

PDPS AGREEMENT FOR THE PROVISION OF

"LIVING WELL AT HOME"

REGULATED AND NON REGULATED CARE AND SUPPORT SERVICES

between

LANCASHIRE COUNTY COUNCIL

and

PROVIDER NAMED ON THE ACCEPTANCE FORM

FINAL TO PUBLISH

THIS AGREEMENT BETWEEN

THE PARTIES

(1) **Lancashire County Council** whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ (the "Authority") and

(2) **The Provider** as named on the Acceptance Form ("the Provider").

Individually the "Party" and collectively the "Parties".

BACKGROUND

- (A) Lancashire County Council sought proposals for the provision of LIVING WELL AT HOME REGULATED AND NON REGULATED CARE AND SUPPORT SERVICES by means of a public tender exercise. Lancashire County Council placed a Find a Tender Notice [REFERENCE] on [DATE] seeking expressions of interest from potential providers for the provision of the Services under a Psuedo Dynamic Purchasing System (PDPS).
- (B) On the basis of the Provider's Request to Participate, Lancashire County Council admitted the Provider onto the PDPS to enable it to bid for Service Contracts or for Service Contracts to be allocated to the Provider by the Authority in accordance with the Call-off Procedure(s).
- (C) All providers applying to join the PDPS indicated in their Requests to Participate that they would comply with all relevant Law governing the subject matter of the PDPS.
- (D) This PDPS Agreement sets out the award and ordering procedure for Service Contracts which may be required by the Authority, details of the terms and conditions applicable to any Service Contract, and the obligations of the Provider during and after the validity period of the PDPS Agreement.
- (E) The Parties acknowledge that this PDPS Agreement is part of a multi-provider arrangement and an Order of Services may be awarded using any of the procedures set out in this Agreement.

IT IS AGREED as follows:-

1. INTERPRETATION AND NOTICES

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Acceptance Form" means the form signed by both Parties incorporating this Agreement and the Call-off Terms and Conditions (Service Contract).

"Agreement or PDPS Agreement" means this means this Agreement together with all schedules and appendices attached hereto

"PDPS or Approved PDPS " means the PDPS established in accordance with the Public Contracts Regulations 2015 to which this Agreement relates.

"Auditor" means the National Audit Office or an auditor appointed by the Audit Commission as the context requires.

"Best Interests Decision" has the meaning set out in the Mental Capacity Act 2005.

"Business Day" means 9:00a.m – 5.00p.m on any day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

"Business Transition" has the meaning set out in the Service Contract

"Call-Off Procedure" means the method by which Service Contracts are awarded to Providers as set out at Schedule 2;

"Call-Off Terms and Conditions" the terms and conditions at Schedule 1;

"Care and Support Plan " has the meaning set out in the Service Contract;

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

"Charges" means the agreed price and charges which shall become due and payable the Authority to the Provider in respect of the Services in accordance with the provisions of clause 11 of the Service Contract.

"Commencement Date" means the date stated on the Acceptance Form.

"Confidential Information" means:-

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

"Core Specification" means the minimum service requirements to be delivered by the Service Provider in each Lot.

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.

"EIR" means The Environmental Information Regulations 2004.

"Find a Tender Notice" means the contract notice published on www.find-tender.service.gov.uk

"FOIA" means The Freedom of Information Act 2000.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Authority.

"Geographical Boundary" means the area(s) in which the Provider will provide the Services in accordance with the Provider's Request to Participate and admission onto the PDPS.

"Individual" means Service User. The term Individual is used in the Core and Lot Specifications.

"Information" has the meaning given under Section 84 of the Freedom of Information Act 2000.

"Information Sharing Protocol" shall mean the policy in place between the Authority and other public bodies which permits the sharing of information about the Provider and other providers relating to concerns about the Services (including safeguarding concerns), the accommodation provided or the Provider itself.

"Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

"Invitation to Participate" means the Authority's invitation to Providers to participate in the PDPS.

"Law" the laws of England and Wales and any other laws, statutes or regulations, regulatory policies, guidelines or industry codes from time to time which apply to the provision of the Services or with which the Supplier must comply;

"Lot" means: the division the Services into the following categories:

- Lot 1a Short Term Care at Home
- Lot 1b Homecare Services
- Lot 1c Extra Care Services
- Lot 2 Non Regulated

"Lot Specification" means those services to be delivered in addition to the Core Specification as relate to a specific Lot.

"Month" means a calendar month.

"Order" means an order for Services sent by the Authority to the Provider in accordance with the Call-Off Procedure;

"Personal Data" is as defined in the Data Protection Legislation.

"Personnel" all directors, officers, employees, agents, consultants and providers of the Provider and/or of any Sub- Contractor (if any) engaged in the performance of its obligations under this Agreement.

"Processor" is as defined in the Data Protection Legislation.

"Prohibited Act" to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

- (a) induce that person to perform improperly a relevant function or activity; or reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this PDPS;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this PDPS or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

"Providers or Service Providers" the organisations who have been appointed to the PDPS and where applicable this shall include the Provider's employees, Sub-Contractor, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members.

"Regulations" The Public Contracts Regulations 2015.

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

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

"Request to Participate" means the submission by a provider in response to the Find My Tender Notice seeking admission onto the PDPS.

"Request for Services" means the Authority's request to eligible PDPS providers to take part in a Call-off Procedure for the award of Services under a Service Contract.

"Response" means the documents submitted to the Authority by the Provider in response to a Request for Services held by the Authority for the provision of Services.

"Services" the services described in the Core Specification and appropriate Lot Specification, to be supplied by the Provider where appointed in accordance with this Agreement and the Call-Off Procedure;

"Service Contract" as set out at Schedule 1, the legally binding agreement (made pursuant to the provisions of this PDPS Agreement) for the provision of Services made between the Authority and the Provider comprising:

- (i) the Call-Off Terms and Conditions;
- (ii) Core Specification and Lot Specification;
- (iii) Care and Support Plan; and
- (iv) Service Contract Data form (if appropriate).

"Service Contract Data Form" means the document at Schedule 10 to the Service Contract, forming part of the Service Contract and supplementing the Specification, setting out the key details and specifics of the Authority's requirement for Services following the Call-Off Procedure;

"Specification" the documents detailing the Services to be delivered by the Provider set out at Schedule 3. The Services are to be delivered in accordance with the Core Specification and Lot Specification and the Specification Glossary;

"Service User" means any individual notified by the Authority to the Provider as requiring the Services.

"Subcontract" any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

"Sub-Contractor" means the service providers that enter into a Subcontract with the Provider.

"Specification Glossary" means the defined terms used in the Core and Lot Specifications in addition to those terms used in this Agreement and the Service Contract.

"Term" means the period commencing on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement or it is otherwise lawfully terminated or otherwise extended in accordance with clause 2.2) ending on the fourth (4th) anniversary of the Commencement Date.

"Termination Date" means the date of expiry or termination of this PDPS Agreement.

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

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

"Year" means a calendar year.

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as

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

1.2.6 headings are included in this PDPS Agreement for ease of reference only and shall not affect the interpretation or construction of this PDPS Agreement;

1.3 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be given by electronic mail (confirmed by letter). Notices shall be sent by email to contractmgmt.care@lancashire.gov.uk and confirmed by post to **Contract Management - Strategic Integrated Commissioning Service, Lancashire County Council, County Hall, PRESTON PR1 8XJ**. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted (save with the exception of post delivered by second class, in which case service shall be deemed to have occurred on the third Working Day after posting), or 4 hours, in the case of electronic mail or sooner where the other party acknowledges receipt of such letters, or item of electronic mail.

2. AGREEMENT PERIOD AND CONSIDERATION

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

2.2 The Authority shall be entitled to extend this Agreement on one or more occasions, save that the maximum length of this PDPS Agreement shall not exceed 12 years.

2.3 The Authority shall serve the Provider with a minimum of 6 months' notice in order to extend this Agreement in accordance with Clause 2.2.

2.4 Clause 2.1 shall not apply to any Service Contract made under this PDPS Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Service Contract.

3. WARRANTIES

3.1 The Provider warrants to the Authority that:

3.1.1 it has full power and authority to enter into this PDPS Agreement and any Service Contract and all governmental or official consents and all necessary consents have been obtained and are in full force;

3.1.2 all obligations of the Provider pursuant to this Agreement and under any Service Contract shall be performed by appropriately experienced, certified, qualified and trained staff with all due skill, care and diligence;

3.1.3 it will ensure that it and all its staff, agents, subcontractor, self-employed staff or personnel employed in connection with the Services will comply with all applicable Laws governing the delivery of the Services;

3.1.4 this Agreement is executed by a duly authorised representative of the Provider;

3.1.5 in entering into this Agreement or any Service Contract it has not committed any Fraud;

3.1.6 as at the Commencement Date, all information, statements and representations contained in the Request to Participate (including statements made in relation to the exclusion grounds referred to in regulation 57 of the Regulations) are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

- 3.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement and/or any Service Contract which may be entered into with the Authority;
- 3.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and/or any Service Contract which may be entered into with the Authority;
- 3.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 3.1.10 in the three (3) years prior to the date of this Agreement:-
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement;
- 3.1.11 it shall perform any Service Contract awarded under this PDPS Agreement in a conscientious and timely manner in accordance with any standards set out in this Agreement and the Service Contract awarded under it or as is otherwise reasonably required by the Authority;
- 3.1.12 it shall notify the Authority immediately of any circumstances relating to the Provider and/or the Authority concerning the Services of which the Provider is aware or anticipates which may justify the Authority taking action to protect its interests (including its reputation and standing);

3.2 The warranties set out in this clause 3 are given on the execution of this PDPS Agreement and repeated on every day during the term of this PDPS Agreement and/or any Service Contract.

4. CALL-OFFS

- 4.1 The Authority appoints the Provider as a potential provider of the Services and the Provider shall be eligible to be considered for the award of Orders for Services during the Term.
- 4.2 When admitted to the PDPS Agreement and where Orders for Services for those Services is to be the subject of a Request for Service, only Providers identified by the Authority, in its absolute discretion and in accordance with the Call Off Procedure, as being capable of performing the Services shall be eligible to be considered for Services.
- 4.3 Where the Authority has identified a need for Services, it shall
- (a) enter into a Service Contract with the Provider for the Services whose terms are in accordance with the Call-off Terms and Conditions; and
 - (b) award the Services in accordance with the Call-Off Procedure for the appropriate Lot set out in Schedule 2.
- 4.4 Subject to Clause 4.5, the Authority, when ordering Services under the Agreement using a Request for Service pursuant to the Call-Off Procedure, shall:

- (a) Identify, in accordance with the Call-Off Procedure, the Providers capable of performing the Service Contract for the Services requirements;
 - (b) conduct a Request for Service seeking a Response from eligible, invited Providers by means as determined by the Authority which may include but not be limited to use of electronic systems, email or telephone (or such other system as the Authority may from time to time employ) and a deadline by which the Response must be submitted;
 - (c) evaluate all Response submissions received by the Request for Services deadline in accordance with the criteria set out in the Authority's Call-Off Procedure;
 - (d) (on conclusion of the Response submission evaluation process) award the Service Contract to the winning Provider(s) on the basis of the criteria specified in the Authority's Call-Off Procedure;
 - (e) prepare and send to the successful Provider(s) via E-mail (or such other system as the Authority may from time to time employ) a notification of award following which the Provider is required, within a reasonable time period as set by the Authority in the Lot Specification, to respond to the Authority to either:
 - (i) accept the invitation to deliver the Services as set out in the Authority's Request for Services and to enter into the arrangement in line with the terms of the Service Contract; or;
 - (ii) notify the Authority that it declines to deliver the Services and the Authority may then enter into a Service Contract with the next Provider that has submitted the next highest placed Response (and so on until all Providers decline and the Authority has to re-procure such Services
 - (f) where:
 - (i) on receipt of the Provider's response to the Authority's notification of award (where the Provider has accepted the invitation and offered to enter into the Service Contract); or
 - (ii) the Provider does not respond to the Authority's notification of award within the reasonable timescale as set by the Authority of receipt and commences performance of the Services,

the Authority is deemed to have accepted the Provider's offer to enter into the Service Contract; and
 - (g) the Provider shall provide the Services at all times in accordance with the terms of the Service Contract.
- 4.5 The Authority may make a direct award of a Service (bypassing the Request for Service and submission of a Response by the Provider) on the terms as set out in the relevant Call-off Procedure appended to this Agreement.
- 4.6 Where a direct award of a Service Contract is made pursuant to clause 4.5, the provisions of clause 4.4(e) and (f) shall apply.
- 4.7 Notwithstanding the fact that the Authority has followed the procedure set out above in this Clause 4 for Services, the Authority may cancel, postpone, delay or end the procedure without awarding a Service Contract. Nothing in this Agreement shall oblige the Authority to award a Service Contract.
- 4.8 The Parties acknowledge and agree that the issue of a Request for Services is an "invitation to treat" by the Authority. Accordingly, the Provider shall submit its Response as its offer to the Authority on the terms of the Service Contract. The Parties shall form a contract by entering into a Service Contract incorporating the Call-Off Terms and Conditions and relevant Service Contract Data Form and / or Care and Support Plan.

4.9 The Provider acknowledges that, in entering this PDPS Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for Services from the Provider. and that the Authority is at all times entitled to:

- (a) enter into other contracts and agreements with other Providers for the provision of any or all of the Services; or
- (b) enter into other contracts and arrangements with other providers for the provision of services which are the same as or similar to the Services.

5. TERMINATION

5.1 The Authority or Provider may terminate this PDPS Agreement upon the provision of no less than six (6) months written notice to the other. Following termination under this Clause 5 the Provider shall no longer be invited to submit bids for Services nor shall the Provider be eligible for the direct award of Services.

5.2 The Authority may terminate this Agreement by serving written notice on the Provider with effect from the date specified in such notice where:-

- (a) the Provider is using staff that are not appropriately experienced, certified, qualified and trained in the delivery of the types of Services to which the PDPS relates;
- (b) the Provider and/or its staff, agents, subcontractor, or personnel employed by the Provider in connection with the Agreement have failed to comply with any applicable Laws;

5.3 Subject to the Authority sharing any information in its possession concerning the financial standing of the Provider and providing the Provider with reasonable opportunity to clarify such information, the Authority may terminate this Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Authority), there is or seems likely to occur a material detrimental change in the financial standing and/or the credit rating of the Provider which will or may adversely impact on the Provider's ability to comply with its obligations under the Agreement.

5.4 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement or suspend the referral or acceptance of Service Contracts with immediate effect by giving written notice to the Provider if:

5.4.1 the Provider commits a Material Breach of any term of this PDPS Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 calendar days after being notified in writing to do so;

5.4.2 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;

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

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

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

- 5.4.6 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 5.4.7 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- 5.4.8 the Provider (being an individual) is the subject of a bankruptcy petition or order;
- 5.4.9 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 (fourteen) days;
- 5.4.10 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 5.4.1 to clause 5.4.8 (inclusive); or
- 5.4.11 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or delivering the Services.

5.5 The Provider shall notify the Authority immediately if the Provider undergoes or anticipates undergoing a change of control within the meaning of section 1124 of the Corporation Tax Act 2010. ("**Change of Control**"). The Authority may terminate this Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:-

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where the Authority approved such a change prior to the Change of Control occurring.

5.6 The Authority reserves the right to terminate the PDPS Agreement where:

- (a) the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR; or
- (b) the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) PCR, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

6. CONSEQUENCES OF TERMINATION AND EXPIRY

6.1 Notwithstanding the service of a notice to terminate the PDPS Agreement under clause 5, the Provider shall continue to fulfil its obligations under the PDPS Agreement until the date of expiry or termination of the PDPS Agreement or such other date as required under this clause 6.

6.2 Termination or expiry of the PDPS Agreement shall not cause any Service Contracts to terminate automatically. For the avoidance of doubt, all Service Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

6.3 Termination or expiry of this PDPS Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this PDPS Agreement prior to termination or expiry.

6.4 In the event of any termination of the Agreement, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Authority under this Agreement or otherwise, the Authority shall be entitled to obtain a refund of any monies paid in respect of any Services which have not been supplied by the Provider in accordance with the terms of the Agreement.

6.5 Termination by the Authority in relation to one Provider in accordance with clauses 5.2- 5.6 shall not have the effect of automatically terminating PDPS agreements in place with other providers.

7. SUSPENSION FROM PDPS AND CONSEQUENCES OF SUSPENSION

7.1 A suspension event shall have occurred if the Authority reasonably considers that there has been a breach by the Provider of any obligation under this PDPS Agreement or any Service Contract ("Suspension Event").

- 7.2 Where a Suspension Event occurs the Authority will follow the procedure as outlined within Clause 8 of Service Contract. The Authority may give written notice to the Provider and with immediate effect suspend the Provider from the PDPS , until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to perform the Service, to the required standard if successful in any Request for Services exercise.
- 7.3 During the suspension of any Service under this clause 7, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to this clause 7 has been referred to dispute resolution under clause 16 (Dispute Resolution).

8. ORDER OF PRECEDENCE

- 8.1 The Provider shall perform all Service Contracts entered into with the Authority in accordance with:-
- (a) the Service Contract;
 - (b) this PDPS Agreement;
 - (c) Service Contract Data Form or Care and Support Plan;
 - (f) the Request for Services requiring a Response (where applicable);
 - (g) the Response (where applicable);
 - (h) the Invitation to Participate;
 - (i) the Request to Participate;
 - (j) any other document referred to in the Service Contract; and
 - (k) any other document referred to in this Agreement.
- 8.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this PDPS Agreement, and the Service Contract, the application of the Clauses shall prevail in the following order:
- (a) the Service Contract;
 - (b) this PDPS Agreement;
 - (c) Service Contract Data Form or Care and Support Plan;
 - (f) the Request for Services requiring a Response (where applicable);
 - (g) the Response (where applicable);
 - (h) the Invitation to Participate;
 - (i) the Request to Participate;
 - (j) any other document referred to in the Service Contract; and
 - (k) any other document referred to in this Agreement.

9. TRANSFER AND SUB-CONTRACTING

- 9.1 The PDPS Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the PDPS Agreement or any part thereof without the prior written consent of the Authority. The Provider shall not be entitled to subcontract any of its rights or obligations under this PDPS Agreement.
- 9.2 The Authority shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the PDPS Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority provided that such assignment, novation or disposal shall not increase the burden of the Provider's obligations under the PDPS Agreement.

10. CQC REQUIREMENTS

- 10.1 With the exception of Lot 2, the Provider shall maintain at all times throughout the term of this PDPS Agreement and the term of the Service Contract(s) registration with the CQC for the Regulated Activity of Personal Care with a rating of "Good" or "Outstanding" for the nominated office and nominated Registered Manager which they have confirmed as that through which they shall deliver the Services under this PDPS Agreement and the Service Contract(s). Failure to comply with this requirement will amount to a Material Breach and the Authority may terminate this PDPS Agreement pursuant to the provisions of clause 5.4.
- 10.2 If at any time the Provider wishes to change its nominated office through the 'add and/or remove location(s)' procedure with the CQC, the Provider must have received approval from CQC where applicable to confirm the change before delivering Services from its chosen location.

- 10.3 If at any time the Provider wishes to change its nominated office by virtue of a complete change of business and location address outside of the CQC's 'add and/or remove location(s)' regime but will be continuing to provide the Services to the same Service Users as it originally did, the Provider must have received approval from CQC in the form of an updated certificate before delivering Services from its new location.
- 10.4 Further to paragraph 10.3 above, for any periods of time the new location is not rated by CQC, the Authority is at liberty to carry out reasonable further and additional inspections beyond the scope carried out with other PDPS Providers.
- 10.5 If at any time during the term of this PDPS Agreement or the term of any Service Contract(s), the Provider is inspected by the CQC and receives an overall rating by the CQC of "inadequate" or "requires improvement" or an "inadequate" rating against any one of the CQC's five key questions or Ofsted "inadequate" or "Not Met – Enforcement Actions" or "an "inadequate" rating for the office out of which the Provider is operating, for the purposes of delivering Services under the Service Contract (or equivalent by any successor body or system of evaluation), the Provider shall inform the Authority immediately and, within a timeframe to be stipulated by the Authority, share an Improvement Plan with the Authority. If the Authority is not satisfied with the Provider's response, this shall amount to a Material Breach and the Authority may suspend the award of Service Contracts to the Provider or terminate this PDPS Agreement pursuant to the provisions of clause 5.4.
- 10.6 Where the Provider is engaged as part of a consortium, all consortium members, subject to CQC regulation, including the Provider, must maintain the CQC requirements detailed within this clause throughout the term of this Agreement.
- 10.7 The Authority shall have the ability to terminate contracting with the entire consortium or, in the alternate, and at its absolute discretion, require the Lead Member of the consortium to terminate its arrangements with the failing consortium member or terminate its arrangement (should the Lead Member be failing), allowing the remaining consortium members to continue to deliver the Services and appoint a new Lead Member if required.

11. CONFIDENTIALITY

- 11.1 Subject to clause 11.2, the Parties shall keep confidential all matters relating to this PDPS Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:
- 11.2.1 required by any applicable law, provided that clause 13 shall apply to any disclosures required under the FOIA or the EIR;
 - 11.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this PDPS Agreement;
 - 11.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11.1;
 - 11.2.4 by the Authority of any document to which it is a party and which the Parties to this PDPS Agreement have agreed contains no Confidential Information;
 - 11.2.5 to enable a determination to be made under clause 16;
 - 11.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
 - 11.2.7 by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
 - 11.2.8 by the Authority relating to this PDPS Agreement and in respect of which the Provider has given its prior written consent to disclosure.
 - 11.2.9 information disclosed by the Authority to other local authorities under the Information Sharing Protocol.

12. NOT USED

13. FREEDOM OF INFORMATION

- 13.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to comply with these information disclosure requirements.
- 13.2 The Provider shall and shall procure that its Subcontractors shall:
- 13.2.1 transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 13.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - 13.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority 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 EIR.
- 13.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 13.4 The Provider acknowledges that the Authority 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, July 2018) (**Code**)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- 13.4.1 without consulting with the Provider; or
 - 13.4.2 following consultation with the Provider and having taken its views into account,
- provided always that where clause 13 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 13.5 The Provider shall ensure that all Information produced in the course of the PDPS or relating to the PDPS is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 13.6 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 13.
- 14. PUBLICITY**
- 14.1 Unless otherwise directed by the Authority, the Provider shall not make any press announcements or publicise this PDPS in any way without the Authority's prior written consent.
- 14.2 The Authority shall be entitled to publicise this PDPS in accordance with any legal obligation on the Authority, including any examination of this PDPS by the Auditor or otherwise.
- 14.3 The Provider shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.
- 15. PREVENTION OF BRIBERY**
- 15.1 The Provider:
- 15.1.1 shall not, and shall procure that the Personnel and all Sub-Contractor personnel shall not, in connection with this PDPS Agreement and any Service Contract made under it commit a Prohibited Act; and
 - 15.1.2 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 Authority, or that an agreement has been reached to that effect, in connection with the execution of this PDPS Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this PDPS Agreement.
- 15.2 The Provider shall:

- 15.2.1 if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- 15.2.2 within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 15 by the Provider and all persons associated with it or other persons who are supplying services in connection with this PDPS Agreement. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 15.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Personnel or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 15.4 If any breach of clause 15 is suspected or known, the Provider must notify the Authority immediately.
- 15.5 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 15, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this PDPS Agreement.
- 15.6 The Authority may terminate this PDPS Agreement by written notice with immediate effect if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 15.
- 15.7 Any notice of termination under clause 15 must specify:
- 15.7.1 the nature of the Prohibited Act;
- 15.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and
- 15.7.3 the date on which this PDPS Agreement will terminate.
- 15.8 Despite clause 16, any dispute relating to:
- 15.8.1 the interpretation of this clause 15; or
- 15.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.
- 15.9 Any termination under this clause 15 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

16. DISPUTE RESOLUTION

- 16.1 If a dispute arises between the Authority and the Provider in connection with the PDPS, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 16.2 If a dispute is not resolved within fourteen (14) days of referral under clause 16.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 16.3 Provided that both parties consent, a dispute not resolved in accordance with clauses 16.1 and 16.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- 16.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

17. VARIATIONS TO THE PDPS AGREEMENT

- 17.1 Any variations to the PDPS Agreement must be made in writing and agreed by the Authority and all Providers on the PDPS.
- 17.2 Any variation to the PDPS Agreement must not amount to a material change in the PDPS or the Services.

18. THIRD PARTY RIGHTS

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

19. SEVERANCE

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

19.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. RIGHTS AND REMEDIES

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

21. WAIVER

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

22. ENTIRE AGREEMENT

22.1 This PDPS Agreement including all Schedules constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

22.2 Each of the Parties acknowledges and agrees that in entering into this PDPS Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this PDPS Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this PDPS Agreement.

22.3 Nothing in this clause 22 shall operate to exclude Fraud or fraudulent misrepresentation.

23. NOT USED

24. LAW AND JURISDICTION

The Parties accept the exclusive jurisdiction of the English courts and agree that the PDPS Agreement is to be governed by and construed according to English law.

Schedule 1- Call-Off Terms and Conditions

Included at Appendix 2 in the Invitation to Participate.

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Schedule 2- Call-Off Procedures

Included at Appendix 2 (2a – 2d) of the Invitation to Participate

- 2a Lot 1a Short Term Care at Home
- 2b Lot 1b Homecare
- 2c Lot 1c Extra Care
- 2d Lot 2 Non regulated

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