

Dated

201

LEICESTER CITY COUNCIL (1)

and

PROVIDER

FRAMEWORK AGREEMENT IN RESPECT OF DOMICILIARY SUPPORT SERVICES

Lot 1-Generic Domiciliary Support Services

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BETWEEN

- (1) **LEICESTER CITY COUNCIL** of New Walk Centre Welford Place Leicester LE1 6ZG
(the “**Commissioner**”)
and
- (2) [REDACTED]
[REDACTED]
[REDACTED] (the “**Provider**”).

1. BACKGROUND

- 1.1** The Commissioner wishes to procure a framework of providers for the provision of generic domiciliary support services for service users in Leicester, which it has assessed as being in need of such services –. This framework is applicable where the Commissioner is acting as the agent of the service user or where the Commissioner is controlling the contractual arrangements because the service user does not wish to choose a provider.
- 1.2** The Commissioner placed a contract notice in the Official Journal of the European Union on 26th October 2012 under reference 340863-2012 seeking expressions of interest from providers in relation to, inter alia, the provision of generic domiciliary support services to the Commissioner under a framework agreement.
- 1.3** On 3rd May 2013 the Commissioner issued an invitation to tender for the provision of generic domiciliary support services for service users in Leicester (the Invitation to Tender)
- 1.4** The Provider represented to the Commissioner that it is capable of delivering the services in accordance with the Commissioner’s requirements as set out in the Invitation to Tender and, in particular, the Provider made representations to the Commissioner in the Tender in relation to its competence, professionalism, resources, willingness and ability to provide the services in an efficient and cost effective manner.

- 1.5** The Commissioner has selected the Provider, along with a number of other Providers to be parties to this framework, to provide Services to the Commissioner on a call-off basis in accordance with the terms of this Framework Agreement.
- 1.6** The Commissioner will at its option commission Services through one of the procedures set out in this Framework Agreement, prior to the award of any specific contract, to provide Services to either an individual Service User or Service Users or Group Services. (Order for Services)
- 1.7** It is the Parties' intention that there will be no obligation for the Commissioner to award any Order for Services under this Framework Agreement during its term.
- 1.8** This Framework Agreement is intended to govern the on-going relationship between the Parties generally and the procedure to be followed in order to award an Order for Services.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Framework Agreement, the following expressions shall have the following meanings:

- “Amber Notice”** means a notice given by the Commissioner under clause 8.4.2.3 and which states:
- (i) The standard, outcome, or requirement for which an amber rating was achieved under the Assessment and either:
 - (ii) The steps that the Commissioner requires the Provider to take, at the cost of the Provider, before, the next self-assessment; or
 - (iii) That the Commissioner requires the Provider to agree with it an action plan to address such the matters described in (i) (at the cost of the

Provider) and the timescale in which such action plan is to be agreed

“Assessment”	means a self-assessment under Clause 8.4.1 or an assessment under Clause 8.4.2.4
“Award”	means to accept an offer in relation to a proposed Order for Services
“Call Off”	means the process of calling off in accordance with Clause 4 in order to award an Order for Services to a Preferred Provider;
“Care and Support”	means the package of domiciliary support services which provides Social Care Services, and may also provide Health Care Tasks and Health Services to a Service User or Group Services as described in the Specification;
“Care Manager”	means the person employed by the Commissioner to manage the Care and Support of an individual Service User;
“Carer”	means a Service User’s family member or other person as agreed by the Care Manager to assist a Service User to exercise a choice under Clause 4.2.3;
“Change in Law”	means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any variation to any Law in each case after the Commencement Date
“Chairperson of the Evaluation Panel”	means a suitable and sufficiently senior office holder of the Commissioner appointed by the Commissioner from

time to time to evaluate Mini Tenders submitted under this Framework

- “Commencement Date”** means 14th October 2013;
- “Complex Care (specialism)”** means Care and Support provided to Service Users with complex needs;
- “Contract Documents”** means the documents listed in Appendices 1-10 and Schedules 1-6 including the form of Order for Services and the Call Off Terms and Specification forming part thereof, , copies of which will be annexed to this Framework Agreement;
- “Confidential Information”** any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed and on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA)
- “CPI”** means the Consumer Price Index published by the Office for National Statistics
- “CQC”** means the Care Quality Commission, the current awarding authority for the registration of the provision of the regulated activity of personal care;
- “CQC Registration”** means registration with the CQC (or any body which may subsequently replace it) for the provision of the regulated activity of personal care;

“Eligible Provider”	a Provider responding to a request for further competition under Procedure 3 as set out in Appendix 5 (Procedures for the award of an Order for Services
“DPA”	means the Data Protection Act 1998 (as amended) and all applicable laws and regulations relating to the processing of personal data, privacy and information security including where applicable the guidance and codes of practice issued by the Information commissioner or relevant Government Department in relation to such legislation, as amended, updated or modified from time to time
“EIR”	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, as amended, updated or modified from time to time
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and codes of practice issued by the Information Commissioner or relevant government Department in relation to such legislation, as amended, updated or modified from time to time
“Framework”	means this framework for the provision of generic domiciliary support services for service users in Leicester, which the Commissioner has assessed as being in need of such services, as procured by virtue of the Procurement Process;
“Framework Agreement”	means this Framework Agreement and its Appendices;

“Framework List”	means the list of Providers procured through the Procurement Process and who are parties to this Framework;
“Framework Manager”	means the service manager or head of service of the Commissioner;
“Group Services”	means Services where two or more Service Users share a property or block Services where a number of Service Users have individual apartments but share communal facilities at one location;
“Health Care Tasks”	means those Health Services covered by the Leicester, Leicestershire and Rutland Health and Social Care Protocol (as amended) which may be provided to Service Users;
“Health Services”	means those Services comprised within the Specification that a Service User has been assessed as being in need of by the application of the National Health Service Decision Making Tool and the relevant CCG has agreed a joint package with the Commissioner to include such Services;
“Hours of Care and Support”	means the hours of Care and Support provided to a Service User;
“Industry”	the sector of industry comprising skilled and experienced contractors engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to this Framework.

“ITT”	invitation to tender for the provision of generic domiciliary support services for service users in Leicester issued by the Commissioner on 3 rd May 2013;
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, judgement of a relevant court of law directly effective, bye-law, regulatory policy, guidance or Industry code, directive or requirement of any regulatory body of which the Provider is bound to comply
“Ranking”	means the order in the Framework List in which the Providers have been ranked in accordance with scores achieved by the Providers by virtue of the Procurement Process so that the highest scoring Provider will be ranked number 1 and the second highest scoring Provider will be ranked number 2 and so on;
“Matching Requirements”	The requirements for matching as set out on an individual service user basis by the Commissioner as against the criteria (or such of the criteria as may be relevant) shown in Annex 1 of Appendix 5 such requirements to be issued with the Package Briefing”
“Material Change in Law”	means a Change in Law proposals for which are published by the competent authority for the first time after the Commencement Date and which, once in effect, has a material impact on the Industry in particular as opposed to industry in general and which has a direct effect upon the Cost Plan

“Mini Tender”	a tender submitted by an Eligible Provider under the Mini Tender Process;
“Mini Tender Documents”	means the Package Briefing, the Specification and associated documents relating to the commissioning of Services together with the Eligible Provider’s response to the Mini Tender; Process
“Mini Tender Process”	means a process of re-opening competition undertaken pursuant to Procedure 3 of the Call Off Process set out in Appendix 5 (Procedures for the award of an Order for Services);
“Multi-Agency Safeguarding Procedure”	means the “No Secrets” Safeguarding Adults: Multi-Agency Policy and Procedures for the Prevention of Abuse of Adults in need of Safeguarding” for Leicester, Leicestershire and Rutland (as amended);
“National Minimum Wage”	means, for the purpose of this Framework Agreement, the rate prescribed from time to time as the single hourly rate of the national minimum wage, by virtue of regulations amending regulation 11 of the National Minimum Wage Regulations 1999 (as amended)
“Notice to Remedy”	means a notice to remedy a breach of this Framework Agreement upon the terms and within the times stipulated in the Notice to Remedy;
“Order for Services”	means an order for services in the form issued by the Commissioner to commission Services from a Service Provider including the terms set out in Appendix 2 and, which, upon its award following one or other of the Call Off process will comprise a specific, binding contract

between the parties for the provision of the Specific Services;

- “Package Briefing”** means the statement of requirements drawn up by the Commissioner setting out details of the Support that are to be commissioned for a single Service User, or Service Users or Group Services under a Call Off;;
- “Package”** means a package of Support as described in a Package Briefing;;
- “Parties”** mean the parties to this Framework Agreement;
- “Price”** means the basic hourly charge for the performance of the Services to be set out in the Order for Services and which shall be ascertained as set out in Clause 5.1 or Clause 5.2, as the method of selection shall determine, and, unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which will be separately accounted for;
- “Procurement Process”** means the process of procuring a Framework List to provide the Services through an EU compliant tender process pursuant to an invitation seeking expressions of interest OJEU reference 340863-2012;
- “Providers”** means the Provider together with other providers selected through the Procurement Process to enter the framework to provide Services to the Commissioner on a call-off basis;
- “Preferred Provider”** a Provider who has been selected for the award of an Order for Services;

“Quality Assurance Framework” means the Quality Assurance Framework attached at Appendix 7, subject to review in accordance with Clause 8.4.6

“Red Notice” means a notice given by the Commissioner under clause 8.4.2.2 and which states:

- (i) The standard, outcome, or requirement for which a red rating was achieved under the Assessment and either
- (ii) The steps that the Commissioner requires the Provider to take (at the cost of the Provider) and the (reasonable) time in which those steps should be taken: or
- (iii) That in the opinion of the Commissioner it the failure for which the red rating was achieved is incapable of remedy

“Relevant Transfer” means a relevant transfer for the purposes of TUPE;

“Ranked Providers” means the Providers on the Framework List who through the Procurement Process as placed in ranked order in accordance with scores achieved by the Providers within the Procurement Process;

“Representative” means the representative of the relevant Party relating to any Project as set out in the Order for Services;

“Reserve Framework” means a framework agreement in respect of the Services established pursuant to [paragraphs 5.6 of volume 5.6.8 of the Invitation to Tender] and which, without prejudice to any other provision of this Framework Agreement, is intended to be available for use by the Commissioner in the circumstances envisaged under Clause 4.2 of this Framework Agreement;

“Safeguarding”	means procedures put in place for safeguarding vulnerable adults and young persons from abuse within the provision of the Services;
“Service Area”	means the provision of Social Care Services and Health Services for relevant Service Users;
“Self Assessment Certificate”	means the form as set out in Appendix 8 which is to be completed by the Provider and submitted to the Commissioner in accordance with Clause 8.4.1 (Quality Assessment”)
“Services”	means the entire range of services as envisaged by the Contract Documents and includes, for the avoidance of doubt, the Social Care Services, the Health Services and the Health Care Tasks
“Service User Representatives”	means persons who are not employed by the Commissioner but who have been selected by or on behalf of a Service User to represent, or act for them, in participation in decisions relating to their social care;
“Service Users”	are those eligible persons to whom the Commissioner wishes to provide Services;
“Social Care Services”	means those Care and Support services that a Service User has been assessed as being in need of and eligible for as set out in the Specification;
“Specification”	means the specification of Care and Support Services as specified in Appendix B of the Invitation to Tender

and forming part of the Contract Documents and which Services the Provider shall make available to the Commissioner;

“Specific Services” means Services required to fulfil the requirements of any Order For Services

“Stakeholders” means those individuals and organisations that have an involvement in the provision of the Services or have a connection to the Service User;

“Standstill Period” means a set period of time during which Potential Providers may make representations or objections to a proposed award of a Services Agreement. This will be a period of at least 10 days where electronic communication is utilised or a period of at least 15 days where other forms of communication are utilised. If a claim is issued within the Standstill Period, then the Standstill Period does not elapse until the claim is dismissed or otherwise disposed of without the procedure leading to the award or any decision of the Commissioner continuing to be suspended or set aside.

“Support Plan” means the support plan prepared by the Commissioner which specifies the Services required for a Service User;

“Suspension Event” means

- (i) Failure by the provider to comply with the requirements of a Red Notice within the time stipulated;
- (ii) A Red Notice has been issued to the Provider which states that in the opinion of the Commissioner the major non-compliance is material and is incapable of remedy;

- (iii) The Provider has not submitted a Self-Assessment Certificate as required under this Framework Agreement
- (iv) The Provider has persistently given inaccurate statements under Self-Assessment Certificates it has submitted
- (v) The Provider has been issued with an Amber Notice and has unreasonably failed to comply with the requirement to agree an Action Plan
- (vi) The Provider has been issued with an Amber Notice in respect of the same matter over 2 or more consecutive Assessments
- (vii) The Provider is in breach of its obligations under this Framework Agreement
- (viii) The Provider is in breach of the terms and conditions of an Order for Services and that breach is either (a) fundamental or (b) material in that it relates to the health, safety and well-being of a Service User, Services Users or Group Services AND a voluntary suspension is not in force under limb (iv) below
- (ix) An investigation under a Safeguarding procedure recommends that a suspension should be implemented
- (x) The Providers CQC Registration has been suspended, or the CQC has required the Provider to deliver a plan of action or has used its enforcement powers under the Health and Social Care Act 2008 and associated regulations

“Guidelines for

Suspension of Placements” means the Guidelines for the Suspension of Placements attached at Appendix 4;

“Sustainability Plan”	means the plan of steps to be taken to maintain objectives and achievements over a range of social, economic and environmental well-being improvements, attached at Appendix 10;
“TUPE”	means the requirements under the TUPE Regulations;
“TUPE Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended updated or modified from time to time)
“Working Days”	means any day on which banks are generally open for business in London (other than Saturdays, Sundays or public holidays).

- 2.2 References to Clauses, Sub-Clauses and Appendices are references to clauses and sub-clauses of and appendices to this Framework Agreement.
- 2.3 The provisions of the Appendices are incorporated in this Framework Agreement.
- 2.4 Reference to the singular includes the plural and vice versa and references to any gender includes the other genders.
- 2.5 References to a person include any individual, firm, unincorporated association or body corporate.
- 2.6 The headings in this Framework Agreement are included for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.
- 2.7 Any periods of time referred to in this Framework Agreement and expressed in days shall refer to calendar days unless stated otherwise.
- 2.8 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

Any reference to any policy or other document setting out procedures to be followed by the Provider includes any amendment, modification or consolidation made by the Commissioner from time to time.

- 2.9 In the event and to the extent only of any conflict between these clauses and any provision of the Framework schedules, these clauses shall prevail over the remainder of the Framework schedules.

3. TERM OF THIS FRAMEWORK AGREEMENT

- 3.1 Subject to earlier termination in accordance with Clause 12, this Framework Agreement shall commence on the Commencement Date and shall continue in force for a period of 4 years.

4. METHOD OF AWARD OF ORDERS FOR SERVICES

- 4.1 Where the Commissioner considers that it may or will require the performance of Services the selection of a Preferred Provider from the subject to Clause 11 (Suspension) and Clause 4.3 (Providers that do not have current CQC Registration) shall be made by one of the procedures set out in Appendix 5 (Procedures for the award of an Order for Services).

- 4.2 In the event that there are no Providers or Eligible Providers (as the case may be) admissible to perform a Package Briefing following the application of any of the above procedures then the Commissioner may utilise the Reserve Framework.

- 4.3 A Provider that does not have current CQC Registration at the time of the commencement of any award procedure shall not be eligible for that award and shall be excluded from that award procedure for the purposes of this sub clause any registration that is suspended, cancelled or is subject to conditions that preclude the undertaking of the Services shall not be deemed to be current.

- 4.4 Where the Commissioner wishes to award an Order for Services then it shall inform the Provider to whom it wishes to award the Order for Services of its decision in writing and that Provider will then become the Preferred Provider. Where the award

follows a Mini Tender Process then it will be subject to a Standstill Period during which time objections or representations may be made to the proposed award by Eligible Providers. Upon the expiry of the Standstill Period the Commissioner must act reasonably and may confirm the award in writing to the Preferred Provider. If the Commissioner does not so confirm the award it shall give its reasons in writing

4.5 The Commissioner reserves the right to abandon any procure leading to the award of an Order for Services, or not to award an Order for Services at all, in respect of any Package Briefing.

4.6 The Commissioner shall be entitled to award an Order for Services in respect of a Service User, a number of Service Users or Group Services (or any combination) to an Provider who has current CQC registration, who shall thereupon become a Preferred Provider (and to the exclusion of other Providers) in circumstances where that Provider was immediately prior to the Commencement Date the provider of Care and Support that are the subject of the Order For Services to such Service User, Service users or Group Services.

4.8 **Costs**

All Eligible Providers invited to participate in a Mini Tender Process, or who are invited to submit a Mini Tender or who are invited to respond to consultation or attend interview will be responsible for their associated costs.

4.9 **Award of Order for Services**

After the Standstill Period has elapsed following selection of a Preferred Provider by Mini Tender process or immediately after a direct selection or otherwise as prescribed by this Framework Agreement the Commissioner will confirm the award of the Order for Services and will issue it to the Preferred Provider

4.10 **Effect of the issue of an Order for Services**

Upon confirmation of the award of any Order for Services, the Preferred Provider shall countersign and return a copy of the Order for Services to the Commissioner. The award of the Order for Services shall constitute a binding contract between the Commissioner and the Preferred Provider for the Services on the terms and at the Price as ascertained in the Call Off process and set out in the Order for Services (notwithstanding any failure to countersign the Order for Services or any delay in so doing)

4.11 **Notification of failed Eligible Providers**

If the Commissioner shall decide to accept a Mini Tender it shall notify, in writing, all other Eligible Providers who were invited to respond (if any) of their failure to be selected.

5. PRICE

5.1 Where the method of selection is that set out in Procedure 3 of Appendix 5 (Procedures for the award of an Order for Services) the Price will be the hourly rate or other price submitted by the Preferred Provider for the relevant category of Services as part of the Mini Tender Process.

5.2 Where the method of selection is that set out in either Procedure 1 or Procedure 2 the Price will be the hourly rate submitted by the Preferred Provider for the relevant category of Services as part of the Procurement Process, which is set out at Appendix 3 (Charging Structure).

5.3 The Commissioner will review the Price annually in accordance with its fees review process prior to the end of the financial year and will apply an increase or decrease to the Price applicable for the following year based on the following elements comprised in the Providers' Pricing Schedule contained at Annex 1 of Appendix 3 (Charging Structure):-

Direct Payroll Cost - by the percentage change in the National Minimum Wage in the period of 12 months expiring on 30 November each year

Overheads – by the percentage change in the CPI (less one per cent) in the period of 12 months expiring on 30 November in each year

The Commissioner will notify the Service Providers of any changes to the Price following such review at the earliest opportunity and the changes shall take effect from 1 April in each year. For the avoidance of doubt the Commissioner does not guarantee any inflationary increase to the Price in any particular year.

- 5.4 The Commissioner, in applying any price increase will require Preferred Providers to demonstrate reasonable efficiencies in the delivery of the Services to individual Service Users, and compliance with the Quality Assurance Framework
- 5.5 The Commissioner will work with Preferred Providers to assist Preferred Providers to achieve efficiencies in the delivery of the Services in accordance with the Joint Commissioning Strategies in place for Social Care Services and Health Services across Leicester.
- 5.6 In the event of a Material Change in Law the Commissioner shall, on the application of a Provider, consult with all the Providers and seek to agree its effect and any additional price increase as a result to reflect the effect of the Material Change in Law following the principle that this clause is not intended to create an artificial cushion from market forces for the benefit of Providers. If the parties, within 40 Working Days of the receipt of such notice, have not agreed the occurrence or the impact of the Material Change in Law, then either part may refer the matter to dispute resolution in accordance with Clause 13. Any agreed additional price ascertained as a result of the operation of this clause shall be added to the Price. For the avoidance of doubt nothing in this Clause is intended to allow the Provider over recovery of any increase in costs.

6. TUPE

- 6.1 The Parties agree that the provisions of clause 10.13 of part 2 of the Call-Off Terms and Schedules and Schedule 4 thereto shall apply to any Relevant Transfer of staff upon the award of a Services Agreement following a Call Off

7. MONITORING OF PERFORMANCE

7.1 Measurement of Preferred Providers' performance

Throughout the period of this Framework Agreement, the performance of the Preferred Providers in relation to any Project shall be monitored by the Commissioner. Such monitoring may include but shall not be limited to obtaining feedback on the Preferred Providers' performance from Service Users or their representatives.

7.2 Records of performance monitoring

The Preferred Providers shall keep a written record of any performance monitoring carried out by the Commissioner pursuant to or under any Order for Services.

7.3 Management Information

The Preferred Provider will provide Framework management information to the Commissioner at the end of each quarter and on an ad hoc basis as requested by the Commissioner. The information to be provided to the Commissioner may include but is not limited to the following:

7.3.1 a description of all Packages for which the Provider is currently appointed, including details of the number of hours of Support provided and the number of people supported;

7.3.2 details of the Provider's personnel working on current Packages;

7.3.3 a description of any Packages in respect of which the Provider has been requested to work but where work has not yet commenced along with estimated costs;

7.3.4 a description of Packages where a Mini Tender was submitted but was not successful;

- 7.3.5 details of the weekly cost of the Package of Care agreed under each Order for Services;
- 7.3.6 details of the Provider's Representative (as defined in the Order for Services) responsible for each Order for Services;
- 7.3.7 comparison of activities and costs against agreed Pricing Schedule; and
- 7.3.8 the total spend with the Provider by the Commissioner over the lifetime of this Framework Agreement.

8. QUALITY AND COMPLIANCE

8.1 Commitment to seek continuous improvement

The Provider shall, throughout the period of this Framework Agreement, look for and seek to achieve, in the delivery of Packages, a continuous improvement in the quality of Services, through the achievement of Continuous Improvement Targets. These targets shall be reviewed annually by the Commissioner and the Parties shall seek to agree, in good faith, any change to the targets arising from the findings of such review. Any failure to agree shall be subject to the Dispute Resolution Procedure at Clause 13.

8.2 Participation in meetings etc.

8.2.1 The Provider shall (at the reasonable request of the Commissioner) provide briefings or other information relating to the Services and/or to participate in meetings with the Commissioner in respect of the Projects or the operation of this Framework Agreement generally and in particular, where necessary, attendance at the Commissioners standing meetings on its policies and strategies in support of safeguarding adults.

8.2.2 The obligation in Sub-Clause 8.2.1 will include discussing potential improvements to the Services for implementation in future Call Offs based on the Provider's experience of completed Orders for Services.

8.2.3 Such contribution and/or participation under this Clause 8.2 by the Provider shall be for no more than three person–days of effort per year and shall be at no cost to the Commissioner.

8.3 Records and Audit Access

8.3.1 The Provider shall keep and maintain until seven years after the determination of this Framework Agreement full and accurate records and accounts of the operation of this Framework Agreement including the Specific Services provided under it, the Orders for Services, the amounts paid by the Commissioner and any efficiency or best value measures implemented by the Provider.

8.3.2 The Provider shall afford the Commissioner the Framework Manager, any Representative on behalf of the Commissioner and any internal or external auditors of the Commissioner access to the records and accounts referred to in Clause 8.3.1 at the Providers premises and/or facilities to be provided with copies of such records and accounts as may be necessary from time to time and acting reasonably and with due regard to the operation and sensitivities of the Services or to carry out an inspection including for the following purposes:

8.3.2.1 to verify the accuracy of Prices

8.3.2.2 to review the providers compliance with the DPA and the integrity, confidentiality and security of personal data held or used by the Provider

8.3.2.3 to review the providers compliance with the Continuous Improvement Targets in accordance with Clause 8.1 (Commitment to seek Continuous Improvement).

8.3.2.4 to ensure that the Provider is complying with its obligations under this Framework Agreement

8.4 Quality Assessment Framework

8.4.1 At the end of every twelve (12) month period of the term of this Framework Agreement the Provider shall undertake a self assessment audit against the Quality

Assessment Framework. The Provider shall provide the Commissioner with a completed annual self assessment against the Quality Assessment Framework within 25 Working Days of each anniversary of this Framework Agreement together with a completed and signed Self Assessment Certificate. The Self Assessment Certificate shall be completed by a responsible member of the provider's management team.

8.4.2 The Commissioner may, within 40 Working Days of the receipt of the Self-Assessment Certificate, and without prejudice to any steps it may take under Clauses 10 (Breach and Remedy) (11) (Suspension) or 12 (Termination) the Commissioner take any or all of the followings steps as may be appropriate:-

8.4.2.1 Conduct a review meeting (or meetings as may be necessary) with the Provider and the Provider shall provide the Commissioner with such reasonable assistance and information as it may reasonably require in order to carry out the review meeting;

8.4.2.2 If the Commissioner determines that there are one or more major non compliances (as ascertained by referenced to the Quality Assessment Framework) then the Commissioner may give a Red Notice to the Provider;

8.4.2.3 If the Commissioner determines that there is one or more moderate non compliances (as ascertained by references to the Quality assessment Framework) then the Commissioner may give an Amber Notice to the Provider;

8.4.2.4 Conduct such inspections or other assessments as it reasonably has cause to conduct to provide assurance that the statements in the Self-Assessment certificate are correctly reported or in order to determine the level of compliance with the Quality Assessment Framework. The Provider acknowledges and agrees that the ratings of compliance in the self assessment Certificate may be changed by the Council following such inspections or other assessments if a material inaccuracy is revealed. The Council shall inform the Provider as soon as practicable of any such change in rating.

- 8.4.3 The Commissioner may withdraw a Red Notice or an Amber Notice at any time, in writing, and it shall then cease to have effect.
- 8.4.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations or functions under this Clause 8.4
- 8.4.6 The Commissioner will review the Quality Assessment Framework in each year, in consultation with the Providers and acting reasonably. Following such review the Commissioner may issue a revised Quality Assessment Framework which shall then have effect on 40 Working Days written notice (but no sooner than the next occurring anniversary of the Commencement Date). The parties acknowledge that the purpose of the Quality Assessment Framework is to provide a tool all year round to continually monitor and maintain service delivery in accordance with the Specification and in accordance with standards and requirements under Law.

8.5 Sustainability

The Provider agrees to implement and/or achieve (as the case may be) the objectives set out in the Sustainability Plan within a period of 6 months of the Commencement Date

8.6 Safeguarding

8.6.1 The Provider shall have such steps and procedures in place to, and shall be in a position to ensure that it can, comply with:-

9.1.1 The Safeguarding of Vulnerable Groups Act 2006;

9.1.2 The Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010;

9.1.3 The “No Secrets” “Safeguarding Adults: Multi-Agency Policy and Procedures for the Prevention of Abuse of Adults in need of Safeguarding” for Leicester, Leicestershire and Rutland (as amended) (The Multi-Agency Safeguarding Procedure”);

9.1.4 The requirements of the Commissioner in respect of safeguarding of vulnerable adults contained in the Order for Services.

8.7 Statutory Compliance and Standards

The Provider shall be responsible for obtaining and maintaining at all relevant times any licences authorisations, consents or permits required, and for maintaining compliance with any Law in the relation to the performance of its obligations under this Framework Agreement and any Order for Services.

8.8 Strategic Needs Review – Organisational Reporting

The Provider will complete Skills for Care's National Minimum Data Set for Social Care (NMDS-SC) organisational record and must update all of its organisational data at least once in each financial year, and must complete individual NMDS-SC worker records for a minimum of 90% of its total workforce (this includes any staff who do not provide care) and update these at least once in each financial year. The Provider agrees not to opt out of data sharing with the Commissioner for the purposes of NMDS-SC.

9. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

9.1 Assignment by the Commissioner

The Commissioner shall be entitled to assign or novate this Framework Agreement to any successor to its functions (and the Provider agrees to join in any written agreement which may be necessary to achieve this purpose) but shall not otherwise be entitled to assign the benefit of this Framework Agreement without the prior written consent of the Provider, such consent not to be unreasonably withheld.

9.2 Assignment by the Provider

The Provider shall not be entitled to assign any benefit or burden in this Framework Agreement either in whole or in part without the prior written consent of the Commissioner. Where such consent is given, this may be subject to conditions at the direction of the Commissioner.

9.3 Subcontracting by the Provider

The Provider shall not subcontract in whole or part the performance of obligations under this Framework Agreement without the prior written consent of the Commissioner.

9.4 Transfer of Engagements

The Provider shall not be entitled to transfer its interest in this Framework Agreement either in whole or in part without the prior written consent of the Commissioner. Where such consent is given, this may be subject to conditions at the direction of the Commissioner.

9.5 Transfer of Control

9.5.1 The Provider shall notify the Commissioner immediately in writing if the Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 (or any event analogous given the legal status of the Provider) (Change of Control) and (provided that this does not contravene any Law) shall notify the Commissioner immediately in writing of circumstances suggesting that a Change of Control is planned or is contemplation.

9.5.2 The Commissioner may terminate this Framework Agreement by giving written notice to the Provider with immediate effect within 6 months of:

9.5.2.1 Being notified that a change of control has occurred, or

9.5.2.2 Where no notification has been made, the date that the Commissioner becomes aware of the Change of Control

If it believes, acting reasonably, that such change is likely to have a material adverse effect on the provision of the Services or such that the Provider would not have been awarded this Framework Agreement had such circumstances been known at the time PROVIDED THAT the Commissioner shall not be permitted to terminate this Framework Agreement where it has given approval to such change of circumstances prior to the Change of Control.

10. BREACH AND REMEDY

10.1 In the event that the Provider is in breach of any of its obligations under this Framework Agreement then, without prejudice to any other of its rights or remedies, the Commissioner shall have regard to the Guidelines on the Suspension of Placements.

10.2 Where in the opinion of the Commissioner the Provider has committed a breach of this Framework Agreement then the Commissioner may at its discretion serve a Notice to Remedy on the Provider requiring the Provider to remedy the breach upon the terms and within the times stipulated in the Notice to Remedy. This procedure is without prejudice to the rights of the Commissioner to suspend the Provider from the Framework List under Clause 11.4 or to terminate this Framework Agreement under Clause 12 (Termination).

10.3 In the event that the Commissioner shall serve a Notice to Remedy then the Commissioner shall be entitled to recover all costs incurred in drawing up and serving the Notice to Remedy which may include (but is not restricted to):

10.3.1 The production of all written correspondence in connection with the Notice to Remedy;

10.3.2 The cost of the Commissioner's staff resources used to monitor the Notice to Remedy;

10.3.3 The production of reports by Commissioner's staff in relation to the Notice to Remedy;

10.3.4 Any other action deemed necessary by the Commissioner to safeguard the interests of all Service Users.

10.4 In the event that the Commissioner is in breach of its obligations under this Framework Agreement then the Provider may serve a Notice to Remedy upon the Commissioner upon the terms and within the times stipulated in the Notice to Remedy without prejudice to the Provider's rights to terminate this Framework Agreement under Clause 12 (Termination).

11 SUSPENSION

11.1 Without prejudice to the Commissioner's rights to terminate this Framework Agreement as set out in clause 12 (Termination), or its rights under Clause 10 (Breach and Remedy) if a Suspension Event arises or in the Commissioner's reasonable belief has occurred, the Commissioner may suspend the Providers appointment to provide Services under this Framework Agreement by giving written notice to the Provider stating the type and nature of the Suspension Event that has occurred and that the effect of the suspension shall be that, as from the service of the notice, the Provider shall not be eligible to participate in any Call Off for either the period set out in the notice, or until such time as the Provider has remedied the Suspension Event to the reasonable satisfaction of the Provider, or for such other ascertainable period as notified by the Commissioner to the Provider from time to time.

11.2 Upon the service of such notice as provided for in Clause 11.1, the Provider shall be so suspended and shall not be eligible to participate in any Call Off.

11.3 The Commissioner may withdraw or cancel the effect of any suspension under this Clause, at any time at its discretion.

11.4 Any suspension under this Clause shall not cause any Order For Services to terminate automatically.

11.5 The parties shall have regard to The Guidelines for Suspension of Placements in the application or conduct of any suspension contemplated, or in force from time to time, under this Clause 11.

12. TERMINATION

12.1 Termination by the Commissioner

The Commissioner may terminate this Framework Agreement with immediate effect:

- i) Following a breach of its terms by the Provider which has not been remedied in accordance with a Notice to Remedy or in the opinion of the Commissioner is incapable of remedy.
- ii) Following any breach by the Provider of the terms or conditions of an Order for Services awarded or issued by the Commissioner (except where a breach has been remedied in accordance with a Notice to Remedy or where the time limit under the Notice To Remedy has yet to expire)
- iii) In the event of the Provider being unable to pay its debts as they fall due.
- iv) In the event of the Provider ceasing to carry on its business by becoming insolvent, or having a liquidator, trustee in bankruptcy, receiver, manager or administrative receiver appointed in respect of the Provider's assets or (where the Provider is a partnership) those of any partner of the firm, or (where the Provider is a company) it is struck off the Register of Companies or where the Provider materially fails (for a period of, or periods in aggregate of, at least 15 working days to satisfy the minimum levels of economic and financial standing or technical or professional ability specified in a notice to the Provider from the Commissioner or where the Provider would otherwise be treated as ineligible to tender on a ground specified in Regulation 23 of the Public Contracts Regulations 2006.
- v) In the event that the Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing forbearing to do or having done or forborne to do any action in relation to the obtaining of this Framework Agreement or any other agreement with the Commissioner or for showing or forbearing to show favour or disfavour to any person in relation to this Framework Agreement or any other agreement with the Commissioner (or one of them) or if the like acts shall have been done by

any person employed by the Provider or acting on the Provider's behalf (whether with or without the knowledge of the Provider or if in relation to this Framework Agreement).

- vi) In the event that the Provider or any other person employed by the Provider or acting on the Provider's behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward to any member or officer of the Commissioner which shall have been exacted or accepted by such officer by virtue of office or employment and if otherwise than such officer's proper remuneration and the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972 the Commissioner shall be entitled to terminate the Provider's employment under this Framework Agreement and to recover from the Provider the amount of any loss resulting from such termination.
- vii) In the event that the Provider does not have CQC Registration on the Commencement Date and fails to obtain CQC Registration within six months thereof.
- viii) In the event that the Provider's CQC Registration is cancelled by the CQC at any time during the term of this Framework Agreement. If a period of grace has been stipulated by the CQC, for its re-instatement, that period has expired without such re-instatement.
- ix) In the event that the CQC takes any enforcement procedure under the Health and Social Care Act 2008 and associated regulations. (For the avoidance of doubt "enforcement" action does not include the requiring of a report under Regulation 10(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010
- x) In the event of at least one Red Notice being issued to the Provider on at least two consecutive Assessments and the Provider has failed in some material respect to comply with the requirements of such notice, or that the failures set out in the notice are incapable of remedy as the case may be ;

- xi) In the event of at least one Red Notice being issued to the Provider and that the failure set out in the notice is material and is incapable of remedy ;
- xii) In the event of the Provider being in breach of any provision of Clause 9 (Assignment, Transfer and Subcontracting) or is in breach of any conditions imposed under Clause 10.4 (Transfer of Engagements)
- xiii) In the event that the Provider or any of its staff commits a fraudulent act in relation to this Framework Agreement or an Order for Services or any other contract with the Commissioner

12.2 Termination by the Provider

The Provider may terminate this Framework Agreement following any breach of this Framework Agreement by the Commissioner (other than a breach which is notified to, and remedied by the Commissioner within **15 Working Days** of the date of the Notice to Remedy).

12.3 Termination by either Party

Either Party may terminate their involvement with this Framework Agreement at any time by serving not less than three months' prior written notice on the other Party.

12.4 Fraud etc.

12.4.1 The Provider shall take appropriate steps to ensure that neither the Provider or any of its staff are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Provider or its staff and the duties owed to the Commissioner under the provisions of this Framework Agreement. The Provider shall promptly notify the Commissioner if it becomes aware of any such conflict or if such conflict is reasonably foreseen.

12.4.2 The Provider shall take all reasonable steps, in accordance with practices and procedures ordinarily applying in the Industry to prevent any fraudulent acts by the Provider and its staff (which shall for the purposes of this Clause include its shareholders directors or members of its management board). The Provider shall

notify the Commissioner if it has reason to suspect that a fraudulent act has occurred, is occurring or is likely to occur (save where complying with this provision would cause the Provider to be in breach of the Proceeds of Crime Act 2002 or the Terrorism Act 2000).

12.5 Effect of termination

The termination of this Framework Agreement shall not automatically terminate any Order for Services already awarded or issued to the Provider prior to the date of termination unless the reason for termination of this Framework Agreement is also a ground for the termination of any such Order for Services.

13 DISPUTE RESOLUTION

13.1 Notification

As soon as either Party is aware of any difference or dispute with the other Party arising out of, or in connection with, this Framework Agreement which does not fall to be dealt with under a Services Agreement or Order for Services, it shall give notice to the other Party of the dispute

13.2 Negotiation

The Parties will endeavour to resolve any difference or dispute by direct negotiation in good faith between which the matter shall be escalated to Care Manager and the Framework Manager, failing senior representatives of both parties, who will similarly attempt to resolve the difference on dispute.

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

The obligations of the Parties under this Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to negotiation or mediation pursuant to this Framework Agreement and the Provider, its servants and

agents shall comply fully with the requirements of this Framework Agreement at all times..

13.3 Mediation

Any disputes arising under or in connection with this Framework Agreement, which cannot be resolved in accordance with Clause 13.2, shall be settled as far as possible by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by both Parties in writing all negotiations connected with the dispute and any settlement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings. Unless the Parties reach written agreement on the resolution of the dispute, the Mediator shall only be able 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 Framework Agreement without the prior written consent of both Parties.

14 NOTICES

14.1 All notices served in connection with this Framework Agreement must be in writing.

14.2 Forms of service

Any notice may be served by leaving it with, or sending it by pre-paid first class post or by facsimile to the relevant Parties at their addresses set out in this Framework Agreement (or to such addresses as shall have been duly notified in accordance with this Clause) or to the following facsimile numbers:

Leicester City Council	0116 222 0166
The Provider	[INSERT FAX NUMBER]

14.3 Times of service

Notices delivered by hand shall be deemed to have been delivered when handed over. Notices sent by post shall be deemed to have been delivered on the first Working Day after posting and notices given by facsimile shall be deemed to have been served upon successful transmission between the hours on 9am and 5pm on any Working Days, subject to a confirmatory copy being sent by pre-paid first class post or by hand by the end of the next Working Day.

15. NO AGENCY, PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Framework Agreement shall be construed as creating an agency, partnership or joint venture relationship between the Parties.

16. NO EXCLUSIVITY

This Framework Agreement is not exclusive to the Provider. The Commissioner is not bound to place any Order for Services under this Framework Agreement and no warranty, representation or agreement is made as to the nature, value or quality of any Order for Services which may be placed by the Commissioner. The Commissioner is not bound to accept the lowest or any tender in any Mini Tender Process and may withdraw any invitation to tender at any time before an award is made. The Commissioner is at all times entitled to enter into other contracts and agreements with other providers for the provision of any or all services which are the same as or similar to the Services.

17. RIGHTS OF THIRD PARTIES

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Framework Agreement and accordingly the Parties do not intend any third party to have any right in respect of this Framework Agreement by virtue of that Act.

18 CONFIDENTIALITY

18.1 Subject as below, the Parties shall treat in confidence, keep secret and not disclose and shall procure that their employees and any subcontractors keep secret treat in

confidence and do not disclose all information and data disclosed to them concerning the financial or business affairs of the other Party and/or any information or data of a confidential nature obtained by them by reason of this Framework Agreement. This obligation shall not apply to information or data.

- 18.1.1 which is in the public domain at the date of this Framework Agreement otherwise than by a breach of any pre-existing obligation or restriction by the Party making the disclosure; or
- 18.1.2 which the Commissioner is required to disclose as a matter of Law including any requirement for disclosure in discharge of its obligations of public accountability access to information, local transparency and freedom of information; or
- 18.1.3 which subsequently become part of the public domain after the date of this Framework Agreement except where that occurred as a breach of this Framework Agreement (or any other pre-existing obligation or restriction) by the Party by whom the information or data is disclosed; or
- 18.1.4 any information or data possessed by a Party prior to disclosure by the other Party provided it was lawfully acquired; or
- 18.1.5 which is disclosed to employees or subcontractors where disclosure is strictly necessary in order to perform their duties in connection with this Framework Agreement and who have in turn agreed to treat such data and information as confidential, kept secret and not disclosed, or
- 18.1.6 which is disclosed to bona fide professional advisors where disclosure is strictly necessary in order to obtain professional advice and who have in turn agreed to treat such data and information as confidential, kept secret and not disclosed.

18.2 The Provider undertakes to make no reference in any advertising or other promotional material to this Framework Agreement without the prior written consent of the Commissioner.

19 FREEDOM OF INFORMATION

19.1 Notwithstanding Clause 18.1 above, the Provider agrees that the Commissioner has reserved the right to using its discretion (as the case may require) to disclose information as provided for under FOIA or EIR or under other legally binding obligations as to local transparency as appropriate and that for such purposes information (having regard to any binding guidance, the Law and any other material consideration, that would otherwise be regarded as or has been described as confidential may be disclosed. The Provider also agrees that the Commissioner may apply such terms as it thinks fit (acting lawfully) to such disclosure to prevent or govern the secondary use of such information. The Provider shall assist and cooperate with the Commissioner to enable the Commissioner to comply with its information disclosure obligations and shall ensure that information required for such purposes is transferred to the Commissioner to enable the Commissioner to comply with the relevant time limits set out in FOIA or EIR.

20 DATA PROTECTION

20.1 With regard to the parties rights and obligations under this Framework Agreement, the Commissioner is the Data Controller and the Provider is the Data Processor (as such terms are defined in the DPA).

20.2 The Provider will process Personal Data only in accordance with instructions from the Commissioner or instructions as set out in this Framework Agreement and shall at all times comply with the DPA.

20.3 The Provider will implement appropriate technical and organisational measures to protect Personal Data from unauthorised or unlawful processing, accidental loss, destruction, damage, alteration or disclosure.

20.4 No Personal Data may be transferred by the Provider without the consent of the Commissioner and then only for the purpose of providing Services.

20.5 The Provider will co-operate and do all things necessary in relation to any complaint or request made under the DPA.

21 SEVERANCE

21.1 Any Clause or provision of this Framework Agreement which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of this Framework Agreement.

21.2 In the event that a Clause or provision (or part of a Clause or part of a provision) is excluded under Clause 19.1 above the validity and enforceability of the remainder of this Framework Agreement shall not be affected.

22. APPLICABLE LAW

This Framework Agreement shall be governed by English law and the Parties submit to the jurisdiction of the English courts.

23. COUNTERPARTS

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

24. FRAMEWORK

This Framework Agreement, together with other Framework Agreements entered into by the Commissioner with other providers in respect of the Services, is an agreement or other arrangement between one or more contracting authorities and one or more

economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies;

IN WITNESS whereof the Commissioner and the Provider have executed and delivered this Framework Agreement as a deed the day and year first before written.

EXECUTED as a **DEED** by)
LEICESTER CITY COUNCIL)
by affixing its **Common Seal**)
the day and year first before written)
in the presence of:)

.....Authorised Signatory

.....Designation

EXECUTED as a **DEED** by)
[REDACTED])
the day and year first before written)
and signed).....
by two authorised signatories]:

1. Managing Director

2 Finance & Commercial Director

APPENDIX 1

CONTRACT DOCUMENTS

Specification

Method Statements excluding Sections E and F

Signed Form of Tender

APPENDIX 2

PART 1

ORDER FOR SPECIFIC SERVICES: Lot 1 GENERIC DOMICILLIARY SUPPORT SPECIFIC SERVICES

UNDER REVIEW ORDER FOR SPECIFIC SERVICES issued under Clause 4 of the Framework Agreement for

Name of framework Agreement

The Commissioner requires the Provider to provide Specific Services as set out below in accordance with Appendix 1 to the Framework Agreement. This Order for Specific Services comprises a binding contract on the terms and conditions set out in this Order for Specific Services and the Call Off Terms together with the Schedules thereto, and any annexures.

Personal Care Domestic Tasks Mobile Meals Professional Support Day Care

<p>Service User Details</p> <p>Name..... Address..... Postcode..... CareFirst ID.....</p> <p>Service Details</p> <p>Start Date..... Expiry Date</p>	<p>Service Provider's Details</p> <p>Name..... Service Provider's ID.....</p> <p>Provider's Hourly Rates</p> <table border="1"> <thead> <tr> <th></th> <th>Weekday</th> <th>Weekend</th> </tr> </thead> <tbody> <tr> <td>Daytime (07:00 – 22:00)</td> <td></td> <td></td> </tr> <tr> <td>Night (22:00 – 07:00)</td> <td></td> <td></td> </tr> <tr> <td>Daycare</td> <td></td> <td></td> </tr> </tbody> </table> <p>Total Weekly Cost of Package</p> <table border="1"> <tbody> <tr> <td>Daytime</td> <td>£ : </td> </tr> <tr> <td>Night</td> <td>£ : </td> </tr> <tr> <td>Mobile Meals</td> <td></td> </tr> <tr> <td>Day care</td> <td></td> </tr> <tr> <td>GRAND TOTAL</td> <td></td> </tr> </tbody> </table>		Weekday	Weekend	Daytime (07:00 – 22:00)			Night (22:00 – 07:00)			Daycare			Daytime	£ :	Night	£ :	Mobile Meals		Day care		GRAND TOTAL		<p>Order Details</p> <p>Order Number</p> <p>This order form automatically replaces all previous order forms for this service user</p> <p>Previous Order No.</p> <p>Commissioner's Details</p> <p>Name..... Telephone..... Team Name..... Team CareFirst ID.....</p> <p>Intake Completion Only</p> <p>Responsible Teams Code</p>
	Weekday	Weekend																						
Daytime (07:00 – 22:00)																								
Night (22:00 – 07:00)																								
Daycare																								
Daytime	£ :																							
Night	£ :																							
Mobile Meals																								
Day care																								
GRAND TOTAL																								

Package Details

The care commissioned is as follows (in hours and minutes)
The hours to be adjusted accordingly in cases which feature more than one carer

		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Weekday	Weekend
a)	Daytime									
b)	Night									
c)	Mobile									
d)	Daycare									
e)										
f)										

Notes

Additional requirements or information
Mobile Meal type to be entered here

Team Manager's Signature	Team Managers' Name	Date
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Providers' Signature	Name of person signing on behalf of Provider	Date
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**PART 2
CALL OFF TERMS AND SCHEDULES**

1. DEFINITIONS

In this Order for Specific Services the following terms shall have the following meanings:

“Absence Notification Form”	means the notification to be given by the Provider to the Commissioner as required by Clause 5.12
“Assessment Forms”	means the Commissioner’s assessment forms which record the needs of a Specific Service User as assessed by the Commissioner.
“Call-Off Terms”	means the terms and conditions in Part 2 of Appendix 2 of the Framework Agreement (Order for Services) and are deemed incorporated into the Order for Specific Services.
“Contract Administrator”	means an officer nominated by the Commissioner to act on its behalf and in the first instance this shall be the person named in the Particulars.
“Commencement Date”	means the date of commencement of delivery of Specific Services at the Specific Service User Address as set out in the Particulars.
“Competent Body”	means any body that has authority to issue standards or recommendations with which either Party must comply.
“Contract Period”	shall be each period of 4 weeks for which Specific Services have been provided and for which an invoice is to be provided in accordance with Schedule 1, Invoicing Requirements. The first Contract Period shall commencing on the Commencement Date and where the Expiry Date falls other than at the end)of a Contract Period, then the last Contract Period occurring under this Order for Specific Services (as the case may be) shall a part period;
“Contract Hours”	means the hours of domiciliary support provided to a Specific Service User at a Specific Service User Address in the provision of the Specific Services as set out in the Particulars and as actually performed. For the avoidance of doubt where the Particulars specify a period of time other than in whole hours, the Contract Hours shall include part of an hour and shall be expressed to the nearest two decimal places.

“Contract Payment”	the amounts to be paid to the Provider in consideration of the provision of the Specific Services and which are calculated in accordance with Schedule 1
“DBS”	means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012
"Default"	means any breach by the Provider of its obligation to carry out the Specific Services commissioned in accordance with this Order for Specific Services.
“Dispute Procedure”	means the dispute procedure set out in Clause 29;
“Employment Checks”	means the pre-appointment check required by Law and applicable guidance, for the avoidance of doubt including verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record and vetting and barring checks and occupational health checks. Where the employment relates to any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) which also meets the criteria set out in the Police Act 1997 (Criminal Records) regulations 2002 (as amended) this will where so permitted include a disclosure of any information held locally by police forces that it is reasonably considered might be relevant to the post applied for together with information from the relevant DBS barred lists.
“Expiry Date”	means the date set out in the Particulars for the purposes of Clause 3.1 of the Call Off Terms
“Health and Social Care Protocol”	means the document published by the Commissioner governing the interface between the provision of social care and Health Tasks,
“Individual Support Plan”	means a document produced by the Service User and agreed by an officer of the Commissioner that states the care/support that will be arranged to meet the Specific Service User’s needs and outcomes identified in the Assessment Forms.
“Local HealthWatch”	means the local independent consumer champion for health and social care in England
“Missed Visit”	means that a Support Worker is not in attendance at the relevant time.
“Notice to Remedy Default”	means a written notice issued by the Contract Administrator setting out the nature of the Default committed and if the Default can be put right the action required to put it right and the timescale within which it is to be put right.

“Order for Specific Services ”	means this Order for Specific Services issued by the Commissioner to commission Specific Services from the Specific Service Provider and including the Call Off Terms and any Schedules or annexures hereto.
“Parties”	means the parties this Order for Specific Services (and “Party” shall be interpreted accordingly).
“Personal Data”	shall have the same meaning as set out in the Data Protection Act 1998.
"Persistent Default"	means any Default which has not been remedied within the remediation period allowed for in the Notice to Remedy Default or any two Defaults committed in any eight week period (whether the same Default or not and whether the Default has been remedied or not or is capable of remedy or not).
“Planned Absence”	means the absence of the Specific Service User from the Specific Service User Address due to hospital stay, holiday, and respite care or similar which has been (1) included in the Particulars or (2) notified to the Provider by the Commissioner.
“Prohibited Act”:	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Commissioner a financial or other advantage to</p> <p style="padding-left: 40px;">(i) induce that person to perform improperly a relevant function or activity or</p> <p style="padding-left: 40px;">(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) committing any offence</p> <p style="padding-left: 40px;">(i) under the Bribery Act 2010;</p> <p style="padding-left: 40px;">(ii) under legislation creating offences concerning fraudulent acts;</p> <p style="padding-left: 40px;">(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Commissioner; or</p> <p style="padding-left: 40px;">(iv) defrauding, attempting to defraud or conspiring to defraud the Commissioner.</p>
“Schedules”	means the Schedules to the Call Off Terms
“Specific Services”	means the services comprising the Package as identified in the Particulars. For the avoidance of doubt this includes the requirements and stipulations as to such Specific Services as set out in the Specification, and any pervasive requirements

	set out in the Specification, the Particulars and the Individual Support Plan
“Specific Service User Address”	means the property or properties where the Specific Services are to be delivered as set out in the Particulars
“Regulated Activity”	has the meaning defined in paragraph 1.1 of Schedule 5;
“Regulated Activity Provider”	has the meaning defined in paragraph 1.1 of Schedule 5;
“Relevant Transfer Date”	means, for the purposes of TUPE, the date on which a Relevant Transfer occurs
“Retainer Payment”	means a payment that may be paid in respect of Unplanned Absences in accordance with the terms of Clause 5.9;
“Particulars”	means the particulars set out in this Order for Specific Services;
“Request for Information”	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
“Specific Service User(s)”	means those person(s) set out in the Particulars living in their own homes (which may be rented or owned by the Specific Service User) for whom the Specific Services are commissioned by virtue of this Agreement.
“Staff”	means all persons employed, engaged or authorised by the Provider (or any authorised sub-contractor) in the performance of the Providers obligations under this Order for Specific Services.
“Support Worker”	means a person who works for the Provider and who provides the Specific Services to the Specific Service User(s).
“Transferring Employees”	means those employees (if any) whose contracts of employment will transfer to the Provider on the Commencement Date and which shall have affect as if originally made between those employees and the Provider in accordance with TUPE.
“Unplanned Absence”	means an absence of the Specific Service User, explained or otherwise, from the Specific service User Address, that is not a Planned Absence

3. START AND DURATION OF THIS ORDER FOR SERVICES

- 3.1 This Agreement will start on the Commencement Date and its term shall continue for a period ending on the Expiry Date unless terminated in accordance with Clause 26 or 27 or extended in accordance with Clause 3.3
- 3.2 Where applicable by virtue of the Specification and/or where the Commissioner has specified in the Particulars that this Order for Specific Services shall be conditional upon the satisfactory completion of any pre- commencement activities by the Provider, the Provider shall complete those pre- commencement activities to the reasonable satisfaction of the Commissioner on or prior to the Commencement Date
- 3.3 The Commissioner may extend this Order for Specific Services for a period of or periods in aggregate not exceeding eight weeks by giving notice to the Provider prior to the date on which this Order for Specific Services would otherwise expire.

4. SUPPLY OF SPECIFIC SERVICES AND THE INDIVIDUAL SUPPORT PLAN

- 4.1.1 The Provider shall provide the Specific Services to the Commissioner with effect from the Commencement Date and for the duration of this Order for Services in accordance with:
 - 4.1.2 the Specific Service standards set out in the Specification and the Individual Support Plan;
 - 4.1.3 the Law (and in particular any Law mentioned in the Specification) and good Industry practice;
 - 4.1.4 the requirements specified by the CQC or any other relevant external regulator;
 - 4.1.5 the requirements and recommendations of any Competent Body; and
 - 4.1.6 the terms and conditions of this Order for Specific Services.
- 4.1.7 The Parties agree that the provision of the Specific Services shall be consistent with the needs of the Specific Service User(s) as assessed by the Commissioner and recorded in the Assessment Forms, and the Individual Support Plan.
- 4.1.8 The Provider, in providing the Specific Services shall respond to any reports and recommendations made by Local HealthWatch.
- 4.1.9 The Individual Support Plan shall be reviewed from time to time by the Commissioner since a Specific Service User's needs are liable to change and the Individual Support Plan may be amended by the Commissioner as required. If necessary a revised Individual Support Plan will be issued to the Provider by the Contract Administrator and the Assessment Forms and the Individual Support Plan will be amended or renewed as appropriate.
- 4.1.10 The Provider is responsible for managing activity and caseloads within an Order for Services and over all Orders for Services issued to the Provider and must comply with all reasonable requests of the Commissioner to assist it with understanding and overseeing levels of activity for the Services generally.
- 4.1.11 The Provider is responsible at its own cost for compliance with the requirements and deliverables as to quality assurance and contract compliance as set out in the Specification.

5. PAYMENT TERMS AND CHANGES IN REQUIREMENTS

Payment of Price

- 5.1 In consideration of the Provider's performance of its obligations under this Order for Specific Services and subject as hereafter provided the Commissioner shall pay to the Provider the Contract Payment in accordance with Clause 5.2
- 5.2 The Provider shall submit an invoice in respect of each Contract Period in accordance with the requirements of Schedule 1 and, payment shall be made within 28 days of receipt of a correct and valid invoice and files in accordance with such schedule. No payment shall be due unless the requirements of Schedule 1 are complied with.
- 5.3 If any supply made under this Order for Specific Services is or becomes chargeable to VAT the Commissioner shall in addition to the Contract Payment pay the Provider the amount of VAT against receipt by the Commissioner from the Provider of a proper VAT invoice in respect of that supply.

5.4 Withholding and Overpayment

- 5.4.1 The Commissioner may make an adjustment to the Contract Payment for any hours claimed which have or which would give rise to an overpayment. The Commissioner will notify the Provider as soon as is practicable of any such adjustment. If the Provider disputes the amount of such overpayment it shall refer the matter to Dispute Resolution within 14 days of notification of such overpayment. Following resolution of the dispute, any amount agreed or determined to have been payable shall be paid forthwith by the Provider to the Commissioner together with interest on such amount calculated in accordance with Clause 7 (Interest on Late Payment). If the Provider does not so refer the matter to Dispute Resolution it shall account to the Commissioner (by rebate or suitable credit note) the amount of any overpayment (together with overpaid interest if any) within 28 days following notification of any such overpayment failing which the Commissioner shall be entitled to recover such overpayment from the Contract Payment next falling due.
- 5.4.2 If the Commissioner (acting in good faith) disputes all or any part of the Contract Payment calculated in accordance with clause 5.1, it shall give notice of such dispute within 14 days of the submission of the relevant invoice, giving details of the amount it proposes to pay, the amount it proposes to withhold and the reasons for such withholding. ("the Withholding Notice") The Commissioner shall pay the undisputed amount of the Contract Payment in accordance with Clause 5.3. If the Provider disputes any amount of the withholding it shall give notice of such dispute within 14 days of the service of the Withholding Notice. ("a Withholding Dispute") The Parties shall use reasonable endeavours to resolve the dispute in question within 28 days of such Withholding Dispute arising either party may refer the matter to Dispute Resolution. Following resolution of the dispute any amount agreed or determined to have been payable shall be paid forthwith, together with interest on such amount calculated in accordance with Clause 7 (Interest on Late Payment)

5.5 Review of Specific Service levels

5.5.1 Service no longer required

- (i) If circumstances should arise whereby a Specific Service User no longer requires Specific Services (whether due to death, serious illness necessitating long term hospitalisation or admission to a hospice, if the Specific Service User is in receipt of a Direct Payment and does not wish the Commissioner to arrange the Specific Services, or otherwise) the Commissioner shall forthwith notify the Provider of that fact and the nature of the circumstances. The provisions of this Order for Services relating to that Specific Service User shall terminate one week after the giving of such notice. The Provider may claim from the Commissioner such

amount as it reasonably incurs in consequence of such termination provided that the amount payable by the Commissioner in respect of such termination shall not exceed the price for providing the Contract Hours allocated to that Specific Service User during that week.

- (ii) (Where more than one Specific Service User is named in the Particulars) if one of the Specific Service Users no longer requires the Specific Services the Commissioner will if required review the situation for the remaining Specific Service User(s).

Adjustment of Contract Hours or care activity by the Commissioner

- 5.5.2 (i) The Commissioner shall be entitled to review the Specific Services provided to the Specific Service Users (or any of them) at any time.
 - (ii) Where the Commissioner requires that the Contract Hours or the Specific Services should be varied, the Commissioner shall consult with the Provider following which the Parties shall promptly enter into negotiations to agree the necessary adjustments to the Specific Services and the Contract Payment. If such negotiations have not resulted in an acceptable outcome to both Parties within 14 days of their start then (but without prejudice to Clause 5.5.2.iv below) the Dispute Procedure may be utilised.
 - (iii) Subject to clause 5.5.3 below, the adjustment shall take effect from the date of agreement or determination and the Commissioner shall issue a revised Order for Services recording such adjustment.
 - (iv) Where the variation would require additional Contract Hours or additional Specific Services in respect of Specific Service User then, if the Provider indicates that it is unwilling or unable to provide those additional Contract Hours and/or Specific Services or if negotiations have not resulted in an acceptable outcome to the Parties within 7 days of their start then the provisions of this Order for Services relating to that Specific Service User shall terminate immediately upon the giving of notice to that effect by the Commissioner. The Provider may claim from the Commissioner such amount as it reasonably incurs in consequence of such termination provided that the amount payable by the Commissioner in respect of such termination shall not exceed the price for providing the Contract Hours allocated to that Specific Service User during that week. The Commissioner shall be entitled to procure the provision of the Specific Services from another provider.
- 5.5.3 Following 14 days of the start of negotiations and during any Dispute Procedure where the Commissioner proposes a reduction in the Contract Hours provided to a Specific Service User (the “**Revised Hours**”) the Commissioner shall pay the full cost of the Revised Hours and 50% of the cost of any Contract Hours which are in dispute between the Parties and once the dispute has been resolved the Commissioner shall be liable for any agreed or determined shortfall in payments made during the continuation of the Dispute Procedure and the Provider shall be liable for any agreed or determined overpayments during that period (and vice versa should there be an overpayment)

Provider proposals to vary contract hours or care activity

- 5.5.4 Where required by the Law or in the following circumstances, the Provider may propose a variation to the Contract Hours or the Specific Services provided to a Specific Service User:-
 - i) where, in the reasonable professional opinion of the Provider the Service User is unsuitable to receive the relevant Service, for as long as such unsuitability remains;

- ii) where the Service User displays abusive, violent or threatening conduct unacceptable to the Provider acting reasonably and taking into account the mental health of the Specific Service User;
- iii) where the Specific Service Users domiciliary care setting poses a level of risk to a Support Worker engaged in the delivery of the Specific Services that the Provider reasonably considers to be unacceptable; or
- iv) where the Provider, in its professional opinion, consider that there has been a change in the circumstances of the Specific Service User.

5.5.5 it will, except in the case of emergency, gain the prior consent to such variation from the Contract Administrator of the relevant Commissioner. In any event, the Provider shall gain the written consent to such variation from the Contract Administrator of the relevant Commissioner within 14 days of such variation and in the absence of such consent the Provider shall revert to the Contract Hours provided prior to such variation.

5.6 Additional Specific Services .

In exceptional circumstances (for example unexpected change in a Specific Service User's needs) in any week the Commissioner shall be entitled to require additional Specific Services for a Specific Service User in addition to those requested in the Individual Support Plan. In such cases the Commissioner shall issue an Order for Services for the additional Specific Services required. If the Provider indicates that it is unwilling or unable to provide those additional Contract Hours and/or Specific Services or if negotiations have not resulted in an acceptable outcome to the Parties within 7 days (or such sooner period as the Commissioner may specify in exceptional circumstances) then the Commissioner may terminate this Order for Specific Services relating to that Specific Service immediately upon the giving of notice to that effect by the Commissioner. The Provider may claim from the Commissioner such amount as it reasonably incurs in consequence of such termination provided that the amount payable by the Commissioner in respect of such termination shall not exceed the price for providing the Contract Hours allocated to that Specific Service User during that week. The Commissioner shall be entitled to procure the provision of the Specific Services from another provider.

5.8 Planned Absences

If a Specific Service User is absent from the Specific Service User Address due to a Planned Absence the Commissioner will use all reasonable endeavours to provide at least 36 hours' notice of such absence or as much notice as reasonable practicable (except in the case of emergency) whereupon the Specific Services will be suspended (and no hourly rate shall be payable) for the duration of the Planned Absence and reinstated thereafter provided that this period is no longer than 4 (four) weeks and that there is no substantial variation to the Individual Support Plan. No Retainer Payment will be paid for Planned Absences.

5.9 Retainer Payment

5.9.1 If the Specific Service User is absent due to any Unplanned Absence it shall be the responsibility of the Provider to notify the Commissioner of this event at the earliest opportunity. In these circumstances, the Provider shall be entitled to payment for the Specific Services they would have provided to the Specific Service User on the first day of such absence. Following the first day of absence no payment will be made by the Commissioner other than the Retainer Payment and the Specific Service will be suspended for the duration of the Unplanned Absence and reinstated thereafter provided that this period is no longer than 4 (four) weeks and that there is no substantial variation to the Individual Support Plan.

5.9.2 A Retainer Payment shall be a payment made to a Provider in respect of the first day of an Unplanned Absence.

5.9.3 A Retainer Payment will not be paid in the following circumstances:

5.9.3.1 upon the death of a Specific Service User – payments will cease on the date of death;

5.9.3.2 where the Specific Service is no longer required and the Commissioner has given notice to the Provider under Clause 5.9.1 above;

5.9.3.3 Planned Absences; or

5.9.3.4 where Absence Notification Forms are not submitted.

Absence and suspension through absence generally

5.10 In every case any absence and the reason for absence shall be recorded on an Absence Notification Form by the Provider, a blank copy of which will be supplied by the Commissioner.

5.11 In the case of an Unplanned Absence where it is recorded in the Specific Service Users Support Plan that they may be at risk (e.g. there is no relative/friend to confirm the reason for absence) then the Provider shall notify the Commissioner within two hours of its discovery.

5.12 In every case where the Specific Services have been suspended the Commissioner shall notify the Provider when the Specific Services are to restart.

5.13 Withdrawal of Funds

If (for whatever reason) the Commissioner determines that the funds available to it for the provision of the Specific Services are insufficient or no longer sufficient, it shall promptly advise the Provider of that fact and the Parties shall promptly enter into negotiations to determine the appropriate level of Specific Services to be provided and the appropriate costs thereof. Such negotiations shall be carried on in good faith and with all due co-operation and despatch.

6. PAYMENTS AND ELECTRONIC CARE MONITORING REQUIREMENTS

6.1 During the Contract Period (and upon termination in respect of the last Contract Payment) the Provider shall operate electronic care monitoring in accordance with the requirements of the Specification and in particular shall comply with the processes and file requirements set out in Schedule 1 attached hereto.

7. LATE PAYMENTS

Interest stated to be payable under this Order for Services or upon the late payment of any undisputed amounts of money properly invoiced shall be payable at the rate of 4.5% above the base rate from time to time of the Bank of England.

8. MISSED VISITS

8.1 The Provider shall put in place and keep diligently such active systems to monitor and report service activity and in particular compliance by Support Workers with the time slot required as set out in the Particulars. This shall include systems and practices whereby:-

8.1.1 Service Users and or persons acting on their behalf shall have real time access to a contact facility of the Provider;

- 8.1.2 Support Workers shall be accountable to the Provider for their whereabouts, attendance at work and time keeping;
 - 8.1.3 Support Workers shall be contactable during appointments and travelling time to receive instructions from the Provider and to be subject to instructions from the Provider;
 - 8.1.4 Support Workers shall be lawfully required to comply with the reasonable instructions of the Provider as to attendance at appointments, variance of tasks or the allocation of new tasks; and
 - 8.1.5 The whereabouts, attendance at work and time keeping of Support Workers shall be contemporaneously available to the Provider
- 8.2 The Provider shall keep a contemporaneous log of Missed Visits, whether these be reported by a Specific Service user or someone acting on their behalf, or by the Commissioner, or where the Provider becomes aware of a Missed Visit.

9. BREACH AND REMEDY

- 9.1 In the event that the Provider is in breach of any of its obligations under this Agreement, then the Commissioner may, without terminating this Order for Specific Services, suspend the affected Specific Services in accordance with the Leicester Framework Agreement Guidance for Suspension of Placements, a copy of which is attached at Appendix 4 of the Framework Agreement.
- 9.2 Where in the opinion of the Commissioner the Provider has committed a material breach of this Agreement then the Commissioner may at its sole absolute discretion serve a Notice to Remedy Default on the Provider to remedy the breach upon the terms and within the times stipulated in the Notice to Remedy Default, without prejudice to the Commissioner's rights to terminate this Agreement under Clause 26 (Termination by the Commissioner).
- 9.3 In the event that the Commissioner (but not the Provider) serves a Notice to Remedy Default then it shall be entitled to recover all costs incurred in drawing up and serving the Notice to Remedy Default which may include (but is not restricted to):
- 9.3.1. the production of all written correspondence in connection with the Notice to Remedy Default;
 - 9.3.2. the cost of the Commissioner's Staff resources used to monitor the Notice to Remedy Default;
 - 9.3.3. the production of reports by the Commissioner's Staff in relation to the Notice to Remedy Default; and
 - 9.3.4. any other action deemed necessary by the Commissioner to safeguard the interests of all Specific Service Users within the Property.
- 9.4 In the event that the Provider fails to comply with a Notice to Remedy Default the Commissioner may issue a Notice of Failure to Remedy Default. If the Provider wishes to dispute such Notice of Failure to Remedy Default it shall refer the matter to Dispute Resolution within 14 days of service
- 9.5 Except where a suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Commissioner in respect of any costs, losses, expenses (including professional fees and administrative costs), liabilities proceedings demands and charges directly and reasonably incurred by the Commissioner in respect of that suspension.
- 9.6 In the event that the Commissioner is in breach of its obligations under this Agreement then the Provider may serve a notice on the Commissioner to remedy the breach upon the terms (which shall not make reference to the recovery of costs) and within the times stipulated in the notice without prejudice to the Provider's rights to terminate this Agreement under Clause 27 (Termination by the Provider).

10. THE PROVIDER'S OBLIGATIONS

- 10.1 The Provider shall provide the Specific Services with complete skill care and diligence, in compliance with the requirements as to the Specific Services and in accordance with a Specific Service User's Individual Support Plan.
- 10.2 At all times the Provider must ensure that:
- 10.2.1 it employs sufficient numbers of people of ability, skill, knowledge, training or experience to be able to provide the Specific Services,
 - 10.2.2 any Health Care Tasks are only carried out by appropriately trained persons;
 - 10.2.3 all Staff are either directly employed by the Provider or that the requirements of the Specification are met as to other workers;
 - 10.2.4 Staff comply with the requirements as to the Specific Service;
 - 10.2.5 it acts within the relevant stipulations, standards, restrictions, policies and procedures as required by the Specification
 - 10.2.6 proper and sufficient continuous professional and personal development, training appraisal and instruction is received by every member of Staff involved in the provision of the Specific Services and as mentioned in the Specification, and
 - 10.2.7 where applicable, Staff are registered with the appropriate professional body.
- 10.3 The Provider shall, and is responsible for obtaining and maintaining, any permission, consent, approval, certificate, permit, licence, agreement, authorisation, exception or declaration required by Law for or in connection with the performance of the Specific Services or necessary for the performance of the Providers' obligations under this Order for Services
- 10.4 In undertaking the Specific Services the Provider shall comply with all legal requirements relating to the provision of such Specific Services in particular but not limited to the Equality Act 2010 and any other legal requirements arising out of or under any Act of Parliament or provision of European Community Law having direct effect on the Commissioner and shall take all reasonable steps to ensure that its employees agents and sub-contractors comply with the same.
- 10.5 The Provider will not without the prior written agreement of the Commissioner, enter into any negotiations either directly or indirectly with any Specific Service User or any third party the effect of which would be:
- a) to vary or amend the Specific Services as stated in an Individual Support Plan;
 - b) to vary or amend the terms and conditions contained in this Agreement;
 - c) to provide any Specific Services to a Specific Service User in addition to or replacement for the Specific Services stated in the Individual Support Plan;
 - d) to require the Specific Service User to pay any sum of money to the Provider in respect of Specific Services under this Agreement.

10.6 The Provider shall ensure that adequate records are maintained in order to evidence to the Commissioner the verification of Specific Services delivered to Specific Service Users.

10.7 The Provider shall operate the Specific Services from a base that is sufficiently local to the Commissioner's administrative area to enable the Specific Services to be delivered efficiently and cost effectively.

10.8 The Provider shall provide at all times management cover for the hours required under this Agreement.

10.9 The Provider undertakes to keep the Specific Services provided under this Agreement completely separate from any other Agreement or Agreements which the Provider may have now or in the future with the Commissioner and will ensure that no conflict of interest arises in respect of this and any other Agreement between the Provider and the Commissioner.

10.10 The Provider shall comply with and give any notices required by any Act of Parliament or any instrument rule guidance or order made under any Act of Parliament or any regulation or by-law of any Local Authority which may have jurisdiction in respect of the Provider or the Specific Services.

10.11 The Provider shall not:

- a) act or hold itself out as the agent of the Commissioner nor allow any of its employees agents or sub-contractors to do so;
- b) bind or make any commitment on behalf of the Commissioner or make any representation or do anything by which any responsibility obligation waiver or estoppel could arise in respect of the Commissioner;
- c) act or hold itself out as a partner of the Commissioner;
- d) do anything which in the reasonable opinion of the Commissioner is likely to bring the Commissioners name or reputation into disrepute;
- e) adopt or use the name or any image or logo of the Commissioner;
- f) act or purport to act so as to make vary discharge or waive any bye-law or regulation of any kind or represent itself as having such power; or
- g) in undertaking the Specific Services , canvass for work from people the Provider supports and their families or offer prices direct to people the Provider supports unless publically advertised or in agreement with the Commissioner.

10.12 **MONITORING**

The Provider will:

- (a) monitor the nature and quality of the Specific Services by keeping records of relating to the provision of the Specific Services ;
- (b) co-operate with the Commissioner's inspection, contract monitoring and evaluation procedures;
- (c) comply with all monitoring requirements of the Commissioner;

- (d) upon request, produce documentation to the Commissioner relating to Specific Service Users and Staff members employed to deliver the Specific Services and specific policies, plans and philosophy statements along with any other information which in the reasonable opinion of the Commissioner is appropriate to the Specific Services ; and
- (e) cooperate in allowing relevant Officers of the Commissioner access to the property where the Specific Services are being delivered for the Commissioner to undertake its monitoring requirements.

10.13 **TUPE**

10.13.1 The Commissioner shall, based on a reasonable assessment of the facts, state in the Particulars where or not the Order for Specific Services is to proceed on the basis that the commencement of the Specific Services by the Providers will be a relevant transfer to which TUPE and/or European Council Directive 77/187/EC will apply.

10.13.2 The Parties agree that the provisions of Schedule 4 shall apply to any Relevant Transfer of Staff under this Agreement.

10.14 **BEST VALUE**

In undertaking the Specific Services, the Provider shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual obligations and of the Specific Services as a whole, including specifically the cost of the Specific Services, the time, cost quality and health and safety standards of the various processes involved in delivery of the Specific Services and generally to provide best value outcomes (including economic, environmental and social value) to the Commissioner as are set out in the Specific Service Specification AND FURTHER the Provider shall cooperate with the Commissioner and others to the extent required so that the Commissioner can keep under review the performance of the Specific Services required under this Agreement and this paragraph in particular.

11. SAFEGUARDING

11.1 The Provider shall adopt safeguarding policies and such policies shall comply with the Commissioners Safeguarding Policies as amended from time to time. The Commissioners Safeguarding Policies are as referred to in Schedule 5 (Safeguarding Policies) and may be amended from time to time and may be substituted from time to time. The Provider shall ensure that the Specific Services are provided in all respects in accordance with Schedule 5 and its safeguarding policies to be adopted under this Clause. .

12. CONTRACT ADMINISTRATOR

12.1 The Contract Administrator shall be the person appointed by the Commissioner to act in the name of the Commissioner for the purposes of this Agreement.

12.2 The Commissioner shall forthwith give notice in writing to the Provider of any replacement of the Contract Administrator or if any person ceases to be the Contract Administrator.

12.3 From time to time the Contract Administrator may appoint one or more representatives to act for the Contract Administrator generally or for specified purposes or periods. Immediately when any such appointment is made the Contract Administrator shall give written notice thereof to the Provider.

13. COMMISSIONER’S POLICIES

The Provider shall provide the Specific Services, or procure that they are provided in all respects in accordance with the Commissioner’s policies set out in Schedule 3.

14. COMPLAINTS PROCEDURE

14.1 The Provider shall publish, maintain and operate a complaints procedure which complies with minimum standards of any regulatory body to which the Provider is subject and with the requirements of the Specification.

14.2 The Provider shall provide the Commissioner if requested with a copy of such procedure.

14.3 The Provider shall ensure that the Service User and anyone acting on their behalf is given information on how to contact the relevant CQC and Local HealthWatch, and information about the Commissioners’ complaints procedure.

14.3 If the Commissioner so reasonably requires the Provider shall supply to the Commissioner a copy of its records relating to complaints made in relation to the Specific Services and its response.

15. AUDIT AND INSPECTION OF DOCUMENTS

15.1 The Provider shall keep and maintain until seven years after the determination of this Order for Specific Services full and accurate records and accounts of the operation of this Order for Specific Services including the Specific Services provided under it, the invoices submitted by the Provider with the supporting reports and information, the amounts paid by the Commissioner and any efficiency or best value measures implemented by the Provider.

15.2 The Provider shall afford the Commissioner, the Contract Administrator, any Representative on behalf of the Commissioner and any internal or external auditors of the Commissioner access to the records and accounts referred to in Clause 15.1 at the Providers premises and/or facilities to be provided with copies of such records and accounts as may be necessary from time to time and acting reasonably and with due regard to the operation and sensitivities of the Services or to carry out an inspection including for the following purposes:

- a) to verify the accuracy of Contract Payments,
- b) to review the providers compliance with the DPA and the integrity, confidentiality and security of personal data held or used by the Provider
- c) to review the providers compliance with the policies it is required to observe by virtue of these Call Off Terms, or
- d) to ensure that the Provider is complying with its obligations under this Order for Specific Services

16. DATA PROTECTION/CONFIDENTIALITLY

16.1 Any information and data provided by the Commissioner to the Provider and used by the Provider directly or indirectly in the performance of this Agreement or any other assets of the Commissioner in the possession of the Provider shall remain at all times the property of the Commissioner and shall be (where reasonably practicable) so identified shall not be used by the Provider otherwise than for the purposes of this Agreement and shall be kept in good order in a safe place and free from loss of integrity corruption and loss.

- 16.2 The Provider shall ensure that it and any person it engages complies at all times with the provisions and obligations contained in the Data Protection Act 1998 and any other Act or regulation relating to data protection privacy or the use of personal information (together Data Protection Legislation). Any personal data acquired by the Provider from the Commissioner shall only be used for the purpose of this Agreement and/or strictly in accordance with the terms of the Data Protection Legislation. The Provider shall hold, and be responsible for maintaining and the safekeeping of the Specific Service User files for the term of this Agreement, in accordance with Data Protection Legislation. For the avoidance of doubt the Provider is and remains the Data Controller of any personal data processed by it under the terms of this Agreement.
- 16.3 The Provider shall observe the rights of Specific Service Users as “data subjects” under the Data Protection Act 1998 and shall comply with all its obligations under that Act and other Data Protection Legislation in that respect. The Provider shall be responsible for facilitating Specific Service Users in accessing their Personal Data under the said Act.
- 16.4 The Provider must publish, maintain and operate a confidentiality policy which complies with the Law and good Industry practice and these Call Off Terms such policy to relate in particular to records held by the Provider and personal information.
- 16.5 The Provider also agrees to comply with the Caldicott Principles as set out in Schedule 2. Further information may be obtained in respect of the Caldicott Principles from the Commissioner’s Caldicott Guardian whose post appears in the contact list.
- 16.6 The Provider shall afford the Commissioner access to information (including its current and archived Specific Service User files) which is reasonably required in connection with this Agreement or for any purpose connected with its rights and obligations under this Agreement (including such information as may be necessary to permit the Commissioner to monitor and confirm that the Specific Services have been delivered in compliance with prevailing standards of clinical governance and the terms of this Agreement).
- 16.7 The Provider and the Commissioner shall not disclose to a third party (other than to employees and officers who require access in order to perform their duties in connection with this Agreement) any information or data relating to members of the public or Specific Service Users and/or any other confidential matter EXCEPT:
- a) where information is required to be disclosed under the Commissioner's Child Protection or Vulnerable Adults policies in relation to reporting suspicion, allegations or evidence of past or present abuse to the Commissioner's Strategic Director Adult Social Care, Health and Housing and/or the Police; and/or
 - b) where the Commissioner has a statutory duty or is subject to a direction from any regulatory or judicial authority to disclose any such information then the Commissioner may make such disclosure; and/or
 - c) where the Provider has a statutory duty or is subject to a direction from any regulatory or judicial authority to disclose any information then the Provider may make such disclosure.
- 16.7 Each Party (either being the “**First Party**”) shall keep the other Party fully indemnified against all actions claims costs expenses fines and damages suffered by the other Party arising out of any breach of Clauses 16.1 to 16.6 inclusive by the First Party (save to the extent that such matters are due to any act neglect or default of the other Party its agents or employees).

16.8 Save as provided in Clause 16.9 the Provider and the Commissioner shall treat in confidence all information and data disclosed to them or coming to their attention concerning the business and practices of the other and/or any other confidential matter (“**Confidential Information**”) and will not disclose the same to any third party other than to employees in order to perform their duties in connection with this Agreement and who have agreed to treat such data and information as confidential. This Clause 16 shall survive termination of this Agreement.

16.9 Clause 16.8 shall not apply to:

- a) any information or data which is in the public domain at the Commencement Date;
- b) any information or data which subsequently becomes part of the public domain except where that occurred as a result of a breach of this Agreement by the Party to whom the information or data in question was disclosed; or
- c) any information or data possessed by a Party prior to disclosure to it by the other Party provided it was lawfully acquired from a source other than that other Party.

16.10 Notwithstanding the Clauses above the Provider agrees that the Commissioner reserves the right to disclose information under the Freedom of Information Act 2000 (“**the Act**”) as appropriate and that for such purposes information that would otherwise be regarded as or has been described as confidential may be disclosable under the Act.

17. INDEMNITY AND INSURANCE

17.1 The Provider shall indemnify and keep indemnified the Commissioner against all actions claims demands proceedings damages costs charges and expenses whatsoever in respect of or in any way arising out of this Agreement in relation to the injury to or death of any person or the loss of or any damage to any property belonging to the Commissioner except and to the extent that it may arise out of the act default or negligence of the Commissioner its employees or agents not being the Provider or employed by the Provider.

17.2 Without thereby limiting its responsibilities under this Clause 17 the Provider shall insure with an insurance company approved by the Authority against its liabilities under Clause 17.1.

17.3 The insurance in respect of any personal injury to or death of any person arising under an agreement of Specific Service with the Provider and arising out of an incident occurring during the course of such persons employment shall comply with the Employer’s Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder and shall be in the sum of Ten Million Pounds (£10,000,000).

17.4 For all claims other than under Clause 17.3 this Clause 17 requires the Provider to ensure that Public Liability insurance cover shall be in the sum of Ten Million Pounds (£10,000,000) or such greater sum as the Provider may choose in respect of any one incident and the Provider’s insurance policy affecting such cover shall have the interest of the Commissioner endorsed thereon or shall otherwise expressly by its terms confer its benefits upon the Commissioner.

17.5 In respect of Professional Indemnity insurance the Provider shall take out and maintain appropriate insurance cover in the minimum sum of Five Million Pounds (£5,000,000).

17.6 In respect of Medical Malpractice insurance the Provider shall take out and maintain appropriate insurance cover in the minimum sum of Two Million Pounds (£2,000,000) to carry out appropriate Health Care Tasks as specified in the Health and Social Care Protocol.

- 17.6A The Provider shall be responsible for any monetary or inventory loss suffered by the Specific Service User arising from the criminal or negligent acts of a Support Worker, and any accidental loss/damage to the property of a Service User caused by a Support Worker.
- 17.7 The Provider shall supply to the Commissioner forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Provider's insurance policies comply with this Clause 17 or other satisfactory evidence of the same and the Provider shall supply to the Commissioner on request copies of all insurance policies cover notes premium receipts and other documents necessary to establish compliance with this Clause 17.
- 17.8 The Provider shall indemnify the Commissioner against any expense liability loss claim or proceeding arising during the continuance of this Agreement from the application of the European Community's' Acquired Rights Directive and the TUPE Regulations and any amendment thereof in respect of any individuals employed in the provision of Specific Services prior to the Provider providing the Specific Services to the Specific Service Users.
- 17.9 The Commissioner shall indemnify and keep indemnified the Provider against all action claims demands proceedings damages costs charges and expenses whatsoever in respect of the injury to or death of any person or loss of or damage to any property including property belonging to the Provider to the extent that it may arise out of the act default or negligence of the Commissioner its employees or agents other than the Provider its employees and agents.
- 17.10 If the Provider fails upon request to produce to the Commissioner's satisfaction evidence that there is in force the insurances referred to in this Agreement then in any such case the Commissioner may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time may deduct the amount so paid by the Commissioner from any monies due or which may become due to the Provider or recover the same as a debt due from the Provider.
- 17.11 The Provider agrees not to do or refrain from doing or omit to do anything which might render any of the foregoing insurance policies void or voidable.
- 17.12 The Provider shall maintain and observe a risk management procedure to prevent in so far as is possible or to minimise risk in the performance of the Specific Services.
- 17.13 The Provider will annually carry out and review its business/Specific Service continuity planning to ensure contingency plans are in place for any associated risks to its business and Specific Service provision processes. These plans will be made available to the Contract Administrator at the commencement of this Agreement and thereafter annually following review. The Provider will address any risks identified by the Commissioner in order to protect Specific Services and operational delivery.

18. HEALTH AND SAFETY

The Provider shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974 and of any other Acts Regulations or Orders pertaining to the health and safety of employees and shall fully and promptly indemnify the Commissioner from and against any breach thereof.

19. FREEDOM OF INFORMATION

- 19.1 The Provider acknowledges that the Commissioner is subject to the requirements of the FOIA, the Environmental Information Regulations and in relation to local transparency and shall assist and co-

operate with the Commissioner (at the Provider's expense) to enable the Commissioner to comply with these information disclosure requirements.

- 19.2 The Provider shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to the Commissioner as soon as practicable after receipt and in any event within two working Days of receiving a Request for Information;
 - (b) provide the Commissioner with a copy of all Information in its possession or power in the form that the Commissioner requires within five working Days (or such other period as the Commissioner may specify) of the Commissioner requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Commissioner to enable the Commissioner to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19.3 The Commissioner shall be responsible for determining at its absolute discretion whether the relevant Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 19.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Commissioner.
- 19.5 The Provider acknowledges that the Commissioner may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Provider; or
 - (b) following consultation with the Provider and having taken its views into account, provided always that where Clause 19.5(b) applies the Commissioner shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 19.6 The Provider shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Commissioner to inspect such records as requested from time to time.
- 19.7 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Commissioner may nevertheless be obliged to disclose Confidential Information in accordance with Clause 16.

20. EQUALITY

- 20.1 The Provider must not discriminate between or against Service Users on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity race, religion or belief, sex, sexual orientation or any other nonmedical characteristics except as permitted by the Law.
- 20.2 The Provider must provide appropriate assistance and make reasonable adjustments for Service Users who do not speak read or write English or who have communication difficulties, or for Service Users who are disabled.
- 20.3 In performing the Specific Service the Provider must comply with the Equality Act 2010 and have regard to the obligations created by section 149 of the Equality act to:

- a) eliminate discrimination harassment victimisation or any other conduct that is prohibited by the Equality Act 2010;
- b) advance equality of opportunity between persons who share a protected characteristic (as defined in the Equality Act 2010) and persons who do not share it, and
- c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and person who do not share it.

20.4 As soon as reasonably practicable following any reasonable request from the Commissioner the Provider must provide the Commissioner with

- a) a plan detailing how it will comply with its obligations under this Clause 20,
- b) evidence of such compliance, and
- c) evidence that demonstrates that Staff have had appropriate training so that they understand the duties required under the Equality Act 2010 and other relevant Law not to discriminate and to promote equality.

20.5 The Provider must provide to the Commissioner as soon as reasonable practicable any information that the Commissioner reasonably requires in order to monitor the equity of access to the Services and/or to fulfil its obligations under the Law

21. RIGHTS OF INDIVIDUALS

21.1 Insofar as and to the extent that its provisions apply to the Provider, or have correspondence, the Provider shall comply and shall procure compliance by its agents employees and sub-contractors with the Human Rights Act 1998 as if it were a body subject to that Act.

21.2 The Provider shall treat all individuals including Specific Service Users and their families and carers in a polite and courteous manner and in recognition of the fundamental rights of individuals and shall procure that its agents employees and sub-contractors do the same.

22. WAIVER

The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

23. STATUS OF THE PROVIDER

23.1 During the Term the Provider shall be an independent contractor and not the servant of the Commissioner.

23.2 In such capacity the Provider shall bear exclusive responsibility for the payment of all wages, National Insurance contributions and all taxes for its employees, all of whom shall be directly employed by the Provider.

24. PROHIBITED ACTS

The Provider must comply with the provisions of Schedule 6 (Prohibited Acts).

25. ASSIGNMENT, TRANSFER AND SUB-CONTRACTING ETC.

25.1 The Provider shall not:

- a) Assign or transfer its interest in this Agreement;
 - b) create any interest in this Agreement or any part of it;
 - c) create any security over this Agreement
 - d) without first obtaining the express consent in writing of the Commissioner which may be granted with or without conditions.
- 25.2 The Provider shall not sub-contract the carrying out of any of its obligations under this Agreement without first obtaining the express consent in writing of the Commissioner which may be granted with or without conditions but which shall not be unreasonably withheld or delayed.
- 25.3 The Commissioner may acting reasonably and on reasonable notice in writing to the Provider withdraw such consent and the Provider shall effect the termination of the sub-agreement concerned at the end of the notice period.
- 25.4 Notwithstanding any consent to sub-contract the Provider shall remain liable for its obligations under this Agreement and will be responsible for the acts defaults and neglect of any sub-contractor or its employees or agents as if they were the acts defaults and neglect of the Provider.
- 25.5 The Provider shall notify the Commissioner immediately in writing if it undergoes:-
- 25.5.1 a change of control within the meaning of section 450 of the Corporation Tax Act 2010 (or any event analogous given the legal status of the Provider) ("Change of Control" and shall notify the Commissioner in writing immediately of circumstances suggesting that a Change of Control is planned or contemplated;
 - 25.5.2 a change or material change in circumstances of the registered care manager (Registered Manager Change); or
 - 25.5.3 any other material change in respect of which the Provider should make application to the CQC ("Provider Change")
 - 25.5.4 The Commissioner may terminate this Order for Specific Services by giving notice with immediate effect within 3 months of:
 - 25.5.5 Being notified that a Change of Control, Registered Manager Change or Provider Change has occurred
 - 25.5.6 Where no notification has been made, the date that the Commissioner becomes aware of that change
 - 25.5.7 If it believes, acting reasonably, that such change is likely to have a material adverse effect on the provision of the Specific Services or such that the Provider would not have been awarded the Framework Agreement had such circumstances been known at the time PROVIDED THAT the Commissioner shall not be permitted to terminate this Order for Specific Services where it has given approval to such change in advance.

26 TERMINATION BY COMMISSIONER

- 26.1 The Commissioner may terminate this Agreement giving three months' notice in writing where:

- a) the Commissioner decides that there no longer exists a continued need or there is a significantly changed need for the Specific Services (whether an increase, decrease or other change in the nature of the Specific Services needed) or;
- b) in the Commissioner’s opinion it is reasonable to do so; or
- c) negotiations conducted in accordance with Clause 5.5.2.(ii)(but without prejudice to Clause 5.5.2.(iv) or Clause 5.16 are not proceeding or have not resulted in an acceptable outcome to the Parties as to price and levels of Specific Services .

26.2 The Commissioner may terminate this Agreement immediately if the Provider:

- a) is in fundamental or persistent breach of its obligations under this Agreement;
- b) commits a material act of Default which is not capable of remedy;
- c) two or more Notices of Failure to Remedy Default are issued to the Provider within any rolling 6 month period which are not disputed by the Provider, or, if disputed are upheld under Dispute Resolution.
- d) becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for a voluntary arrangement with its creditors or for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- e) does not hold for any reason a current CQC Registration at any time during the term of this Agreement;
- f) in the event that the CQC takes any enforcement procedure under the Health and Social Care Act 2008 and associated regulations. For the avoidance of doubt “enforcement action” does not include the requiring of a report under Regulation 10(3) of the Health and Social Care Act 2008 (Regulated Activities) regulations 2010;
- g) any permission, consent, approval, certificate, permit, licence, agreement, authorisation, exception or declaration required by Law for or in connection with the performance of the Specific Services or necessary for the performance of the Providers’ obligations under this Order for Services is not obtained, or having been obtained is lost or varied the effect of which may have a material adverse effect on the provision of the Specific Services
- h) has an application made under the Insolvency Act 1986 for the appointment of an administrative receiver;
- i) has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- j) has a provisional liquidator receiver or manager of its business or undertaking duly appointed;
- k) has an administrative receiver as defined in the Insolvency Act1986 appointed;
- l) has possession taken by or on behalf of the holders of any debentures secured by a floating charge or any property comprised in or subject to the floating charge;
- m) suspends payment of its debts or ceases or threatens to cease to carry on its business or substantially the whole of its business;

- n) is struck off the Register of Companies or the Register of Industrial and Provident Societies or is dissolved (as the case may be);
 - o) is in breach of any provision of Clause 25 (Assignment, Transfer and Subcontracting etc.) or is in breach of any conditions imposed under clause 25.1
 - p) In the event that the Provider or any of its Staff shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing forbearing to do or having done or forborne to do any action in relation to the obtaining of this Order for Specific Services or any other agreement with the Commissioner or for showing or forbearing to show favour or disfavour to any person in relation to this Order for Specific Services or any other agreement with the Commissioner (or one of them)
 - q) In the event of a breach of paragraph 1.1 of schedule 6; or
 - r) In the event that the Provider or any of its Staff commits a fraudulent act in relation to the Framework Agreement or an Order For Services or any other contract with the Commissioner;
 - s) then the Commissioner may without prejudice to any accrued rights or remedies under this Agreement terminate the Provider's employment under this Agreement by notice in writing having immediate effect.
- 26.3 Where a Notice of Failure to Remedy Default has been issued the Commissioner may, without prejudice to any other rights or remedies it may have under this Order for Specific Services, consult with the Provider and the, without terminating the whole of this Order for Specific Services, terminate this Order for Specific Services in respect of the affected part of the Specific Service with immediate effect, whereupon a corresponding reduction in the Contract Payment shall be paid, and thereafter the Commissioner may supply or procure a third party to supply such part of the Specific Services
- 26.4 If the Provider's employment is terminated as provided in Clauses 5.5, 5.6, 26.1 or 26.2 the Commissioner shall cease to be under any obligation to make further payment until the costs loss and/or damage resulting from or arising out of the termination of the Provider's employment shall have been calculated and shall then be under any obligation only if such calculation shows a sum or sums properly due to the Provider.
- 26.5 Upon any proper termination of this Agreement howsoever arising the Commissioner shall not be liable to the Provider for any loss of profit loss of agreements or other losses or expenses arising out of as a result of or in connection with the termination.
- 26.6 If as a result of termination under Clause 26.2 and the Commissioner procures any terminated Specific Services from an alternate provider and the cost of doing so exceeds the amount that otherwise would have been payable to the Provider for providing the same service then the Commissioner acting reasonably, shall be entitled to recover from the Provider (in addition to any other sums payable by the Provider in respect of that termination) the excess cost and all reasonable related professional and administrative fees subject to a maximum period of six months following termination.

27. TERMINATION BY THE PROVIDER

- 27.1 The Provider shall be entitled to terminate this Agreement where it decides at any time it is unable or unwilling to comply with the terms of this Agreement.

27.2 Under Clause 27.1 the Provider shall give six months' written notice to the Commissioner and shall until the expiry of that notice continue to carry out its obligations under this Agreement.

28. SUBSTITUTED SUPPLY OF PART

If the Commissioner exercises any of its rights under clause 9.1 or 26.3 the Provider shall indemnify the Commissioner for any costs reasonably incurred (including reasonable professional and administrative costs) in respect of the supply of any part of the Specific Services by Commissioner or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Specific Services and provided that the Commissioner uses reasonable endeavours to mitigate any additional expenditure in obtaining replacement services.

29. DISPUTE RESOLUTION

29.1 If any disagreement arises between the Parties on any matter concerning this Agreement, which does not appear to constitute a breach of this Agreement and cannot be resolved through routine liaison or review, then either Party may submit a formal statement in writing to the other setting out the details of the disagreement and any action requested to resolve it.

29.2 A formal statement shall be deemed to be submitted on the date it is served upon the Commissioner's Strategic Director Adult Social Care, Health and Housing or the Provider.

29.3 If the cause of the disagreement is not resolved to the satisfaction of the Party submitting it within three months from the date of submission of the formal statement, then the Parties shall submit the dispute to an agreed neutral adviser. If it is not possible to agree upon the appointment of a neutral adviser either Party to the dispute may request the Centre for Dispute Resolution to appoint a neutral adviser.

29.4 The Parties shall with the assistance of the neutral adviser seek to resolve the dispute by using an alternative dispute resolution (ADR) procedure established by the neutral adviser.

29.5. In the event that the Parties are unable to accept any recommendations made by the neutral adviser or otherwise reach agreement as to resolution of the dispute then either Party may follow the termination provisions in this Agreement.

30. WHOLE AGREEMENT

Each Party acknowledges that this Agreement contains the whole agreement between the Parties relating to the subject matter hereof and it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

31. NOTICES

Any notices to be served on either of the Parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the relevant Party shown at the head of this Agreement or by facsimile transmission or by electronic mail or by telex to the email address or telephone number previously notified in writing by the receiving Party and shall be deemed to have been received by the address within 72 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail or by telex to the correct facsimile number or electronic mail address of the addressee (with correct answer back).

32. HEADINGS AND INTERPRETATION

- 32.1 This Agreement shall be governed by English Law.
- 32.2 The headings in this Agreement are for ease of reference only and do not affect its interpretation.
- 32.3 Any capitalised terms and phrases not otherwise defined are to bear the meanings ascribed to them in the Framework Agreement or (as the case may be) refer to documents or sections of documents that are listed in the Framework Agreement.
- 32.4 Where the context so admits or requires a reference to one gender shall include a reference to the other genders the singular includes the plural and vice versa and a person includes a reference to an individual firm partnership company corporation or unincorporated association.
- 32.5 Any reference to an Act of Parliament or to any other legislative instrument or similar shall include a reference to any consolidation amendment or re-enactment of it in force for the time being. Any reference to any policy or other document setting out procedures to be followed by the Provider includes any amendment, modification or consolidation made by the Commissioner from time to time.

33. GENERAL RIGHTS AND OBLIGATIONS

- 33.1 Any forbearance by the Commissioner in relation to any breach or Default in discharging any of the provisions of this Agreement by the Provider shall not be construed as a waiver of that or any subsequent breach or Default. Any waiver by the Commissioner shall only be effective if in writing and signed by an authorised signatory and shall only apply to the breach or Default specified in such written waiver and shall not constitute a waiver of any rights of the Commissioner in relation to any subsequent breach or Default.
- 33.2 The Provider shall comply with all obligations to provide information and data to the Commissioner set out in Schedule 4. Subject to Clause 16 at the Commissioner's reasonable request the Provider shall provide the Commissioner with such additional information and data as the Commissioner may reasonably require to enable the Commissioner to prepare the necessary documentation to re-tender the Specific Services or appoint another person in place of the Provider.
- 33.3 Insofar as the Provider is lawfully able so to do the Provider shall provide the Commissioner with such information as is necessary for the Commissioner either to comply with its obligations under the TUPE Regulations and the Acquired Rights Directive or to enable any successor provider of the Specific Services (in whole or part) so to do. The Provider shall supply such information to the Commissioner within such reasonable period as the Commissioner may in writing require. The Provider will fully and promptly indemnify and hold harmless the Commissioner against all losses damages costs expense liabilities claims or proceedings suffered on the part of the Commissioner as a result of any negligence or Default on the part of the Provider in carrying out its obligations under this Clause or any breach of any statutory duty or obligation on its part or anything done or omitted to be done in relation to the employment of any employee or former employee of the Provider or its agents.
- 33.4 Termination of this Agreement howsoever arising shall be without prejudice to the rights and remedies of either Party in relation to any negligence omission or default of the other prior to termination.
- 33.5 The provisions of this Agreement shall continue to bind each Party insofar as and for as long as may be necessary to give effect to their respective rights and obligations
- 33.6 Termination of this Order for Specific Services shall not affect the continuing rights remedies or obligations of the Parties under Clause 5 (Payment Terms), 37 (Copyright), 16 (Data Protection and Confidentiality), 19 (Freedom of Information) 26.4 – 26.6 inclusive (Termination), 24 (Prohibited Acts, 15

(Audit and Inspection of Documents), 33.7 (as to cumulative remedies), 36 (The Contracts (Rights of Third Parties Act 1999) and 33.1 (as to governing Law)

33.7 Any remedy or right exercisable by the Commissioner in relation to a Default shall be in addition to and shall be capable of being exercised without prejudice to all other rights and remedies available to it.

34. ENVIRONMENTAL POLICIES AND LEGISLATION

34.1 The Provider shall comply with its statutory obligations under Environmental Legislation and for the purposes of this Agreement 'Environmental Legislation' means the Environmental Protection Act 1990 the Water Resources Act 1991 the Clean Air Act 1993, the Environment Act 1995 and any regulations, directions or guidance having statutory effect pursuant to the same or any EU directive having effect which makes provision for the control of pollution, the control of hazardous substances land use control and wild life and countryside protection.

34.2 In the event of any finding by any court or tribunal or other judicial or quasi-judicial body being made against the Provider in respect of any breach of environmental legislation the Provider shall take appropriate steps to abate such a breach and prevent its repetition.

34.3 The Provider shall upon request provide the Commissioner with details of any steps taken under Clause 34.2.

34.4 The Provider shall within 3 months of the date of this Agreement adopt a policy to the satisfaction of the Commissioner to comply with the Commissioner's Environmental Policy (http://www.leicester.gov.uk/your-council-Specific_Services_/ep/the-environment/environmental-policies-action/environmental-policy) and shall thereafter maintain such a policy taking account as far as reasonably practical of any amendment to that policy from time to time made by the Commissioner and any revisions or amendments to any national guidelines or any nationally recognised procedures or lists which relate to the minimising of environmental emergency.

34.5 The Provider shall observe as far as possible the policy from time to time enforced by virtue of Clause 34.4.

34.6 The Provider shall provide such information as the Commissioner may reasonably request for the purposes of assessing the Provider's compliance with Clauses 34.4 and 34.5 as far as is relevant including examples of documents advertisements or other literature.

34.7 The Provider shall institute and maintain an environmental management system in accordance with the procedures targets and other specifications mentioned in and shall provide and perform the Specific Services in all respects in accordance with the Environmental Statement (where the words "Environmental Statement" mean the environmental method statement and any other information or representations supplied with incorporated into or presented within the Provider's tender or submission to the Commissioner in respect of this Agreement) and operate such environmental management system as referred to in this Clause 34.7 during the operational phase that complies with the Commissioner's EMAS environmental objectives and targets (a copy of which is available from the Commissioner on request) and shall furnish such detailed information as the Commissioner may reasonably require in regard thereto and without prejudice to the generality of the foregoing shall accurately complete and submit to the Commissioner at such times as the Commissioner shall reasonably direct (but so that the Provider shall not be required to submit more than one return in any one period of 12 months) performance returns in the form to be directed by the Commissioner (acting reasonably). The Provider shall also permit the Commissioner (acting reasonably) to inspect the system referred to in this paragraph for compliance with the requirements of this paragraph.

35 PUBLIC INTEREST DISCLOSURE ACT 1998 (WHISTLEBLOWING)

35.1 The Provider shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the Provider) and shall establish and where necessary update from time to time a procedure for its Staff encouraging them to report to the Provider any incidents of malpractice within the Provider or the Commissioner. In this context “malpractice” shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration.

35.2 The Provider shall notify the Commissioner in writing if any person invokes the whistle-blowing malpractice procedure pursuant to Clause 35.1 and shall provide details of the alleged malpractice. Without prejudice to any other rights and remedies which the Commissioner may have under this Agreement the Provider shall comply with the Commissioner’s reasonable requirements in dealing with the alleged malpractice where such malpractice affects the Commissioner.

36 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Save for the rights of any Replacement Provider set out in Schedule 4 a person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

37 COPYRIGHT

All copyright created by any works carried out under this Agreement by the Provider shall rest in the Commissioner.

38 FORCE MAJEURE

38.1 This Agreement shall be suspended for any period during which either Party reasonably believes the Parties are prevented or hindered from complying with their obligations under any part of this Agreement by any cause beyond their reasonable control including but not limited to strikes war civil disorder and natural disasters.

38.2 If such period of suspension exceeds 90 days then either Party may upon giving written notice to the other require that this Agreement be terminated forthwith upon which all money due to the Provider shall be paid immediately.

39 BUSINESS CONTINUITY

The Provider must maintain a business continuity plan relating to the protection and continuity of the Services and the operation of the Provider, such plan to be reviewed annually and made available to the Commissioner on request. The Provider shall within the plan address any risks relevant to service and business continuity reasonably identified from time to time by the Commissioner.

APPENDIX 3

CHARGING STRUCTURE

5.2 Pricing Schedule.

APPENDIX 4

GUIDELINES FOR THE SUSPENSION OF SERVICES

APPENDIX 5

PROCEDURES LEADING TO THE AWARD OF A CALL OFF CONTRACT

5.1 Where the Commissioner considers that it may or will require the performance of Specific Services the selection of a Preferred Provider shall subject to Clause 11 (Suspension) and Clause 4.3 (Providers that do not have current CQC Registration) be made by one of the following procedures.

5.2 Procedure 1 – Call off by Service User and/or Carer preference

5.2.1 The following procedure shall be used in the first instance where there is a proposal to provide new Specific Services to a Service User and the terms of the Order for Services to be awarded (including Service and Price) are capable of being precisely ascertained by the application of the terms laid down in this Framework. In other cases Procedures 2 or 3 shall be used.

5.2.2 The Service User may express a preference from the Framework List from Ranked Providers who in the opinion of the Commissioner are capable of performing the Specific Services.

5.2.3 Service Users and any Carers can express their choice of Provider under paragraph 5.2.2 above using such criteria as they may determine in their sole discretion and without being required to express what those criteria are.

5.2.4 If a preference has been expressed by the Service Users and Carers in accordance with paragraph 5.2.3, the Commissioner shall contact the Provider to assess whether it has capacity to take on the Specific Services including suitable resources, to provide the Services. It shall do this by issuing the Preferred Provider with a Package Briefing.

5.2.5 If the Commissioner decides, under paragraph 5.2.4 above that the Provider is not able to provide the Specific Services or if the Provider does not wish to be selected to provide the Specific Services then the procedures in paragraphs 5.2.2, 5.2.3 (where it applies) and 5.2.4 above shall be repeated until a Provider has been selected or, if a Provider cannot be selected through Procedure 1, Procedure 2 or 3 shall be followed.

5 Procedure 2 – Call off from the List of Providers

5.3.1 This procedure shall be used where there is a proposal to provide Specific Services to a single Service User or to Service Users or Group Services and the terms of the Order for Services to be awarded (including Service and Price) are capable of being precisely ascertained by the application of the terms laid down in this Framework, and where the Service User/s do/es not wish to be directly involved in the selection process so that Procedure 1 is not applicable.

5.3.2 The Ranked Providers will be initially created on the basis of the highest score overall (the most economically advantageous bid) achieved at tender stage amongst the Providers selected to form the Framework, being ranked “1” and so forth, but subject always to the provisions on suspension under Clause 11 of the Framework Agreement and the requirements as to CQC registration under Clause 4.3 of the Framework Agreement.

5.3.3 The Commissioner, by the most appropriate means, will issue a Package Briefing to the Ranked Providers as ascertained under paragraph 5.3.2 above and invite them to submit a response, by the date and time and in the manner (electronically or by facsimile) stated in the invitation, confirming that they have the capacity to take on the Specific Services described in the Package Briefing and wish to express an interest.

5.3.4 The Provider agrees and acknowledges that this procedure is designed to place Packages promptly so the response date and time may be expressed in as little as 2 hours or sooner in the case of hospital discharge or emergency. The date and time fixed by the Commissioner will take into account factors such as the complexity of the subject matter the time needed to submit tenders

and (if outside usual office hours) the time of day that an invitation issued by facsimile or e mail given).

5.3.5 Any invitation under this paragraph may be issued in accordance with Clause 14 of the Framework Agreement (Notices) or by email to the Provider at

4	Provider	5	Provider email address
6		7	

invitations given by email shall be deemed to have been served successfully five minutes after the date and time transmission recorded by the Commissioners email system.

5.3.6 The response to an invitation must comprise;

- (i) Confirmation that the response is intended to be an offer to carry out the Package;
- (ii) Confirmation that the Provider has the capacity to take on the Package and can meet the Matching Requirements;
- (iii) The Matching Proposal: This will comprise a fully completed response to the Matching Requirements and must contain, against each requirement, the Providers proposal either in the terms that the requirement will be provided, or cannot be provided. In the latter case (but without prejudice to paragraph 5.3.7 (i) below the Provider may propose its nearest offer;
- (iv) Confirmation that the information provided by the Provider in response to the ITT is true and accurate and holds good for the Package;
- (v) Confirmation that Prices will be applied from form the Charging Structure set out in Appendix 3 of the Framework Agreement.

5.3.7 The Commissioner will evaluate each response on the following basis,

- (i) the Matching Proposal, on a pass/fail basis;
- (ii) the confirmations required under limbs (i), (ii) and (v) above, on a compliance basis (i.e. that the confirmation has been given with no departures, or it has not)

- (iii) the confirmation required under limb (iv) above on a compliance basis (i.e. that the confirmation has been given or has been given with no material change, or it has not)
 - (iv) in the event of more than one compliant response that is a "pass" under limb (i) then the Commissioner will resolve the tie by reference to the order of Ranked Providers it has prepared under paragraph 5.3.2 above.
- 5.3.8 The Commissioner may use the process described in 5.3.3 until a Preferred Provider is selected and an Order for Service awarded.
- 5.3.9 A Provider may decline to submit a response or issue to the Commissioner an advisory note indicating that, on this occasion, it does not wish to submit a response.
- 5.3.10 Providers may be required to attend an interview, by the Commissioner, as part of the evaluation process. The matters to be covered at interview will be limited to any or all of the criteria set out at paragraph 5.3.6 above.
- 5.3.11 The Commissioner does not bind itself to accept the best matched offer, or any offer at all or to award the Package at all.

5.4 Procedure 3 - Call off following Mini Tender Process

- 5.4.1 This procedure shall be used when the Commissioner wishes to call off a Package, and where the Commissioner has concluded that neither Procedure 1 or Procedure 2 is applicable, such as in cases where not all the terms are laid down by virtue of the Framework Agreement which may include more precisely formulated or other terms in order to reflect their particular circumstances,
- 5.4.2 The Commissioner shall prepare a List of Providers and consult in writing all Eligible Providers capable of performing the Specific Services and invite them within a time limit specified by the Commissioner to submit a tender in response to a Package Briefing.
- 5.4.3 The time limit set under Clause 5.4.1 above shall take account of the complexity of the subject matter of the Specific Services being procured and the time needed to send in tenders which should be no longer than 14 days or as otherwise determined in exceptional circumstances by the Commissioner.

- 5.4.4 Without prejudice to the generality of Clause 18 (Confidentiality) the Commissioner shall keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
- 5.4.5 The Commissioner will appoint an evaluation panel (the “Evaluation Panel”) one of whom will be appointed as Chairperson of the Evaluation Panel (“Chairperson”) and who shall be an officer of the Commissioner authorised to award an Order for Services. Service Users, Carers and Service User Representatives may be members of the Evaluation Panel. The Commissioner’s aim will be to use the same personnel throughout the Mini Tender Process within the Evaluation Panel but no commitment is given in this regard.
- 5.4.6 Members of the Evaluation Panel will assess the information provided by tenderers in response to the award criteria set out in the Mini Tender Documents.
- 5.4.7 The Evaluation Panel will either recommend a Preferred Provider on the basis of the responses to the invitation to tender in accordance with the criteria set out in the Mini Tender Documents or shortlist up to five suitable Eligible Providers from the written submissions received from tenderers to put forward to Stage 2 of the Mini Tender Process. The decision of the Chairperson of the Evaluation Panel will be final as to which Eligible Providers are shortlisted at Stage 1.
- 5.4.8 Eligible Providers who are invited to Stage 2 of the Mini Tender Process may be required to give a presentation, and proposed staff may be interviewed by the Commissioner, Services Users and Carers as part of the evaluation process.
- 5.4.9 Where a response to a Mini Tender is considered to be fundamentally unacceptable on a key issue then regardless of its other merits that tender may be rejected. The Commissioner does not bind itself to accept the lowest or any Mini Tender submission and unless a tenderer states that a partial award will

not be acceptable then the Commissioner shall be entitled to accept a Mini Tender in part, as long as the basis for a partial award is set out in the invitation to submit a mini tender.

5.4.10 Where there are any discrepancies or disputes regarding any part of a Mini Tender Process then the Chairperson of the Evaluation Panel will attempt to resolve discrepancies or disputes. Where the Chairperson of the Evaluation Panel has concerns about settling any discrepancies or disputes then he may escalate them to a senior officer of the Commissioner to resolve.

4.4.11 The Commissioner reserves the right not to award a Package or to re-commence a process, at its discretion.

5.5 Where the Commissioner decides to issue an Order for Services to an Eligible Provider following any of the above procedures then it shall inform that Eligible Provider of its decision in writing and that Eligible Provider will then become the Preferred Provider. Where the award follows a Mini Tender Process then it will be subject to a Standstill Period during which time objections or representations may be made to the proposed award by Eligible Providers (The Standstill Period will be at least 10 days where electronic communication is utilised and at least 15 days where other forms of communication are utilised). If no court proceedings have been issued and served then the Commissioner will confirm the award in writing to the Preferred Provider.

APPENDIX 6

CONTINUOUS IMPROVEMENT TARGETS

Please refer to the ITT submission, Part Five: From of Tender, 5.3 Method Statements, Section E – Continuous Improvement.

APPENDIX 7

QUALITY ASSURANCE FRAMEWORK

Please refer to the Appendix B: Service Specification

APPENDIX 8

Annual Self Assessment Certificate

[To be completed by an executive director of the Provider]

In accordance with the Framework Agreement entered into on [date] between [Provider name] and Leicester City Council, I confirm the following:

I have undertaken the Provider Self- Assessment as required under the Framework Agreement.

This self assessment covers the period [from] [to]

[Provider name] has in place suitable systems for inaccurately identifying and recording the evidence required to undertake the self-assessment.

I have tested the systems for identifying and reporting on Framework activity and have found them to be operating accurately.

I certify that the above particulars are correct and present an accurate picture in accordance with the Leicester City Council: Domiciliary Care Quality Assurance Framework [20XX].

Name
Signed
Position
Date

APPENDIX 9

NOT USED

APPENDIX 10

SUSTAINABILITY PLAN

Please refer to the ITT submission, Part Five: From of Tender, 5.3 Method Statements, Section F – Sustainability.

SCHEDULE 1

Invoicing Requirements

Electronic Care Monitoring Output

The processes and file requirements described in this Schedule must be complied with. It enables the Commissioner to monitor and pay for the work done by Providers. Failure to comply will cause delay of invoice payment or no payment at all.

File Layout requirements

The file layout requirements are subject to change at one month's notice by The Commissioner. In order to process payments in respect of care provided to Service Users, The Commissioner expects Providers to submit details electronically from their individual Care Monitoring systems. Initially the data will be expected to be transmitted by email to a generic email address, but options for secure exchange of data are being investigated. Providers will be kept informed of the progress on this.

The assumptions throughout this document are:-

- the charges to Service Users are based on charges being applied with a 15¹ minute minimum charge per user and each minute thereafter
- the payments to Providers are based on payments being applied in bands with a 15 minute per visit minimum payment
- the charges, invoice detail, invoice summary and master file will represent the same period
- the charges, invoice detail, invoice summary and master file will all be received by THE COMMISSIONER at the same time
- the charges, invoice detail, invoice summary and master file will be based on week ending dates
- week ending dates will always be a Sunday

The files will be used by the Commissioner to import into their Payments and Charging System (PACS) in order to cross check the data with their primary system, CareFirst, and produce reports to assist with management of the contracts.

The requirements shown may change over the term of the contract as the Commissioner changes computer systems and processes.

File Delivery from Care Providers' Electronic Care Monitoring (ECM) Systems

Six electronic files will be required from Providers every four weeks. The four-weekly period will be the same for all Providers. Files will need to be provided in MS Excel format and compatible with Excel 2000. All Providers will need an ECM system.

The **charges** file will be required every four weeks. This represents the actual time (in minutes) that each Service User has received care, over the four week period, broken down by week, from the sum of the actual durations for each visit. Where there is more than one carer at a visit, the total time for all carers should be included. This file will enable THE COMMISSIONER to charge the Service User and will be supplied by each Provider for all of their Service Users. The format of the filename will be HC508_YYYYMMDD_CHARGES.XLS, where HC508 is the Provider ID and YYYYMMDD is the final weekending date for the period in universal format.

¹ Whilst the Council will be using a minimum of 30 minute visits in future there are existing packages with 15 minute calls that will change once reviewed.

See **Annex 1** for the layout required.

The **invoice detail** file will be required every four weeks. This represents the total time that has been spent providing the Service User with care over the four week period, broken down by week. The total time will be the sum of the banded durations of the visits by each carer. The format of the filename will be HC508_YYYYMMDD_INVDETAIL.XLS where HC508 is the Provider ID and YYYYMMDD is the final weekending date for the period in universal format.

See **Annex 2** for the layout required

The **invoice summary** file will also be required to be sent every four weeks. This is the actual invoice which will be required for payment purposes and will replace the need to send a hard copy. The company header should be on the invoice for audit purposes. The format of the filename will be HC508_YYYYMMDD_INVSUMMARY.PDF where HC508 is the Provider ID and YYYYMMDD is the final weekending date for the period in universal format.

See **Annex 3** for the layout required.

The Actual Hours report will be required every week. It must follow the details in **Annex 4** exactly.

The **master** file will be required every four weeks. This provides supplementary information per user, over the four week period, broken down by week and visit date. The file should include a separate line for each carer, for each visit. This will be used to provide reports. The format of the filename will be HC508_YYYYMMDD_MASTER.XLS where HC508 is the Provider ID and YYYYMMDD is the final weekending date for the period in universal format.

See **Annex 5** for the layout required.

The **performance standard** report will be required every four weeks. This provides key performance data against which Providers will be monitored.

See **annex 6** for layout required.

The **continuity of support report** will be required every four weeks. The Council will set appropriate standards for acceptable numbers of different care workers in the period *and the standard will be notified to Providers should it change. The standard is currently no more than 4 carers between 14-42 visits in any 2 weeks when a single carer is required (and multipliers thereafter).*

Providers will list below the performance data the names and the Council's ID for each Service User where the standard was not met and in which particular 2 week period ending this occurred.

See **Annex 7** for the layout required

Import Process into PACS

THE COMMISSIONER will be automating the process of importing the files received from Providers. The import process will only work if all four files are received – charges, invoice detail, invoice summary and master file.

Once all four file types for the four week period have been imported, if a Provider needs to amend any of the data they will need to resend all of the files for that period.

It will not be possible to change incorrect data on PACS once any record in the four week period has been reconciled, authorised or validated. If the Provider decides that they have submitted incorrect

data, the method to correct the information will be to make the appropriate adjustment within the data sent for the following four week period.

It is assumed that the Provider will ensure that the files sent are reconciled and balanced to each other so that the data is consistent through the four, four weekly files. The Council recommends that Providers prepare each previous week's data each week and not try to check their 4 weekly report at the end of the 4 weekly period, as all documents are required to be sent to the council **within 7 days** of the end of a four week period. The four weekly periods will be clarified by schedules issued each year by the Council.

If you supply services for more than one of the Contract Lots in the relevant period you must supply separate files for all reports except for "for "Annex 4 — Actual Hours Report", which must contain all information on one report.

Import File Specifications

The following will be MS Excel 2000 compatible format. There will be a separate Invoice Summary file in .pdf format.

Charges File (4 - weekly) – Separate file per Lot provided

<i>Field</i>	<i>Type</i>	<i>Max Length</i>
Provider ID	Character	10
Provider Name	Character	50
Weekending Date	Date	10 (DD/MM/YYYY) (for each week within the four week period)
User ID	Character	10
First Names	Character	50
Surname	Character	50
Minutes	Integer	

Invoice Detail File (4-weekly payment file 1) – Separate file per Lot provided

This is the file PACS will use for validation.

<i>Field</i>	<i>Type</i>	<i>Max Length</i>
Provider ID	Character	10
Provider Name	Character	50
Invoice ID	Character	10
Weekending Date	Date	10 (DD/MM/YYYY) (for each week within the four week period)
User ID	Character	10
First Names	Character	50
Surname	Character	50
1 st line of address	Character	50
Weekly Charges	Decimal	4.2

Master (Service User Summary) File (4-weekly payment file 2) - Separate file per Lot provided

This file is used for service delivery reports.

<i>Field</i>	<i>Type</i>	<i>Max Length</i>
Provider ID	Character	10
Weekending Date	Date	10 (DD/MM/YYYY) (for each week within the four week period)
User ID	Character	10
Visit Date	Date	10 (DD/MM/YYYY)

Critical visit	Yes/No	3
Carer ID	Text	15
Planned arrival time	Time	(hh:mm)
Minutes (early -; late+)	Integer	(Minutes)
Planned Duration	Integer	(Minutes)
Arrival	Character	5
Departure	Character	5
Actual Duration	Integer	(Minutes)
Banded Duration	Integer	(Minutes)
Hourly Rate	Decimal	3.2
Banded Visit Charge	Decimal	3.2
Comments	Character	255 (for over/under charge)
Manual Adjustment Reason	Character	50 - ECM pick list. The Service will provide details of the acceptable reasons. The same reasons will be used by all ECMs.

Continuity of Support Report

Data Fields

For each 2 week period (of which there will be four in each four-week period):

Field	Type	Max length
Provider ID	Character	10
Provider name	Character	50
Period week ending	date	10 DD/MM/YYYY
Number of cases	Integer	long
Number of cases not meeting standard	Integer	

At row 10 onwards

Field	Type	Max length
LCC ID	Character	
Last Name	Character	50
First Name	Character	50
No of care workers in 2 week period	Integer	
2-week period end in which breach occurred	Date	10 (DD/MM/YYYY)

Performance Standard Report

The performance standard report will be required every four weeks. This provides key performance data against which Providers will be monitored.

Data Fields

Field	Type	Max length
Provider ID	Character	10
Provider	Character	50

W/E	date	10 DD/MM/YYYY
Total No of Planned Visits	integer	
Total Time (Hours)	decimal	
Total No of Actual Visits	integer	
Total Time (Hours)	decimal	
Total No Missed Visits	integer	
% of Missed Visits	percentage	7 %###.##
Total No Visits Where no Retrospective Entry	integer	
% of Visits Where no Retrospective Entry	percentage	7 %###.##
Total No of Critical Visits	integer	
Total No of Critical Visits Met	integer	
Total No of Early Critical Visits	integer	
Total No of Late Critical Visits	integer	
% of Critical Visits Met	percentage	7 %###.##
Total No of Standard Visits	integer	
Total No of Early Standard Visits	integer	
Total No of Late Standard Visits	integer	
Total No of Standard Visits Met	integer	
% of Standard Visits Met	percentage	7 %###.##

Contract Payment

The Contract Payment shall be as follows:-

$$\Sigma = ((HC + RP + AVP + PT) - (IVP) - (SFD) - (OP) - (RD)) \pm CA$$

Where

- HC is the amount calculated by applying the Price to the Contract Hours as ascertained from the Charges File
- RP is any Retainer Payment agreed for the period of care covered by the invoice under Clause 5.9
- IVP is, where the Commissioner proposes a variation under Clause 5.5.2(ii) and the necessary adjustment to the Contract Payment are not agreed, an adjustment under clause 5.5.3 reflecting the Revised Hours plus 50% of the Contract Hours in dispute.
- AVP is any shortfall now ascertained and falling due to be paid to the Provider in accordance with Clause 5.5.3
- PT is any termination payment falling due to be paid to the Provider under Clause 5.5.5 (1) or (iv) or 5.6 and which has either been agreed or has been ascertained in respect of the period of care covered by the invoice
- SFD is the sum of the Service Failure Deductions accounted for in the Contract Period
- OP is any overpayment falling due to be accounted for in accordance with Clause 5.4.1 or Clause 5.5.3
- CA means any adjustment agreed or determined to be made in accordance with variations under clauses 5.5.1, 5.5.2.ii and 5.5.5
- RD means the sum of Reporting Deductions accounted for in the Contract Period

All items shall carry interest where it is payable under the specific contract condition.

Service Failure Deduction for Missed Visits

Legal/94456 Lot 1
 Generic Domiciliary Support Services
 Provider

In this Paragraph

“Logged Time” means the time the Missed Visit was logged by (or should have been logged by the Provider if it were complying with its obligations under this Order for Specific Services) as shown on the log of Missed Visits required under Clause [8]

“Rectification Period” means the period in which the Provider shall rectify fully a breach of the requirements specified in the Particulars, as set out in the table below:-

“Failure” means that there is a Missed Visit as at the end of the Rectification Period

“Excusing Cause” means:-

- (a) That the Specific User was away from home;
- (b) That a medical emergency was occurring such that the Support Worker was expressly instructed not to enter the Service User Address, or not to commence the Services by an emergency service provider who has authority to give such instruction, for so long as that instruction lasts;
- (c) That the Service User has died;
- (d) Where the Service User, or someone occupying the Service User Address refused entry to the Support Worker or displays abusive threatening or violent behaviours unacceptable to the Support Work acting reasonably and taking into account the known mental health of the Service User
- (e) that the Failure was caused by the Service User, or someone acting on their behalf, or the Commissioner, such that the Support Worker could not by reasonable endeavours access the Service User Address or commence the delivery of the Specific Services within the Rectification Period or at all

“Reporting Failure” means a failure to record the Logged Time or a Missed Visit should have been reported by the Provider in the report required by paragraph xx of this Schedule, if it were complying with its obligations under this Order for Specific Services

Time Critical	15 minutes from specified start time
Standard	30 minutes from specified start time
No specific time (day is specified)	2 hours from Logged Time

For each Failure that occurs within a Contract Period, in excess of the Maximum Length shown in the table set out above under “Performance Standard Report” the Provider shall incur a Service Failure Deduction of £5 for Critical Visits and £3.50p for Standard Visits

For each Reporting Failure in respect of a Contract Period the Provider shall incur a Reporting Deduction of £1.75p such deduction being accounted for in the following Payment Period

No Deduction may be made if and to the extent that the relevant breach is a direct result of an Excusing Cause

The sum of any Service Failure Deduction and reporting deductions in any one Contract Period shall not exceed [30%] of the Contract Payment (disregarding this cap)

Annex 1 – Charges File Layout

Provider ID	Provider Name	Weekending Date	User ID	First Names	Surname	Minutes
HC508	Name of Provider	04/01/2009	12345	Joe	Smith	240
HC508	Name of Provider	11/01/2009	12345	Joe	Smith	245
HC508	Name of Provider	18/01/2009	12345	Joe	Smith	240
HC508	Name of Provider	25/01/2009	12345	Joe	Smith	210
HC508	Name of Provider	04/01/2009	23456	Anne	Brown	105
HC508	Name of Provider	11/01/2009	23456	Anne	Brown	105
HC508	Name of Provider	18/01/2009	23456	Anne	Brown	0
HC508	Name of Provider	25/01/2009	23456	Anne	Brown	105
HC508	Name of Provider	04/01/2009	24567	Albert	Bloggs	25
HC508	Name of Provider	11/01/2009	24567	Albert	Bloggs	25
HC508	Name of Provider	18/01/2009	24567	Albert	Bloggs	25
HC508	Name of Provider	25/01/2009	24567	Albert	Bloggs	25

Annex 2 – Invoice Detail File Layout

Provider ID	Provider Name	Invoice ID	Weekending Date	User ID	First Names	Surname	1st Line address	Weekly Charges
HC508	Name of Provider	xyz001	04/01/2009	12345	Joe	Smith	1 Acacia Avenue	24.00
HC508	Name of Provider	xyz001	11/01/2009	12345	Joe	Smith	1 Acacia Avenue	24.00
HC508	Name of Provider	xyz001	18/01/2009	12345	Joe	Smith	1 Acacia Avenue	24.00
HC508	Name of Provider	xyz001	25/01/2009	12345	Joe	Smith	1 Acacia Avenue	24.00
HC508	Name of Provider	xyz001	04/01/2009	23456	Anne	Brown	2 Bramley Bank	12.00
HC508	Name of Provider	xyz001	11/01/2009	23456	Anne	Brown	2 Bramley Bank	12.00
HC508	Name of Provider	xyz001	18/01/2009	23456	Anne	Brown	2 Bramley Bank	0.00
HC508	Name of Provider	xyz001	25/01/2009	23456	Anne	Brown	2 Bramley Bank	12.00
HC508	Name of Provider	xyz001	04/01/2009	24567	Albert	Bloggs	3 Carlisle Close	3.00
HC508	Name of Provider	xyz001	11/01/2009	24567	Albert	Bloggs	3 Carlisle Close	3.00
HC508	Name of Provider	xyz001	18/01/2009	24567	Albert	Bloggs	3 Carlisle Close	3.00
HC508	Name of Provider	xyz001	25/01/2009	24567	Albert	Bloggs	3 Carlisle Close	3.00

Annex 3 – Invoice Summary File Layout

Insert Company Name & Address

Contact details

Invoice No
Invoice
Date dd/mm/yy
Account
No

To:

Leicester City Council
Payments Section, Adults &
Housing

5th Floor B Block
New Walk Centre
Welford Place
Leicester
LE1 6ZG

Period Invoiced:

From
dd/mm/yyyy
Decimal

To
dd/mm/yyyy
Decimal

Amount £

Annex 4 - Actual Hours Report

This report must be provided as an Excel spreadsheet exactly as follows:

	A	B	C	D	E
1	<i>Provider ID</i>	<i>Provider Name</i>			
2					
3					
4					
5					
6	<i>CF ID's</i>	<i>Surname</i>	<i>First Name</i>		<i>w /e date</i>
7					
8					
9					
10	<i>first ID</i>				

An example would be:

	A	B	C	D	E
1	HC911	Leicester Home Care			
2					
3					
4					
5					
6	CF ID's	Surname	First Name		11-01-2009
7					
8					
9					
10	12345	JOE	SMITH		3.00
11	23456	ANNE	BROWN		8.50
12	34567	ALBERT	BLOGGS		7.25
13	45678	ANNE	OTHER		3.00
14	56789	DAWN	JONES		9.25
15	67891	PRAVIN	PATEL		5.75
16	78912	DAVID	BAKER		8.25
17	89123	JENNY	DAVIDSON		12.00

<i>Field</i>	<i>Type</i>	<i>Max Length</i>
Provider ID	Character	10
Provider Name	Character	50
CF ID's	Character	10
Surname	Character	50
W /e date	Date	10 (DD/MM/YYYY)
Hours	Decimal	4.2

Provider Guide for Actual Hours Reports

1. Report to cover one week, Monday to Sunday, and dated as a week-ending date.
2. Report should be sent to nonres.charging@leicester.gov.uk by the Wednesday following the week-ending date of that report.
3. Each weekly report to be sent as the **First sheet** of a new excel workbook, as per the template supplied.
4. Template Details:
 - Week-ending date must be in cell **E6** in excel format e.g. **dd-mm-yyyy**.
 - The First Care First number must be in cell **A10**
 - First hours record to be in cell **E10**
 - First surname in cell B10, and First initial/first-name in cell C10 for reference only: in case there is a query. (the system only reads the CF number, not the names).
 - Hours to be recorded as a number of hours in 0.25 increments i.e. 1.25; 1.50; 1.75; 2.00. The minimum being 0.5 hours.
 - Hours to be recorded as the total number of hours for that week.
 - Hours to be recorded as values, not derived from formulae.
 - Totals should not be shown
5. Only actual delivered hours should be on the report. An actual delivered hour is defined as: **'the home has been entered, and the assigned tasks completed'**
6. Where two or more Care Workers are involved in the visit, are to be recorded as the total number of hours for both carers.
7. The hours figure should be the same as the result of dividing the number of minutes in the ECM Charges file by 60 and rounding down to the nearest quarter of an hour.
8. It is **essential** that the correct Care First number is always used, if not, it is very likely that another Service User will be charged for the care instead. If you have any doubts about a Care First number being correct, please contact **0116 252 8829** to check. We do some basic checks, but they are not foolproof. If we think there is an error we will contact you to get the problem resolved.
9. If you provide services in more than one of the four contract lots all of the charging information must be contained in the **one** report only.

Annex 5 - Master File Layout

Provider ID	Weekending Date	User ID	Visit Date	Critical Visit	Carer ID	Planned Arrival Time	Actual Arrival Time	Minutes (-early-;:late)	Departure	Planned Duration	Actual Duration	Banded Duration	Hourly Rate	Banded Visit Charges	Comments	Manual Adjustment Reason
HC508	04/01/2009	12345	06/01/2009	Yes	XYZ	08:30	08:30	0	09:00	30	30	30	6	3		
HC508	04/01/2009	12345	07/01/2009	No	XYZ	08:40	08:35	-5	09:00	30	25	30	6	3		
HC508	11/01/2009	12345	13/01/2009	Yes	XXZ	08:40	08:30	-10	09:00	30	30	30	6	3		No telephone
HC508	11/01/2009	12345	14/01/2009	No	ABC	09:55	10:00	5	10:15	30	15	15	6	1.5	Not needed	
HC508	11/01/2009	12345	15/01/2009	No	DDA	17:00	17:15	-15	10:45	30	45	45	6	4.5	Needed more	
HC508	11/01/2009	12345	16/01/2009	No	YYZ	09:00	09:00	0	09:30	30	30	30	6	3		

More than one carer

Where visits by more than one carer overlap, the master file should contain a separate line for each carer, showing individual arrivals, departures, durations and charges.

Banded Visit Charges

The banded visit charges should detail the charge for each carer for the bands charged. The total combined for each Service User for each week should equal the amount shown on the Invoice Detail file, and the grand total should match the amount shown on the Invoice Summary Layout file.

Comments Column

The comments column should be populated in all cases where the actual banded visit duration is greater than or less than the actual visit duration giving a reason for the variation.

Manual Adjustment Reason Column

A reason why any record of the visit has been adjusted manually must be entered here e.g. if Service User has refused access to telephone. One of the following reasons must be selected.

Non Access
Delayed Entry
Shopping
Emergency Occurred
Service away from home
Service User refused visit
Forgot to log in /out
No telephone
System error
Other

The detail on the master file that has been manually adjusted must be highlighted. E.g. Departure time amended due to carer forgetting to log out. The Departure time must be highlighted and a reason of 'Forgot to Log in/out chosen.

Annex 6 - Performance Standard Report

Provider	W/E	Total No of Planned Visits	Total Time (Hours)	Total No of Actual Visits	Total Time (Hours)	Total No Missed Visits	% of Missed Visits	Total No Visits Where no Retrospective Entry	% of Visits Where no Retrospective Entry	Total No of Critical Visits	Total No of Critical Visits Met	Total No of Early Critical Visits	Total No of Late Critical Visits	% of Critical Visits Met	Total No of Standard Visits	Total No of Early Standard Visits	Total No of Late Standard Visits	Total No of Standard Visits Met	% of Standard Visits Met	
Agency name	Must be a fixed and defined 4 week period for all providers	1000	30000.45	790	25000.75	50	0.05	700	90	300	350	50	100	290	490					
			Decimal not hh:mm		Decimal not hh:mm															

Annex 7 - Continuity of Support File Layout

	A	B	C	D	E	F
1	Provider ID	Provider name	W/E	Total service users/care packages	No of service users / care packages meeting standard	No of service users / care packages not meeting standard
2	ID	Agency name	29/07/2012	150	140	10
3	ID	Agency name	05/08/2012	148	141	9
4	ID	Agency name	12/08/2012	151	140	9
5	ID	Agency name	19/08/2012	150	142	8
6						
7	Standard is: no more than 4 carers in any 2 week period					
8	Breakdown of Service Users / Care Packages where standard not met:					
9	LCC ID	Last Name	First Name	No of careworkers in 2 week period	2-week period end in which breach occurred	
10	123456	Smith	Jane	10	29/07/2012	
11	654321	Patel	Rakesh	6	05/08/2012	
12	231453	Evans	Gill	5	12/08/2012	
13	231452	Jones	Bill	5	19/08/2012	
14	2314539	Singh	Raj	5	19/08/2012	
15						
16						

Annex 8 – Commissioned Time Banding

The first figure in the range is over that amount and the second figure is equal to or under. For example 25 – 40 means an amount of time above 25 minutes and up and including 40 minutes.

Commissioned Visit Time	Actuals Range (Minutes)	Pay (Minutes)	Band
0.25 (15 minutes)	0-25 Minutes	15	1
All 15 minute visits are to be phased out by commissioners but until all packages are revised there is a need to retain Band 1 for payment purposes			
0.5 (30 minutes)	25- 40	30	2
0.75 (45 minutes)	40-55	45	3
1 (60 minutes)	55-70	60	4
1.25 (75 minutes)	70-85	75	5
1.5 (90 minutes)	85-100	90	6
1.75 (105 minutes)	100-115	105	7
2 (120 minutes)	115-130	120	8
2.25 (135 minutes)	130-145	135	9
2.5 (150 minutes)	145-160	150	10
2.75 (165 minutes)	160-175	165	11
3 (180 minutes)	175-190	180	12
3.25 (195 minutes)	190-205	195	13
3.5 (210 Minutes)	205-220	210	14
3.75 (225 Minutes)	220-235	225	15
4 (240 Minutes)	230-250	240	16

The Council will pay the Provider the Pay (Minutes) time for the relevant band. This will be based on the actual time delivered as shown in the ECM reports as long as the time quoted does not exceed the care package without good reason.

SCHEDULE 2

The Caldicott Principles and Recommendations Summary of the 6 Caldicott General Principles

Principle 1: Justify the purpose(s)

Every proposed use or transfer of personally-identifiable information within or from an organisation should be clearly defined and scrutinised with continuing uses regularly reviewed by an appropriate Guardian.

Principle 2: Don't use personally identifiable information unless it is absolutely necessary

Personally identifiable information items should not be used unless there is no alternative.

Principle 3: Use the minimum necessary personally identifiable information

Where use of personally identifiable information is considered to be essential each individual item of information should be justified with the aim of reducing identifiability.

Principle 4: Access to personally-identifiable information should be on a strict need to know basis

Only those individuals who need access to personally identifiable information should have access to it and they should only have access to the information items that they need to see.

Principle 5: Everyone should be aware of their responsibilities

Action should be taken to ensure that those handling personally identifiable information – both practitioner and non-practitioner Staff – are aware of their responsibilities and obligations to respect an individual's confidentiality.

Principle 6: Understand and comply with the law

Every use of personally-identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

Caldicott Guardian Contact:

Director Care Specific Services & Commissioning (ASC)
Leicester City Council
New Walk Centre
B Block – 8th Floor
Welford Place
Leicester
LE1 6ZG

10042010

SCHEDULE 3

Commissioner's policies

Refer to Service Specification for Domiciliary Support Service Section 2 – Service Summary, Section 3 – Strategic Aims and Objectives, Section 4 – Domiciliary Support Ethos, Principles and Outcomes, Section 5 – Services, Section 6 – Policy and Procedures Requirements, Section 7 – Needs Assessment & Support Planning, Section 8 – Commissioning & Decommissioning of Support Services.

SCHEDULE 4

TUPE

Part 1. Transfer of employees

DEFINITIONS

The definitions in this paragraph apply in this Schedule:

Admission Agreement: the agreement in such form as

(in the case of Eligible Employees who are active members of (or are eligible to join) the LGPS (LGPS Eligible Employees)) the LGPS administering authority and the Commissioner shall require to be entered into in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008, as amended, by the LGPS administering authority, the Commissioner and the Provider or its sub-contractor, as appropriate.; or

(in the case of Eligible Employees who are active members of (or are eligible to join) the NHSPS (NHSPS Eligible Employees)) the NHS Pension Agency and the Commissioner shall require to be entered into in accordance with the NHS Pension Scheme Regulations 1995 and 2008, as amended, by the NHS Pension Agency, the Commissioner and the Provider or its sub-contractor, as appropriate.;

Appropriate Pension Provision: in respect of:

Eligible Employees, either:

membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or

pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.

Bond: the bond to be executed in the Commissioner's standard form to the value that shall be determined by the actuary acting for the LGPS administering authority in the case of LGPS Eligible Employees and the NHS Pension Agency in the case of NHSPS Eligible Employees.

Direction: the Best Value Authorities Staff Transfers (Pensions) Direction 2007, made under section 101 of the Local Government Act 2003.

Effective Date: the date(s) on which the Specific Services (or any part of the Specific Services) transfer from the Commissioner or any Third Party Employer to the Provider or its sub-contractor, and a reference to the Effective Date shall be deemed

to be the date on which the employees in question transferred or will transfer to the Provider or its sub-contractor.

Eligible Employees: the Transferring Employees or employees of Third Party Employers to whom the Direction applies and who are active members of (or are eligible to join) the LGPS in the case of LGPS Eligible Employees or the NHSPS in the case of NHSPS Eligible Employees on the date of a Relevant Transfer including the Effective Date.

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

the identity and age of the employee; and

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

information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and

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

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

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

LGPS: Local Government Pension Scheme.

LGPS Regulations: includes:

the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239); and

the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) (as amended); and

the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (SI 2008/238); and

the Local Government Pension Scheme Regulations 1997 (SI 1997/1612) (as amended and replaced from time to time).

NHSPS: NHS Pension Scheme

Redundancy Costs: statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Provider to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

Redundant Transferring Employees: Transferring Employees whom the Provider has dismissed following a lawful redundancy within six months of the Effective Date.

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

Replacement Provider: any third party supplier of Replacement Specific Services appointed by the Commissioner from time to time.

Replacement Specific Services : any Specific Services that are identical or substantially similar to any of the Specific Services and which the Commissioner receives in substitution for any of the Specific Services following the termination or expiry of this Agreement, whether those Specific Services are provided by the Commissioner internally or by any Replacement Provider.

Provider's Final Staff List: the list of all the Provider's and its sub-contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Specific Services or any part of the Specific Services at the Specific Service Transfer Date.

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

Specific Service Transfer Date: the date on which the Specific Services (or any part of the Specific Services), transfer from the Provider to the Commissioner or any Replacement Provider.

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

Third Party Employee: employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Provider by virtue of the application of TUPE.

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

Transferring Employees: employees of the Commissioner whose contract of employment transfer with effect from the Effective Date to the Provider by virtue of the application of TUPE.

1. TRANSFER OF EMPLOYEES TO THE PROVIDER

1.1 The Commissioner and the Provider agree that where the identity of the provider of any of the Specific Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Provider or its sub-contractor. The Provider shall comply and shall procure that each of its sub-contractors shall comply with their obligations under TUPE. The first Relevant Transfer shall occur on the Effective Date.

1.2 The Commissioner shall use reasonable endeavours to provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Provider, as required by TUPE. The Commissioner shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by it or any Third Party Employers. This shall be without prejudice to any right the Provider may have as against any Third Party Employers.

1.3 The Provider shall be liable for and indemnify and keep indemnified the Commissioner and any Third Party Employer against Employment Liabilities arising from or as a consequence of:

- (i) any proposed changes to terms and conditions of employment the Provider or its sub-contractor may consider taking on or after the Effective Date;
- (ii) any of the employees informing the Commissioner and any Third Party Employer they object to being employed by the Provider or its sub-contractor; and
- (iii) any change in identity of the Transferring Employees' and Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or its sub-contractor may consider taking on or after the Effective Date.

1.4 The Provider shall be liable for and indemnify and keep indemnified the Commissioner and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, the Third Party Employees, and any other person who is or will be employed or engaged by the Provider or any of its sub-contractors in connection with the provision of the Specific Services, including without limitation, all wages, holiday pay,

bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.

- 1.5 The Provider shall immediately on request by the Commissioner and/or the Third Party Employer provide details of any measures that the Provider or any of its sub-contractors of the Provider envisages it will take in relation to any Transferring Employees and the employees of any Third Party Employer including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact, and shall indemnify the Commissioner and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

2. EMPLOYMENT EXIT PROVISIONS

- 2.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Specific Services (or any part of the Specific Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Specific Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Commissioner or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Specific Service Transfer Date.
- 2.2 The Provider shall and shall procure that any of its sub-contractors shall on receiving notice of termination of this Agreement or otherwise, on request from the Commissioner and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any of its sub-contractors in the provision of the Specific Services , the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Commissioner, including information as to the application of TUPE to the employees. The Provider shall notify the Commissioner of any material changes to this information as and when they occur.
- 2.3 Subject to a Qualifying Change in the law, at least 14 days prior to the Specific Service Transfer Date, the Provider shall and shall procure that any of its sub-contractors shall prepare and provide to the Commissioner and/or, at the direction of the Commissioner, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and its sub-contractor's personnel named are Relevant Employees.
- 2.4 The Commissioner shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any Specific Services that are substantially the same type of Specific Services as (or any part of) the Specific Services .

- 2.5 The Provider warrants that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information (together, the TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Specific Services other than those included on the Provider's Final Staff List.
- 2.6 The Provider shall and shall procure that any of its sub-contractors shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 2.7 Any change to the TUPE Information which would increase the total employment costs of the Staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Commissioner's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any of its sub-contractors shall supply to the Commissioner full particulars of such proposed changes and the Commissioner shall be afforded reasonable time to consider them.
- 2.8 The Provider shall indemnify and keep indemnified in full the Commissioner and at the Commissioner's request each and every Replacement Provider against all Employment Liabilities relating to:
- (i) any person who is or has been employed or engaged by the Provider or any of its sub-contractors in connection with the provision of any of the Specific Services ; or
 - (ii) any trade union or Staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any of its sub-contractors),
- arising from or connected with any failure by the Provider and/or any of its sub-contractors to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Specific Service Transfer Date.
- 2.9 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 2.10 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8 to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Commissioner in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.11 Despite paragraph 3.10, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this contract without the consent of any other person

who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

3. PENSIONS

- 3.1 The Provider shall or shall procure that any of its relevant sub-contractors shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this Agreement.
- 3.2 The provisions of paragraph 3 and paragraph 4 of this Schedule 4 shall be directly enforceable by an affected employee against the Provider or any of its relevant sub-contractors.

4 ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT OR NHS PENSION SCHEME

- 4.1 Where the Provider or its sub-contractor wishes to offer the LGPS Eligible Employees membership of the LGPS or NHS Eligible Employees membership of the NHSPS, the Provider shall or shall procure that it and/or each of its relevant sub-contractors shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Provider or its sub-contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate or Bond value in respect of any Eligible Employee who elects to join the LGPS or NHSPS on or after the Effective Date.
- 4.2 The Provider shall indemnify and keep indemnified the Commissioner and/or any Replacement Provider and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Provider or its sub-contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Agreement.
- 4.3 The Provider shall and shall procure that it and any of its sub-contractors shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement.
- 4.4 The Provider shall and shall procure that any of its relevant sub-contractors shall award benefits (where permitted) to the LGPS Eligible Employees under the LGPS Regulations and the NHSPS Eligible Employees under the NHS Pension Scheme Regulations 1995 and 2008 in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Commissioner. The Provider shall be responsible for meeting all costs associated with the award of such benefits.

PROVIDER PENSION SCHEME

- 4.5 Where the Provider or its sub-contractor does not wish to or is otherwise prevented from offering the LGPS Eligible Employees membership or continued membership of the LGPS and the NHSPS Eligible Employees membership or continued membership of the NHSPS or such other broadly comparable scheme, then the Provider shall or shall procure that any of its relevant sub-contractors shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:
- (i) established no later than three months prior to the date of the Relevant Transfer; and
 - (ii) certified by the GAD as providing benefits that are broadly comparable to those provided by the LGPS in the case of the LGPS Eligible Employees and NHSPS in the case of the NHSPS Eligible Employees.
 - (iii) and the Provider shall produce evidence of compliance with this paragraph 4.5 to the Commissioner prior to the date of the Relevant Transfer.
- 4.6 The Commissioner (together with the LGPS's administrator and its actuary) shall determine the terms for Bulk Transfers from the LGPS and the Commissioner (together with the NHS Pension Agency's administrator and its actuary) shall determine the terms for Bulk Transfers from the NHSPS to the Provider's scheme following the Effective Date and any subsequent Bulk Transfers on termination or expiry of this Agreement.

SCHEDULE 5

SAFEGUARDING

1.1 The Parties acknowledge that where the Provider is a Regulated Activity Provider (because the nature of the Specific Services falls within the definition of a regulated activity relating to children and/or to vulnerable adults in Part 1 and/or Part 2 of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 (as amended) ("**Regulated Activity**")) it shall have ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006. Regardless of whether the Provider is a Regulated Activity Provider the following provisions of this Schedule 5 shall apply.

1.2 The Provider acknowledges that it has read both:

- (a) the "No Secrets" "Safeguarding Adults: Multi-Agency Policy and Procedures for the Prevention of Abuse of Adults in need of Safeguarding" for Leicester Leicestershire and Rutland (January 2010 edition); and
- (b) the Leicester City Council's Safeguarding Children and Vulnerable Adults Guidance for Contracted Providers

(together the "Commissioners **Safeguarding Policies**"), each of which are available on the Commissioner's webpage at http://www.leicester.gov.uk/your-council-Specific_Services_/social-care-health/older-people/Specific_Services_-in-the-home-and-community/adult-protection/adult-protection-policy-and-procedures/ The Provider further acknowledges that the Commissioners Safeguarding Policies are liable to amendment in response to statutory and policy changes and hereby consents to the Commissioner making such amendments at its sole discretion without further consultation with or agreement by the Provider. The Provider undertakes to maintain its own safeguarding policy, consistent with the Commissioners Safeguarding Policies (as amended) and shall incorporate promptly therein all amendments to the Commissioners Safeguarding Policies promulgated on the above webpage from time to time and as otherwise directed by the Commissioner. The Provider shall observe and comply with the Safeguarding Policies (and any revision or replacement of them) in respect of its delivery of the Specific Services as if they were set out below and it is agreed that the Safeguarding Policies (as amended) shall be incorporated into this Agreement.

1.3 The Provider shall ensure that all individuals engaged in the provision of the Specific Services are: subject to the Employment Checks and such other checks as are required by DBS; and the Provider shall monitor the level and validity of the checks under this paragraph 1.3 for each member of Staff.

1.4 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Specific Services is barred from any activity comprised in the Specific Services in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

1.5 The Provider shall immediately provide the Commissioner with any information that it reasonably requests to enable it to be satisfied that the obligations of this Schedule 5 have been met. In addition, the Provider shall:

- (a) on the engagement of any person who is or will be employed or engaged by the Provider in the provision of the Specific Services ;
- (b) on the third anniversary of the previous disclosure in respect of any such staff
- (c) keep appropriate records that are sufficiently detailed to demonstrate that the checks required by this Schedule 5 have been made and that either the result of each check is satisfactory or where this is not the case a satisfactory risk assessment has been undertaken. The risk assessment shall be conducted before the start of the Service; and
- (d) Consider including in staff contracts of employment/statement of terms that, if following an individual's appointment, they are subsequently cautioned, charged, summonsed or convicted of a criminal offence then they shall inform their line manager immediately. Failure to disclose such information may lead to disciplinary action being taken.

1.6 The Provider shall refer information about any person carrying out the Specific Services to the DBS where it removes permission for such person to carry out the Specific Services (or would have, if such person had not otherwise ceased to carry out the Specific Services) because, in its opinion, such person has harmed or poses a risk of harm to Specific Service Users children and vulnerable adults.

1.7 The Provider shall not employ or use in or about the Specific Services of any person who:

- (a) is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Specific Services Users; or
- (b) is in the reasonable opinion of the Contract Administrator unsuitable to work with children or vulnerable adults

and the Provider shall comply immediately with any instruction by the Contract Administrator that such a person shall cease to be engaged in or associated with the delivery of the Specific Services .

1.8 The Provider hereby grants to the Commissioner as a condition of this Agreement an irrevocable licence for the term of this Agreement to permit the Contract Administrator at their sole discretion to enter without prior notice at any time all premises of the Provider that are utilised in whole or part for the delivery of the Specific Services :

- (a) to investigate any complaint or incident involving the delivery of the Specific Services regardless of whether a Specific Service User is funded by the Commissioner or another public authority or is self-funding; and
- (b) to monitor the delivery of the Specific Services and the Provider's performance of its obligations under this Agreement.

1.9 The Provider shall publish, maintain, operate and ensure the observation by its Staff of:

- a) a clear policy of no tolerance of abuse that is underpinned by clear procedures that cover all incidents of abuse from any person towards any other e.g. staff-staff, Service User-staff, as well as those covered by the 'Safeguarding Adults' policy e.g. staff-Service User, Service User-Service User.
- b) Whistleblowing policies as required by these Call Off Terms
- c) a 'Safeguarding Adults' procedure that is consistent with the local multi-agency procedure, and all incidents of abuse covered by that procedure are referred to it without delay.
- d) a 'Safeguarding Adults' policy and procedure that is publicised to all staff members, volunteers, Service Users and carers in ways which are appropriate and accessible.
- e) a clear policy and procedure for reporting all suspected crimes taking place within the Service to the Police.
- f) clear policies against discrimination and harassment towards any person (staff, volunteers, Service Users, carers) on any grounds including age, race, culture, language, gender, sexuality disability, religion or belief.
- g) policies to ensure that all staff are able to identify and report concerns of abuse or neglect

SCHEDULE 6
PROHIBITED ACTS

- 1.1 The Provider:
- (a) shall not, and shall procure that any employees, Staff, other workers, agents and consultants of the Provider and of any its sub-contractors who are engaged in the provision of the Specific Services from time to time (“**Provider Personnel**”) shall not, in connection with this Agreement commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Commissioner, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Commissioner before execution of this Agreement.
- 1.2 The Provider shall:
- (a) if requested, provide the Commissioner with any reasonable assistance, at the Commissioner's reasonable cost, to enable the Commissioner to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within ten working days of the Commencement Date, and annually thereafter, certify to the Commissioner in writing (such certification to be signed by an officer of the Provider) compliance with this Schedule 6 by the Provider and all persons associated with it or other persons who are supplying goods or Specific Services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Commissioner may reasonably request.
- 1.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Commissioner) to prevent any Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 1.4 If any breach of paragraph 1.1 is suspected or known, the Provider must notify the Commissioner immediately.
- 1.5 If the Provider notifies the Commissioner that it suspects or knows that there may be a breach of paragraph 1.1, the Provider must respond promptly to the Commissioner's enquiries, co-operate with any investigation, and allow the Commissioner to audit books, records and any other relevant documentation. This obligation shall continue for seven years following the expiry or termination of this Agreement.
- 1.6 The Commissioner may terminate this Agreement by written notice with immediate effect if the Provider or Provider Personnel (in all cases whether or not acting with

the Provider's knowledge) breaches paragraph 1.1. In determining whether to exercise the right of termination under this paragraph 1.6, the Commissioner shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, sub-contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a sub-contractor) means and shall be construed as acting:

- (a) with the Commissioner; or,
- (b) with the actual knowledge of any one or more of the directors of the Provider or the sub-contractor (as the case may be); or
- (c) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.

1.7 Any notice of termination under paragraph 1.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Commissioner believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

1.8 Despite Clause 29 (Disputes), any dispute relating to:

- (a) the interpretation of Schedule 6; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Commissioner and its decision shall be final and conclusive.

1.9 Any termination under paragraph 1.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Commissioner.

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