |
| **“UK Visas and Immigration”** | means the UK visas and immigration department that forms part of the Home Office; |
| **“VAT”** | means value added tax; |
| **“WHO Global Code of Practice on the International Recruitment of Health Personnel”** | means the World Health Organisation’s Global Code of Practice on the International Recruitment of Health Personnel which can be accessed here: <https://www.who.int/publications/i/item/wha68.32>; and |
| **“Working Days”** | means a day (other than a Saturday or Sunday) on which banks are ordinarily open for business in the City of London. |

## References to Clauses, Schedules and Appendices are to the clauses, schedules and appendices of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## Reference to “this Agreement” includes any variations made from time to time pursuant to its terms.

## Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.

## Any reference to ‘writing or written’, includes include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly, save that any notice required to be given in writing must comply with the provisions of Clause 50 (Notices);

## Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

## The headings in this Agreement are for ease of reference only any shall not affect the interpretation or construction of this Agreement.

# ORDER OF PRECEDENCE

## In the event of any inconsistency between the provisions of the body of these Clauses and the Schedules, the inconsistency shall be resolved according to the following descending order of precedence:

### these Clauses;

### Schedule 2(Specifications);

### the Schedules (excluding Schedule 2 (Specifications), and Schedule 3 (Alliance Tender); and

### Schedule 3(Alliance Tender).

## For the avoidance of doubt, the Specifications shall at all times have priority over the Tender and each Alliance Provider shall be obliged to comply with the Specifications and provide the Services in accordance with the Specifications at all times.

## In the event of any inconsistency or conflict between the provisions of this Agreement on the one hand and the provisions of the ISP Agreements on the other, the provisions of this Agreement shall prevail over the provisions of the ISP Agreement.

# CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

## On or prior to the execution of this Agreement each Alliance Provider shall deliver to the Council the documents set out in Appendix 1(Conditions Precedent) of Schedule 1(Conditions) (unless the requirement to deliver any such document is waived by written agreement between the Council and the relevant Alliance Provider).

## On or prior to the CS Completion Date, each Alliance Provider shall deliver to the Council the documents set out in Appendix 2 (Conditions Subsequent) of Schedule 1 (Conditions) (unless the requirement to deliver any such document is waived by written agreement between the Council and the relevant Alliance Provider).

## If the Conditions Subsequent have not been satisfied or waived in accordance with Clause 3.2 on or prior to the CS Completion Date, the Council may in its absolute discretion by written notice to the relevant Alliance Provider, extend the CS Completion Date. If the Council does not exercise its option to extend the CS Completion Date, the relevant Alliance Provider shall be removed automatically from the Alliance and this Agreement on 23.59:59 hours on the CS Completion Date, and for the avoidance of doubt, no compensation shall be payable by the Council to any of the Alliance Providers as a result of such removal.

## If:

### the Council exercises its option to extend the CS Completion Date; and

### the Conditions Subsequent have not been satisfied or waived in accordance with Clauses 3.2 or 3.3 on or prior to the date to which the Council has extended the CS Completion Date,

## then the Council shall be entitled to remove the relevant Alliance Provider from the Alliance and this Agreement on the CS Completion Date (as extended pursuant to Clause 3.3), and for the avoidance of doubt no compensation shall be payable by the Council to any Alliance Provider as a result of such removal.

## The provisions of Clauses 7.23 to 7.27 (inclusive) shall apply in respect of the consequences of the removal of any Alliance Provider pursuant to this Clause 3 (Conditions Precedent and Conditions Subsequent).

# COUNCIL’S OPTION TO EXTEND

## Subject the provisions of Clauses 3 (Conditions Precedent and Conditions Subsequent), and 5.6, this Agreement shall take effect from the Effective Date for the Term unless terminated earlier in accordance with the terms of this Agreement or otherwise by operation of Law.

## The Council may, by giving written notice to the Alliance no later than the date which falls six (6) Months prior to the expiry of the Initial Term (or the First Extended Term, as applicable), extend this Agreement on two occasions in accordance with provisions of this Clause 4 (Council's Option to Extend).

## In the event the Council exercises its rights under this Clause 4 (Council's Option to Extend) to extend the Initial Term to the First Extended Term, and the Second Extended Term (if applicable), this Agreement shall be extended for the relevant period.

## Expiry of this Agreement shall not automatically cause the ISP Agreements to terminate unless notified in writing by the Council to the relevant Alliance Provider.

# MOBILISATION

## The Alliance has submitted its Mobilisation Plan as part of its Tender, such Mobilisation Plan being annexed at Schedule 3 (Alliance Tender) of this Agreement. During the Mobilisation Period each Alliance Provider shall:

### comply with and implement the Mobilisation Plan;

### keep the Mobilisation Plan continually under review; and

### not modify the Mobilisation Plan other than as permitted by this Clause 5 (Mobilisation).

## Where the Alliance identifies that an amendment is required to the Mobilisation Plan, the Alliance shall present to the Council the amendment and its rationale and seek the Council’s approval before implementing the relevant amendment.

## Where the amendment to the Mobilisation Plan is:

### required as a result of a breach of Clause 5.1.1, the Council shall be entitled to approve or reject such amendment in its absolute discretion; or

### required for any other reason than a breach of Clause 5.1.1, the Council shall be entitled to approve or reject such amendment (acting reasonably),

## and in either event communicate its decision to the Alliance within a seventy-two (72) hour period of the request being made.

## None of the Alliance Providers shall be entitled to any payments or renumeration of any kind from the Council during the Mobilisation Period.

## During the Mobilisation Period, the following activities shall be undertaken:

### each Alliance Provider shall ensure that the ECM System is in place and operational;

### the Strategic Provider and the Council shall agree and implement the Alliance Agreement Communications;

### the Strategic Provider shall prepare and submit to the Council a Business Continuity Plan detailing procedures for providing the Services in the event of an emergency or any disruption to the Services due to unexpected and unforeseen circumstances throughout the Term in accordance with the requirements set out in Clause 45 (Business Continuity Planning and Disruption);

### each Alliance Provider shall ensure it has access to and training in relation to the use of the E-referral Platform and the Provider Payment Portal;

### the Parties shall implement and facilitate any administrative arrangements for the transfer of Existing Care Packages to be brought under the terms of this Agreement and the ISP Agreements;

### each Alliance Provider shall complete a Data Security and Protection Toolkit self-assessment; and

### each Alliance Provider shall develop in collaboration with the Council an annual complaints report.

## If any of the Alliance Providers’ obligations or responsibilities under the Mobilisation Plan are not satisfied by the Longstop Date the Council shall be entitled to:

### terminate this Agreement on notice with immediate effect (and for the avoidance of doubt, no compensation shall be payable by the Council to any of the Alliance Providers as a result of such termination); or

### in its absolute discretion by written notice extend the Longstop Date.

## During the first six (6) Months of the Term, the Council shall undertake at least one (1) site visit at an office of each Alliance Provider, such site visit to take place, whereas at the Effective Date:

#### an Alliance Provider has a CQC registered office in Cornwall, at that office;

#### an Alliance Provider does not have a CQC registered office in Cornwall, at an alternative office which is registered with the CQC; or

#### an Alliance Provider is not required to be registered with CQC, at its head office,

to ensure that all the Provider Policies are in place in readiness for the commencement of the delivery of the Services.

# JOINING THE ALLIANCE

## The Council may allow a New Provider or New Providers to join the Alliance and this Agreement:

### at least once in the first three (3) years of the Agreement, and at least once in the subsequent five (5) years of the Agreement (if the Agreement is extended in accordance with its terms) if the total capacity of the Alliance to provide the Care Services is less than eighty percent (80)% of the Geographical Zone Capacity Threshold; or

### where an Alliance Provider or Alliance Providers has or have been removed from the Alliance and this Agreement and as a result the total capacity of the Alliance to provide the Care Services is less than eighty percent (80)% of the Geographical Zone Capacity Threshold; or

### where the SPoLR is appointed pursuant to Clauses 7 (Removal from the Alliance) and 14 (Step-In Rights),

the “**Opening Triggers**”.

## Where an Opening Trigger exists and the Council wishes to admit a New Provider or New Providers to the Alliance and this Agreement, the Council shall undertake a Competition in accordance with the provisions of Schedule 11(New Provider Competition).

## Subject to the provision of Clause 6.4 below, where a New Provider has been invited to join the Alliance, the Parties and the New Provider shall execute the documentation required to become a party to this Agreement and an ISP Agreement and on execution, the New Provider shall become a party to the Alliance and this Agreement.

## Where a New Provider has been procured under a Competition as a new strategic provider, the provisions of Clauses 7.15 or 7.22 below (as appliable) will apply.

# REMOVAL FROM THE ALLIANCE

## Save for in respect of removal of an Alliance Provider pursuant to Clauses 3.3 and 3.4, an Alliance Provider may be removed from the Alliance and this Agreement only in accordance with the terms of this Clause 7 (Removal from the Alliance).

## If any Alliance Provider suspects that an Alliance Provider has committed a Provider Default (such Alliance Provider being the “**Defaulting Provider**”), it shall notify the Council in writing as soon as reasonably practicable.

## Where an Alliance Provider has committed a Provider Default under limb (a) of the definition of Provider Default, the provisions of GC17.5 of the ISP Agreement shall apply.

## Where an Alliance Provider has committed a Provider Default under limb (b), (c) or (d) of the definition of Provider Default, the Council shall be entitled to give notice to remove that Defaulting Provider from the Alliance and this Agreement by issuing a notice to that effect (a “**Provider Removal Notice**”).

## Each Provider Removal Notice must specify:

### the type and particulars of the Provider Default;

### subject to Clause 7.6, the date on which the Defaulting Provider will be removed from the Alliance and this Agreement (“**Date of Removal**”); and

### state that the Defaulting Provider shall be placed into Suspension with immediate effect up until the Date of Removal or the date that the Provider Removal Notice is revoked by the Council.

## Where an Alliance Provider has committed a Corruption Default that Alliance Provider shall be removed from the Alliance and this Agreement on the service of a Provider Removal Notice with immediate effect, such that the Date of Removal shall be deemed to be the date of the Provider Removal Notice.

***Suspension***

## On the service of:

### a notice pursuant to GC17.5 of the ISP Agreement (an “**ISP Termination Notice**”); or

### a Provider Removal Notice pursuant to Clause 7.4 above,

the Alliance Provider shall be suspended from delivering the Services, meaning the Alliance Provider shall not be allocated or accept any New Care Packages ordered by the Council pursuant to Schedule 5 (Ordering Procedure) (“**Suspension**”).

## Where the Council revokes an ISP Termination Notice or Provider Removal Notice (as applicable) and the Alliance Provider’s Suspension is lifted, the Provider shall be able to accept any New Care Packages allocated to it pursuant to Schedule 5 (Ordering Procedure).

## Where the Council:

### does not revoke an ISP Termination Notice and the ISP Agreement is terminated pursuant to GC17.5 of the ISP Agreement, the Alliance Provider shall be automatically removed from the Alliance and this Agreement on the ISP Termination Date; or

### does not revoke a Provider Removal Notice, the Alliance Provider shall be removed from the Alliance and this Agreement from the Date of Removal and the ISP Agreement between the Council and the Alliance Provider shall automatically terminate on the Date of Removal; or

### the provisions of Special Condition 30.10 of the ISP Agreement apply and the ISP Agreement is terminated pursuant to GC17.5 of the ISP Agreement, the Alliance Provider shall be automatically removed from the Alliance and this Agreement on the ISP Termination Date.

## Where the Defaulting Provider is the Strategic Provider, or where the Strategic Provider has committed a SP Persistent Performance Failure, the provisions of Clauses 7.11 to 7.15 shall apply.

## The Council shall be entitled to:

### exercise its step-in rights pursuant to Clause 14 (Step-In Rights) up until the Date of Removal or the ISP Termination Date (as applicable); and

### where the Strategic Provider is removed from the Alliance, appoint the SPoLR to the Alliance who will become the strategic provider in the Alliance for the purposes of this Agreement in accordance with the provisions below.

## Where the Council elects to appoint the SPoLR as the replacement strategic provider to the Alliance:

### all Alliance Providers shall consent and agree to a novation of all of the rights and obligations of the Strategic Provider under this Agreement to the SPoLR and shall promptly execute all documentation required to implement such a novation; and

### the Council and the Strategic Provider shall novate the ISP Agreement between the Strategic Provider and the Council to the SPoLR and shall promptly execute all documentation required to implement such a novation.

## Where the Council does not elect to appoint the SPoLR as the replacement strategic provider, or appoint a replacement strategic provider in accordance with the provisions of Clause 6 (Joining the Alliance), the provisions of Clause 38 (Termination for Alliance Default) shall apply.

## Where the SPoLR is appointed to this Agreement under the provisions of Clause 7.12, the Council shall be able to review the appointment of the SPoLR at any time during the Term, and a new strategic provider may appointed by the Council in accordance with the provisions of Clause 6 (Joining the Alliance).

## Where the Council elects to appoint a new strategic provider under the provisions of Clause 7.14 as the replacement strategic provider to the Alliance:

### all Alliance Providers shall consent and agree to a novation of all of the rights and obligations of the SPoLR under this Agreement to the new strategic provider and shall promptly execute all documentation required to implement such a novation; and

### the Council and the SPoLR shall novate the ISP Agreement between the SPoLR and the Council to the new strategic provider and shall promptly execute all documentation required to implement such a novation.

***Removal due to ISP Agreement termination for Council Default***

## Subject to the provisions of Clause 7.17 below, where an Alliance Provider’s ISP Agreement has been terminated by that Alliance Provider pursuant to GC17.4 of the ISP Agreement, that Alliance Provider shall be removed from the Alliance and this Agreement from the ISP Termination Date.

## Where the Alliance Provider being removed under the provisions of Clause 7.16 is the Strategic Provider, the provisions of Clauses 7.17 to 7.22 shall apply.

## The Council shall be entitled to appoint the SPoLR to the Alliance who will become the Strategic Provider in the Alliance for the purposes of this Agreement in accordance with the provisions below.

## Where the Council elects to appoint the SPoLR as the replacement strategic provider to the Alliance all Alliance Providers shall consent and agree to a novation of all of the rights and obligations of the Strategic Provider under this Agreement to the SPoLR and shall promptly execute all documentation required to implement such a novation.

## Where the Council does not elect to appoint the SPoLR as the replacement strategic provider, or appoint a replacement strategic provider in accordance with the provisions of Clause 6 (Joining the Alliance), this Agreement shall terminate on the ISP Termination Date and the provisions of Clause 39 (Consequences of Termination) shall apply.

## Where the SPoLR is appointed to this Agreement under the provisions of Clause 7.17, the Council shall be able to review the appointment of the SPoLR at any time during the Term, and a new strategic provider may appointed by the Council in accordance with the provisions of Clause 6 (Joining the Alliance).

## Where the Council elects to appoint a new strategic provider under the provisions of Clause 7.21 as the replacement strategic provider to the Alliance:

### all Alliance Providers shall consent and agree to a novation of all of the rights and obligations of the SPoLR under this Agreement to the new strategic provider and shall promptly execute all documentation required to implement such a novation; and

### the Council and the SPoLR shall novate the ISP Agreement between the SPoLR and the Council to the new strategic provider and shall promptly execute all documentation required to implement such a novation.

***Consequences of Removal***

## Other than a removal under the provisions of Clauses 7.16 to 7.22 above, upon removal from the Alliance and this Agreement, the Defaulting Provider shall pay to the Council the Defaulting Provider Default Sum.

## The Parties acknowledge and agree that, save where this Agreement expressly provides otherwise, removal of an Alliance Provider from the Alliance and this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to such removal and nothing in this Agreement shall prejudice the right of any Party to recover any amount outstanding at such removal.

## As soon as reasonably practicable (and not later than twenty (20) Working Days following the Date of Removal or ISP Termination Date or, where Clauses 3.3 or 3.4 apply, the CS Completion Date (as applicable)), each Party will return to the other Parties all Confidential Information of the other Parties and will certify that it does not retain the other Parties’ Confidential Information.

## On the removal of an Alliance Provider from the Alliance and this Agreement, each Alliance Provider shall do any necessary acts (including entering into any contracts) to ensure that the Council or any Alternative Provider obtains all rights and interests in order to deliver the Services and/or the Care Services with effect on and from the Date of Removal or ISP Termination Date or, where Clauses 3.3 or 3.4 apply, the CS Completion Date (as applicable). The provisions of this Clause 7.26 shall continue in force until a period of twelve (12) Months after the Date of Removal or ISP Termination Date or, where Clauses 3.3 or 3.4 apply, the CS Completion Date (as applicable).

## It is hereby agreed that Clauses 27(Freedom of Information), 29 (Confidentiality), 32 (Liability and Indemnity), 37 (Dispute Resolution Procedure), 33 (Termination for Alliance Default), 34 (Consequences of Termination), 43 (Exit Management) and Schedule 13 (Exit Requirements) of this Agreement shall continue in full force and effect and be enforceable by the Council on the removal of an Alliance Provider from the Alliance and this Agreement.

# COLLABORATION

## Each Alliance Provider shall:

### act in good faith to promote and participate in the Alliance;

### work together in the spirit of collaboration to deliver the obligations under this Agreement;

### put in place and comply with a governance regime (strategic and operational) which manages the communication and actions between Alliance Providers that meets the requirements of this Agreement, including (without limitation) Schedule 10 (Monitoring and Reporting); and

### identify between themselves, and adapt as required, each Alliance Provider’s obligations in relation to the delivery of the Services and the Care Services.

## Each Alliance Provider and the Council shall comply with their respective obligations in Schedule 10 (Monitoring and Reporting).

# SERVICE IMPROVEMENTS AND BEST VALUE DUTY

## Each Alliance Provider shall to the utmost extent reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty.

## In addition to the Alliance Provider’s obligations under Clause 9.1, where reasonably requested by the Council, each Alliance Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Council and shall assist the Council with the preparation of any Best Value Duty performance plans.

## During the term of this Agreement at the reasonable request of the Council, each Alliance Provider shall:

### demonstrate how it is going to secure continuous improvement in the way in which the Services and the Care Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;

### implement such improvements; and

### where practicable following implementation of such improvements decrease the price to be paid by the Council for the Services and the Care Services.

## If requested by the Council, each Alliance Provider shall identify the improvements that have taken place in accordance with Clause 9.3, by reference to any reasonable measurable criteria notified to the Alliance by the Council.

# ORDERING PROCEDURE AND REALLOCATION OF CARE PACKAGES

## The Parties shall comply with their respective obligations pursuant to Schedule 5 (Ordering Procedure) in respect of the ordering, allocation and optimisation of the provision of the Care Services under a Care Package.

## Where a Care Package has been allocated to an Alliance Provider, and that Alliance Provider wishes to relinquish that Care Package due to:

### no longer having the capacity or capability to deliver the Care Services under that Care Package; or

### the violent, abusive or unduly disruptive behaviour of the Person receiving the Care Services under that Care Package,

## (each a **“Potential Hand Back”**) it shall notify the Strategic Provider as soon as reasonably practicable.

## The Strategic Provider shall use its best endeavours to prevent the Potential Hand Back, including, where appropriate, reallocating the Care Package amongst the Alliance Providers, or allocating the Care Package to itself in its role as Operational Provider of Last Resort. The Parties acknowledge that both the prevention and reallocation of Potential Hand Backs will be monitored by the Council as SP KPIs pursuant to Schedule 7 (Performance Regime) of this Agreement.

## Where a Potential Hand Back cannot be prevented, the Strategic Provider shall give the Council no less than twenty-eight (28) days’ notice to cancel the relevant Care Package.

## The Alliance shall at all times have the right to reallocate a Care Package to a different Alliance Provider where such reallocation would assist the Alliance in meeting its obligation to deliver the Services in the most optimal manner possible (each an **“Optimisation Reallocation”**).

## Whenever Potential Hand Back is reallocated, or an Optimisation Reallocation has occurred, the Strategic Provider shall give notice to Council confirming:

### the identity of the Alliance Provider who has been reallocated the Care Package; and

### the date from which that Alliance Provider will take over the provision of the Care Services under that Care Package, such date being no less than twenty-eight (28) days from the date the notice is given.

## The Council shall require the Alliance to use the ECM System to support contingency arrangements in respect of Persons at times of emergency, including but not limited to severe weather conditions. At such times, the Alliance Providers shall work together, subject always to the Data Protection Laws, to identify vulnerable Persons and their location and to identify any Time Critical Service Visits that need to be conducted during such times. The Alliance Providers, shall, where appropriate, temporarily re-allocate the delivery of the Care Services pursuant to the ISP Agreement under the provisions of this Clause 10 (Ordering Procedure and Hand Back and Reallocation of Care Packages).

# PROVISION OF THE SERVICES

## The Alliance has been appointed to provide the Services and the Care Services in the Geographical Zone.

## Each Alliance Provider has entered into an ISP Agreement with the Council which governs the provision of the Care Services by each Alliance Provider under each Allocated Care Package.

## The Strategic Provider shall:

### comply with its obligations in the Strategic Provider Specification;

### collect, collate and review the Provider Compliance Certificates each Month and reporting any areas of non-compliance to the Operational Meeting;

### maintain the Alliance’s Environmental Policy throughout the Term;

### facilitate the allocation of New Care Packages pursuant to Schedule 5 (Ordering Procedure) of this Agreement; and

### monitor and manage the performance of the Alliance and each Alliance Provider pursuant to Schedule 7 (Performance Monitoring) of this Agreement.

## Subject to Clause 11.8, each Alliance Provider shall comply with its obligations under this Agreement for the duration of the Term, including (without limitation):

### compliance with the requirements of the Specifications;

### compliance with and delivery of the commitments set out in the Tender, including its Social Value Obligations;

### compliance with the carbon reduction obligations set out in the Specifications, the SP KPIs and its Tender and the overarching obligation for each Alliance Provider to become carbon neutral before 2025; and

### optimisation of delivery of the Care Services.

## Each Alliance Provider shall be responsible for obtaining and maintaining all Necessary Consents in relation to the performance of the Services and this Agreement.

## Each Alliance Provider shall:

### provide or procure all resources required in connection with and for the purposes of performing the Services, whether of a temporary or permanent nature;

### ensure that all activities, operations and other things done, all equipment used, and all methods adopted in connection with and for the purposes of performing the Services are sufficient, safe and fit for purpose; and

### ensure, where any time period or deadline is specified in this Agreement for the provision of the Services or any part thereof, that all reasonable endeavours are used by each Alliance Provider to ensure that such time period is complied with or such deadline is met.

## Without prejudice to Clause 11.4 and subject to Clause 11.8, each Alliance Provider shall perform its obligations under this Agreement, including those in relation to the Services, in accordance with:

### the Specifications;

### Law (including, for the avoidance of doubt, all standards required by the Health and Social Care Act 2008 in respect of CQC registration and all relevant provisions of the Care Act 2014 together with all subordinate legislation made under the Act and all legal obligations in the fields of environmental, social or labour law);

### Good Industry Practice;

### reasonable care and skill;

### Guidance;

### all Necessary Consents;

### the SP KPIs and SP KPI Targets;

### the Choice Policy;

### the Choice Protocol;

### the Caldicott Principles; and

### the Council Policies,

## the **“Service Standard”**.

## In the event of:

### any conflict between any of requirements set out in Clause 11.4;

### any conflict between any of requirements set out in Clause 11.7; or

### any conflict between any of the requirements set out in Clause 11.4 and any of the requirements set out in Clause 11.7,

## the Alliance Provider shall draw the relevant conflict to the attention of the Council and shall comply with the Council's decision regarding the resolution of that conflict.

## Where any conflict identified pursuant to Clause 11.8 also applies to equivalent requirements within any ISP Agreement, any decision of the Council made pursuant to Clause 11.8 shall apply to the relevant conflict under the relevant ISP Agreements. In these circumstances, each Alliance Provider acknowledges and agrees that the Council's decision shall have binding effect for the purposes of each relevant ISP Agreement.

## Each Alliance Provider shall deliver the Services and the Care Services efficiently with optimum use of resources and in a manner which represents value for money for the Council.

## No Alliance Provider shall provide any Regulated Care under the provisions of this Agreement or the ISP Agreement unless that Alliance Provider is registered with the CQC for the provision of Regulated Care and has an office registered with the CQC in Cornwall.

## Following the reporting by the Strategic Provider of the compliance of the Provider Compliance Certificates provided in any Month to the Operational Meeting, if the Strategic Provider identifies any issues of non-compliance, these shall be referred by the Strategic Provider to the next Strategic Meeting. Where the Strategic Meeting has any issues of non-compliance reported to it, the Council shall be entitled to carry out an audit of the Alliance Provider where the non-compliance has been identified.

# GAINSHARE AND INVOICING

## The Council shall, throughout the Term, pay the Strategic Provider the Gainshare Funding each Quarter in advance.

## Payment of the Gainshare Funding is exclusive of any applicable VAT for which the Council will be additionally liable to pay the Strategic Provider upon receipt of a valid VAT invoice at the prevailing rate in force from time to time.

## The Council shall pay the Gainshare Funding within thirty (30) days of receipt by the Council of a valid VAT invoice in respect thereof.

## If the Council fails to pay any undisputed amount in accordance with Clause 12.3, then the Strategic Provider shall (not earlier than thirty (30) days following receipt by the Council of the invoice referred to in Clause 12.3) serve a further written demand on the Council and the Council Representative attaching a copy of the invoice referred to in Clause 12.3 and requiring payment within a further thirty (30) days of receipt by the Council of such demand.

## The Council shall not be obliged to pay any interest on any unpaid amount of the invoice referred to in Clause 12.3 unless a period of more than sixty (60) days has elapsed from the date of receipt of that invoice by the Council. Following that date, the Strategic Provider shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## In the event the Council has not paid any undisputed amount of an invoice for the Gainshare funding and a period of more than one hundred and twenty (120) Working Days has elapsed from the date of receipt, and provided always that the Strategic Provider has served a written demand on the Council and the Council Representative under the provisions of Clause 12.4 above, the Strategic Provider may request to be removed from its role in this Agreement on giving three (3) Months’ notice and the provisions of Clause 7.17 above shall apply.

## In the event the Strategic Provider terminates its role in this Agreement under the provisions of Clause 12.6 above, the Strategic Provider shall also terminate its ISP Agreement using the provisions of GC17.4.2 (as amended).

## The Gainshare Funding shall be adjusted from 1 April each year (the **“Adjustment Date”**) in accordance with the Index rate prevailing on the Announcement Date immediately prior to the Adjustment Date.

# NON-EXCLUSIVITY

## In accordance with its obligations under the Care Act 2014, the Council shall have the right to order or commission services that are equivalent to the Services and/or the Care Services in the Geographical Zone outside of this Agreement from a third party. As such, the provision of the Services and the Care Services under this Agreement and the ISP Agreements is not an exclusive arrangement.

# STEP-IN RIGHTS

## If the Council reasonably believes that it needs to take action in connection with this Agreement:

### where the Strategic Provider has committed a Provider Default;

### where there is a breach of this Agreement or an ISP Agreement which is materially preventing or materially delaying the performance of the Services or the Care Services or any part thereof and/or which has an adverse material impact on the business of the Council and/or it ability to fulfil its functions;

### where the Council is entitled to terminate the Agreement for Alliance Default;

### where the Council reasonably believes that the occurrence of an Alliance Default is imminent and such Alliance Default shall materially prevent or materially delay the performance of the Services or the Care Services or any part thereof and/or which shall prevent the Services or the Care Services being provided to the Service Standard required by this Agreement and/or which shall have an adverse material impact on the business of the Council;

### where the Council considers it necessary in order to carry out any of its statutory obligations, functions or other duties and in respect of which an Alliance Provider has been or will be unable to perform such obligations, functions or other duties;

### where the Council, acting reasonably, considers there is a significant risk to the safety and/or wellbeing of one or more Persons if an Alliance Provider continues to deliver the Services and/or Care Services;

### where the Council reasonably believes that the occurrence of Provider Fragility and/or Business Failure is imminent; and/or

### the occurrence of a Force Majeure Event,

## then the Council shall be entitled to take action in accordance with the provisions of this Clause 14 (Step-In Rights).

## If Clause 14.1 applies and the Council wishes to take action, the Council shall notify (by way of a "**Step-In Action Notice**") the Alliance of the following:

### the action it wishes to take (which may include, for the avoidance of doubt, the provision of the Services by itself, or by an Replacement Provider, as well as the intervention of the SPoLR in accordance with the Council’s instructions to assist with overcoming Provider Fragility and/or Business Failure within the Alliance);

### the reason for such action;

### the date it wishes to commence such action;

### the time period which it believes will be necessary for such action; and

### the effect on the Alliance and its obligations to provide the Services during the period such action is being taken,

## provided always that where the Alliance has remedied the grounds for step-in as described in Clause 14.1 to the reasonable satisfaction of the Council prior to the date referred to in Clause 14.2.3 the Step-In Action Notice shall be deemed to be withdrawn and therefore Clause 14.3 shall not apply.

## Following service of any Step-In Action Notice, the Council may take such action as notified under Clause 14.2 above and any consequential additional action as it reasonably believes to be necessary (together the "**Required Action**"):

### at the Alliance Provider’s cost if such action results from a breach of this Agreement by any Alliance Provider; or

### at the Council’s cost if such action does not result from a breach of this Agreement by any Alliance Provider,

### and each Alliance Provider shall give all reasonable assistance to the Council while it is taking such Required Action.

## The costs the Council is entitled to claim from an Alliance Provider pursuant to Clause 14.3.1 include:

### any costs associated with the procurement of the provision of the Services from a Replacement Provider or a group or alliance of Replacement Providers;

### any costs incurred by the Council providing the Services itself and/or the provision of the Services by the SPoLR;

### any costs associated with the procurement of any equipment necessary for an alternative alliance or service provider and/or the Council to deliver the Services or the Care Services;

### any administration costs incurred by the Council; and/or

### any other Direct Losses the Council suffers as a result of taking the Required Action.

## The taking of the Required Action shall be subject to the following conditions:

### the Council shall employ suitably qualified contractors or personnel;

### the Council shall take reasonable steps to properly manage any contractors or works being carried out so as to procure that any rights and/or remedies available to it or the Alliance against any contractors are preserved;

### the Council shall take reasonable steps to mitigate the effects of the circumstances to the extent that such effects are giving rise to the Required Action including taking all reasonable steps to minimise the period of the Required Actions; and

### the Council shall have due regard to all reasonable recommendations put forward by any Alliance Provider.

## The Council shall be entitled to take the Required Action until the circumstances giving rise thereto have ceased to subsist or until such times as the Alliance Providers are able to demonstrate to the Council’s reasonable satisfaction that they have implemented sufficient measures to allow resumption of performance of the Services or the Care Services without such circumstances.

## The Strategic Provider shall ensure that any Sub-Contractors are subject to an obligation to comply with the terms of any Step-In Action Notice given under this Clause 14 (Step-In Rights).

## To the extent that the Required Action affects the ability of any Alliance Provider to provide any part of the Services or Care Services (other than those parts of the Services or Care Services which are subject of the Required Action), the Alliance Provider shall, without prejudice to the Council’s rights under Clauses 7 (Removal from the Alliance) and 38 (Termination for Alliance Default) be relieved of its obligations to provide such part of the Services or Care Services provided that if the Council is entitled to recover its costs from the Alliance Provider pursuant to Clause 14.3.1, the Council shall, subject to Clause 14.4, be entitled to demand payment from the Alliance Provider of an amount equal to the Council’s costs in taking the Required Action.

# REPRESENTATIVES

## The Alliance shall nominate a single point of contact, the identity of whom will be subject to the prior written approval of the Council (such approval not to be unreasonably withheld or delayed), to act as the Alliance’s representative in connection with the provision of the Services and/or the Care Services and generally in connection with this Agreement (the "**Alliance Representative**"). The Alliance Providers shall also designate a deputy representative to replace the Alliance Representative in case of absence, the identity of whom will also be subject to the prior written approval of the Council (such approval not to be unreasonably withheld or delayed).

## The Alliance Representative shall have full authority to act on behalf of the Alliance for all purposes of this Agreement. The Council and the Council Representative shall be entitled to treat any act of the Alliance Representative in connection with this Agreement as being expressly authorised by the Alliance (save where the Alliance has notified the Council in writing that such authority has been revoked) and the Council shall not be required to determine whether any express authority has in fact been given.

## The Alliance may by notice to the Council change the Alliance Representative. Where the Alliance wishes to do so it shall by written notice to the Council propose a substitute for approval, taking account of the need for liaison and continuity in respect of the provision of and/or the Care Services. Such appointment shall be subject to the approval of the Council (not to be unreasonably withheld or delayed).

## Each Alliance Provider shall also employ a representative the identity of whom will be subject to the prior written approval of the Council (such approval not to be unreasonably withheld or delayed), to act as its representative in connection with the provision of the Services and generally in connection with this Agreement and the relevant ISP Agreement (each a "**Provider Representative").**

## An Alliance Provider may by notice to the Council change the Provider Representative. Where a Alliance Provider wishes to do so it shall by written notice to the Council propose a substitute for approval, taking account of the need for liaison and continuity in respect of the provision of the Services and/or the Care Services. Such appointment shall be subject to the approval of the Council (not to be unreasonably withheld or delayed).

## The Council shall appoint an individual to liaise with the Alliance Representative and Provider Representatives (as applicable) (the "**Council Representative**"), and shall keep the Alliance informed of the identity from time to time of the Council Representative.

## The Council Representative shall have full authority to act on behalf of the Council for all purposes of this Agreement and the ISP Agreements. The Alliance and each Alliance Provider shall be entitled to treat any act of the Council Representative in connection with this Agreement and the ISP Agreements as being expressly authorised by the Council (save where the Council has notified the Alliance that such authority has been revoked) and the Alliance and the Alliance Providers shall not be required to determine whether any express authority has in fact been given.

## The Council may by notice to the Alliance change the Council Representative. Where the Council wishes to do so it shall by written notice to the Alliance propose a substitute for approval (such approval not to be unreasonably withheld or delayed), taking account of the need for liaison and continuity in respect of the provision of the Services and/or the Care Services.

## Subject to Clause 50 (Notices), any notice, information, instructions or communication given to:

### the Alliance Representative shall be given in writing and shall be deemed to have been given to the Alliance;

### a Provider Representative shall be given in writing and shall be deemed to have been given to the relevant Alliance Provider; and

### the Council Representative shall be given in writing and shall be deemed to have been given to the Council.

## Any notice, information, instructions or communication given by the Council to the Alliance Representative shall be deemed to have been given to each Alliance Provider, and each Alliance Provider shall be deemed to have knowledge of such information, instructions or communication.

# COUNCIL WARRANTIES

## Subject to Clause 16.3, the Council does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

## Subject to Clause 16.3, neither the Council nor any of its agents or employees shall be liable to the Alliance or any Alliance Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

### any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or

### any failure to make available to the Alliance or any Alliance Provider any materials, documents or other information relating to the Services (save where there is an express obligation under this Agreement to do the same).

## Nothing in this Clause 16 (Council Warranties) shall exclude any liability which the Council or any of its agents or employees would otherwise have to the Alliance or any Alliance Provider in respect of any statements made fraudulently.

## Subject to Clause 16.3, each Alliance Provider shall not in any way be relieved from any obligation under this Agreement or the ISP Agreements nor shall it be entitled to claim against the Council on grounds that any information available before or on the Effective Date, whether obtained from the Council or otherwise (including information made available by the Council), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

# ALLIANCE PROVIDER WARRANTIES

## Each Alliance Provider warrants, represents and undertakes to the Council that as at the Effective Date and the Commencement Date:

### the Alliance Provider is validly authorised and the obligations expressed as being assumed by it under this Agreement constitute valid and binding obligations on its part enforceable against it in accordance with its terms;

### neither the execution of this Agreement by the Alliance Provider nor the performance or observation of any of its obligations under it will:

#### conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Alliance Provider is bound; or

#### cause any limitation on any of the powers whatsoever of the Alliance Provider or on the right or ability of any directors and/or trustees (as applicable) of the Alliance Provider to exercise such powers, to be exceeded;

### the Alliance Provider is not in default of any law or enactment or any deed, agreement or other instrument or obligation by which it is bound so as to affect adversely its ability to perform its obligations under this Agreement;

### the Alliance Provider has obtained all consents required in connection with execution, delivery, issue, validity or enforceability of this Agreement and none have been withdrawn;

### to the best of the Alliance Provider’s knowledge, there is no litigation or administrative or arbitration proceeding before any court, tribunal, government authority or arbitrator presently taking place in any country, pending or (to its knowledge, information and belief) threatened against, or against any of the Alliance Provider’s assets which might have a material adverse effect on either of its business, assets, condition or operations or might affect adversely its ability to perform its obligations under this Agreement;

### there has been no material adverse change in the Alliance Provider’s business, assets, operations, data security policies and controls or prospects since such information was provided in the Selection Questionnaire;

### there has been no material adverse change in the Alliance Provider’s position under the grounds of exclusion in Regulation 57 of the Regulations;

### the Alliance Provider is not aware, after due enquiry, of anything which materially threatens the provision of the Services;

### there is no charge or other form of security over the Alliance Provider or any of its assets which could affect the ability of the Alliance Provider to deliver the Services;

### the Alliance Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement;

### no order has been made and no resolution has been passed for the winding up of the Alliance Provider or for a provisional liquidator to be appointed in respect of the Alliance Provider and no petition has been presented and no meeting has been convened for the purpose of winding up the Alliance Provider;

### no administration order has been made and no petition for such an order has been presented in respect of the Alliance Provider, nor has any administrator been appointed in respect of the Alliance Provider, nor has any notice of intention to appoint any such administrator been given, nor have any steps been taken by any person (including the Alliance Provider, or any directors) to appoint any such administrator;

### no person has appointed or threatened to appoint a receiver (including any administrative receiver) in respect of the Alliance Provider’s assets;

### the Alliance Provider is not insolvent or unable to pay its debts within the meaning of section 123 Insolvency Act 1986 and has not stopped payment of its debts as they fall due;

### no voluntary arrangement has been proposed under section 1 Insolvency Act 1986 in respect of the Alliance Provider;

### the Alliance Provider has not applied to be struck off the register of companies and is not subject to a proposal that it be struck off the register of companies;

### no circumstances have arisen (so far as the Alliance Provider is aware) which are likely to result in:

#### a contract or transaction to which the Alliance Provider is party being set aside; or

#### a third party claim involving any asset owned or used by the Alliance Provider being made under sections 238 or 339 (transactions at undervalue) or 239 or 340 (preferences) of the Insolvency Act 1986; and

### all Staff assigned to the provision of the Services or the Care Services possess and exercise such qualifications, skills and experience as are necessary for the proper performance of such services.

## Change of Control

### This Clause 17.2 applies to any Change in Control in respect of an Alliance Provider or any Sub-Contractor, but not to a Change in Control of a company which is a Public Company.

### Each Alliance Provider shall notify the Council immediately if it undergoes a Change in Control and provided this does not contravene any Law shall notify the Council immediately in writing of any circumstances suggesting that a Change in Control is planned or in contemplation.

### The Council may remove an Alliance Provider from the Alliance and this Agreement in accordance with Clause 7 (Removal from the Alliance) within six (6) Months of:

#### being notified in writing that a Change in Control has occurred or is planned or in contemplation; or

#### where no notification has been made, the date that the Council becomes aware of the Change in Control,

### if it believes, acting reasonably, that such Change in Control is likely to have an adverse effect on the performance of the Services or the Care Services, but it shall not be permitted to remove the Alliance Provider from the Alliance and this Agreement where the Council's approval of the Change in Control was granted prior to the Change in Control occurring.

### Notwithstanding any other provision of this Agreement:

#### a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time five percent (5%) or more of the total value of any Security in any Alliance Provider or in the Alliance Provider’s Affiliates; and

#### a Restricted Person must not hold, and each Alliance Provider must not permit (and must procure that a Sub-Contractor must not at any time permit) a Restricted Person to hold, at any time five percent (5%) or more of the total value of any Security in a Sub-Contractor or in any Affiliate of a Sub-Contractor,

and failure of an Alliance Provider to comply with this Clause 17.2.4 shall entitle the Council to remove the Alliance Provider from the Alliance pursuant to Clause 7 (Removal from the Alliance).

# STAFFING MATTERS

## Each Alliance Provider shall at all times ensure that Services are performed by appropriately qualified and trained Staff with all due skill, care ability and diligence.

## Each Alliance Provider shall and shall procure that the Sub-Contractors (if applicable) shall:

### provide a sufficient number of supervisory staff to ensure that any Staff engaged in the provision of the Services are at all times adequately supervised and trained and properly perform their duties to the standards set out in this Agreement;

### employ at all times an adequate number of sufficiently qualified, certified, skilled and experienced Staff (including apprentices) to provide the Services in accordance with Good Industry Practice and the Specifications;

### ensure that a sufficient reserve of Staff is available to provide the Services during Staff holidays or absence through sickness or any other cause;

### ensure that:

#### all Staff have the right to work in the United Kingdom; and

#### it and all Provider Related Parties have current and valid evidence on file of such right,

and indemnify and keep indemnified the Council against any Losses arising in relation to any breach of the Alliance Provider’s obligations under this sub-clause;

### be responsible for all remuneration, benefits, entitlements and outgoings in respect of all Staff, including (without limitation) all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise and each Alliance Provider shall indemnify and keep the Council indemnified from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or liability or responsibility to HM Revenue and Customs as an employer of the Staff whether during the Term or arising from termination or expiry of this Agreement;

### ensure that its Staff perform their duties in as orderly, caring and sensitive a manner as may reasonably be practicable having regard to the nature of the duties being performed by them and shall ensure that its Staff and other employees (as applicable) are aware of and comply with the contents of this Agreement and specific instructions issued to them from time to time by the Council;

### employ or cause to be employed in the performance of the Services only such persons who are medically fit as appropriate for their specific responsibilities and duties (subject to the Alliance’s duty to make reasonable adjustments under the Equality Act 2010), careful and competent in the execution of their duties and either appropriately trained, skilled and experienced in their professions and vocations, or, in the case of trainees, properly supervised;

### where the nature or the place of any duties upon which the Staff shall be engaged in the provision of the Services make the wearing of any special or protective clothing and footwear necessary or appropriate, provide, and shall require its Staff wear, such clothing or footwear; and

### provide a means of identification to all Staff and require all Staff to wear and keep visible such identification at all times whilst providing the Services (and make it available for inspection on request by any officer(s) of the Council who shall similarly disclose their identity).

## The Alliance and each Alliance Provider shall ensure it has systems in place to effectively monitor the work of its Staff and shall provide evidence of such systems to the Council whenever the Council reasonably requests.

***International Recruitment***

## Each Alliance Provider shall, at all times comply with the Law and all guidance in place from time to time relating to the recruitment of individuals from overseas, including but not limited to:

### the WHO Global Principles for Ethical International Recruitment;

### the LGA Overseas Recruitment Bite-Size Guide for Social Care Providers in England; and

### the Code of Practice for the International Recruitment of Health and Social Care Professionals.

## In the event that an Alliance Provider recruits, employs or engages individuals from overseas it shall at all times:

### hold a valid UK Sponsor Licence;

### have a CQC registered local office in Cornwall;

### adopt an ethical recruitment practice in accordance with the Code of Practice for the International Recruitment of Health and Social Care Professionals;

### comply with the WHO Global Principles for Ethical International Recruitment;

### comply with the LGA Overseas Recruitment Bite-Size Guide for Social Care Providers in England;

### carry out appropriate due diligence in respect of any agency it uses to complete the process of recruiting individuals from overseas;

### ensure that it does not contract, use or otherwise engage any such agency based in the UK if such agency charges a candidate directly for recruitment fees for their services.

## The Alliance Provider shall not recruit, employ or engage any individual in the provision of the Services from outside of the UK unless it is on the Ethical Recruiters List.

## The Alliance Provider shall notify the Council immediately if:

### it or any Group Company has its UK Sponsor Licence Rating downgraded to a B-rating;

### any individual within its organisation or any Group Company (including but not limited to directors, trustees, non-executive directors, board members and management staff) has its UK Sponsor Licence Rating downgraded to a B-rating;

### it or any Group Company has, or has previously had, a UK Sponsor Licence suspended or revoked by the Home Office; and/or

### any individual within its organisation or any Group Company (including but not limited to directors, trustees, non-executive directors, board members and management staff) has or has previously had, a UK Sponsor Licence suspended or revoked by the Home Office whilst working within its organisation and/or a Group Company and/or an alternative organisation.

# SAFEGUARDING

## The Alliance Provider shall use its best endeavours to ensure that Persons are safeguarded from any form of harm, abuse, neglect or exploitation (whether physical, financial psychological or sexual) through intended or negligent acts or omissions of the Alliance Provider and/or its Staff .

## On or before the Commencement Date, the Alliance Provider shall put or have in place a policy and practice designed to safeguard the wellbeing of Persons (the “**Alliance Provider’s Safeguarding Policy**”). The Alliance Provider’s Safeguarding Policy must:

### comply with all Law and Guidance relating to the safeguarding of children and/or adults at risk;

### comply with all of the Council’s Safeguarding Policies as notified to the Alliance Provider from time to time and provide an equivalent level of protection as the Council’s Safeguarding Policies;

### actively encourage the immediate reporting by Staff of any allegation, suspicion, incident or risk or incident of harm, neglect or abuse (whether physical, financial, psychological or sexual) of any individual affected by the Services, whether the Person or otherwise, to the appropriate representative of the Council (as notified to the Alliance Provider from time to time).

## The Alliance Provider and all Staff shall comply with the Alliance Provider’s Safeguarding Policy at all times.

## Where:

### allegations of abuse towards any individual affected by the Services, whether the Person or otherwise, by a person other than the Alliance Provider or its Staff are made or where the Alliance Provider or any Provider Related Party suspects abuse is taking place towards an individual; and/or

### allegations of abuse towards any individual affected by the Services, whether the Person or otherwise are made against a member of Staff or where the Alliance Provider suspects a member of Staff of being guilty of abusing an individual; and/or

### where the Alliance Provider believes that an adult with care and support needs or a child is suffering or is likely to suffer significant harm,

the Alliance Provider shall:

### immediately take all action as necessary to ensure the safety and wellbeing of the Person, including carrying out a risk assessment and, as applicable and where appropriate, suspending and/or dismissing the relevant Staff member; and

### notify the CQC Inspector and the appropriate representative of the Council (as notified to the Alliance Provider from time to time) immediately and in any event within one (1) Working Day of the Alliance Provider becoming aware of such allegations and/or suspecting abuse is taking place and/or suspecting harm is occurring or likely to occur.

## The Alliance Provider shall:

### appoint an individual of sufficient seniority to have overall responsibility for and supervision of the implementation and monitoring of the Alliance Provider’s Safeguarding Policy;

### where the Alliance Provider is a Regulated Activity Provider (as defined by the SVGA 2006) with ultimate responsibility for the management and control of the Regulated Activity (as defined by the SVGA 2006) provided under this Agreement and for the purposes of the SVGA 2006, the Alliance Provider shall:

#### comply with all of its obligations under the SVGA 2006 including without limitation information sharing, Disclosure and Barring Service ("**DBS**", as defined by the SVGA 2006) referral obligations and checking that a person is subject to monitoring;

#### in accordance with the SVGA 2006, refer information about any person providing the Regulated Activity to the DBS where it removes permission for such person to provide the Services (or would have, if such person had not otherwise ceased to provide the Services) because, in its opinion, such person has harmed or poses a risk of harm to a recipient of the Services;

### ensure that all Staff are subject to a valid enhanced disclosure check undertaken through the DBS;

### ensure that all Staff involved in the delivery of Regulated Activities (as currently defined by the Safeguarding Vulnerable Groups Act 2006 and as amended by the Protection of Freedoms Act 2012) are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the two DBS "barred lists" for adults and where services are being delivered to children, the DBS “barred list” for children;

### ensure that all Staff who have lived and/or worked abroad for a period of three (3) months or more during the last five (5) years and are involved in the delivery of the Services have a valid overseas check conducted in accordance with applicable DBS guidance;

### record, monitor the level and validity, and where necessary update the checks under this Clause 19.5 for each member of Staff, including any Agency Staff;

### immediately provide the Council with all information that the Council may reasonably require to enable the Council to verify that it has satisfied its obligations under this Clause 19 (Safeguarding) and immediately inform the Council if there is any reason to believe that any are not being complied with in relation to the Services;

### not employ, use the services of, or otherwise engage any person who is in any way barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services or who may otherwise present a risk to a recipient of the Services;

### comply with all guidance issued by the DBS as applicable and as amended from time to time; and

### ensure that appropriate and valid DBS certificates are held at the point of checking references of potential new Staff;

### ensure that appropriate and valid DBS certificates are held at the point of appointment of Staff to a new role within its organisation;

### ensure that any disclosures of relevant offences within its organisation have been investigated and appropriate action taken;

### make referrals to the DBS as and when required by Law; and

### provide Staff with regular and appropriate training in relation to the safeguarding of Persons.

## The Alliance Provider shall operate a recruitment and ongoing Staff monitoring procedure which implements the Council’s safe recruitment and disciplinary standards, complies with Law relating to the safeguarding of children and/or adults with care and support needs and ensures the protection of Persons. Such procedure shall include but not be limited to:

### use of an appropriate application form;

### face to face interviews;

### checking self-declaration forms for relevancy to the role;

### checking references before confirming appointment;

### checking that appropriate and valid disclosure and barring service certificates are held at the point of checking references of potential new Staff;

### checking that appropriate and valid disclosure and barring service certificates are held at the point of appointment of Staff to a new role within its organisation;

### a probationary and supervision period for new Staff;

### conducting personal development reviews;

### continually monitoring conduct; and

### conducting regular risk assessments.

## The Alliance Provider warrants that at all times for the purposes of this Agreement it is appropriately registered in relation to all persons who are or will be employed or engaged by the Alliance Provider in the provision of the Services, and that it has no reason to believe that any such person is barred from the provision of the Services in accordance with the provisions of the SVGA 2006 and any regulations made thereunder.

## The Alliance Provider acknowledges that the Council may, acting in accordance with the SVGA 2006, disclose information in relation to an employee where required to do so by the DBS without consultation with the Alliance Provider.

# MODERN SLAVERY

## Each Alliance Provider undertakes, warrants and represents throughout the Term that:

### neither the Alliance Provider nor any of its officers, employees, agents or Sub-Contractors (if applicable) has:

#### committed an offence involving slavery and human trafficking anywhere in the world;

#### committed an offence under the Modern Slavery Act 2015 (a **“MSA Offence”**);

#### been the subject of any investigation, inquiry or enforcement proceedings by any governmental administrative of regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking, including any MSA Offence or prosecution under the Modern Slavery Act 2015;

#### become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

#### been listed or is listed by any Government agency as being debarred, suspended, proposed for suspension or debarment or otherwise ineligible for participation in any public sector procurement programmes or other public sector contracts including, without limitation, any exclusion under Regulation 57 of the Regulations .

## In performing its obligations under the Agreement, each Alliance Provider shall (and shall procure that each Sub-Contractor (if appliable) shall):

### comply with all applicable anti-slavery and human trafficking Laws and codes from time to time in force, including, but not limited to, the Modern Slavery Act 2015 (**“Anti-Slavery Laws”**);

### comply with the Modern Slavery Policy;

### not engage in any activity, practice or conduct that would constitute an MSA Offence;

### implement due diligence and risk assessment procedures for its own suppliers, Sub-Contractors and other participants in its supply chains, to ensure that they comply with the standards laid out in the Modern Slavery Policy and to ensure that there is no slavery or human trafficking or forced labour in its supply chains;

### notify the Council immediately in writing if it becomes aware or has reason to believe that it, or any of its Staff have breached or potentially breached any of the obligations under this Clause 20 (Modern Slavery). Any notice under this Clause 20.2.5 shall set out full details of the circumstances concerning the breach or potential breach of the Alliance Provider’s obligations;

### ensure that either:

#### its Alliance Provider’s Safeguarding Policy includes a modern slavery and human trafficking policy position; or

#### it has a standalone modern slavery and human trafficking policy,

## which includes how practices will be implemented and monitored and reviewed and how Staff, Persons and other stakeholders can raise areas of concern, such policy position or policy to align with the Modern Slavery Policy; and

### prepare and submit to the Council within ten (10) Working Days of the end of each Contract Year an annual slavery and human trafficking report setting out the steps the Alliance Provider has taken to ensure that slavery and human trafficking is not taking place in connection with the delivery of the Services.

## Each Alliance Provider shall:

### if the Council reasonably suspects the Alliance Provider of breach of this Clause 20 (Modern Slavery), permit the Council and its third party representatives to have access to and take copies of any records and any other information at any Alliance Provider’s premises and to meet with the Staff to audit the Alliance Provider’s compliance with its obligations under this Clause 20 (Modern Slavery); and

### implement annual audits of its compliance and its Sub-Contractors’ (if applicable) compliance with the Modern Slavery Policy and the Anti-Slavery Laws, either directly or through a third party auditor. The first set of audits shall be completed no less than the date falling twelve (12) Months from the Commencement Date.

## Each Alliance Provider shall:

### implement a system of training for its employees and Sub-Contractors (if applicable) to ensure compliance with the Modern Slavery Policy and Anti-Slavery Laws, such training to align with the Government’s training approach as set out at <https://www.gov.uk/government/collections/modern-slavery>; and

### keep a record of all training offered and completed by its employees and Sub-Contractors (if applicable) to ensure compliance with the Modern Slavery Policy and Anti-Slavery Laws and shall make a copy of the record available to the Council on request.

## Each Alliance Provider shall indemnify the Council against any Losses incurred by the Council as a result of any breach of this Clause 20 (Modern Slavery) by the Alliance Provider.

# ANTI-DISCRIMINATION

## Each Alliance Provider shall comply with and maintain policies to ensure that it and all Sub-Contractors (if applicable) comply with their and the Council's statutory obligations under the equal opportunities legislation from time to time in force, such obligations to include, for the avoidance of doubt:

### assisting the Council with compliance with its and their duties under Part 11 of the Equality Act 2010; and

### assisting the Council with compliance with any equality scheme in respect of all "Protected Characteristics" (as defined in the Equality Act 2010) as may reasonably and expressly be directed by the Council.

## Each Alliance Provider shall not, and shall use its best endeavours to procure that neither any Sub-Contractor (if applicable) nor any employee or worker or agent of the Alliance Provider or any Sub-Contractor shall, commit any act or omission of unlawful discrimination of any form against or in relation to any person.

## If in relation to the provision of the Services a finding of unlawful discrimination is made by any court or tribunal against an Alliance Provider or any Sub-Contractor (if appliable), the Alliance Provider shall:

### inform the Council of this finding promptly upon becoming aware of it;

### take all reasonable appropriate steps to prevent repetition of the unlawful discrimination; and

### reimburse the Council on demand for any Losses incurred in connection with any such investigations or proceedings.

## Each Alliance Provider shall provide suitable training to its Staff in relation to equality, diversity and human rights throughout the Term.

## Each Alliance Provider shall ensure that its complaints process includes an option to record complaints relating to equality, diversity, human rights, harassment and discrimination through the Term.

# CONFLICTS OF INTEREST

## Each Alliance Provider shall take appropriate steps to ensure that neither it nor any Provider Related Party are placed in a position where (in the reasonable opinion of the Council) there is or may be an actual conflict or a potential conflict, between the pecuniary or personal interests of the Alliance, the Alliance Providers or an Provider Related Party in the duties owed to the Council under the provisions of this Agreement.

## Each Alliance Provider shall promptly notify in writing and provide full particulars to the Council if such conflict referred to in Clause 22.1 above arises or may reasonably be foreseen as arising in respect of an Alliance Provider or Provider Related Party (the “**Conflicted Party**”) and shall confirm in such notice the steps the Alliance Provider proposes to take in order to rectify the relevant conflict of interest.

## Following issue by an Alliance Provider of a notice pursuant to Clause 22.2 in respect of a conflict of interest which is remediable, the Council shall afford the Alliance Provider a reasonable period (such period not to exceed twenty (20) Working Days unless agreed otherwise by the Council) to remedy the relevant conflict of interest, provided that the Alliance Provider shall comply with any reasonable instructions from the Council in this respect.

## In the event that there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Alliance and/or an Alliance Provider and the duties owed to the Council under the provisions of this Agreement and the Council reasonably considers that the conflict of interest could have a material adverse effect on the Council's business or the provision of the Services under this Agreement:

### where the conflict of interest is remediable, the Alliance Provider shall take such steps as are necessary to remedy the conflict of interest, provided that, where the Alliance Provider does not take such actions as are required to remedy the conflict of interest, then the Council shall be entitled to remove that Alliance Provider from the Alliance and this Agreement pursuant to Clause 7 (Removal from the Alliance) as a Provider Default; or

### where the conflict of interest is not remediable, then:

#### all Services being delivered by the Conflicted Party shall be suspended;

#### the Strategic Provider shall make the necessary arrangements to ensure all Services being delivered by the Conflicted Party are transferred to another Alliance Provider; and

#### the Council shall be entitled to remove that Alliance Provider from the Alliance and this Agreement pursuant to Clause 7 (Removal from the Alliance) as a Provider Default.

## The provisions of this Clause 22 (Conflict of Interest) shall continue in force until a period of two (2) years after the expiry or earlier termination of this Agreement.

# PREVENTION AGAINST BRIBERY AND CORRUPTION

## Each Alliance Provider shall not:

### offer or give, or agree to give, to the Council or any Relevant Person any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Agreement or any other contract with the Council;

### engage in and shall procure that all the Provider Related Parties or any person acting on the Alliance’s or an Alliance Provider’s behalf shall not commit any Prohibited Act.

## Each Alliance Provider warrants, represents and undertakes to the Council that it has not:

### in entering into this Agreement breached the provisions of Clause 23.1; or

### paid commission or agreed to pay commission to the Council or any Relevant Person in connection with this Agreement; or

### entered into this Agreement with knowledge, that, in connection with it, any money has been, or will be, paid to the Council or any Relevant Person in connection with this Agreement, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before execution of this Agreement.

## If an Alliance Provider or any Provider Related Party or any person acting on an Alliance Provider’s behalf, in all cases whether or not acting with the Alliance Provider’s (as applicable) knowledge:

### breaches this Clause 23 (Prevention Against Bribery and Corruption); or

### commits an offence under the Bribery Act 2010 in relation to this Agreement,

## the Council shall be entitled to remove that Alliance Provider from the Agreement by written notice with immediate effect in accordance with Clause 7 (Removal from the Alliance).

## Without prejudice to its other rights and remedies under this Clause 23 (Prevention Against Bribery and Corruption), the Council shall be entitled to recover in full from an Alliance Provider and each Alliance Provider shall on demand indemnify the Council in full from and against:

### the amount of value of any such gift, consideration or commission; and

### any other Losses sustained by the Council in consequence of any breach of this Clause 23 (Prevention Against Bribery and Corruption).

# SAFEGUARD AGAINST FRAUD AND ANTI-TAX EVASION

## Each Alliance Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraudulent activity by the Alliance Provider and any Provider Related Party.

## Each Alliance Provider shall notify the Council immediately and in writing if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur save where complying with this provision would cause the Alliance Provider or any Provider Related Party to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

## Each Alliance Provider shall not, and shall use all reasonable endeavours to ensure that the Provider Associated Persons shall not, solicit or engage with or take steps to solicit or engage with any person Associated With the Council to facilitate the commission of a UK Tax Evasion Offence or a Foreign Tax Evasion Offence in connection with the performance of the Services and this Agreement.

## Each Alliance Provider shall, and shall procure that the Provider Associated Persons shall, pay, in full and in a timely manner, all taxes due and payable relating to all monies, remuneration, profit and value received or payable by each Alliance Provider or the Provider Associated Persons in connection with the performance of the Services and this Agreement.

## Without prejudice to Clause 24.1, each Alliance Provider shall ensure that it and all relevant Provider Associated Persons have in place such Prevention Procedures as it is reasonable in all the circumstances to expect such persons to have in place to prevent any breach of this Clause 24 (Safeguard Against Fraud and Anti-Tax Evasion). Such Prevention Procedures shall set out as a minimum:

### the procedures that each such person should follow if they are requested to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence;

### acceptable conduct in relation to engagement with customers, clients and Provider Associated Persons;

### risk assessments and due diligence procedures for identifying tax evasion facilitation risks in relation to customers and Provider Associated Persons; and

### each Alliance Provider’s procedures for taking action to inform the relevant enforcement bodies or regulatory authorities about requests to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence,

## and each Alliance Provider shall provide the Council on request with copies of these policies and procedures (and prompt notice of any material changes to the same from time to time).

## Each Alliance Provider shall ensure that all of the Provider Associated Persons involved in providing the Services or with this Agreement have been vetted and that due diligence has been undertaken to such standard or level of assurance as is reasonably necessary in relation to a person in that position in the relevant circumstances.

## Each Alliance Provider shall maintain accurate and up to date records of:

### any requests to facilitate any UK Tax Evasion Offence or any Foreign Tax Evasion Offence made to the Alliance Provider or any Provider Associated Person in connection with the Services or with this Agreement either in the United Kingdom or elsewhere;

### any action taken by the Alliance Provider to inform the relevant enforcement bodies or regulatory authorities that the Alliance Provider or any Provider Associated Person has been requested to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence (except to the extent that the Alliance Provider is prevented by Law from doing so);

### its compliance with its obligations under this Clause 24 (Safeguard Against Fraud and Anti-Tax Evasion) and all training and guidance provided to the Provider Associated Persons in respect of the obligations under this Clause 24 (Safeguard Against Fraud and Anti-Tax Evasion) and applicable Law for the prevention of tax evasion;

### the Alliance Provider’s monitoring of compliance by Provider Associated Persons with the applicable policies and procedures as required by Clause 24.5; and

### the measures that the Alliance Provider has taken in response to any incidence of suspected or actual tax evasion or facilitation of tax evasion or breach of this Clause 24 (Safeguard Against Fraud and Anti-Tax Evasion),

## and shall allow the Council access to such records or information on request.

## If any Alliance Provider or any Provider Related Party commits Fraud and/or a UK Tax Evasion Offence and/or a Foreign Tax Evasion Offence, the Council may:

### remove the Alliance Provider from the Alliance pursuant to Clause 7 (Removal from the Alliance) and recover from the relevant Alliance Provider the amount of any Loss suffered by the Council resulting from the termination; or

### recover in full from the relevant Alliance Provider the relevant gift, consideration or other asset which was the subject of the Fraudulent activity.

# TUPE AND PENSIONS

## The provisions set out in Schedule 6 (TUPE) shall apply in respect of the application of TUPE to this Agreement and the provision of the Services.

# PERFORMANCE MONITORING

## The provisions set out in Schedule 7 (Performance Monitoring) shall apply in regards to the monitoring and management of each Alliance Provider’s performance of the Services under this Agreement.

# FREEDOM OF INFORMATION

## Each Alliance Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Council to enable the Council to comply with its information disclosure obligations.

## Each Alliance Provider agrees:

### that this Agreement and any other recorded information held by the Alliance Provider on the Council’s behalf for the purposes of this Agreement is subject to the obligations and commitments of the Council under the FOIA and EIRs;

### that the decision on whether any exemption under the FOIA or exception under the EIRs applies to any information is a decision solely for the Council to whom a Request for Information is addressed;

### that where the Alliance Provider receives a Request for Information relating to the Services provided under this Agreement and the Alliance Provider itself is subject to the FOIA or the EIRs, it will liaise with the Council as to the contents of any response before a response to a Request for Information is issued and will promptly (and in any event within two (2) Working Days) provide a copy of the request and any response to the Council;

### that where the Alliance Provider receives a Request for Information and the Alliance Provider is not itself subject to the FOIA or as applicable the EIRs, it will not respond to that Request for Information (unless directed to do so by the Council to whom the request relates) and will promptly (and in any event within two (2) Working Days) transfer the Request for Information to the Council;

### that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA and regulation 16 of the EIRs, may disclose information concerning the Alliance Provider and this Agreement either without consulting with the Alliance Provider, or following consultation with the Alliance Provider and having taken its views into account; and

### to assist the Council in responding to a Request for Information, by processing information or environmental information (as the same are defined in the FOIA or the EIRs) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by the Council within five (5) Working Days of that request and without charge.

## Each Alliance Provider acknowledges that the description of information as Commercially Sensitive Information in Schedule 8 (Commercially Sensitive Information) is of an indicative nature only and that the Council may be obliged to disclose it in accordance with the FOIA and the EIRs, as such each Alliance Provider acknowledges and agrees that the Council owes the Alliance Providers no duty of confidence in such circumstances.

# TRANSPARENCY

## The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, or for which an exception applies under the EIRs, the content of this Agreement is not Confidential Information.

## Notwithstanding any other term of this Agreement, each Alliance Provider consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA or for which an exception applies under the EIRs.

## In preparing a copy of this Agreement for publication under Clause 28.2 the Council may consult with any Alliance Provider to inform decision-making regarding any redactions but the final decision in relation to the redaction of information will be at the Council’s absolute discretion.

## Each Alliance Provider must assist and co-operate with the Council to enable the Council to publish this Agreement.

# CONFIDENTIALITY

## Without prejudice to the obligations of the Parties under Clause 30 (Data Protection) in relation to personal information that is confidential, each Party must, except as permitted by this Clause 29 (Confidentiality), keep confidential all information disclosed to it by any other Party in connection with this Agreement, and must use all reasonable endeavours to prevent their Staff from making any disclosure to any person of that information.

## Clause 29.1 will not apply to disclosure of information that:

### is in or comes into the public domain other than by breach of this Agreement;

### the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or

### the receiving Party can prove it obtained or was able to obtain from a source other than the disclosing Party without breaching any obligation of confidence.

## A Party may disclose the another Party’s Confidential Information:

### to comply with applicable Law;

### to any appropriate Regulatory Body or Supervisory Body;

### in connection with any Dispute Resolution Procedure or litigation between any of the Parties;

### as permitted under any other express arrangement or other provision of this Agreement; and

### where the disclosing Party is the Council, to another Contracting Authority for the purposes of carrying out its duties.

# DATA PROTECTION

## The Parties agree that the Council is an independent Controller of the Shared Personal Data. The Alliance Providers act together to determine the purpose and means of Processing the Shared Personal Data received from the Council and together act as Joint Controllers in respect of such Shared Personal Data.

## If and to the extent that the Parties determine in respect of any Processing of the Shared Personal Data that the relationship between the Alliance Providers is not one of Joint Controllers, then the Alliance Providers will co-operate in agreeing and documenting appropriate arrangements for that other relationship, including where necessary implementing alternative data protection contract provisions. Any such alternative contract provisions shall be subject to the Council’s prior written approval.

## Each Party shall at all times comply with all Data Protection Laws in connection with the exercise and performance of its respective rights and obligations under this Agreement.

## The Parties have determined that it is necessary for the Council to provide the Shared Personal Data to the Alliance Providers, and for the Alliance Providers to jointly share and make decisions concerning the Shared Personal Data, in each case in order to achieve the Permitted Purpose.

## Each Party undertakes to the other Parties that it shall only Process Shared Personal Data where it has a permitted lawful basis and, where necessary, a special category processing condition applies, in each case in accordance with the Data Protection Laws.

## Each Party shall ensure that:

### the Shared Personal Data has been collected, Processed and shared in accordance with the Data Protection Laws;

### the Shared Personal Data is accurate and up-to-date and shall promptly notify one another if it becomes aware that the Shared Personal Data becomes inaccurate or out of date;

### it provides appropriate privacy notices to Data Subjects explaining the Processing and sharing of the Shared Personal Data between the Parties for the Permitted Purpose; and

### if Shared Personal Data is Processed by a third party on behalf of the relevant Party, it has in place arrangements with those third parties which are adequate to permit the Processing to be carried out in accordance with this Agreement and Data Protection Laws.

## Each Party shall use its reasonable endeavours to assist the other Parties to comply with the Data Protection Laws and shall not perform its obligations under this Clause 30 (Data Protection) in such a way as to cause the other Parties to breach the Data Protection Laws to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of the Data Protection Laws.

## Each Party shall at all times implement and maintain appropriate technical and organisational measures to:

### protect the Shared Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access; and

### ensure that it has the capability to respond to requests from Data Subjects to exercise their legal rights under the Data Protection Laws, in accordance with the Data Protection Laws.

## No less than annually, each Alliance Provider shall complete and publish a NHS Data Security and Protection Toolkit self-assessment to provide assurance that it is maintaining the security of Personal Data.

## The Parties agree that in respect of the Shared Personal Data, the Strategic Provider shall act as the primary point of contact for Data Subjects on behalf of all Alliance Providers. The Strategic Provider shall not act as primary point of contact on behalf of the Council.

## The Alliance Providers shall make available to Data Subjects the essence of the allocation of responsibilities between the Alliance Providers as set out in this Clause 30 (Data Protection).

## Notwithstanding the terms of this Agreement, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Laws against any relevant Party as Controller.

## Responsibility for complying with any request from a Data Subject to exercise their legal rights under the Data Protection Laws in respect of the Shared Personal Data or for replying to any communication from a Data Subject, privacy regulator or other party concerning the Shared Personal Data (a “**Data Protection Communication**”), falls on the Party which first received such request or Data Protection Communication.

## If an Alliance Provider receives a request from a Data Subject to exercise their legal rights under the Data Protection Laws in respect of the Shared Personal Data or a Data Protection Communication, it shall notify the Council within two (2) Working Days of receipt and shall consult with the Council in advance of giving any response, to the extent lawful and reasonably practicable.

## The Alliance Providers shall not transfer Shared Personal Data to any country outside the United Kingdom, except to the extent required by applicable law or with the Council’s prior written consent.

## Each Alliance Provider shall promptly (and in any event within twenty four (24) hours of becoming aware) notify the Council of any actual or suspected Personal Data Breach in respect of any Shared Personal Data. In such circumstances, the relevant Party shall promptly provide to the Council:

### a description of the nature of the Personal Data Breach including, the categories and approximate number of Data Subjects concerned, and the categories and approximate number of data records concerned;

### the name and contact details of the data protection officer or other person able to provide additional information;

### a description of likely consequences and/or realised consequences of the Personal Data Breach for the Council and the Data Subjects; and

### a description of the measures taken by the relevant Party to address the Personal Data Breach and to mitigate its possible adverse effects.

## The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in respect of Shared Personal Data in an expeditious and compliant manner.

## Each Alliance Provider shall maintain complete, accurate and up to date written records of all of its Processing of the Shared Personal Data and as necessary to demonstrate its compliance with this Agreement and the Data Protection Laws.

## Each Alliance Provider shall promptly:

### make available to the Council such information as is reasonably required to demonstrate its compliance with this Clause 30 (Data Protection); and

### not more than once in any twelve (12) month period upon reasonable prior notice allow for, permit and contribute to audits, including inspections, by the Council (or another auditor mandated by the Council) during normal business hours to the extent necessary to verify the audited Party's compliance with its obligations under this Clause 30 (Data Protection).

## Except as required by applicable law, the Alliance Providers shall:

### Process all Shared Personal Data for no longer than such Processing is necessary for the Permitted Purpose and compliant with this Agreement and all Data Protection Laws; and

### immediately, confidentially and securely destroy or dispose of all Shared Personal Data (and all copies) in its possession or control that are no longer required for the Permitted Purpose or can no longer be Processed in accordance with this Agreement.

## Each Alliance Provider shall indemnify and keep indemnified the Council in respect of all Losses suffered or incurred by, awarded against or agreed to be paid by, the Council arising from or in connection with any breach by the relevant Alliance Provider of any of its obligations under this Clause 30 (Data Protection).

# PUBLICITY

## Unless otherwise directed by the Council, each Alliance Provider shall not make any press announcements or publicise its participation in this Agreement and the ISP Agreements in any way without the Council's prior written consent.

## The Council shall be entitled to publicise this Agreement and the ISP Agreements in accordance with any legal obligation imposed upon the Council, including examination of this Agreement and the ISP Agreements by Auditors or otherwise.

## Each Alliance Provider shall assist and co-operate with the Council to enable the Council to publicise this Agreement and the ISP Agreements where the Council is required to do so under Law or Guidance.

## None of the Parties shall do anything or cause anything to be done, which may damage the reputation of the other Parties or bring the other Parties into disrepute.

# LIABILITY AND INDEMNITY

## Each Alliance Provider shall (subject to Clause 32.2) be responsible for, and shall release and indemnify the Council on demand from and against all liability for Losses arising from:

### death or personal injury;

### loss or damage to property; or

### third party actions, claims and/or demands brought against the Council, including any fine, penalty or levy imposed on the Council by any competent authority as a result of breach of statutory duty or otherwise,

in each case which may arise out of, or in consequence of the provision of the Services or the performance or non-performance by any Alliance Provider of its obligations under this Agreement.

## Each Alliance Provider shall not be responsible or be obliged to indemnify the Council pursuant to Clause 32.1:

### for any matter referred to in Clause 32.1 that arises as a direct result of the Alliance Provider acting on written notice issued by the Council and which the Alliance Provider has upon receipt of such written notice, communicated to the Council the relevant risks associated with the course of action described in the relevant notice; and

### for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Council (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by any Alliance Provider of its obligations under this Agreement) or by the breach of the Council of its obligations under this Agreement.

## The losses for which the Alliance Provider assumes responsibility and which shall be recoverable by the Council shall include, but not be limited to the following:

### the costs and expenses reasonably incurred by the Council in procuring and implementing alternative or replacement Services including consultancy costs, the additional costs of management time and other personnel costs and costs of hardware, software and other equipment and materials; and

### Direct Losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party against the Council caused by the act or omission of the Alliance Provider.

## To the extent permitted by the Unfair Contract Terms Act 1977, the Council shall not be liable for any loss or damage (except the negligence of the Council, its officers or employees) and the Council shall in no circumstances be liable to any Alliance Provider for any Indirect Losses whatsoever (howsoever caused) which arise out of or in connection with this Agreement.

## The aggregate liability of the Council to an Alliance Provider in respect of all causes of action, losses, damages or liability (whether for breach of contract, in negligence or for any other tort under statute or otherwise) arising out of or in connection with this Agreement shall be limited in aggregate per year to the amount that the Council has paid to that Alliance Provider in the preceding twelve (12) Month period under this Agreement.

## Subject to Clauses 32.1, 32.7, 32.8 and 32.9 and notwithstanding anything contained in this Agreement to the contrary, each Alliance Provider’s liability in contract, tort negligence, statutory duty or otherwise arising by reason of or in connection with this Agreement (except in relation to death or personal injury caused by negligence), to include the Alliance Default Sum, shall be limited in the aggregate per year to the amount that the Council has paid to that Alliance Provider under the provisions of this Agreement (if applicable) and the ISP Agreement in the preceding twelve (12) Month period.

## The limitation of liability set out in Clause 32.6 shall not apply to any liability of the an Alliance Provider arising pursuant to Clauses 46.2 and 46.9 below and Paragraphs 2.1.4, 4.2, 5.3, 5.5, 5.6.1, 5.6.2, 5.8.4, 5.11 and 6.2 of Schedule 6 (TUPE).

## Nothing in this Agreement excludes or limits the liability of any Alliance Provider:

### under the indemnity at Clause 30.21; or

### for Losses incurred by the Council as a result of the Data Protection Laws where the Alliance Provider is at fault.

## Each Alliance Provider’s liability to the Council under this Clause 32 (Liability and Indemnity) shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Parties whether under the common law principles of contract, equity or tort, under statute or as expressly provided in this Agreement and shall not (without limitation) prejudice the Council’s right to enforce at any time and in any manner whatsoever any bond, parent company guarantee or sub-contractor warranty.

## For the avoidance of doubt, the Parties agree that there shall be no double recovery on the part of the Council in relation to any costs, losses or liabilities which are recoverable by the Council under this Agreement, whether by way of indemnity or otherwise, where such costs, losses or liabilities have been recovered under the provisions of the ISP Agreement.

# INSURANCE

## Each Alliance Provider shall take out and maintain or procure the maintenance of the Insurances in accordance with the provisions of Schedule 16 (Insurances).

## The maintenance of the Insurances (or the extent of cover procured under the Insurances) shall not limit the liability of any Alliance Provider to the Council or relieve any Alliance Provider of any obligation to the Council in any way.

# CONDUCT OF CLAIMS

## In the event that any claim is made against the Council and it appears that the Council is or may be entitled to indemnification under this Agreement, the Council shall:

### (other than in respect of indemnification arising under Clause 46 (Intellectual Property Rights) and/or claims relating to the Insurances) notify the Alliance in writing of any such claim as soon as reasonably practicable after it becomes aware of the same;

### (subject to the rights of the insurers under the Insurances) conduct all negotiations and proceedings itself, provided that it shall supply the relevant Alliance Provider(s) with all information and documents relating to the claim and shall, unless deemed inappropriate by the Council (acting reasonably) permit the relevant Alliance Provider(s) to attend any negotiation meetings or proceedings relating to the claim and the Alliance Providers shall provide the Council with such reasonable assistance as may be required by the Council regarding such claim;

### not, without the relevant Alliance Provider’s prior written consent (not to be unreasonably withheld or delayed), make any public statement in respect of such claim;

### not, without the relevant Alliance Provider’s prior written consent (not to be unreasonably withheld or delayed), make an admission or agree a settlement in respect of the said claim;

### use its reasonable endeavours not to prejudice the relevant Alliance Provider’s defence of the said claim or the Alliance Provider’s rights in relation to the claim when defending the claim on the Alliance Provider’s behalf (as appropriate); and

### use its reasonable endeavours to mitigate any losses in relation to the said claim.

# CHANGE IN LAW

## Subject to the terms of this Clause 35 (Change in Law) each Alliance Provider shall take all steps necessary to ensure that the Services and the Care Services are delivered and performed in accordance with the terms of this Agreement and all Law following any Change in Law.

## Each Alliance Provider acknowledges and agrees that each Alliance Provider shall not be entitled to:

### relief from any of its obligations under this Agreement; or

### any payment or other form of compensation from the Council, as a result of the occurrence of a General Change in Law.

## If a Specific Change in Law occurs or is shortly to occur, then any Alliance Provider may by way of written notice to the Council express an opinion on its likely effects, giving details of its opinion of:

### any necessary changes to the Services and/or the Care Services;

### whether any changes are required to the terms of this Agreement to deal with the Specific Change in Law;

### whether any relief from compliance with any obligations is required; and

### any adjustment to the Care Package Charges which is required as a result of a Specific Change in Law, whether of a temporary or permanent nature, such adjustment to be calculated in accordance with Clause 35.4 to 35.6 (inclusive),

## in each case giving in full detail the procedure for implementing the change in Services and/or the Care Services.

## As soon as practicable after receipt of any notice from an Alliance Provider under Clause 35.3 above, the Parties shall discuss and agree the issues referred to in Clause 35.3 above and any ways in which the Alliance Providers can mitigate the effect of the Specific Change of Law, including:

### providing evidence that the Alliance Providers have used reasonable endeavours to minimise any increase in costs and maximise any reduction in costs;

### demonstrating how any expenditure to be incurred or avoided is being measured in a cost effective manner and has been taken into account by the Alliance Providers when proposing any amendments to the Care Package Charges; and

### giving evidence as to how the Specific Change in Law has affected prices charged by any businesses delivering services the same as or similar to the Services and/or Care Services.

## If the Parties agree or it is determined under Clause 37 (Dispute Resolution Procedure) that the Care Package Charges should be adjusted to take into account the Specific Change in Law, such adjustment shall be calculated in accordance with the basic principle that any Alliance Provider should be in a no better and no worse position than it would have been but for the Specific Change in Law.

## If an Alliance Provider considers that the Specific Change in Law requires an adjustment to the Care Package Charges, it shall provide evidence to the Council on an open book basis of why such an adjustment is required.

## If the Parties cannot reach agreement on any matter arising from a Specific Change in Law, the matter shall be referred to the Dispute Resolution Procedure in Clause 37 (Dispute Resolution Procedure).

## Any reference in this Agreement to "no better and no worse" or to leaving an Alliance Provider in a "no better and no worse position" shall be construed by reference to the Alliance Provider’s:

### rights, duties and liabilities under or arising pursuant to performance of this Agreement; and

### ability to perform its obligations and exercise its rights under this Agreement,

### so as to ensure that the Alliance Provider is left in a no better and no worse position.

# CHANGE CONTROL PROCEDURE

## The provisions set out in Schedule 9 (Change Control Procedure) shall apply to the implementation of any Changes.

# DISPUTE RESOLUTION PROCEDURE

## ***Alliance Disputes***

## If any Alliance Dispute arises in connection with this Agreement, the Council and any Alliance Provider in dispute (the “**Disputing Parties**”) shall in the first instance attempt in good faith to settle it by negotiation. To initiate the negotiation, a Disputing Party must give notice in writing to the other Disputing Parties (“**Notice of Dispute**”). The Notice of Dispute shall set out the nature of the Alliance Dispute and insofar as reasonably possible, full particulars, together with any supporting documentation the Disputing Party considers necessary to understanding its position. The Disputing Parties shall attempt to settle the Alliance Dispute within twenty (20) Working Days of the date of the Notice of Dispute and such efforts shall involve the escalation of the Alliance Dispute, if required, to senior officers of the Disputing Parties.

## If the Alliance Dispute cannot be resolved by the Disputing Parties pursuant to Clause 37.1, the Disputing Parties may by agreement refer it to mediation pursuant to the procedure set out in Clause 37.3.

## If an Alliance Dispute is referred to mediation the Disputing Parties shall comply with the following provisions:

### a neutral adviser or mediator (the “**Mediator**") shall be chosen by agreement between the Disputing Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Disputing Party to the other(s) or if the Mediator agreed upon is unable or unwilling to act, any Disputing Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to any Disputing Party that the Mediator is unable or unwilling to act, apply to the CEDR to appoint a Mediator;

### the Disputing Parties shall within ten (10) Working Days of the appointment of the Mediator meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Disputing Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

### unless otherwise agreed, all negotiations connected with the Alliance Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Disputing Parties in any future proceedings;

### if the Disputing Parties reach agreement on the resolution of the Alliance Dispute, the agreement shall be reduced to writing and shall be binding on the Disputing Parties with effect from its signature by their duly authorised representatives;

### if the Disputing Parties fail to reach an agreement on the resolution of the Alliance Dispute, any of the Disputing Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the Disputing Parties;

### if the Disputing Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Disputing Parties, then the relevant Alliance Dispute may be referred to the courts of England for final determination; and

### all costs of mediation shall be borne equally by the Disputing Parties unless otherwise directed by the Mediator.

## ***Provider Disputes***

## If a Provider Dispute arises in connection with this Agreement, the Alliance Providers in dispute (the “**Provider** **Disputing Parties**”) shall in the first instance attempt in good faith to settle it by negotiation. To initiate the negotiation, a Provider Disputing Party must give notice in writing to the other Provider Disputing Parties (“**Provider** **Notice of Dispute**”). The Provider Notice of Dispute shall set out the nature of the Provider Dispute and insofar as reasonably possible, full particulars, together with any supporting documentation the Provider Disputing Party considers necessary to understanding its position. The Provider Disputing Parties shall attempt to settle the Provider Dispute within twenty (20) Working Days of the date of the Provider Notice of Dispute and such efforts shall involve the escalation of the Provider Dispute, if required, to senior officers of the Provider Disputing Parties.

## If the Provider Dispute cannot be resolved by the Provider Disputing Parties pursuant to Clause 37.4, and the Strategic Provider is not one of the Provider Disputing Parties, the Provider Dispute may be referred to the Strategic Provider who may, acting impartially:

### assist and facilitate negotiations for the settlement of the Provider Dispute akin to the role of a mediator; or

### determine the Provider Dispute akin to the role of an arbitrator,

within a further twenty (20) Working Days of referral, as agreed between the Provider Disputing Parties.

## Where:

### the Strategic Provider is not party to the Provider Dispute and:

#### the Provider Dispute has not been settled pursuant to Clauses 37.5; or

#### the Provider Disputing Parties (or either of them) do not consider that the Strategic Provider can act impartially in assisting with the determination of the Provider Dispute; or

#### the Provider Disputing Parties cannot agree as to the role of Strategic Provider in resolving the Provider Dispute; or

### the Strategic Provider is a party to the Provider Dispute,

### the Provider Disputing Parties may by agreement refer the Provider Dispute to mediation pursuant to the procedure set out in Clause 37.7.

## If a Provider Dispute is referred to mediation the Provider Disputing Parties shall comply with the following provisions:

### a Mediator shall be chosen by agreement between the Provider Disputing Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Provider Disputing Party to the other(s) or if the Mediator agreed upon is unable or unwilling to act, any Provider Disputing Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to any Provider Disputing Party that the Mediator is unable or unwilling to act, apply to the CEDR to appoint a Mediator;

### the Provider Disputing Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Provider Disputing Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

### unless otherwise agreed, all negotiations connected with the Provider Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Provider Disputing Parties in any future proceedings;

### if the Provider Disputing Parties reach agreement on the resolution of the Provider Dispute, the agreement shall be reduced to writing and shall be binding on the Provider Disputing Parties with effect from its signature by their duly authorised representatives;

### if the Provider Disputing Parties fail to reach an agreement on the resolution of the Provider Dispute, any of the Provider Disputing Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the Provider Disputing Parties;

### if the Provider Disputing Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Provider Disputing Parties, then the relevant Provider Dispute may be referred to the courts of England for final determination; and

### all costs of mediation shall be borne equally by the Provider Disputing Parties unless otherwise directed by the Mediator.

## Each Alliance Provider shall notify the Council as soon as reasonably practicable of a Provider Dispute and shall keep Council informed of the progress of the resolution and/or settlement of each Provider Dispute on at least a Monthly basis.

***Care Package Dispute***

## Each Care Package Dispute shall be addressed as a dispute under the provisions of the ISP Agreement.

***General***

## Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining a Party from doing any act or compelling another Party to do any act.

## The obligations of each Alliance Provider under this Agreement shall not be suspended, cease or be delayed by the reference of an Alliance Dispute or Provider Dispute to this Clause 37 (Dispute Resolution Procedure) or to the courts or to any other form of alternative dispute resolution procedure adopted by the Parties, and each Alliance Provider and any Provider Related Party shall comply fully with the requirements of this Agreement at all times.

# TERMINATION FOR ALLIANCE DEFAULT

## Without prejudice to any other rights and remedies it may possess including its right of termination, if an Alliance Default occurs, the Council shall be entitled to give notice to terminate the Agreement in whole or in part by issuing a notice to that effect to the Alliance (the “**Council Termination Notice**”). The right of the Council to terminate shall be a contractual right pursuant to this Clause 38.1 and/or a common law right.

## Each Council Termination Notice must specify:

### the type and particulars of the Alliance Default; and

### the date on which the Agreement will terminate.

## Where the Alliance Default is capable of remedy, the Council shall, in addition to the details set out in Clause 38.2, specify in the Council Termination Notice either:

### that the Alliance Providers must put forward a rectification programme within ten (10) Working Days after the date the Alliance receives the Council Termination Notice (and implements such programme within its terms and rectifies the Alliance Default in accordance with the programme) failing which this Agreement will terminate on the specified date; or

### that the Alliance Providers have to remedy the Alliance Default by a specific date, such date to be reasonable in the circumstances, failing which this Agreement will terminate on the specified date.

## In the event that:

### the Alliance Default is incapable of remedy; or

### the Alliance Default is capable of remedy but the Alliance Providers have:

#### failed to put forward an acceptable rectification programme and/or failed to implement the rectification programme in accordance with its terms; or

#### failed to remedy the Alliance Default within the time period specified in the Council Termination Notice,

this Agreement shall terminate on the date notified to the Alliance by the Council in the Council Termination Notice.

## The Council’s rights under this Clause 38 (Termination for Alliance Default) are in addition and without prejudice to any right that the Council may have against the any Alliance Provider for prior breach and to any right the Council may have against any Alliance Provider for the breach, default, negligence or event leading to the termination.

# CONSEQUENCES OF TERMINATION

## Upon termination of this Agreement in accordance with Clause 38 (Termination for Alliance Default) the Alliance Providers shall pay to the Council the Alliance Default Sum in the Provider Proportions.

## Subject to Clause 38.3, each Alliance Provider acknowledges and agrees that, on termination of this Agreement pursuant to Clause 38 (Termination for Alliance Default) and/or Clause 40 (Termination for Continuing Force Majeure) and/or Clause 41 (Termination pursuant to the Public Contracts Regulations 2015) and/or pursuant to expiry of the Term due to the effluxion of time, any Alliance Provider shall have no entitlement to recover (and unconditionally and irrevocably waives its rights to claim) from the Council Losses of any kind.

## The Parties acknowledge and agree that, save where this Agreement expressly provides otherwise, termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

## As soon as reasonably practicable (and not later than twenty (20) Working Days following the date of termination or expiry of this Agreement), each Party will return to the other Parties all Confidential Information of the other Parties and will certify that it does not retain the other Parties’ Confidential Information.

## On expiry or earlier termination of this Agreement, each Alliance Provider shall do any necessary acts (including entering into any contracts) and comply with the Exit Requirements to ensure that the Council or any Replacement Provider obtains all rights and interests in order to deliver the Services with effect on and from the date of expiry or the date of termination of this Agreement (as applicable). The provisions of this Clause 39.5 shall continue in force until a period of twelve (12) Months after the expiry or earlier termination of this Agreement.

## It is hereby agreed that Clauses 7 (Removal from the Alliance), 27 (Freedom of Information), 29 (Confidentiality), 32 (Liability and Indemnity), 37 (Dispute Resolution Procedure), 38 (Termination for Alliance Default), 39 (Consequences of Termination), 43 (Exit Management) and Schedule 13 (Exit Requirements) of this Agreement shall continue in full force and effect and be enforceable by the Council on the expiry or earlier termination of this Agreement.

# TERMINATION FOR CONTINUING FORCE MAJEURE

## The Strategic Provider or the Council may, by written notice to the other Parties, terminate this Agreement in the event that a Force Majeure Event occurs which prevents the Strategic Provider from performing all or a substantial part of its obligations under this Agreement for a continuous period of more than six (6) Months.

## In the event this Agreement is terminated pursuant to Clause 40.1, the Council shall pay to each Alliance Provider all sums lawfully due to that Alliance Provider pursuant to the ISP Agreement up until the date that the Agreement terminates. The Council shall pay such sums within thirty (30) days of its receipt of a valid and properly payable invoice for the same from the Alliance Provider. No Party shall have any further liability to the other, including without limitation, in relation to any loss of future profit of any Party accruing after the termination and/or compensation howsoever arising.

# TERMINATION PURSUANT TO THE PUBLIC CONTRACTS REGULATIONS 2015

## The Council shall be entitled to terminate this Agreement forthwith upon giving written notice that:

### this Agreement has been subject to a substantial modification that constitutes a new contract award; and/or

### it has been discovered after the date of contract award that the Strategic Provider should have been excluded on mandatory exclusion grounds under the Regulations, and this shall amount to an Alliance Default which is incapable of remedy and the provisions of Clause 38 (Termination for Alliance Default) shall apply.

## In the event this Agreement is terminated pursuant to Clause 41.1, the Council shall pay to each Alliance Provider all sums lawfully due to that Alliance Provider pursuant to the ISP Agreement up until the date the Agreement terminates. The Council shall pay such sums within thirty (30) days of its receipt of a valid and properly payable invoice for the same from the Alliance Provider. No Party shall have any further liability to the other, including without limitation, in relation to any loss of future profit of any Party accruing after the termination and/or compensation howsoever arising.

# INEFFECTIVENESS

## In the event that following execution of this Agreement a court of competent jurisdiction declares this Agreement ineffective in accordance with the Regulations the Parties agree that:

### this Agreement, each ISP Agreement and any corresponding licences or leases granted to the Alliance or any Alliance Provider for the purposes of carrying out the Services and/or the Care Services will terminate with immediate effect, unless otherwise ordered by the court;

### the Alliance Providers will immediately cease the provision of the Services and the Care Services, unless otherwise ordered by the court and otherwise Clause 39 (Consequences of Termination) shall apply accordingly; and

### the Parties will agree the amount (if any) which is due to the Strategic Provider up to and including the date of the declaration. Upon agreement of such sum due the Strategic Provider shall hereby agree to issue an itemised VAT invoice for such sum to the Council for payment within thirty (30) Working Days. In the event that the Parties cannot agree an amount, within thirty (30) Working Days, this will be referred to the Dispute Resolution Procedure, which the Parties agree shall constitute a collateral agreement and shall survive and continue to apply and not be subject to any ineffectiveness declaration; and

### each Alliance Provider shall not be entitled to claim for any damages, costs, loss of earnings, and/or profit from the Council as a result of the declaration of ineffectiveness.

## In the event that this Agreement is declared ineffective in accordance with Clause 42.1, the provisions of this Clause 42 (Ineffectiveness), which set out the relevant discharge terms of this Agreement shall survive and continue to apply.

# EXIT MANAGEMENT

## The provisions of Schedule 13 (Exit Requirements) shall apply in respect of the arrangements for the re-tendering and handover of the Services and the Care Services on the expiry or earlier termination of this Agreement.

# HEALTH AND SAFETY

## Each Alliance Provider shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Services.

## Each Alliance Provider shall maintain the relevant Health and Safety Accreditation throughout the Term.

## Each Alliance Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety including any policies of the Council in relation to the Services, which may apply to Staff and other persons working in the performance of its obligations under this Agreement.

## Each Alliance Provider 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 Council on request.

## Each Alliance Provider shall notify the Council immediately in the event of any accident or incident occurring in the performance of the Services where such accident or incident causes a death, any personal injury or damage to property which could give rise to personal injury.

# BUSINESS CONTINUITY PLANNING AND DISRUPTION

## The Alliance Providers shall at the Commencement Date implement, maintain and keep updated in accordance with Good Industry Practice, its Business Continuity Plan. The Business Continuity Plan shall clearly detail how the Alliance Providers will deliver the Services where there are unexpected or unforeseen disruptions and circumstances that impact service delivery and how it will deal with any emergencies so as to ensure continuity to service delivery to Persons.

## The Strategic Provider shall, no later than ten (10) Working Days after the end of each Contract Year, submit to the Council a copy of the Alliance’s most up to date Business Continuity Plan.

## Each Alliance Provider shall, at the earliest opportunity, notify the Council in writing of every instance where the provisions of the Business Continuity Plan are instigated by any Alliance Provider and shall furnish the Council will all relevant information in regard to the incident as required by the Council, acting reasonably.

## Each Alliance Provider shall ensure that emergency procedures are practiced, tested and recorded at least twice yearly. The relevant Alliance Provider shall where requested, send to the Council a written report summarising the results of any test and shall promptly implement any actions or remedial measures which the Council reasonably considers to be necessary as a result of those tests.

# INTELLECTUAL PROPERTY RIGHTS

## Except as expressly stated in this Agreement, none of the Parties shall have any right to use any of the other Parties’ names, logos or trademarks on any of their products or services (including the Services) without the relevant Party's prior written consent.

## Each Alliance Provider shall at all times during the Term on written demand indemnify the Council and keep the Council fully indemnified against all Losses, incurred by, awarded against or agreed to be paid by the Council arising out of any claim or infringement or alleged infringement (including the defence of such infringement or alleged infringement) resulting from the Alliance Provider’s unauthorised use of the Council’s names, logos or trademarks.

## Each Party shall contribute the Background IPR owned or licensed to it which that Party considers is necessary to perform this Agreement or the Services.

## All Background IPR shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom its right to use the Background IPR has derived). Each Party acknowledges and confirms that nothing contained in this Agreement shall give it any right, title or interest in or to the Background IPR of the other Parties save as granted by this Agreement.

## All Foreground IPR shall vest in the Party who creates it.

## Each Party grants to the other Parties a non-exclusive, non-assignable and non-sublicensable, royalty-free licence during the Term to use the Background IPR disclosed under Clause 46.3 and any Foreground IPR created by it to the extent necessary for the other Parties to carry out their obligations in relation to the Services and this Agreement and for no other purpose.

## Nothing in this Clause 46 (Intellectual Property Rights) shall be construed so as to prevent or hinder any Party from using Know-How gained during the performance of the Services in the furtherance of its normal activities, to the extent that such use does not result in the disclosure or misuse of Confidential Information or the infringement of any Intellectual Property Right of the other Parties.

## Each Alliance Provider shall ensure and procure that the availability, provision and use of the Services as permitted under this Agreement and the performance of the each Alliance Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

## Each Alliance Provider shall at all times, during and after the Term, on written demand indemnify the Council and keep the Council indemnified against all Losses incurred by, awarded against or agreed to be paid by the Council arising from an IPR Claim provided that the Council has complied in full with any terms of use which:

### relate to the relevant IPR Claim; and

### have been notified to it in advance and by the Alliance Providers.

## If an IPR Claim is made, or any Alliance Provider anticipates that an IPR Claim might be made, the Alliance Provider may, at its own expense and sole option, either:

### procure for the Council the right to continue using the relevant item which is subject to the IPR Claim; or

### replace or modify the relevant item with non-infringing substitutes provided that:

#### the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

#### the replaced or modified item does not have an adverse effect on any other Services;

#### there is no additional cost to the Council; and

#### the terms and conditions of this Agreement shall apply to the replaced or modified Services.

## If any Alliance Provider elects to procure a licence in accordance with Clause 46.10.1 or to modify or replace an item pursuant to Clause 46.10.2, but this has not avoided or resolved the IPR Claim, then:

### the Council may remove the relevant Alliance Provider(s) from the Alliance and this Agreement pursuant to Clause 7 (Removal from the Alliance); and

### without prejudice to the indemnity set out in Clause 46.9, the relevant Alliance Provider shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## Each Alliance Provider shall promptly notify the Council (in writing) of any IPR Claim of which it is aware.

## The Council shall:

### notify the Alliance in writing of any IPR Claim of which it is aware;

### allow (subject to Clause 46.14) any Alliance Provider to conduct all negotiations and proceedings and provide the relevant Alliance Provider with such reasonable assistance required by the Alliance Provider (as applicable), each at the Alliance Provider’s cost, regarding the IPR Claim; and

### not, without first consulting with the relevant Alliance Provider, make an admission relating to the IPR Claim.

## Each Alliance Provider shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the Council into disrepute.

## On:

### removal of an Alliance Provider pursuant to the terms of this Agreement, the licences granted to or by that Alliance Provider pursuant to Clause 46.6 shall determine and the relevant Alliance Provider shall return all materials relating to such licences held in any format; or

### termination or expiry of this Agreement, all the licences granted pursuant to Clause 46.6 shall determine and each Alliance Provider shall return all materials relating to such licences held in any format.

# RECORDS AND AUDIT RIGHTS

## Each Alliance Provider shall keep and maintain until six (6) years after the date of termination or expiry of this Agreement or, if later, the ISP Agreement (or such other longer period as may be requested by the Council, acting reasonably), full and accurate records and accounts of:

### the operation of this Agreement; and

### the operation of the ISP Agreements including full details of the Care Services provided to Persons under them and the amounts paid by the Council to that Alliance Provider under such ISP Agreements.

## Each Alliance Provider shall keep the records and accounts referred to in Clause 47.1 in accordance with Good Industry Practice.

## Each Alliance Provider shall on reasonable notice and during normal business hours (and shall procure that any Provider Related Party) shall afford each of the Council (or any Relevant Person), the National Audit Office, the Commissioner for Local Administration (“**Ombudsman**”) and/or any auditor appointed by the National Audit Office ("**Auditors**") and their respective representatives (subject to the provisions of the Data Protection Laws, where applicable) access to the records and accounts referred to in Clause 47.1 (including access to any IT systems and devices which store such records and accounts) and/or provide copies of such records and accounts, as may be required and agreed with the Council (or any Relevant Person or any Auditor) from time to time, in order that the Council (or any Relevant Person or any Auditor) may carry out an inspection including for the following purposes:

### to verify the accuracy of the payments made by the Council to any Alliance Provider under this Agreement and their compliance with the requirements of Clause 12 (Gainshare and Invoicing);

### to review the Alliance’s and each Alliance Provider’s compliance with the Data Protection Laws in accordance with this Agreement and any Laws;

### to review the Alliance’s and each Alliance Provider’s compliance with its security obligations;

### to review any books of accounts or other financial records kept by the Alliance and each Alliance Provider in connection with the provision of the Services and/or the Care Services; and

### to ensure that the Alliance and each Alliance Provider is complying with its obligations under this Agreement.

## Each Alliance Provider shall provide such records and accounts, including for the avoidance of doubt, electronic records, (together with copies of the Alliance Provider’s published accounts) on request during the Term and for a period of six (6) years after termination or expiry of this Agreement to the Council or its Auditors.

## The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Alliance Provider or delay the provision of or any Services and/or Care Services, save insofar as each Alliance Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Council.

## Subject to the Council's obligations of confidentiality, each Alliance Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

### all information within the scope of the Audit requested by the Auditors; and

### reasonable access to any Provider Related Party.

## The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 47 (Records and Audit Rights).

# FORCE MAJEURE

## No Party shall be entitled to bring a claim for a breach of obligations under this Agreement by another Party nor incur any liability to the other Parties for any Losses incurred by the other Parties to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out its obligations under this Agreement as a result of the Force Majeure Event.

## A Party may not claim relief if the Force Majeure Event is attributable to its wilful act or omission, neglect or failure to take reasonable precautions or make reasonable effort to prevent against the Force Majeure Event.

## The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

## Subject to Clause 48.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

## The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where an Alliance Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

## 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.

## Relief from liability for the Affected Party under this Clause 47 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 48.6.

# SUBCONTRACTING

## An Alliance Provider shall not sub-contract the provision of all or part of the Services or the Care Services, other than in compliance with this Clause 49.

## The Strategic Provider may submit a written request to subcontract part of the Care Services to a Sub-Contractor (a “**Subcontracting Request**”) to the Council where the Alliance and the Strategic Provider are not able to provide a Care Package or a part of the Care Services.

## The Strategic Provider must ensure that appropriate checks are carried out on each proposed Sub-Contractor to ensure it is capable of delivering the Care Services before making a Subcontracting Request. In particular, each Sub-Contractor must meet the following minimum requirements:

### be registered with the CQC and have a local office registered with CQC in Cornwall if providing Regulated Care;

### not be subject to any of the exclusions in Regulation 57 of the Regulations;

### be registered with the Information Commissioner; and

### the Procurement Minimum Requirements;

the “**Sub-Contractor Minimum Requirements**”.

## Each Subcontracting Request must:

### identify the Sub-Contractor;

### confirm the circumstances which have arisen which warrant the need for sub-contracting the Care Services to the Sub-Contractor;

### include full details of, and evidence to support, the inability of the Alliance and the Strategic Provider to provide the Care Package or part of the Care Services;

### confirm that the Sub-Contractor meets the Sub-Contractor Minimum Requirements; and

### provide a copy of the form of Sub-Contract that the Strategic Provider and the Sub-Contractor intend to enter into, such form of Sub-Contract to contain obligations which are commensurate to the obligations in this Agreement and ISP Agreements and any additional terms as required by the Council, including, for the avoidance of doubt, the requirement in respect of suspension of the Care Services set out in Clause 49.8.

## The Council will promptly consider each Subcontracting Request and confirm in writing either:

### that it consents to the Subcontracting Request, in which case, the Strategic Provider may proceed with subcontracting the Care Services to the Sub-Contractor;

### that it consents to the Subcontracting Request, but subject to certain conditions, in which case the Strategic Provider will implement such conditions accordingly before proceeding with subcontracting the Care Services to the Sub-Contractor; or

### that it requires further information in respect of the Sub-Contractor before consenting, including evidence of the Sub-Contractor’s capability and suitability where appropriate; or

### that it does not consent to the Subcontracting Request, in which case the Council shall give its reasons for such refusal.

## The Strategic Provider shall provide a copy of each executed Sub-Contract to the Council within ten (10) Working Days of signature.

## Notwithstanding the Strategic Provider’s right to sub-contract pursuant to this Clause 49, the Strategic Provider shall remain responsible for all acts and omissions of any Sub-Contractor and for the avoidance of doubt, any Provider Related Party as if they were its own. An obligation on the Strategic Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Strategic Provider to procure that any Sub-Contractor and any other Provider Related Party also does, or refrains from doing, such act or thing.

## The Strategic Provider shall monitor the performance of each Sub-Contractor to ensure that it is performing the Care Services to the standards set out in this Alliance Agreement and the Specifications. Where an Action Plan is issued, the Strategic Provider shall ensure that each Sub-Contractor meets the requirements of the Action Plan, including any timescales set therein. The Strategic Provider shall incorporate a provision into each Sub-Contract which enables the suspension of the provision of the Care Services by the Sub-Contractor in the event of the Sub-Contractor’s failure to meet the Action Plan.

## The Strategic Provider shall, if directed by the Council, take such action or procure such action is taken against a Sub-Contractor for any breach of or enforcement of any of the terms of the Sub-Contract and shall indemnify and keep indemnified the Council against all Losses arising from the acts or omissions of any Sub-Contractor.

## In the event that the Council has approved a corporate restructuring of an Alliance Provider in accordance with the provisions of Clause 51.6.4, the Council may request that the Alliance Provider enters into such sub-contracting arrangements as the Council may prescribe in its approval of the corporate restructuring.

# NOTICES

## Any notices given under or in relation to this Agreement shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, registered post, by the recorded delivery service or by electronic mail.

## A notice shall be deemed to have been received:

### if delivered personally, at the time of delivery;

### in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting, unless such notice is returned as undelivered; or

### in the case of electronic mail, four (4) hours after sending, or sooner where the other Party acknowledges receipt of such electronic mail, unless such notice is returned as undelivered.

## In proving service, it shall be sufficient to prove that:

### personal delivery was made; or

### that the envelope containing the notice was addressed to the relevant Party set out in Schedule 12 (Notices Details) (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first-class post, special or other recorded delivery or pre-paid airmail letter; or

### that the electronic mail was sent to the email address set out in Schedule 12 (Notices Details) and no undelivered message was received.

## Where a notice has been issued to the Alliance by the Council (as required under this Agreement) to the address or email address set out in Schedule 12 (Notice Details), the notice will be deemed to have been served on each Alliance Provider and each Alliance Provider will be deemed to have knowledge of that notice.

## Where a notice is sent by the Council to an Alliance Provider pursuant to this Agreement, the Council shall also send a copy of the notice to the Alliance at the address or email address set out in Schedule 12 (Notices Details) and each Alliance Provider shall be deemed to have knowledge of such notice.

# GENERAL

## Entire Agreement

### This Agreement, together with the ISP Agreements and the other documents referred to in them constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel or nullify any previous agreement between the Parties in relation to such matters.

### Each Alliance Provider irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Agreement and any ISP Agreement because of breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement.

### Nothing in this Clause 51.1 shall operate to exclude liability or remedy for Fraud or Fraudulent misrepresentation.

## Relationship of the Parties

### Nothing in this Agreement or any ISP Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of another Party, or to authorise any Party to act as agent for the another Party. With the exception of the provisions of Clause 15, none of the Parties shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the another Party.

## Waiver and cumulative remedies

### The rights and remedies provided by this Agreement may be waived only in writing by the Council or an Alliance Provider in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

### Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by the relevant Party is without prejudice to the relevant Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by any Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

### The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Agreement.

## Severability

### If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force without affecting the remaining provisions of this Agreement.

### If any provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Council and the Alliance shall immediately commence good faith negotiations to remedy such invalidity.

## Rights of Third Parties

### 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, except that any Alternative Provider has the benefit of and may enforce the terms of any of the indemnities given by the Alliance Provider to it or the Council in Schedule 6 (TUPE).

### This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

### 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.

## Transfer Restrictions

### The Council may assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement or any ISP Agreement to any Contracting Authority, as defined in the Regulations or other body which substantially performs any of the functions that previously had been performed by the Council.

### A change in the legal status of the Council shall not affect the validity of this Agreement or the ISP Agreements and this Agreement and the ISP Agreements shall be binding on any successor body to the Council.

### Each Alliance Provider shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement or any ISP Agreement without the prior written consent of the Council.

### Notwithstanding the provisions of Clause 51.6.3, the Council may (acting in its complete discretion) consider the assignment or novation of an Alliance Provider’s rights and obligations under this Agreement or any ISP Agreement in the event of a corporate restructuring of that Alliance Provider, subject to the completion of due diligence to a level which is satisfactory to the Council and having regard to any policy issued by the Council from time to time relating to corporate restructuring of its contractors.

## Sufficiency of Information

### The Council does not warrant the accuracy of any representation or statement of fact or law given to any Alliance Provider by the Council, its servants or agents at any time prior to the execution of this Agreement. The Council shall not be liable to any Alliance Provider for any loss or damage which any Alliance Provider may sustain as a result of relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as any such other representation, statement information or advice was made or given fraudulently by the Council, its servants or agents acting in the course of their employment.

## Governing Law and Jurisdiction

### This Agreement and the ISP Agreements and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of England and, without prejudice to the Dispute Resolution Procedure set out in Clause 37 (Dispute Resolution Procedure), each Party agrees to submit to the exclusive jurisdiction of the courts of England and for all disputes to be conducted within England.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

[EXECUTION BLOCKS TO BE INSERTED HERE]

1. Conditions
2. **Documents to be delivered and Conditions Precedent to be satisfied by the Alliance Providers**
   1. Unless an original document is specifically referred to in this Schedule 1 (Conditions), a copy (certified by an officer of the relevant Alliance Provider as being a true copy) of each of the documents in Appendix 1 to this Schedule 1 (Conditions)) is to be delivered by the Alliance Providers to the Council (in a form that is satisfactory to the Council) in accordance with Clause 3.1 of this Agreement. The items listed in Appendix 1to this Schedule 1 (Conditions) shall only be considered to be satisfied when the Council has confirmed in writing that the documents delivered are in a form satisfactory to it or, where no document needs to be delivered, that the relevant Condition Precedent has, in the Council’s opinion, been satisfied.
3. **Documents to be delivered and Conditions Subsequent to be satisfied by the Alliance Providers**
   1. Unless an original document is specifically referred to in this Schedule 1 (Conditions), a copy (certified by an officer of the relevant Alliance Provider as being a true copy) of each of the documents in Appendix 2to this Schedule 1 (Conditions) is to be delivered by the Alliance Providers to the Council (in a form that is satisfactory to the Council) in accordance with Clause 3.2 of this Agreement. The items listed in Appendix 2 to this Schedule 1 (Conditions)shall only be considered to be satisfied when the Council has confirmed in writing that the documents delivered are in a form satisfactory to it or, where no document needs to be delivered, that the relevant Condition Subsequent has, in the Council’s opinion, been satisfied.
4. to Schedule 1

Conditions Precedent to be satisfied by the Alliance Providers prior to the Effective Date

1. Delivery of an executed ISP Agreement from each Alliance Provider.
2. [Delivery of an executed parent company guarantee in the form agreed [and set out at Schedule xx]].
3. [Delivery of the Bond in the form agreed [and set out at Schedule xx]].
4. Each Alliance Provider’s constitutional documents.
5. Evidence from each Alliance Provider’s board of directors, or other governing body of the Alliance Provider (certified as true and accurate) approving the execution, delivery and performance of this Agreement and in each case authorising a named person or persons or class of persons to execute and deliver each such document and any documents to be delivered pursuant to them.
6. Evidence of registration from each Alliance Provider with the Information Commissioner as a data controller in accordance with the Data Protection Laws.
7. Evidence of registration of the Strategic Provider with the CQC for Regulated Care.
8. Evidence of registration of the Strategic Provider of an office within Cornwall with the CQC.
9. to Schedule 1

Conditions Subsequent to be satisfied by each Alliance Provider prior to the CS Completion Date

1. Evidence of registration from each Alliance Provider who will be providing Regulated Care under the ISP Agreement, with the CQC.
2. Evidence of registration of each Alliance Provider, who will be providing Regulated Care under the ISP Agreement of an office within Cornwall with the CQC.
3. A completed and signed Data Security and Protection Toolkit self-assessment.
4. The Strategic Provider’s Alliance Environmental Policy.
5. For all Alliance Providers that are employing or engaging or intend to employ or engage overseas workers in the provision of the Service and/or Care Services, evidence of having a UK Sponsor Licence Rating, rated A by the Government.
6. Specifications

[Part A: Alliance Specification]

[Part B: Strategic Provider Specification]

1. Alliance Tender

***[Note to Bidders: The tender submitted by the Alliance will be annexed here.]***

1. Form of ISP Agreement

***[Note to Bidders: Please refer to the document titled “ISP Agreement” provided with the ITT documents.]***

1. Ordering Procedure
2. **Definitions**
   1. In this Schedule 5 (Ordering Procedure) the following words and expressions shall have the meanings set out below:

|  |  |
| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Allocated Care Package”** | means a Care Package which has been allocated to a specific Alliance Provider and validated by the Council pursuant to paragraph 3.4 of this Schedule 5 (Ordering Procedure); |
| **“Amended Care Package”** | means a care package for a Person which requires amendment following a Reassessment and for which a new Care and Support Plan has been issued and for which the existing provider has indicated it can no longer meet the needs of the Person; |
| **“Assessment”** | means the assessment by the Council of the Person’s needs in accordance with the Council’s statutory duty pursuant of the Care Act (2014) as amended or replaced from time to time; |
| **“Care Package Charges”** | means the rates and charges applicable to and payable under the ISP Agreement to an Alliance Provider in respect of the delivery of Allocated Care Packages; |
| **“Care Package Services”** | means the Care Services required under a specific Care Package; |
| **“Deadline”** | has the meaning given to it in paragraph 3.1.2.1 of this Schedule 5 (Ordering Procedure); |
| **“E-referral Platform”** | means the Council’s electronic platform which it will use to order the Care Services; |
| **“Exceptional Event”** | means the occurrence after the Commencement Date of:   1. technical failure of the E-referral Platform; or 2. a Force Majeure Event; |
| **“New Care Package”** | means a new or re-started Care Package or an Amended Care Package for a Person which is commissioned by the Council pursuant to this Schedule 5 (Ordering Procedure); |
| **“Ordering Procedure”** | means the procedure for ordering New Care Packages as set out paragraph 3 of this Schedule 5 (Ordering Procedure); |
| **“Out of Hours”** | means weekdays between the times of 17:00 hours to 08:30 hours, weekends and public holidays; |
| **“Priority Care Package”** | means a Care Package for a Person who at the time the Service Request is issued is:   1. at home with no care and support; or 2. occupying an acute or community hospital bed; or 3. using a reablement service; or 4. in a temporary care home placement; |
| **“Provider Payment Portal”** | has the meaning given to it in the ISP Agreement; |
| **“Purchase Order”** | means the Council's standard adult social care purchase order which it is necessary for the Council to create in order to generate a purchase order number for the delivery of any services including the Care Services and which is required in order for the Council to authorise payments to its suppliers. For the avoidance of doubt where the term "Purchase Order" is used in this Agreement, such term expressly excludes any terms or conditions, either expressly set out or implied or incorporated in any way whatsoever in the Council's standard form purchase order and any reference to a “Service Order” shall also mean Purchase Order; |
| **“Reassessment”** | means the reassessment by the Council of a Person’s needs:   1. in accordance with its statutory duty pursuant to the Care Act (2014); or 2. following a change in the Person’s needs,   which can be conducted face-to-face or over the telephone, |
| **“Service Request”** | means a service request issued by the Council via the E-referral Platform requesting a New Care Package; |
| **“Service Request Response”** | means the response submitted by an Alliance Provider in response to a Service Request; |
| **“Service Visit”** | means a visit by a Staff member to a Person’s home for the purposes of delivering the Services; and |
| **“SP KPI”** | has the meaning given to it in Schedule 7(Performance Regime); |
| **“Start Date”** | has the meaning given to it in paragraph 3.1.2.2 of this Schedule 5 (Ordering Procedure). |

1. **E-referral Platform**
   1. Each Alliance Provider shall procure that it has the ability to access the E-referral Platform. The Council shall use the E-referral Platform to order the Care Package Services from the Alliance Providers.
   2. Each Alliance Provider shall at all times comply with and abide by the terms of use of the E-referral Platform as communicated and set out on the E-referral Platform and as varied from time to time including, for the avoidance of doubt, where there is a software upgrade.
   3. Each Alliance Provider shall at all times use (and shall train and instruct its Staff to use) the E-referral Platform in accordance with the Council’s instructions and the terms of use and shall not use the E-referral Platform to:
      1. introduce any viruses, trojan horses, worms, time bombs, cancelbots, or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information;
      2. create any liability for the Council or cause the Council to lose (in whole or in part) the services of its suppliers;
      3. violate any law, statute, ordinance or regulation;
      4. infringe any copyright, patent, trademark, trade secret, or other proprietary right;
      5. access any data or system which the Alliance Provider is not authorised to access; or
      6. cause annoyance, inconvenience or needless anxiety.
   4. Each Alliance Provider shall indemnify and keep the Council indemnified against all Losses incurred as a result of the Alliance Provider’s breach of its obligations under paragraphs 2.2 and 2.3 above.
2. **Ordering Procedure**
   1. Service Request
      1. Where the need for a New Care Package arises in the Geographical Zone, the Council may request the relevant Care Package Services via the E-referral Platform by issuing a Service Request to the Alliance Providers.
      2. Each Service Request shall (subject to the provisions of the Data Protection Laws) set out:
         1. the deadline by which the Alliance must submit a Service Request Response in response to the Service Request ("**Deadline**"). The Deadline shall be one hundred and twenty (120) hours from the issue of the Service Request, unless the New Care Package is a Priority Care Package, in which case, the Deadline shall be twenty-four (24) hours from the issue of the Service Request;
         2. the preferred date on which the delivery of Care Package Services are to commence, which could be expressed as a range of dates or as soon as possible (the "**Start Date**");
         3. the date on which the Council completed an Assessment of the Person’s care and support needs;
         4. the needs and outcomes for the Person;
         5. the frequency and length of Service Visits, and where necessary, the times at which the Service Visits should take place;
         6. known risks to the Person or member of Staff or the wider public;
         7. any specific requirements from the Person that are necessary to meet their care and support needs and preferences; and
         8. any other relevant information.
      3. In the event any Alliance Provider wishes to clarify any information in relation to a particular Service Request, it must do so via the E-referral Platform. The Council may circulate a clarification response, or issue a new Service Request to allow for further discussion with an Alliance Provider where appropriate.
   2. Allocation of New Care Packages

The Strategic Provider shall facilitate the allocation of the New Care Package to an Alliance Provider, having regard to the requirement to optimise service delivery across the Geographical Zone as set out in the Specifications and the commitments the Alliance made in the Tender in this regard.

* 1. Service Request Response
     1. Once the Alliance has determined which Alliance Provider will be allocated the New Care Package, that Alliance Provider shall respond to the Service Request by submitting a Service Request Response to the Council via the E-referral Platform on or before the Deadline specified in the Service Request.
     2. Each Service Request Response shall confirm:
        1. the identity of Alliance Provider who has been allocated the New Care Package;
        2. the earliest date from which the Alliance Provider has the capacity to commence the delivery of the Care Package Services, such date to be on or within the range of the Start Date set out in the Service Request and in any case within:
           1. twenty-eight (28) days of the issue of the Service Request; or
           2. if the New Care Package is a Priority Care Package, forty-eight (48) hours from the issue of the Service Request,

unless otherwise agreed between the Council and the Alliance Provider;

* + - 1. that the Alliance Provider has the Staff with the sufficient skills to deliver the Care Package Services from the Start Date;
      2. the specific times in which the Staff will undertake the Service Visits to the Person;
      3. its responses to any other relevant information provided by the Council in the Service Request; and
      4. that the allocation of the New Care Package to the Alliance Provider has been undertaken in the most optimal manner.
    1. The Strategic Provider acknowledges that:
       1. the submission of Service Request Responses by the Deadline; and
       2. the commencement of New Care Packages:
          1. within forty-eight (48) hours of the issue of the Service Request for Priority Care Packages; and
          2. within twenty-eight (28) days of the issue of the Service Request for all other New Care Packages,

shall be monitored as SP KPIs in accordance with Schedule 7 (Performance Monitoring).

* 1. Validation
     1. The Council shall confirm and validate the allocation of the New Care Package to the relevant Alliance Provider by sending such Alliance Provider an email.
     2. A Care and Support Plan and a Purchase Order shall be issued on the Provider Payment Portal or, where the Provider Payment Portal is not being utilised, the Care and Support Plan will be issued with a Purchase Order via email to the relevant Alliance Provider in respect of each New Care Package, at which point the New Care Package will be deemed allocated to the relevant Alliance Provider and become an “**Allocated Care Package**” and the terms of the ISP Agreement shall apply in relation to the delivery of that Allocated Care Package.
  2. Operational Provider of Last Resort
     1. Where a New Care Package cannot be allocated to an Individual Provider for whatever reason, the Strategic Provider shall, in its role as Operational Provider of Last Resort, be allocated the New Care Package.
     2. The provisions of Clause 49 (Subcontracting) shall apply in respect of any subcontracting of the Care Package Services to a Sub-Contractor.

1. **Circumstances where the Ordering Procedure will not be utilised**
   1. The Council shall not be obliged to implement the Ordering Procedure in the following circumstances:
      1. where the ordering for the Care Services occurs Out of Hours;
      2. the occurrence of an Exceptional Event;
      3. where a Person is receiving services equivalent to the Care Services from an Alliance Provider or Sub-Contractor prior to the Start Date and such services were not commissioned by the Council (including, but not limited to services funded by way of direct payment or privately funded services), the Council may elect to keep the services with the relevant Alliance Provider or Sub-Contractor;
      4. where an Alliance Provider or Sub-Contractor may already be delivering Care Services for another Person at the same address as the Person requiring the New Care Package, that Alliance Provider shall be allocated the relevant New Care Package; and
      5. where an order by the courts or any Law dictates delivery of the Services by a specific Alliance Provider or Sub-Contractor, that Alliance Provider or Sub-Contractor shall be allocated the relevant New Care Package.
   2. In the case of the circumstances listed in paragraphs 4.1.1 or 4.1.2 of this Schedule 5 (Ordering Procedure):
      1. where the New Care Package was allocated to an Alliance Provider, that Alliance Provider shall not be required to relinquish that New Care Package and the New Care Package shall become an Allocated Care Package from the date it was ordered; and
      2. where the New Care Package was allocated to a provider which is not an Alliance Provider, that provider shall be required to relinquish the New Care Package and it shall then be ordered via the E-referral System at the earliest opportunity.
2. TUPE
3. **Interpretation**
   1. In this Schedule 6(TUPE) the following words and expressions shall have the following meanings:

|  |  |
| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Alleged New Employer”** | has the meaning given to it in paragraph 5.8 of this Schedule 6 (TUPE); |
| **“Alternative Provider”** | means any person appointed by the Council or the Alliance Providers (as applicable) to provide services the same as or similar to any of the Services and/or the Care Services in place of an Alliance Provider or any Sub-Contractors, including (without limitation):   1. any Alliance Provider to whom the Services are being transferred or reallocated pursuant to a Service Provision Change; 2. any Replacement Provider appointed by the Council pursuant to Clause 14 (Step-In Rights); 3. the SPoLR where it is appointed by the Council pursuant to Clause 7.11.2; 4. any New Provider appointed by the Council pursuant to Clause 6 (Joining the Alliance); or 5. any person appointed by the Council following the termination or expiry of this Agreement or an ISP Agreement; |
| **“Assigned Employees”** | any person engaged or employed by an Alliance Provider or any Sub-Contractor or any of them as appropriate and who is at the relevant time wholly or substantially engaged in the provision of any element of the Services and/or the Care Services; |
| **“Employee Information”** | means the following details:   1. name of employer; 2. anonymised staff number; 3. the team in which they work; 4. date of birth; 5. gender; 6. continuous service commencement date; 7. (if relevant) the date of the end of any fixed term employment; 8. job title and grade; 9. salary or hourly rate of pay; 10. payment intervals (monthly or weekly); 11. bonus and commission arrangements; 12. benefits provided (insurance or otherwise); 13. pension contribution rates (employer and employee/worker); 14. annual leave entitlement and balance of entitlement due in current leave year (including any leave carried over from previous years); 15. normal place of work; 16. contracted hours and normal working hours; 17. overtime arrangements (including whether compulsory or voluntary, and rates of pay); 18. whether the employee or worker is absent from work as a result of sickness or injury, or any family-related reasons, and (if so) the anticipated return to work date; 19. current disciplinary and grievance issues (but excluding expired warnings); 20. periods of notice of termination which the employer and employee or worker are required to give; 21. whether the employee or worker has issued or threatened to issue legal action against their employer (or which the employer has reasonable grounds to believe the employee or worker may issue), and the nature of that legal action; 22. proportion of the employee's or worker’s working time which they spend in delivering the Services and/or the Care Services; and 23. a summary of the activities which the employee or worker carries out in relation to providing the Services and/or the Care Services. |
| **“Employee Liability Information”** | means the employee liability information to be provided pursuant to Regulation 11 of TUPE; |
| **“Employee List”** | includes the First Employee List, all material changes to the First Employee List which the Alliance Providers are obliged to provide under paragraph 5.1.2 of this Schedule 6 (TUPE), and the Final Employee List; |
| **“Final Employee List”** | has the meaning given to it in paragraph 5.1.3 of this Schedule 6 (TUPE); |
| **“First Employee List”** | has the meaning given to it in paragraph 5.1.1 of this Schedule 6 (TUPE); |
| **“Relevant Transfer”** | means a relevant transfer for the purposes of TUPE; |
| **“Return Date”** | means in respect of any of the Services and/or the Care Services the date on which an Alliance Provider ceases to provide that Service or those Services (or that Care Service or those Care Services) whether upon the occurrence of a Service Provision Change, expiry or earlier termination of the Term or pursuant to any notice served by the Council or for any other reason; |
| **“Returning Employees”** | means those employees and workers of the Alliance Provider or any of its sub-contractors who are wholly or mainly engaged in the provision of Services at or immediately before the date of the Service Provision Change or expiry or termination of the provision by the Council or a sub-contractor of any Services or Care Services and whose contract of employment transfers to the Council or an Alternative Provider pursuant to TUPE as a consequence of such expiry or termination; |
| **“Service Provision Change”** | has the meaning given to it in paragraph 3.1 of this Schedule 6 (TUPE); and |
| **“Terminated Service”** | means any or all of the Services and/or Care Services which an Alliance Provider or any sub-contractor ceases to provide for whatever reason. |

1. **TUPE on Commencement**
   1. Each Alliance Provider:
      1. acknowledges to the Council that the Council has made and makes no representations or warranty as to the application or otherwise of TUPE in relation to the commencement of the provision of any Services or any Care Services by any Alliance Provider or any Provider Related Party;
      2. has formed and shall form its own view as to whether or not TUPE applies to this Agreement and any ISP Agreement;
      3. has and shall have no cause of action or claim for compensation or other remedy whatsoever against the Council in relation to the application or otherwise of TUPE in relation to this Agreement or any ISP Agreement issued before submitting its Tender;
      4. shall indemnify and keep indemnified the Council against any claims, proceedings, loss or damages as may be occasioned by the Council arising out of or in relation to the application or otherwise of TUPE in relation to any of the arrangements contemplated by this Agreement or any ISP Agreement.
   2. Each Alliance Provider agrees further that no Gainshare Funding shall be varied on the grounds that TUPE does or does not apply in respect of this Agreement or any ISP Agreement.
2. **TUPE during the Term**
   1. The Parties acknowledge that TUPE may apply during the Term of this Agreement where the identity of an Alliance Provider delivering the Services and/or the Care Services under a Care Package changes, including (without limitation):
      1. following the suspension and/or removal of an Alliance Provider from this Agreement; or
      2. on the exercise of the Council’s step in rights pursuant to Clause 14 (Step-In Rights);
      3. on the appointment of a New Provider pursuant to Clause 6 (Joining the Alliance);
      4. on the appointment of the SPLoR where it is appointed by the Council pursuant to the provisions of this Agreement;
      5. on the sub-contracting of a Care Package to a Sub-Contractor under the provisions of Clause 49 (Subcontracting); or
      6. following any decision by the Alliance to reallocate the Care Package to a different Alliance Provider for the purposes of optimising the Care Services or otherwise,

each a “**Service Provision Change**”.

* 1. Where a Service Provision Change has or is due to take place, each Alliance Provider shall:
     1. form its own view as to whether or not TUPE applies to the Service Provision Change; and
     2. where TUPE is deemed to apply, comply with the obligations under TUPE (including the consultation requirements and the provision of Employee Liability Information to the Alternative Provider) and the provisions of paragraph 5 of this Schedule 6 (TUPE).

1. **Remuneration and Benefits**
   1. Each Alliance Provider shall be responsible for, and/or shall procure that any relevant Sub-Contractor is responsible for, all remuneration, benefits, entitlements and outgoings in respect of all its and/or their respective Staff, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise.
   2. Each Alliance Provider shall indemnify and keep indemnified in full the Council and each Alternative Provider, against:
      1. all Direct Losses incurred by the Council or any Alternative Provider in connection with or as a result of any claim or demand against the Council or any Alternative Provider by:
         1. any person who is or has been employed or engaged by an Alliance Provider or any Sub-Contractor in connection with the provision of any of the Services or any of the Care Services; or
         2. any trade union or staff association or employee representative in respect of any such person,

in either case where such claim is alleged to have arisen as a result of any act, fault or omission of the relevant Alliance Provider and/or any Sub-Contractor on or after the Effective Date;

* + 1. all Direct Losses incurred by the Council or any Alternative Provider in connection with or as a result of a breach by an Alliance Provider of its obligations under paragraph 4.1; and
    2. all Direct Losses incurred by the Council or any Alternative Provider in connection with or as a result of any claim by any employee, worker, trade union or staff association or employee representative (whether or not recognised by the relevant Alliance Provider and/or the relevant Sub-Contractor in respect of all or any of its or their employees or workers) arising from or connected with any failure by any Alliance Provider and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative, whether under Regulation 13 of TUPE or otherwise and, whether any such claim arises or has its origin before or after the Effective Date.

1. **TUPE Issues on Re-Letting the Services or the Care Services and Service Provision Change**

**Employee Lists**

* 1. Each Alliance Provider shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) Months immediately preceding the expiry of the Term, or following the service of notice of termination in respect of any of the Services or any of the Care Services, or on the occurrence of a Service Provision Change or as a consequence of the Council notifying the Alliance of its intention to reprocure any of the Services or any of the Care Services under this Agreement:
     1. on receiving a written request from the Council provide to the Council at no cost to the Council as soon as is reasonably practicable and in any event within five (5) Working Days, the Employee Information in respect of all Assigned Employees assigned at that time to the delivery of such Services.(the “**First Employee List**”);
     2. notify the Council forthwith in writing of any material changes to the First Employee List promptly as and when such changes arise;
     3. provide to the Council within five (5) Working Days after the Return Date information, which was correct as at the Return Date, in respect of the Returning Employees on all the same matters as should be provided in respect of the First Employee List is (the “**Final Employee List**”); and
     4. be precluded from (other than in the ordinary course of business and with the Council's prior written consent (such consent not to be unreasonably withheld or delayed)):
        1. making any material increase or decrease in the numbers of Assigned Employees;
        2. making any increase in the remuneration or other change in the terms and conditions of employment of the Assigned Employees;
        3. dismissing any of the Assigned Employees; and/or
        4. transferring any of the Assigned Employees to another part of its or their business or moving other employees or workers from elsewhere in its or their business to provide the Services or the Care Services or any of them.
  2. Each Alliance Provider hereby grants permission to the Council to share all Employee Lists:
     1. with any possible Alternative Provider to allow them to prepare a bid for the provision of the Services or the Care Services (including, for the avoidance of doubt, where the Council runs a Competition) or any of them in place of any Alliance Provider or any Sub-Contractor; and
     2. with any Alternative Provider.
  3. Each Alliance Provider shall indemnify and shall keep indemnified in full the Council and any Alternative Provider against all Direct Losses arising from any claim by any person as a result of the Alliance Provider failing to provide or promptly to provide the Council and/or any Alternative Provider where requested by the Council with complete and accurate Employee Lists and/or Employee Liability Information or as a result of any material inaccuracy in or omission from any Employee Lists and/or Employee Liability Information.

**Termination of the provision of any of the Services or any of the Care Services**

* 1. Without prejudice to paragraph 3.2, on the termination of the provision of the Services or the Care Services or any of them by any Alliance Provider or any Sub-Contractor, whether on the occurrence of a Service Provision Change, the expiry or earlier termination of the Term or for any other reason, the Council and the Alliance Providers agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to such Terminated Services but the position shall be determined in accordance with the law at the date of expiry or termination as the case may be and paragraphs 5.5 – 5.8 (inclusive) of this Schedule 6 (TUPE) are without prejudice to such determination.
  2. Each Alliance Provider shall or shall procure that:
     1. all wages, salaries and other benefits of the Returning Employees and other employees or workers or former employees or workers of any Alliance Provider or any Sub-Contractors who had been engaged in the provision of the Terminated Services; and
     2. all PAYE tax deductions and national insurance contributions relating thereto,

in respect of the employment of the Returning Employees and such other employees or workers or former employees or workers of any Alliance Provider or any Sub-Contractors up to the Return Date, are satisfied. Each Alliance Provider shall indemnify and shall keep indemnified in full the Council and any Alternative Provider against all Direct Losses arising from any breach of the Alliance Provider's obligations under this paragraph 5.5.

* 1. Without prejudice to paragraph 5.5, each Alliance Provider shall:
     1. remain (and procure that its Sub-Contractors shall remain) (as relevant) responsible for all the relevant Alliance Provider's or the relevant Sub-Contractor's employees and workers (other than the Returning Employees) on or after the Return Date and shall indemnify the Council and any Alternative Provider against all Direct Losses incurred by the Council or any Alternative Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Alliance Provider's or Sub-Contractor's employees or workers who do not constitute the Returning Employees; and
     2. in respect of those employees and workers who constitute Returning Employees indemnify the Council and any Alternative Provider against all Direct Losses incurred by the Council or any Alternative Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees arising out of or in respect of the period on or after the Effective Date but on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) where such claim arises out of any act, fault or omission of any Alliance Provider and/or any Sub-Contractor including but not limited to any failure by any Alliance Provider or any Sub-Contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Alternative Provider.
  2. Each Alliance Provider shall discharge all of its obligations arising under TUPE in respect of or in connection with its ceasing to provide any of the Services or any of the Care Services for any reason (and in particular under Regulations 11, 13 and 14 of TUPE) and acknowledges that the indemnities it gives in paragraph 5.6 above shall be without prejudice to:
     1. any remedies available to the Council or any Alternative Provider in respect of any alleged failure by an Alliance Provider to discharge such obligations (and in particular under Regulation 12 of TUPE); or
     2. any arguments which the Council or an Alternative Provider may wish to advance in defence of any claims made by employees or workers or their representatives in respect of any alleged breaches of Regulations 13 and 14 of TUPE.
  3. If it is found or alleged that the contract of employment of any employee or worker of any Alliance Provider or any Sub-Contractor other than the people identified by the Alliance Providers as Returning Employees has transferred to the Council and/or any Alternative Provider or any Sub-Contractor of any of them (“**Alleged New Employer**”) at any time during the Term or as a result of any Alliance Provider or any Sub-Contractor ceasing to provide the Services or the Care Services or any of them and whether pursuant to TUPE or otherwise:
     1. the Council shall notify the relevant Alliance Provider, or shall take reasonable steps to procure that the Alleged New Employer notifies the relevant Alliance Provider, of that finding or allegation as soon as reasonably practicable after becoming aware of it;
     2. in consultation with the Alleged New Employer, the relevant Alliance Provider may within five (5) Working Days of becoming aware of that allegation or finding make that person a written offer of employment to commence immediately on the same terms and conditions on which that person was employed prior to the transfer (actual or alleged), and under which the Alliance Provider would agree to recognise that person's prior service with the Alliance Provider or Sub-Contractor as appropriate;
     3. the Alleged New Employer may, within twenty eight (28) days after becoming aware of that finding or allegation, if that person is still an employee or worker of the Alleged New Employer and has either not received or (if received) has not accepted an offer of employment made in accordance with paragraph 5.8.2 above, dismiss that person; and
     4. each Alliance Provider shall in the circumstances described in paragraph 5.8.3 above indemnify and keep indemnified the Council and/or the Alleged New Employer against all Direct Losses which the Council and/or the Alleged New Employer may suffer or incur in relation to that dismissal and the employment of that person up to the date of that dismissal.
  4. The Council shall be entitled to assign the benefit of the indemnities set out in this Schedule 6 (TUPE) to any Alternative Provider or Alleged New Employer.

**Offer of Employment if TUPE does not apply**

* 1. If on the termination of the provision of the Services or the Care Services or any of them by any Alliance Provider, whether on the occurrence of a Service Provision Change or the expiry or earlier termination of the Term or for any other reason, TUPE does not apply, each Alternative Provider (including the Council) shall have the right to offer employment to persons employed or engaged by an Alliance Provider or a Sub-Contractor and assigned to the provision of the Services or the Care Services immediately before the Return Date.
  2. Where any such offer as referred to in paragraph 5.10 is accepted, each Alliance Provider shall indemnify and keep indemnified in full the Council and/or the relevant Alternative Provider on the same terms and conditions as those set out in paragraph 4.2 as if there had been a Relevant Transfer in respect of each and every employee or worker who has accepted any such offer, and for the purposes of this paragraph and paragraph 4.2 each and every such employee or worker shall be treated as if they were a Returning Employee.
  3. Where any offer made pursuant to paragraph 5.10 is not accepted and TUPE does not apply, the relevant employee or worker shall remain an employee or worker of the relevant Alliance Provider or Sub-Contractor as appropriate.

1. **Sub-Contractors**
   1. If the Strategic Provider enters into any Sub-Contract, in accordance with the provisions of Clause 49 (Subcontracting) in connection with this Agreement or the ISP Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Schedule 6 (TUPE) and shall procure that each Sub-Contractor complies with such terms.
   2. Each Alliance Provider shall indemnify and keep the Council and any Alternative Provider indemnified in full against all Direct Losses incurred by the Council or any Alternative Provider as a result of or in connection with any failure on the part of any Alliance Provider to comply with paragraph 6.1 and/or any Sub-Contractor's failure to comply with such terms.
2. **Third Party Rights**
   1. Notwithstanding anything to the contrary provided in any other provision of this Agreement or its Schedules, it is agreed that any Alternative Provider has the benefit of and may enforce the terms of any of the indemnities given by the Alliance Provider to it or the Council in this Schedule 6 (TUPE), subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
3. Performance Monitoring
4. **Definitions**
   1. In this Schedule 7 (Performance Monitoring) the following words and expressions shall have the meanings set out below:

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| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Performance Monitoring Workbook”** | means the Quarterly report completed by each Alliance Provider detailing its performance in meeting the Provider KPIs, Provider KPI Targets and Provider Performance Measures and submitted to the Strategic Provider each Quarter pursuant to the ISP Agreement; |
| **“Provider KPI Targets”** | has the meaning given to it in the ISP Agreement; |
| **“Provider KPIs”** | has the meaning given to it in the ISP Agreement; |
| **“Provider Performance Measures”** | has the meaning given to it in the ISP Agreement; |
| **“Repeat SP Performance Failure”** | means where the same SP Performance Failure occurs in two (2) consecutive Months (and, for clarity, the SP Performance Failure occurring in the second (2nd) consecutive Month shall be deemed a Repeat SP Performance Failure for the purposes of this Schedule 7 (Performance Monitoring)); |
| **“SP KPI Targets”** | means the minimum level of performance for a SP KPI which is required by the Council as set out against the relevant SP KPI in Appendix 3 (SP KPIs and SP Performance Measures) to this Schedule 7 (Performance Monitoring). |
| **“SP KPIs”** | means the key performance indicators set out in Appendix 3 (SP KPIs and SP Performance Measures) of this Schedule 7 (Performance Monitoring); |
| **“SP Performance Failure”** | has the meaning given to it in paragraph 4.1 of this Schedule 7 (Performance Monitoring; |
| **“SP Performance Measures”** | means the performance measures set out in Appendix 3 (SP KPIs and SP Performance Measures) of this Schedule 7 (Performance Monitoring); |
| **“SP Performance Report”** | means the Quarterly report completed by the Strategic Provider detailing its performance of meeting the SP KPIs, SP KPI Targets and SP Performance Measures and submitted to the Council each Quarter pursuant to this Schedule 7 (Performance Regime); |
| **“SP Persistent Performance Failure”** | means the failure of the Strategic Provider to implement any SP Rectification Plan in accordance with its terms pursuant to 5.3; |
| **“SP Rectification Notice”** | has the meaning given to it in paragraph 5.1 of this Schedule 7 (Performance Monitoring); |
| **“SP Rectification Plan”** | has the meaning given to it in paragraph 5.1 of this Schedule 7 (Performance Monitoring); and |
| **“Strategic Meeting”** | has the meaning given to it in Schedule 10 (Monitoring and Reporting). |

1. **Alliance Provider Performance Monitoring**
   1. Each Alliance Provider is required to complete and submit to the Strategic Provider a Performance Monitoring Workbook detailing its performance of the Care Services on a Quarterly basis pursuant to the terms of the ISP Agreement.
   2. The Strategic Provider shall collate the Performance Monitoring Workbook of each Alliance Provider on a Quarterly basis and shall submit these to the Council not less than five (5) Working Days prior to each Strategic Meetings.
   3. The contents of the Performance Monitoring Workbooks along with any performance issues shall be discussed at the Strategic Meetings conducted in accordance with Schedule 10 (Monitoring and Reporting) of this Agreement.
2. **Strategic Provider Performance Monitoring**
   1. The Strategic Provider shall monitor its performance under this Agreement and in particular the achievement of the SP KPI Targets at its own expense as part of the overall performance provision of the Services in accordance with this Schedule 7 (Performance Monitoring) and any other provisions of this Agreement.
   2. Subject to paragraph 4.6 of this Schedule 7 (Performance Regime), the requirement to meet the SP KPIs and SP KPI Targets and the requirement to report the SP Performance Measures shall apply in full for the Term and contain a non-exhaustive remedy to the Council in respect of any failure by the Strategic Provider to deliver the Services in accordance with this Agreement.
   3. The Strategic Provider shall be responsible for the monitoring and accurate reporting at all times of its performance and delivery of the Services and of compliance with, or default under, the requirements of this Agreement.
3. **Performance Failures**
   1. Where any breach of or failure to satisfy any SP KPI Target (“**SP Performance Failure**”) comes to the notice of the Strategic Provider, the Strategic Provider shall report this in reasonable detail to the Council Representative as soon as reasonably practicable.
   2. The Strategic Provider shall provide reasonable detail to the Council of any SP Performance Failure and, in particular, shall ensure that all SP Performance Failures are recorded in the relevant SP Performance Report.
   3. The Strategic Provider shall monitor its performance against each SP KPI by completing and returning to the Council a SP Performance Report on a Quarterly basis within fifteen (15) Working Days of the end of each Quarter.
   4. The Council shall review each SP Performance Report in order to assess and measure the Strategic Provider’s performance in respect of the achievement of the SP KPI Targets.
   5. The contents of the SP Performance Report along with any performance issues shall be discussed at the Strategic Meetings conducted in accordance with Schedule 10 (Monitoring and Reporting).
   6. The SP KPIs, SP KPI Targets and SP Performance Measures shall be reviewed by the Strategic Provider and the Council each Contract Year to ensure they continue to align with this Agreement.
   7. Following the review described by paragraph 4.6 of this Schedule 7 (Performance Monitoring), the Council may adapt and finesse the SP KPIs, the KPI Targets or the SP Performance Measures but shall not increase the Strategic Provider’s obligations so as to ensure that the Strategic Provider is in no better and no worse position.
4. **Repeat Performance Failures**
   1. Where a Repeat SP Performance Failure occurs, the Council may at its absolute discretion issue a notice to the Strategic Provider (a “**SP** **Rectification Notice**”) detailing the relevant SP Performance Failure and setting out a request that the Strategic Provider provides a rectification plan to address the SP Performance Failure (a “**SP** **Rectification Plan**”). A failure by the Council to issue a SP Rectification Notice in accordance with this paragraph shall not prejudice any other rights or remedies that the Council has under this Agreement.
   2. The Strategic Provider shall promptly provide to the Council any SP Rectification Plan requested by the Council. The Parties shall use their best endeavours to agree the terms of any such SP Rectification Plan as soon as reasonably practicable following receipt by the Council and, following agreement or determination in accordance with Clause 37 (Dispute Resolution Procedure), the Strategic Provider shall implement the SP Rectification Plan in accordance with its terms.
   3. Where the Strategic Provider fails to implement any SP Rectification Plan in accordance with its terms, this shall be deemed a SP Persistent Performance Failure.
5. **Council Monitoring**
   1. Notwithstanding the Council’s rights pursuant to paragraph 7 of this Schedule 7 (Performance Regime), the Council may in its absolute discretion, undertake its own assessment and monitoring in seeking to verify the accuracy of any submissions made to it by the Strategic Provider and the Strategic Provider shall facilitate such assessment acting reasonably and in good faith, promptly advising the Council with access to all records and granting to the Council all other assistance which it may reasonably require.
   2. Without prejudice to the Council’s other express rights under this Agreement, where the Strategic Provider has been found to:
      1. be fraudulent in the submission of any SP Performance Report or any other report or information required to be submitted by the Strategic Provider under this Agreement; or
      2. have submitted at least two (2) erroneous SP Performance Reports within a twelve (12) Month period,

then the Council may by notice to the Strategic Provider increase the level of its monitoring of the Strategic Provider in respect of the Services (or any part thereof) which are the subject of such erroneous or fraudulent reporting until such time as the Strategic Provider shall have demonstrated to the reasonable satisfaction of the Council that it will perform (and is capable of performing) its obligations under this Agreement.

* 1. For the purposes of paragraph 6.2 above, the Council acknowledges that if the Strategic Provider has otherwise failed to have demonstrated to the reasonable satisfaction of the Council as required in paragraph 6.2, but:
     1. the Strategic Provider has removed the person or persons responsible for the fraudulent reporting under paragraph 6.2 above; or
     2. in the Quarter following the Council notice (if it has not already been established), there have been no further erroneous reports of any kind,

this shall be regarded as sufficient demonstration that the Strategic Provider will perform and is capable of performing its obligations.

* 1. If the Council issues a notice under paragraph 6.2, the Strategic Provider shall bear its own costs and indemnify and keep indemnified the Council at all times from and against all reasonable costs and expenses incurred by or on behalf of the Council in relation to such increased level of monitoring arising due to the circumstances under paragraph 6.2 above.

1. **SP Persistent Performance Failure**
   1. In the event that the Strategic Provider commits a SP Persistent Performance Failure, the Council shall be entitled to remove the Strategic Provider from this Agreement pursuant to Clause 7 (Removal from the Alliance).
2. SP KPIs and SP Performance Measures

**Strategic Provider Key Performance Indicators and Performance Measures**

The capitalised terms and definitions in this Appendix shall have the meaning set out in this Agreement or the ISP Agreement, as applicable.

**Strategic Provider KPIs and KPI Targets**

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| --- | --- | --- | --- | --- |
| **SP KPI No.** | **KPI Description** | **KPI Target** | **Link to ASCOF Objectives** | **Requirement Reference** |
| **1.** | **Percentage of Potential Hand Backs prevented by the Strategic Provider’s intervention.** | Not less than eighty percent (80%) of Potential Hand Backs each Quarter | * **1. Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently. * **2. Independence:** people are enabled by adult social care to maintain their independence and, where appropriate, regain it. * **4. Safety:** people have access to care and support that is safe, and which is appropriate to their needs. * **6. Continuity and quality of care:** people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff. | Clause 10 (Ordering Procedure and Reallocation of Care Packages) of the Alliance Agreement |
| **2.** | **Percentage of Potential Hand Backs allocated within the Alliance (not Subcontracted by the Strategic Provider)** | Not less than ninety percent (90%) of Hand Backs each Quarter | * **1. Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently. * **2. Independence:** people are enabled by adult social care to maintain their independence and, where appropriate, regain it. * **4. Safety:** people have access to care and support that is safe, and which is appropriate to their needs. * **6. Continuity and quality of care:** people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff. | Clause 10 (Ordering Procedure and Reallocation of Care Packages) of the Agreement |
| **3.** | **Percentage of New Care Packages allocated within the Alliance (not Subcontracted by the Strategic Provider)** | Not less than ninety percent (90%) of New Care Packages each Quarter | * **1. Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources areallocated efficiently. * **2. Independence:** people are enabled by adult social care to maintain their independence and, where appropriate, regain it. * **4. Safety:** people have access to care and support that is safe, and which is appropriate to their needs. * **6. Continuity and quality of care:** people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff. | Clause 49 (Subcontracting) of the Agreement |
| **4.** | **Percentage of Business Failures prevented by the Strategic Provider each Quarter** | Not less than eighty percent (80%) of Business Failures prevented each Quarter | * **1. Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently. * **4. Safety:** people have access to care and support that is safe, and which is appropriate to their needs. * **6. Continuity and quality of care:** people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff. | Paragraph 7 of the Strategic Provider Specification. |
| **5.** | **Percentage of Business Failures where Care Packages are re-allocated to within the Alliance (not Subcontracted by the Strategic Provider)** | Not less than ninety percent (90%) of Business Failures each Quarter | * **1. Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently. * **4. Safety:** people have access to care and support that is safe, and which is appropriate to their needs. * **6. Continuity and quality of care:** people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff. | Paragraph 7 of the Strategic Provider Specification. |
| **6.** | **Percentage of New Care Packages allocated to the Alliance commenced within twenty eight (28) days of the issue of the Service Request in each Quarter** | Not less than ninety percent (90%) in each Quarter | * **1. Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently. * **2. Independence:** people are enabled by adult social care to maintain their independence and, where appropriate, regain it. * **4. Safety:** people have access to care and support that is safe, and which is appropriate to their needs. * **5. Social Connections:** people are enabled by adult social care to maintain and, where appropriate, regain their connections to their own home, family and community. * **6. Continuity and quality of care:** people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff. | Paragraph 3.3 of Schedule 5 (Ordering Procedure) of the Agreement |
| **7.** | **Percentage of Service Requests allocated to the Alliance each Quarter for which** Service **Request Responses are submitted by the Deadline**  **(Twenty four (24) hours for Priority Care Packages and one hundred and twenty (120) hours for other New Care Packages)** | Not less than ninety percent (90%) in each Quarter | * **1. Quality of life**: people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently. * **2. Independence:** people are enabled by adult social care to maintain their independence and, where appropriate, regain it. * **4. Safety:** people have access to care and support that is safe, and which is appropriate to their needs. * **5. Social Connections:** people are enabled by adult social care to maintain and, where appropriate, regain their connections to their own home, family and community. * **6. Continuity and quality of care:** people receive quality care, underpinned by a sustainable and high-quality care market and an adequate supply of appropriately qualified and trained staff. | Paragraph 3.1 of Schedule 5 (Ordering Procedure) of the Agreement |
| **8.** | **MEASURED FROM YEAR 2 OF THE TERM OF THE ALLIANCE AGREEMENT**  **Percentage of home visits for the provision of the Care Services carried out by the whole Alliance using zero or low carbon methods in each Alliance Agreement Contract Year** | Not less than [the percentage bid back by the Alliance in the Alliance’s Tender in response to Question 7] | * **1. Quality of Life:** people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently * **4. Safety**: people have access to care and support that is safe, and which is appropriate to their needs. | Schedule 3 (Alliance Tender) of the Agreement |
| **9** | **MEASURED FROM YEAR 2 OF THE TERM OF THE ALLIANCE AGREEMENT**  **Compared to the Theoretical Baseline, percentage increase in home visits for the provision of the Care Services carried out by the whole Alliance using zero or low carbon methods in each Alliance Agreement Contract Year** | Not less than [the percentage bid back by the Alliance in the Alliance’s Tender in response to Question 7] | * **1. Quality of Life:** people’s quality of life is maximised by the support and services which they access, given their needs and aspirations, while ensuring that public resources are allocated efficiently * **4. Safety**: people have access to care and support that is safe, and which is appropriate to their needs. | Schedule 3 (Alliance Tender) of the Agreement |

**Strategic Provider Performance Measures**

|  |  |  |
| --- | --- | --- |
| **SP PM No.** | **PM Description** | **Requirement Reference** |
| **1** | **Total percentage of all Care Packages subcontracted by the Strategic Provider outside of the Alliance Providers under Clause 49 (Subcontracting) of the Agreement in each Quarter** | Clause 49 (Subcontracting) of the Agreement |

1. Commercially Sensitive Information
2. **Introduction** 
   1. Without prejudice to the Council’s general obligation of confidentiality and notwithstanding the contents of this Schedule 8 (Commercially Sensitive Information), the Parties acknowledge that the Council may have to disclose information in or relating to this Agreement or the ISP Agreements following a Request for Information pursuant to Clause 27 (Freedom of Information).
   2. In this Schedule 8 (Commercially Sensitive Information) the Parties have sought to identify each Alliance Provider’s information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
   3. Where possible the Parties have sought to identify where any relevant information will cease to fall into the category of information to which this Schedule 8 (Commercially Sensitive Information) applies.
   4. Without prejudice to the Council’s obligation to disclose information in accordance with FOIA or the EIRs, the Council will, acting reasonably but in its sole discretion, seek to apply:
      1. the commercial interests exemption set out in s.43 of the FOIA to the information listed in the Appendix; and/or
      2. the protection of legitimate economic interests exemption set out in s12(5)(e) of the EIRs to the Information listed in the Appendix,

as applicable.

**Appendix to Schedule 8**

**List of Commercially Sensitive Information**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No.** | **Date** | **Item(s)** | **Reasons for commercial sensitivity** | **Duration of Confidentiality** |
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1. Change Control Procedure
2. **Interpretation**
   1. In this Schedule 9(Change Control Procedure) the following words and expressions have the following meanings unless the context otherwise requires:

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| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Change Authorisation Notice”** | means the form used by the Parties to set out the agreed Change and which shall be substantially in the form of Appendix 2to this Schedule 9 (Change Control Procedure) which is signed by all Parties; |
| **“Change Control Procedure”** | means the procedure for agreeing and implementing Changes as set out in this Schedule 9 (Change Control Procedure); |
| **“Change Request”** | means a written request for a Change which shall be substantially in the form of Appendix 1 to this Schedule 9(Change Control Procedure); and |
| **“Impact Assessment”** | means a written assessment prepared by the Alliance Providers setting out the information required by paragraph 5.1 of this Schedule 9 (Change Control Procedure). |

1. **General Principles of the Change Control Procedure**
   1. This Schedule 9 (Change Control Procedure) sets out the procedure for dealing with Changes to this Agreement.
   2. Under this Change Control Procedure:
      1. the Council and the Alliance Providers may request a Change which they shall initiate by issuing a Change Request in accordance with paragraph 4 of this Schedule 9 (Change Control Procedure);
      2. the Alliance Providers or the Council as appropriate will assess and document the potential impact of a proposed Change in accordance with the relevant sections of paragraph 5 of this Schedule 9 (Change Control Procedure) before the Change can be either approved by the Council or implemented by the Alliance Providers;
      3. the Council shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 6 of this Schedule 9 (Change Control Procedure);
      4. the Alliance Providers shall have the right to reject a Change Request issued by the Council solely in the manner set out in paragraph 7 of this Schedule 9 (Change Control Procedure); and
      5. no proposed Change shall be implemented by any of the Alliance Providers until such time as a Change Authorisation Notice has been signed and issued by the Council in accordance with paragraph 6.2 of this Schedule 9 (Change Control Procedure).
   3. Until such time as a Change Authorisation Notice has been signed and issued by the Council in accordance with paragraph 6.2 of this Schedule 9 (Change Control Procedure), then:
      1. unless the Council expressly agrees otherwise in writing, the Alliance Providers shall continue to provide the Services and the Care Services in accordance with the existing terms of this Agreement as if the proposed Change did not apply; and
      2. any discussions, negotiations or other communications which may take place between the Council and any Alliance Provider in connection with any proposed Change, including the submission of any Change communications, shall be without prejudice to any Party's other rights under this Agreement.
2. **Costs**
   1. Subject to paragraph 3.2, each Party shall bear its own costs in relation to the preparation and agreement of each Change Request and any Impact Assessment.
   2. All Parties' reasonable and properly incurred costs incurred in respect of any operation of this Change Control Procedure:
      1. as a result of any Alliance Default shall be paid for by the Alliance Providers in the Provider Proportions; or
      2. as a result of any Provider Default shall be paid for by the Defaulting Provider(s).
3. **Change Request**
   1. The Council may issue a Change Request to the Alliance at any time during the Term.
   2. The Strategic Provider shall be responsible for the issuing and processing of all Change Requests on behalf of the Alliance pursuant to this Schedule 9 (Change Control Protocol). The Strategic Provider shall ensure that no Change Request is issued to the Council unless all Alliance Providers have consented to such Change Request being issued.
   3. No Individual Provider may issue a Change Request. If an Individual Provider wishes to request a Change, it shall request that the Strategic Provider issues a Change Request in accordance with paragraph 4.2 of this Schedule 9 Change Control Procedure).
   4. Subject to paragraph 4.6 of this Schedule 9 (Change Control Procedure), if the Strategic Provider issues a Change Request to the Council, then it shall also provide an Impact Assessment to the Council as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request. Such Impact Assessment shall be considered a composite assessment by the Alliance Providers in respect of the impact of the proposed Change.
   5. Subject to paragraph 4.6 of this Schedule 9 (Change Control Procedure), if the Council issues a Change Request to the Alliance, then the Strategic Provider shall provide an Impact Assessment to the Council as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of receiving the Change Request from the Council. Such Impact Assessment shall be considered a composite assessment by the Alliance Providers in respect of the impact of the proposed Change.
   6. If any Alliance Provider requires any clarifications in relation to the Change Request before the Impact Assessment can be delivered, then the Strategic Provider will promptly notify the Council and the time period for the receipt of the Impact Assessment shall be extended by the time taken by the Council to provide such clarifications. The Council shall respond to the request for clarifications as soon as is reasonably practicable and the Council shall provide the Strategic Provider with sufficient information to enable the Alliance to understand fully the nature of the request for clarification.
4. **Impact Assessment**
   1. The Strategic Provider shall ensure that each Impact Assessment includes details of:
      1. the impact of the proposed Change on the delivery of the Services and the Care Services; and
      2. each Alliance Provider’s ability to meet its other obligations under this Agreement; and
      3. any variation to the terms of this Agreement that will be required as a result of that impact and including without limitation changes to:
         1. the Specifications;
         2. other proposed Changes which have yet to be agreed with the Council pursuant to this Change Control Procedure;
         3. details of the cost of implementing the proposed Change;
         4. details of the ongoing costs required by the proposed Change when implemented, including any associated increase or decrease in the Care Package Charges;
         5. a timetable for the implementation of the Change and details of the impact on any other proposed Changes; and
         6. such other information as the Council may reasonably request in (or in response to) the Change Request.
   2. The Council shall review the Impact Assessment and, shall no later than fifteen (15) Working Days of receiving the Impact Assessment, respond to the Strategic Provider in accordance with paragraph 6 of this Schedule 9 (Change Control Procedure).
5. **The Council’s Right of Approval**
   1. Within the period specified in paragraph 5.2 of this Schedule 9 (Change Control Procedure), the Council shall consider the Impact Assessment and shall do one of the following:
      1. approve the proposed Change, in which case the Parties shall follow the procedure set out in paragraph 6.2 of this Schedule 9 (Change Control Procedure);
      2. in its absolute discretion reject the Change, in which case it shall notify the Strategic Provider of the rejection. If the Council does reject a Change, then it shall explain its reasons in writing to the Strategic Provider as soon as is reasonably practicable following such rejection; or
      3. require the Strategic Provider to modify the Change Request and/or Impact Assessment in which event the Strategic Provider shall make such modifications within five (5) Working Days of such request (such modifications requiring the consent of all the Alliance Providers). Subject to paragraph 4.6 of this Schedule 9 (Change Control Procedure), on receiving the modified Change Request and/or Impact Assessment, the Council shall approve or reject the proposed Change within ten (10) Working Days.
   2. If the Council approves the proposed Change pursuant to paragraph 6.1 of this Schedule 9 (Change Control Procedure) and it has not been rejected in accordance with paragraph 7 of this Schedule 9 (Change Control Procedure), then the Council shall inform the Strategic Provider and as soon as reasonably practicable thereafter the Strategic Provider shall prepare two (2) copies of a Change Authorisation Notice which shall be promptly signed by all Alliance Providers and delivered to the Council for its signature. As soon as reasonably practicable following receipt by the Council of the Change Authorisation Notice, it shall sign both copies and return one (1) copy to the Strategic Provider. On the Council’s signature, the Change Authorisation Notice (together with the variations itemised in the Impact Assessment that has been approved by the Council in accordance with paragraph 6.1.1 and/or 6.1.3 (as applicable)) shall constitute a binding variation to this Agreement, provided that the Change Authorisation Notice has been signed by the Council within ten (10) Working Days of receiving the Alliance Providers’ signed copy. If the Council does not sign the Change Authorisation Notice within this time period, then the Strategic Provider shall have the right to notify the Council and if the Council does not sign the Change Authorisation Notice within five (5) Working Days of the date of such notification, then the Alliance Providers may refer the matter to the Dispute Resolution Procedure.
6. **Alliance Providers’ Right of Rejection**
   1. If any Alliance Provider reasonably believes that any proposed Change which is requested by the Council:
      1. would materially and adversely affect the risks to the health and safety of any person; or
      2. would cause any Necessary Consent to be revoked;
      3. would require the Services or the Care Services to be provided in a way that infringes any Law; or
      4. is outside of the Alliance Provider’s technical capability where:
         1. the Alliance Provider can demonstrate to the Council’s reasonable satisfaction that the proposed Change is impossible to implement; and
         2. the proposed Change is outside the technical scope of the Services or the Care Services as set out in the Specifications or the Care Services Specification,

then the Alliance Providers shall be entitled to reject the proposed Change and the Strategic Provider shall notify the Council of the reasons for doing so within the relevant Impact Assessment in accordance with paragraph 5 of this Schedule 9 (Change Control Procedure).

1. **Change Authorisation**
   1. Any proposed Change processed in accordance with this Schedule 9 (Change Control Procedure) will not be authorised and the Alliance Providers shall not implement any proposed Change until the associated Change Authorisation Notice is executed in accordance with paragraph 6.2 of this Schedule 9 (Change Control Procedure).
2. to Schedule 9 (Change Control Procedure)

**Change Request**

|  |  |  |
| --- | --- | --- |
| CR No.: | Title: | |
| Required by date: | | |
| Action: | Name: | Date: |
| Raised by: | | |
| Area(s) impacted (optional field): | | |
| Full description of requested Change: | | |
| Details of any proposed alternative scenarios: | | |
| Reasons for and benefits and disadvantages of requested Change: | | |
| Signature of requesting Change owner: | | |
| Date of request: | | |

1. to Schedule 9 (Change Control Procedure)

**Change Authorisation Notice**

|  |  |  |
| --- | --- | --- |
| CR No.: | Title: | Date raised: |
| Required by date: | | |
| Detailed description of Change for which an Impact Assessment has been being prepared and details of any related Changes to the Agreement: | | |
| Agreed Financial Adjustments (and proposed means and mechanism of payment) | | |
| Signed on behalf of the Council:  Signature:  Name  Position:  Date: | | |
| Signed on behalf of the [STRATEGIC PROVIDER]::  Signature:  Name  Position:  Date: | | |
| Signed on behalf of the [ALLIANCE PROVIDER]:  Signature:  Name  Position:  Date: | | |
| Signed on behalf of the [ALLIANCE PROVIDER]:  Signature:  Name  Position:  Date: | | |

1. Monitoring and Reporting
2. Interpretation
   1. In this Schedule 10 (Monitoring and Reporting) the following words and expressions shall have the following meanings:

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| --- | --- |
| **“Action Plan”** | has the meaning given to it in the ISP Agreement; |
| **“Annual Contract Report”** | means the report compiled by the Strategic Provider which will be reviewed and discussed at the Annual Review Meeting, the contents of which shall comply with the guidance set out at Appendix 4 (Annual Contract Report Guidance) of this Schedule 10 (Monitoring and Reporting); |
| **“Annual Review Meeting”** | has the meaning given to it in paragraph 5.1 of this Schedule 10 (Monitoring and Reporting); |
| **“ASC-WDS”** | means the online data collection service and the leading source of workforce information for the adult social care sector in England which can be accessed at <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Adult-Social-Care-Workforce-Data-Set/Adult-Social-Care-Workforce-Data-Set.aspx>; |
| **“Continuous Improvement Plan”** | means the Council’s live plan for recording the improvement and development activities of Strategic Provider and the Alliance Providers and the savings made/value added to the provision of the Services and the Care Services as a result; |
| **“Financial Year”** | means the period commencing on 1 April and ending on 31 March; |
| **“Operational Meeting”** | has the meaning given to it in paragraph 3.1 of this Schedule 10 (Monitoring and Reporting); |
| **“QAR Action Plan”** | has the meaning given to it in the ISP Agreement; |
| **“Quarter”** | means every three (3) calendar months ending on 30 June, 30 September, 31 December and 31 March, and “**Quarterly**” shall be interpreted accordingly; |
| **“Performance Monitoring Workbook”** | has the meaning given to it in the ISP Agreement; |
| **“Provider KPI Target”** | has the meaning given to it in the ISP Agreement; |
| **“Provider Risk Register”** | means the Council’s live register for recording potential risks to the delivery of the Services and the Care Services; |
| **“Rectification Plan”** | has the meaning given to it in the ISP Agreement; |
| **“Strategic Meeting”** | has the meaning given to it in paragraph 4.1 of this Schedule 10 (Monitoring and Reporting); and |
| **“SP Performance Report”** | has the meaning given to it in Schedule 7 (Performance Regime). |

1. Contract Management
   1. Each Alliance Provider will be required to comply with the contract management arrangements in respect of each Operational Meeting, Strategic Meeting and Annual Review Meeting. It will also contribute to the Provider Risk Register and contribute to and comply with any Continuous Improvement Plan.
   2. Notwithstanding the remaining provisions of this Schedule 10 (Monitoring and Reporting), the Council shall be entitled to request a meeting with any Alliance Provider at any time during the Term of this Agreement at its entire discretion, and each Alliance Provider shall attend each such meeting so requested.
2. Operational Meetings
   1. The Council shall hold operational meetings with the Strategic Provider in the first (1st) and second (2nd) Month of each Quarter (each an “Operational Meeting”).
   2. The purpose, terms of reference and agenda of each Operational Meeting is set out in Appendix 1 (Operational Meetings TOR) to this Schedule 10 (Monitoring and Reporting).
   3. The Strategic Provider shall, no later than five (5) Working Days prior to each Operational Meeting, deliver to the Council a written report confirming it has collated and reviewed any Provider Compliance Certificates submitted to it by the relevant Alliance Providers and providing details of any issues which may have arisen in respect of those Provider Compliance Certificates.
3. Strategic Meetings
   1. The Council shall hold strategic meetings with the Strategic Provider in the third (3rd) Month of each Quarter (each a “Strategic Meeting”).
   2. The purpose, terms of reference and agenda of each Strategic Meeting is set out in Appendix 2 (Strategic Meetings TOR) to this Schedule 10 (Monitoring and Reporting).
   3. Each Alliance Provider shall, no later than ten (10) Working Days prior to each Strategic Meeting, deliver to the Strategic Provider the Performance Monitoring Workbooks.
   4. The Parties acknowledge that the contents of the Performance Monitoring Workbooks shall be discussed at the Strategic Meetings.
   5. The Council and the Strategic Provider shall discuss the contents of the SP Performance Report at the Strategic Meetings.
4. Annual Review Meetings
   1. The Council shall hold annual review meetings with the Strategic Provider; no later than twenty (20) Working Days from the end of each Financial Year (each an “Annual Review Meeting”), unless agreed otherwise between the Council and the Strategic Provider.
   2. The purpose, terms of reference and agenda of each Annual Review Meeting is set out in Appendix 3 (Annual Review Meetings TOR) to this Schedule 10 (Monitoring and Reporting).
   3. The Strategic Provider shall, no later than ten (10) Working Days prior to the Annual Review Meeting, deliver to the Council an Annual Contract Report.
5. Contract Compliance
   1. Each Alliance Provider shall keep under review its compliance with the terms of this Agreement and the ISP Agreement, and shall deliver to the Strategic Provider the following documents on an annual basis within twenty (20) Working Days of the end of each Financial Year or as and when the relevant registrations, accreditations, reports, policies or procedures are due for renewal or review. Such documents will then be delivered to the Council by the Strategic Provider within (20 Working Days of the end of each Financial Year:
      1. evidence of the Alliance Provider’s CQC registration (where applicable);
      2. the Alliance Provider’s insurance policy certificates, confirming the Alliance Provider has the required insurances in place pursuant to Clause 33 (Insurances) of this Agreement;
      3. the Alliance Provider’s business continuity plan;
      4. the Alliance Provider’s UK Sponsor Licence (where applicable);
      5. the Alliance Provider’s Safeguarding Policy;
      6. the Alliance Provider’s Modern Slavery Policy;
      7. the Alliance Provider’s business plan;
      8. the Alliance Provider’s audited accounts, unless the Alliance Provider is subject to an audit exemption under the Companies Act 2006, in which case the Alliance Provider shall provide its unaudited accounts;
      9. the Alliance Provider’s operating level of ECM System, where required;
      10. the Alliance Provider’s completion of an ASC-WDS organisational record;
      11. the Alliance Provider’s annual complaints report;
      12. the Alliance Provider’s health and safety accreditation, which can be:
          1. CHAS;
          2. PQS Pre-Qualification-Scheme;
          3. SALUS certification;
          4. ISO 45001; or
          5. a UKAS or equivalent accreditation to those in 6.1.12.1 or 6.1.12.4;
      13. the Alliance Provider’s environmental data; and
      14. the Alliance Provider’s international recruitment data.

**Appendix 1 - Operational Meetings TOR**

**Operational Meetings: **

**Contract Name……………………………………………………..**

**Contract Ref. No…………………………………………………..**

**1. Terms of Reference**

**2. Agenda**

**3. Minutes**

**Purpose:**

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| Operational Meetings relate to ‘business as usual’ delivery of the contracted provision. This includes managing individual or minor cases of under-delivery, as well as managing minor adjustments to the scope or volume of provision, which does not require a change to contractual documentation. This can include issues relating to early identification and management of the Alliance Provider’s performance, as well at the Strategic Provider’s performance in its role, including where there is an indication that a Provider KPI Target is unlikely to be met, management of contractual changes, savings, value for money, social value and consistent under or over performance.  Council may request a meeting with any Alliance Provider at any time during the Term of this Agreement at its entire discretion and these terms of reference will apply in this instance. |

**1. Terms of Reference:**

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| --- |
| Purpose:   * Main purpose is to focus upon and resolve matters relating to the operation of the Care Services. * To address operational contract delivery issues and manage day-to-day risk * Focus on: Compliance against the Agreement and ISP Agreement, performance, risk/incidents including health and safety, safeguarding, etc. where an incident has occurred, managing minor cases of under delivery, managing minor contract changes * To review the Strategic Provider and each Alliance Provider’s fulfilment of its social value offering.   Logistics   * Completed either via electronic submission or in a face-to-face meeting * Coordinated and chaired by the Council’s contract managers * Issues escalated to the Strategic Meeting   NB: There is an ability to invite other attendees to discuss specific matters relating to service operations as the need arises.  Attendance:  The designated contract managers (or designated deputies) from both the Council or Strategic Provider. Alliance Provider are required to attend at the Council’s request.  Ground Rules:  The Council’s representative will chair the meetings  Mandatory (standing) Agenda items to include:   * performance of the Alliance Providers under this Agreement and the ISP Agreement; * only in the case of meetings between the Council and Alliance Provider, the Alliance Provider’s performance under any Action Plan, Rectification Plan or QAR Action Plan; * levels of activity under this Agreement and the ISP Agreement; * any changes to the operation of the Care Services; * any health and safety or safeguarding incidents; and * the Alliance Providers’ fulfillment of the social value offering.   Optional Agenda Items to be submitted at least ten (10) days in advance of the Operational Meeting.  Attendees to have the necessary authorisations to progress operational matters.  Agreed process to escalate unresolved issues to the Strategic Meeting.  Agendas, minutes, documentation circulated at least five (5) Working Days before the Operational Meeting.  Participants must review and be familiar with any documents submitted  Documentation:  Formal Agenda, Minutes and reports |

**2.1 Agenda Topics (can include):**

|  |
| --- |
| * Please copy the relevant items below into the Agenda Template found in 2.2 * **Standing/Mandatory Items:** * Minutes of last meeting and actions arising * Review of Alliance and Strategic Provider performance * Review of payment and issues * Operational matters * Statutory compliance e.g. Safeguarding, Information Governance, Data Protection, Equality & Diversity and Health & Safety (if any of these are prominent features of the contract) NB: for Clinical/NHS Care Contracts it is necessary to discuss any matters relating to the investigation of serious incidents, * Communications (items of news – good or bad that could cause concern publicly) * where the Operational Meeting is being held with the Council, performance of the Alliance Provider under any Action Plan, Rectification Plan or QAR Action Plan or any other plan in place under or in connection with this Agreement and/or the ISP Agreement; * levels of activity under this Agreement and the ISP Agreement; * any changes to the operation of the Care Services; and * the Alliance Provider’s fulfillment of the social value offering.   **Optional:**   * Review of open and new contract change requests * Open issues (not covered by previous agenda items – use Issues Log to keep track) * Forthcoming key dates and activities * Staffing * Complaints * Changes to an Alliance Provider business with direct impact on contracted provision (mergers/ acquisitions/ changes to supply chain) |

**2.2 Agenda Template**

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| --- |
| Meeting Title:  **C:\Users\becke\AppData\Local\Packages\61545timgrabinat.wapperforgmail_rcb0qdgx4z9ca\AC\INetCache\07JKQB04\unnamed[1].jpg**  Date:  Time:  Location:  Chaired by: Council/Strategic Provider Contract Manager  Membership: Council and Strategic Provider Contract Managers – other Alliance Providers on request  Apologies:  **Agenda**  1. Welcome & Introductions  2. Minutes & Actions from Previous Meeting  3. Review of Performance  4. Review of payment and issues  5. Operational matters  6. Statutory compliance e.g. Safeguarding, Information Governance, Data Protection, Equality & Diversity and Health & Safety (if any of these are prominent features of the contract) NB: for Clinical/NHS Care Contracts it is necessary to discuss any matters relating to the investigation of serious incidents  7. Performance of the Alliance Providers under any Action Plan, Rectification Plan or QAR Action Plan or any other plan in place under or in connection with this Agreement and/or the ISP Agreement;  8. Levels of activity under this Agreement and the ISP Agreement;  9. Any changes to the operation of the Care Services  10. The Alliance Provider’s fulfillment of the social value offering  11.AOB  12. Confirm Date of Next Meeting |

**3 Minutes**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Meeting Title:  **C:\Users\becke\AppData\Local\Packages\61545timgrabinat.wapperforgmail_rcb0qdgx4z9ca\AC\INetCache\07JKQB04\unnamed[1].jpg**  Date:  Time:  Location:  Chaired by:  Membership:  Apologies:  Copies: | | | | | | |
| Name: | | Title: | | | Organisation: | |
| **MINUTES** (Capture the main points, clarifications future agenda items and list necessary actions as below) | | | | | | |
| **ACTIONS:** | | | | | | |
| **Action Ref. No.** | **Action By Date** | | **Responsible party** | **Status** | | **Comments** |
|  |  | |  |  | |  |

1. Strategic Meetings TOR

**Strategic Meetings:**

**Contract Name…………………………………………….**

**Contract Reference No…………………………………**

**1. Terms of Reference**

**2. Agenda**

**3. Minutes**

**Purpose:**

|  |
| --- |
| The purpose of this template it to enable Contract Managers and Senior Officers to set the parameters for Strategic Meetings (These meetings are in addition to the Operational Meetings that are held). The effective management of these meetings is required for the development of relationships with the Strategic Provider. A stronger relationship with the Strategic Provider will enable the Parties to achieve added value, continuous improvement and realise benefits aligned to corporate priorities. It also provides opportunity for the Strategic Provider to submit innovative solutions to generate mutual benefits as well as by the nature of the contracted provision. The Terms of Reference as listed below therefore mirror the minimum requirements as set in the Council’s Contract Procedure Rules.  Council may request a meeting with any Alliance Provider at any time during the Term of this Agreement at its entire discretion and these terms of reference will apply in this instance. |

**1. Terms of Reference:**

|  |
| --- |
| The Terms of Reference sets the scene for the management of the meetings and can include:  Purpose:   * To address strategic contract management issues * To review the Alliance Providers’ performance against the Provider KPIs/Provider KPI Targets/Performance Measures as well at the Strategic Provider’s performance in its role; * Deals with issues escalated from the Operational Meetings * Focus on: Aggregated Performance, Aggregated Risk, Contractual Changes, Specific Risk Areas e.g. Safeguarding, Health and Safety, Information Governance * SRM: Continuous Improvement and Innovation * Trigger points assessed for escalation and intensive support   Logistics   1. In addition to Monthly reporting/meeting 2. Carried out face to face 3. Coordinated by the Council’s contract manager   NB: There is an ability to invite other attendees to discuss specific matters relating to service matters as the need arises.  Ground Rules:  The Council representative will chair the meetings  Mandatory (standing) Agenda items  Optional Agenda Items to be submitted at least ten (10) days in advance of the meeting  Attendees to have the necessary authorisations to progress operational matters  Agreed process to escalate unresolved issues e.g. dispute resolution  Agendas, minutes, documentation circulated in agreed timescales  Participants must review and be familiar with any documents submitted  Documentation:  Formal Agenda, Minutes and reports  NB: The Alliance Providers must agree the ToR as part of the contract set up procedures. Please note: Agendas & Minutes can be used to support claims/disputes made by either party |

**2.1 Agenda Topics (can include):**

|  |
| --- |
| Please copy the relevant items from the lists below into the Agenda template in Section 2.2  **Standing/Mandatory Items:**   * Minutes of last meeting and actions arising * Escalated Matters – e.g. contract claims/disputes/safeguarding/H/S/IG/E&D etc. * Alliance Providers’ performance as detailed in the Performance Monitoring Workbook. * Strategic Provider’s performance in its role * Where the meeting is between the Council and Strategic Provider, Strategic Provider’s performance as set out in the SP Performance Report. * Review and mitigation of joint risks * organisational priorities * Major scheduled/ implemented changes to contract and budget – reasons and implications * Changes to Strategic Provider’s business – mergers/ acquisitions/ changes to supply chain relevant to contracted provision    * Continuous improvement and benefits realisation - Innovation * NB: for Clinical/NHS Care Contracts it is necessary to discuss any matters relating to the investigation of serious incidents,   **Optional:**   * Market development * Wider government priorities and legislation * Technological innovations in the [relevant] sector * Alliance Provider internal technology and business development update * Impact of additional business won by the Strategic Provider and/or Alliance Provider in related areas * Council developments which could positively impact on contract delivery * Potential for joint working/ JVs and co-location * Major contract budget underspend/ overspend (Review of contract expenditure for the year, any major deviations from the original budget and their impact on both parties; next year’s budget planning) |

**2.2 Agenda Template**

|  |
| --- |
| Meeting Title:  **C:\Users\becke\AppData\Local\Packages\61545timgrabinat.wapperforgmail_rcb0qdgx4z9ca\AC\INetCache\07JKQB04\unnamed[1].jpg**  Date:  Time:  Location:  Chaired by:  Membership:  Apologies:  **Agenda**  1. Welcome & Introductions  2. Minutes & Actions from Previous Meeting  3.  4.  5.  6.  7.  8.  9. AOB  10. Confirm Date of Next Meeting |

**3 Minutes**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Meeting Title:  **C:\Users\becke\AppData\Local\Packages\61545timgrabinat.wapperforgmail_rcb0qdgx4z9ca\AC\INetCache\07JKQB04\unnamed[1].jpg**  Date:  Time:  Location:  Chaired by:  Membership:  Apologies:  Copies: | | | | | | |
| Name: | | Title: | | | Organisation: | |
| **MINUTES** (Capture the main points, record any key facts or comments made, clarifications future agenda items and list necessary actions as below). Please note; Minutes can be used to support claims/disputes made by either party | | | | | | |
| **ACTIONS:** | | | | | | |
| **Action Ref. No.** | **Action By Date** | | **Responsible party** | **Status** | | **Comments** |
|  |  | |  |  | |  |

Appendix 3 Annual Review Meetings TOR

**Annual Review Meetings:**

**Contract Name……………………………………….**

**Contract Ref. No…………………………………….**

**1. Terms of Reference**

**2. Agenda**

**3. Minutes**

**Purpose :**

|  |
| --- |
| The Annual Review Meeting forms part of the wider Annual Contract Review Process.  The purpose of the Annual Review Meeting is it to enable to the Parties to focus on strategic matters and ensure oversight of the main issues associated with the Agreement and the ISP Agreement. It will provide an opportunity to discuss any escalated matters, examine performance of the contract, the Alliance Providers, as well at the Strategic Provider’s performance in its role, check alignment with corporate priorities, discuss innovative solutions to generate mutual benefits in terms of efficiency and agree associated improvement plans.  To also particularly focus on achievements against Council priorities, to highlight performance over and above contractual requirements, such as social, environmental or economic benefits. |

1. **Terms of Reference:**

|  |
| --- |
| Purpose   * To ensure strategic alignment between the Strategic Provider, the Alliance Providers and the Council * Deals with issues escalated from the Strategic Meetings in the context of the contract lifecycle, including decisions around the use of options to extend the contract * Focus on: review of the previous year’s performance, risk, improvement, etc., Look forward to the coming year of contract delivery, Council and the Strategic Provider to feed in strategic aims and objectives, reviewing escalation tolerances for the coming year, including input from the Alliance Providers via the Strategic Provider * Supplier Relationship Considerations: 360o Relationship Assessment, Review Value for Money & Opportunities, Explore Options for Innovation including feedback from the Alliance Providers about the Strategic Provider’s performance * The annual review process is used to inform the Annual Internal Audit Plan, and the Council’s publications and communications plans on overall performance   Logistics   * Carried out face to face * Coordinated by the Council’s Contract and Supplier Relationship Management Team * Chaired by the Council’s responsible Service Director as a minimum * Timed to inform Medium Term Financial Strategy and Council Business/Service Planning Cycle (Feb - April) * Attendees can include the Council’s Portfolio Holder, Corporate Director, Service Director, Head of Service, Contract Manager and the Strategic Provider’s Senior Executives, Managing Director, Regional and Contract Manager and Chief Executive Officer.   Ground Rules:  The Council representative will chair the meetings  Mandatory (standing) Agenda items  Optional Agenda Items to be submitted at least ten (10) days in advance of the meeting  Attendees to have the necessary authorisations to progress matters  Agreed process to escalate unresolved issues e.g. dispute resolution  Agendas, minutes, documentation circulated in agreed timescales  Participants must review and be familiar with any documents submitted  Documentation:  Formal Agenda, Minutes and reports  NB: Each Alliance Provider must agree to the Terms of Reference as part of the contract starting procedures  Please note; Agenda’s & Minutes can be used to support claims/disputes made by either party and therefore must be an accurate representation of discussions. |

**2.1 Agenda Topics (can include):**

|  |
| --- |
| **Standing/Mandatory Items:**   1. Supplier presentation of Annual report - focus on: 2. Escalation of matters arising from the Strategic Meeting 3. Review of the previous year’s performance- e.g. KPI’s, Safeguarding, H&S etc 4. Risk, improvement, etc. 5. Look forward to the coming year of contract delivery, 6. Innovations - Review Value Proposition, Explore Options for Innovation 7. Council and Alliance Provider to feed in Strategic aims and objectives 8. Reviewing escalation tolerances for the coming year   **Optional:**   * 360o Relationship Assessment outcome – to be conducted in advance of the meeting and discussed at the meeting * Joint Business Planning |

**2.2 Agenda Template**

|  |
| --- |
| Meeting Title:  **C:\Users\becke\AppData\Local\Packages\61545timgrabinat.wapperforgmail_rcb0qdgx4z9ca\AC\INetCache\07JKQB04\unnamed[1].jpg**  Date:  Time:  Location:  Chaired by: Service Director  Membership: Attendees can include the Council’s Portfolio Holder, Corporate Director, Service Director, Head of Service, Contract Manager and the Strategic Provider’s Senior Executives, Managing Director, Regional and Contract Manager and Chief Executive Officer.  Apologies:  **Agenda**   1. Welcome & Introductions 2. Minutes & Actions from Previous Meeting   3. Issues escalated from the Strategic Meetings in the context of the contract lifecycle, including decisions around the use of options to extend the contract   1. Alliance Provider presentation of Annual report - focus on: 2. Review of the previous year’s performance. 3. Risk, improvement, etc. 4. Look forward to the coming year of contract delivery, 5. Innovations - Review value proposition, Explore options for innovation 6. Council and Strategic Provider to feed in strategic aims and objectives 7. Reviewing escalation tolerances for the coming year   12.  13. Confirm Date of Next Meeting |

**3 Minutes**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Meeting Title:  **C:\Users\becke\AppData\Local\Packages\61545timgrabinat.wapperforgmail_rcb0qdgx4z9ca\AC\INetCache\07JKQB04\unnamed[1].jpg**  Date:  Time:  Location:  Chaired by:  Membership:  Apologies:  Copies: | | | | | | |
| Name: | | Title: | | | Organisation: | |
| **MINUTES** (Capture the main points, record any key facts or comments made, clarifications future agenda items and list necessary actions as below). Please note; Minutes can be used to support claims/disputes made by either party | | | | | | |
| **ACTIONS:** | | | | | | |
| **Action Ref. No.** | **Action By Date** | | **Responsible party** | **Status** | | **Comments** |
|  |  | |  |  | |  |

Appendix 4 Annual Contract Report Guidance

**Annual Contract Report**

**Content Requirements Guidance**

**Purpose:**

|  |
| --- |
| To ensure that all Annual Review reports are submitted by the Strategic Provider to the Council in a standardised format and contain all the necessary headings and information to enable efficient management of the meeting. The Alliance Providers will be required to make information available to the Strategic Provider to ensure this report can be prepared. |

1. **Content List:**

|  |
| --- |
| Executive summary of the performance of the each Alliance Provider for the contracted services relating to the previous contract year, as well at the Strategic Provider’s performance in its role, including the outcomes of any innovative solutions previously agreed and implemented with the Council. Particularly on achievements against Cabinet priorities, and performance over and above contractual requirements. Outline plans for the coming year.  **Finance & Resources:**   * Organisational structure – highlighting and explaining any changes * Summary of resources deployed and trend analysis against previous contract years resources deployed e.g. vehicles, staff etc. * Summary of actual spend (Council payments received) and trend analysis against previous contract years spend.   **Performance:**   * A summary of performance to date for the previous contract year in the form of a summary of data contained within the monthly summary reports i.e. a cumulative summary. * Annual summary of all Provider KPI’s in RAG format with reflective commentary against each indicator * Trend analysis against previous contract years. * Evidence of continuous improvement or corrective actions implemented in the event of under-performance.   **Summary of any Service Changes during the period including:**   * Details of the changes to service provision and procedure. * Benefits to the Council, the Service, Residents, members of the public * Financial implications of the implemented service change   **Compliance:**   * Incidents of major contract non-compliance and remedial plans * Summary of defaults and remedies with financial consequences * Summary of status of any disputes with the Council or third parties involved with delivering the contracted services. * Details of any findings of unlawful conduct or investigations relating to: * Health & Safety * Safeguarding (including Modern Slavery) * Equality & Diversity * Information Governance * Data Protection * Environmental Permitting * Care Commissioner * Discrimination * Trade Union interventions * HRMC/Tax Fraud * Summary of staff training -initiatives/mandatory   **Innovation**:   * Contract review and alignment to corporate objectives * Strategic risk management * Stakeholder engagement – results * 360° relationship assessment repeated annually * Value release * Joint Business Planning – including future plans for improvement * Financial Implications involved with any proposed changes in service provision |

**2. Supporting Appendices:**

|  |
| --- |
| The Strategic Provider and the Alliance Providers are required to provide documentary evidence for example; in the form of info graphics, tables, spreadsheets, surveys, maps, diagrams. |

1. New Provider Competition
2. **Interpretation**
   1. In this Schedule 11(New Provider Competition) the following words and expressions have the following meanings unless the context otherwise requires:

|  |  |
| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Award Criteria”** | means the award criteria to be applied when carrying out a Competition for the appointment of a New Provider to the Alliance and this Agreement which are set out in Appendix 2Appendix 2 (Award Criteria) of this Schedule 11Schedule 11 (New Provider Competition); |
| **“Find a Tender Service”** | means the Government’s platform for the publication of notices relating to the procurement of contracts under the Regulations, and such a term shall extend to any replacement platform established by the Government during the Term; |
| **“Minimum Requirements”** | means the Council’s minimum requirements in respect of capability, financial standing and technical ability which each New Provider has to meet in order to join the Alliance pursuant to Clause 6 (Joining the Alliance) and which are set out in Appendix 1Appendix 1 (Minimum Requirements) of this Schedule 11 Schedule 11 (New Provider Competition); and |
| **“Most Economically Advantageous Tender”** | means the tender(s) which achieve(s) the highest scores when applying the Award Criteria. |

1. **Competition**
   1. If an Opening Trigger exists and the Council wishes to appoint a New Provider or New Providers to the Alliance and this Agreement, it shall:
      1. publish a call for competition, requesting expressions of interest to join the Alliance by placing a notice on the Find a Tender Service;
      2. make it clear in the call for competition whether it is seeking to appoint a new strategic provider, just new individual providers, or both;
      3. require all interested providers to:
         1. evidence that they meet the Minimum Requirements;
         2. submit a tender response; and
         3. confirm the total amount of hours of the Care Services the interested provider can provide under the Alliance if appointed.
      4. adopt and apply the Award Criteria in the evaluation of all tenders submitted; and
      5. subject to the provisions of paragraph 2.1.6 below, on the basis set out above, invite the provider(s) which submit(s) the Most Economically Advantageous Tender(s) to join the Alliance and this Agreement, provided always that the Council shall only appoint a New Provider or New Providers up to the capacity to cover the Geographical Zone Capacity Shortfall identified by the Council in the Competition.
      6. where the Council is seeking to appoint a new strategic provider it shall set out the transparent and non-discriminatory method it will use to appoint a new strategic provider and any individual provider(s), having regard at all times to the identified Geographical Zone Capacity Shortfall and the identification of the relevant Most Economically Advantageous Tender.
2. **Deed of Admittance**
   1. The New Provider shall become party to the Alliance and this Agreement on the execution by all Parties and the New Provider of the documentation required to enable this and an ISP Agreement.
   2. The Alliance Providers shall act promptly and reasonably in facilitating the execution of the documentation required to admit the New Provider to the Alliance.
3. **No Award**

Notwithstanding the fact that the Council has conducted a Competition pursuant to this Schedule 11 (New Provider Competition), the Council shall be entitled at all times to cancel, postpone, delay or end the Competition without inviting a New Provider to join the Alliance and this Agreement or decline to make an award.

1. Minimum Requirements

The Council shall base the Minimum Requirements on those minimum requirements identified in the Council’s Invitation to Tender, subject to any amendments required to reflect:

* The capacity and structure being procured in the Competition; and
* Any changes to the legal and policy positions relating to the Services and the Care Services that may apply.

1. Award Criteria
2. **General**
   1. A New Provider shall be appointed to the Alliance and this Agreement on the basis of Most Economically Advantageous Tender from the point of view of the Council.
3. **Award Criteria**
   1. The following criteria and weightings shall be applied to the compliant tenders submitted through the Competition.

|  |  |  |
| --- | --- | --- |
| **Criteria Number** | **Criteria** | **Range of weightings that can be applied** |
| **1** | Price | 0-100% |
| **2** | Quality | 0-100% |
|  | 2a Alliance Approach  2b Optimisation of Care Provision  2c Strategic Provider Role  2d Provision of Care Services  2e Workforce  2f Carbon Neutrality  Presentation | 0-100%  0-100%  0-100%  0-100%  0-100%  0-100%  0-100% |
| **3** | Social Value | 0-100% |

1. Notice Details

For the purposes of Clause 50, the address and email address of each Party shall be as set out in this Schedule 12 (Notice Details).

The address for the service of notices for the Council shall be:

|  |  |
| --- | --- |
| **For the Council** | |
| Name: |  |
| Address: |  |
| Email address: |  |

Where a notice is to be served on the Alliance, the address and email address for the service of notices for the Alliance shall be:

|  |  |
| --- | --- |
| **For the Alliance** | |
| Name: |  |
| Address: |  |
| Email address: |  |

The address and email-address for service of notices for each Alliance Provider shall be:

|  |  |
| --- | --- |
| **For the Strategic Provider** | |
| Name: |  |
| Address: |  |
| Email address: |  |

|  |  |
| --- | --- |
| **For [Individual Provider]** | |
| Name: |  |
| Address: |  |
| Email address: |  |

|  |  |
| --- | --- |
| **For [Individual Provider]** | |
| Name: |  |
| Address: |  |
| Email address: |  |

|  |  |
| --- | --- |
| **For [Individual Provider]** | |
| Name: |  |
| Address: |  |
| Email address: |  |

|  |  |
| --- | --- |
| **For [Individual Provider]** | |
| Name: |  |
| Address: |  |
| Email address: |  |

|  |  |
| --- | --- |
| **For [Individual Provider]** | |
| Name: |  |
| Address: |  |
| Email address: |  |

|  |  |
| --- | --- |
| **For [Individual Provider]** | |
| Name: |  |
| Address: |  |
| Email address: |  |

1. Exit Requirements
2. **Definitions**
   1. In this Schedule 13 (Exit Requirements) the following expressions shall have the meanings set out under them:

|  |  |
| --- | --- |
| **Defined Term/Phrase** | **Meaning** |
| **“Draft Exit Plan”** | has the meaning given to it in paragraph 3.3 of this Schedule 13 (Exit Requirements); |
| **“Exit Period”** | means the period between:  (a) the Expiry Trigger Date and the date of expiry of the Agreement; or  (b) the Termination Trigger Date and the date of termination of the Agreement; |
| **“Exit Plan”** | has the meaning given to it in paragraph 3.7 of this Schedule 13 (Exit Requirements); |
| **“Exit Requirements”** | has the meaning given to it in paragraph 2.1 of this Schedule 13 (Exit Requirements); |
| **“Expiry Date”** | means the date which falls on the last day of the Term; |
| **“Expiry Trigger Date”** | has the meaning given to it in paragraph 3.1 of this Schedule 13 (Exit Requirements); |
| **“Handover Meeting”** | has the meaning given to it in paragraph 4.1 of this Schedule 13 (Exit Requirements); and |
| **“Termination Trigger Date”** | has the meaning given to it in paragraph 3.2 of this Schedule 13 (Exit Requirements). |

1. **Introduction**
   1. In order to ensure business continuity following the expiry or on earlier termination of the Agreement, it is necessary for the Parties to agree a process that delivers the Council’s exit requirements (as set out in this Schedule 13 (Exit Requirements)) and which provides all Parties with a clear indication of the areas for which they will be responsible (the "**Exit Requirements**").
   2. This Schedule 13 (Exit Requirements) provides that procedure and sets out the principles required to ensure a smooth transfer of responsibilities, services, staff and any other items or information necessary to enable a Replacement Provider to operate the replacement services with effect from the date of expiry or earlier termination of all or any part of the Agreement for any reason. It also provides confirmation of each Alliance Provider’s commitment to ensuring service quality throughout the Exit Period through to the completion of handover.
   3. This Schedule 13 (Exit Requirements) seeks to provide clarification of the nature and extent of the responsibilities that will need to be discharged by the Alliance Providers and the Council following the date of expiry or earlier termination of the Agreement.
2. **Exit Plan**
   1. On the date falling no later than six (6) Months prior to the Expiry Date, the Council will notify the Alliance that the Agreement is due to expire (the "**Expiry Trigger Date**").
   2. If a Council Termination Notice or other written notice to terminate is served prior to the Expiry Date the date of such notice shall constitute the "**Termination Trigger Date**".
   3. The Strategic Provider shall, in collaboration with the Alliance Providers, produce and submit to the Council an outline draft exit plan ("**Draft Exit Plan**") for the Council to review, such Draft Exit Plan being based on the matters set out in paragraphs 4 to 5 of this Schedule 13 (Exit Requirements) on the date falling no later than:
      1. twenty (20) Working Days after the Expiry Trigger Date; or
      2. with the exception of termination of the Agreement for an Alliance Default which warrants immediate termination of the Agreement, five (5) Working Days after the Termination Trigger Date.
   4. For the avoidance of doubt, the Strategic Provider shall not be required to produce and submit to the Council a Draft Exit Plan in the event that the Council has served a Council Termination Notice for an Alliance Default which warrants immediate termination.
   5. The Council shall provide any comments in respect of the Draft Exit Plan to the Strategic Provider:
      1. in the case of expiry of the Agreement or termination of the Agreement pursuant to Clause 4 (Council’s Option to Extend), on the date falling no later than ten (10) Working Days of receipt of the Draft Exit Plan from the Strategic Provider; or
      2. in the case of termination of the Agreement, on the date falling no later than five (5) Working Days of receipt of the Draft Exit Plan from the Strategic Provider.
   6. The Strategic Provider and the Council shall meet to discuss and seek to agree the contents of the Draft Exit Plan. In the event of a dispute in relation to the contents of the Draft Exit Plan, the matter shall be referred to the Dispute Resolution Procedure.
   7. Once the Council and the Strategic Provider have agreed the contents of the Draft Exit Plan, or it has been determined pursuant to the Dispute Resolution Procedure, then it shall become the exit plan ("**Exit Plan**").
   8. Following agreement or determination of the Exit Plan, the Strategic Provider will appoint an exit manager who will be responsible for its implementation in accordance with Good Industry Practice.
   9. The Exit Plan will be agreed by both the Council and the Strategic Provider.
3. **Handover Meeting and Support to the Replacement Provider**
   1. The Strategic Provider shall provide within the Exit Plan its arrangements for a handover meeting between key Staff members, the Strategic Provider and the Replacement Provider ("**Handover Meeting**").
   2. The Strategic Provider shall ensure that all information and data concerning the provision of the Services and the Care Services is provided to the relevant Replacement Provider as soon as reasonably practicable, and in any case, no later than ten (10) Working Days prior to the commencement of the replacement services.
   3. The Strategic Provider will include within the Exit Plan full details of knowledge transfer requirements and their method of achievement. If the Council requests additional assistance in respect of knowledge transfer, the Strategic Provider will provide or procure the provision of training to the staff of either the Council or, at the Council’s request and subject to payment of additional reasonable costs, staff of the Replacement Provider, to ensure they have sufficient knowledge (theoretical and practical) to enable them to operate the new services.
4. **Exit Manager and Exit Team**
   1. The Strategic Provider shall nominate a member of the senior management team of the Strategic Provider who will have responsibility for exit arrangements, who will be supported by a team of Staff.
   2. The Parties agree to work together in good faith and cooperation to ensure the smooth operation of the Exit Plan.
5. **Exit Period Assistance**
   1. The Exit Plan shall include (but not be limited to) each Alliance Provider:
      1. providing assistance and expertise as necessary to identify all material operational and business processes (including all supporting documentation) in place;
      2. providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and the Care Services;
      3. providing access to the Replacement Provider and the Council during the Exit Period and for up to twelve (12) Months thereafter to:
         1. such information relating to the Services or the Care Services as is in the power, possession or control of the Alliance Provider or any Provider Related Party (and each Alliance Provider agrees and shall procure that all Provider Related Parties do not destroy, erase, delete or dispose of such information within such period); and
         2. such members of the Alliance Provider’s or the Provider Related Parties' personnel as have been involved in the delivery or management of the Services and the Care Services and who are still employed or engaged by the Alliance Provider or the appropriate Provider Related Party, provided that the Replacement Provider or the Council shall pay the reasonable and proven costs of the Alliance Provider incurred in responding to requests;
      4. explaining the procedures and operations used to provide the Services and the Care Services to the Replacement Provider and the Council and providing such information, records and documents required to clarify such explanation; and
      5. answering all reasonable questions from the Council or its Replacement Provider regarding the general nature of the Services and the Care Services.
   2. Each Alliance Provider shall provide to the Council any and all relevant information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services and/or the Care Services. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under TUPE. Such information provided pursuant to this Schedule 13 (Exit Requirements) shall be at no cost to the Council.
   3. If requested to do so by the Council Representative, an Alliance Provider may request the Council to reimburse any additional costs, other than incurred under paragraph 6.2 necessarily and properly incurred by the Alliance Provider in providing assistance and co-operation during the transition. Any such request shall be accompanied by such evidence of expenditure and the reasons for it as the Council Representative may require. No such requests shall be unreasonably refused.
6. **TUPE Assistance**
   1. Without prejudice to the Alliance Providers’ obligations to provide the Council with staff-related information in accordance with this Agreement, each Alliance Provider will provide the Council with the information relating to all Staff connected with delivery of the Services and the Care Services.
   2. Each Alliance Provider shall collaborate with and support the Council and the Replacement Provider through the consultation process for all transferring staff following the date of termination of this Agreement or the Expiry Date, as the case may be.
7. Gainshare Funding

|  |  |
| --- | --- |
| **Lot Number** | **Gainshare Funding per Quarter** |
|  | £98,145 |
|  | £32,925.25 |
|  | £82,817.75 |
|  | £51,196 |
|  | £61,813.75 |
|  | £35,469.25 |
|  | £74,597 |
|  | £40,115.75 |
|  | £46,192 |
|  | £34,943.75 |
|  | £51,784.75 |

1. Caldicott Principles

**Principle 1: Justify the purpose(s) for using confidential information**

Every proposed use or transfer of confidential information should be clearly defined, scrutinised and documented, with continuing uses regularly reviewed by an appropriate guardian.

**Principle 2: Use confidential information only when it is necessary**

Confidential information should not be included unless it is necessary for the specified purpose(s) for which the information is used or accessed. The need to identify individuals should be considered at each stage of satisfying the purpose(s) and alternatives used where possible.

**Principle 3: Use the minimum necessary confidential information**

Where use of confidential information is considered to be necessary, each item of information must be justified so that only the minimum amount of confidential information is included as necessary for a given function.

**Principle 4: Access to confidential information should be on a strict need-to-know basis**

Only those who need access to confidential information should have access to it, and then only to the items that they need to see. This may mean introducing access controls or splitting information flows where one flow is used for several purposes.

**Principle 5: Everyone with access to confidential information should be aware of their responsibilities**

Action should be taken to ensure that all those handling confidential information understand their responsibilities and obligations to respect the confidentiality of patient and service users.

**Principle 6: Comply with the law**

Every use of confidential information must be lawful. All those handling confidential information are responsible for ensuring that their use of and access to that information complies with legal requirements set out in statute and under the common law.

**Principle 7: The duty to share information for individual care is as important as the duty to protect patient confidentiality**

Health and social care professionals should have the confidence to share confidential information in the best interests of patients and service users within the framework set out by these principles. They should be supported by the policies of their employers, regulators and professional bodies.

**Principle 8: Inform patients and service users about how their confidential information is used**

A range of steps should be taken to ensure no surprises for patients and service users, so they can have clear expectations about how and why their confidential information is used, and what choices they have about this. These steps will vary depending on the use: as a minimum, this should include providing accessible, relevant and appropriate information - in some cases, greater engagement will be required.

1. Insurances
2. **Insurance Covenants** 
   1. Each Alliance Provider:
      1. shall effect and maintain or procure the maintenance of, the Insurances (and any other insurances required by Law) in full force and effect at all times from the Commencement Date until the date which is six (6) years following the end of the Term provided that such insurances are generally available in the market to businesses similar to the Alliance Provider;
      2. shall not cancel the Insurances or make any material change thereto without the express written consent of the Council;
      3. subject to paragraph 1.1.2 of this Schedule 16 (Insurances), may change the insurers with whom the Insurances are held on annual basis and the Alliance Provider shall use reasonable endeavours to provide the Council with notice of at least ten (10) Working Days prior to any such change; and
      4. agrees that neither the failure to comply nor full compliance with the insurance provisions of this Agreement shall limit the Alliance’s or any Alliance Provider’s liabilities and/or obligations under this Agreement or the ISP Agreement.
   2. The Insurances shall be maintained on terms that are as favourable to those generally available to a prudent Alliance Provider in respect of risks insured in the international insurance market.
   3. The Insurances shall be maintained with a reputable insurance company that are of good financial standing (and the Alliance Provider acknowledges and agrees that the Insurances notified to the Council prior to the Commencement Date satisfy these requirements).
   4. Each Alliance Provider shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any Insurance or cover, or to treat any Insurance, cover or claim as avoided in whole or part. Each Alliance Provider shall use reasonable endeavours to notify the Council (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any Insurance, or any cover or claim under any Insurance in whole or in part.
   5. The Council may purchase (if possible) any of the Insurances which any Alliance Provider has failed to maintain in full force and effect pursuant to this Agreement. The Council may recover the premium and other costs incurred doing so as a debt due from the Alliance.
   6. Each Alliance Provider shall within thirty (30) days after the renewal of each Insurance forward a letter from its insurance brokers who arranged the Insurances containing at least the information set out in Appendix 1 to this Schedule 16 (Insurances).
   7. The Council may from time to time submit a request in writing to the Alliance Provider, demanding evidence of the existence of all Insurances in the form of certificates of insurance and evidence of the timely payment of premiums (confirmation in the form of a broker's letter) and the Alliance Provider shall provide all such evidence within five (5) Working Days of such written request.
   8. Insurance Claims
      1. Each Alliance Provider shall:
         1. promptly notify the insurers of any matter arising or in relation to the Services, the Care Services, this Agreement and/or the ISP Agreements for which it may be entitled to claim under any of the Insurances; and
         2. diligently pursue any valid insurance claim.
      2. Each Alliance Provider shall notify the Council immediately, such notification to be accompanied by reasonable particulars of the incident or circumstances, of any incident or circumstances which may give rise to any claim under any of the Insurances which are connected to the delivery of the Services, the Care Services, this Agreement and/or the ISP Agreements.
      3. Each Alliance Provider shall have the conduct of any claims it makes under the Insurances which are connected to the delivery of the Services, the Care Services, this Agreement and/or the ISP Agreements, provided that it shall keep the Council notified of the progress of any such claims at least every three (3) Months.
3. **Insurances**

|  |  |
| --- | --- |
| **Class** | **Minimum Sum Insured** |
| **Public Liability** | An indemnity limit of not less than ten million pounds (£10,000,000) for each and every claim or series of connected claims. |
| **Employers Liability** | An indemnity limit of not less than ten million pounds (£10,000,000) for each and every claim or series of connected claims. |
| **Professional Indemnity** | An indemnity limit of not less than five million pounds (£5,000,000) for each and every claim or series of connected claims. |
| **Any other insurances required by law.** |  |

1. to Schedule 16

**Contents of Broker's Letter**

|  |  |  |
| --- | --- | --- |
| A) | Class: | **PUBLIC LIABILITY** |
| Insurer: | **[to be completed]** |
| Policy No: | **[to be completed]** |
| Period: | **[to be completed]** |

[Confirmation that the levels of Insurance are at least as required in paragraph 2 of Schedule 16 (Insurances).]

[Confirmation that the premiums due under the terms of the policy of insurance are not (and have not previously been) in arrears as at the date of inception or renewal or as at the date of the broker's letter.]

|  |  |  |
| --- | --- | --- |
| B) | Class: | **EMPLOYERS LIABILITY** |
| Insurer: | **[to be completed]** |
| Policy No: | **[to be completed]** |
| Period of Insurance: | **[to be completed]** |

[Confirmation that the levels of Insurance are at least as required in paragraph 2 of this Schedule 16 (Insurances).]

|  |  |  |
| --- | --- | --- |
| C) | Class: | **PROFESSIONAL INDEMNITY** |
| Insurer: | **[to be completed]** |
| Policy No: | **[to be completed]** |
| Period of Insurance: | **[to be completed]** |

[Confirmation that the levels of Insurance are at least as required in paragraph 2 of Schedule 16 (Insurances).]

1. Social Value Obligations

[*Note to Bidders: The Alliance’s responses to the Social Value TOMs element of the Alliance Tender to be inserted here in full*.]