



**FRAMEWORK AGREEMENT
FOR
CARE HOME SERVICES**

TC140



THIS AGREEMENT is made the day of

2023

BETWEEN:

- (1) THE BOROUGH AUTHORITY OF BOLTON of Town Hall, Bolton, BL1 1RU (hereinafter called "the Authority")
- (2) [INSERT PROVIDER] of [insert address] (Registered Company Number: [insert if relevant]) (hereinafter called the "Provider")

WHEREAS:

- (1) The Authority wishes to consolidate arrangements for provision of the Services by establishing a platform by which Orders may be placed under a Pseudo Dynamic Purchasing System ("Flexible Purchasing System" (FPS)) during the Term of the Agreement.
- (2) The Authority placed a Contract Notice in the Find A Tender Service on 5 July 2023 ("Contract Notice") informing potential providers of its intention to establish a FPS and seeking bid submissions from potential providers to be placed on the FPS for the provision of Services at the Commencement Date.
- (3) From time to time during the FPS Term, as set out in the original Contract Notice, other potential provider(s) may submit a request to the Authority to be placed onto the FPS, and the Authority may invite one, or more, providers to submit a response and may, on the basis of the response submitted by the provider(s), select one or more further providers to provide the Services through the FPS.
- (4) The Provider will either have submitted a bid in response to the Contract Notice, or a request for inclusion on the FPS after the Commencement Date, and was selected by the Authority to provide the Services through the FPS in accordance with this Agreement.
- (5) The Provider has agreed to enter into this Agreement with the Authority. This Agreement sets out: the procedure the parties must follow when placing an Order; the obligations of the parties under this Agreement and the main terms and conditions for the provision of the Services pursuant to Orders made under this Agreement.
- (6) The Authority in in placing an Order in accordance with this Agreement, and the Provider in accepting an Order in accordance with this Agreement, will be bound by the terms set out in this Agreement. All Orders automatically incorporate the terms of this Agreement.
- (7) Inclusion on the Agreement does not guarantee any engagement for the Provider for any or all of the Services. The Agreement will not be exclusive to one provider and the Authority reserves the right to place Orders with more than one successful provider for the Services. The Authority does not guarantee to place any Order for any specific quantity of Service during the Term of the Agreement.
- (8) On [insert date] the Authority issued an invitation to tender ("Invitation") in respect of the delivery of residential care in care homes and care homes with nursing services ("Services").
- (9) The Provider has successfully submitted a request to the Authority at [time] on [date] and in accordance with the terms of the Invitation ("Invitation Response"), and, on the basis of the Invitation Response, the Provider was selected by the Authority to provide

the Services as and when engaged by the Authority, to do so in accordance with the ordering procedures detailed in this Agreement.

- (10) This Agreement shall commence on 1 November 2023, or such date as the Provider submits a successful application to be admitted to the FPS.
- (11) Nothing shall require the Authority to purchase any Services or a particular volume of the Services under this Agreement.
- (12) This Agreement governs the relationship between the Authority and the Provider in respect of the supply of the Services and each Order placed by the Authority.

IT IS NOW AGREED as follows:-

- 1. This Agreement shall commence on 1 November 2023 and unless terminated in accordance with the Authority's terms and conditions of contract ("Terms and Conditions"), which are appended to, and hereby incorporated into this Agreement, shall continue for a term of seven (7) years expiring at 23:59:59 on 31 October 2030 ("Agreement Period"). The Authority may upon written notice to the Provider extend the Agreement Period for one further period of up to three (3) years, so that the Agreement will terminate at the latest on 31 October 2033. Any extended term shall form part of the Agreement Period.
- 2. Where a Provider is admitted to the FPS after 1 November 2023 the Agreement shall commence on the date which is specified in writing by the Authority, and the extension of the Agreement Period shall be amended accordingly, so that the Agreement will terminate at the latest on 31 October 2033.
- 3. As and when the Services are required, the Authority will submit an order for services ("Order") to the Provider. Each Order will be placed by the Authority and delivered by the Provider in accordance with the ordering procedure detailed in Schedule 1, using the agreed template, or as agreed in writing between the Authority and the Provider.
- 4. Once an Order has been placed by the Authority with the Provider, the Authority may place Individual Service User Placement Agreements ("ISUPA") with that Provider for the placement of an individual resident at that care home.
- 5. All Orders and ISUPA's are subject to the provisions of this Agreement, and this Agreement is hereby incorporated into each Order or ISUPA by reference.
- 6. In consideration of the provision of the Services, the Authority shall pay to the Provider those fees calculated in accordance with the Invitation Response ("Fees") on those payment terms detailed in this Agreement.
- 7. The Provider's total aggregate liability under this Agreement and each Order entered into under this Agreement:
 - 7.1 is unlimited in respect of:
 - 7.1.1 fraud or fraudulent misrepresentation;
 - 7.1.2 death or personal injury caused by its negligence;
 - 7.1.3 breach of any obligation as to title implied by statute;

- 7.1.4 any act or omission, liability for which may not be limited under any applicable law.
 - 7.1.5 the indemnities in clause 22 of the Terms and Conditions;
 - 7.1.6 any breach of clause 11 of the Terms and Conditions;
 - 7.1.7 any breach of Data Protection Legislation (as defined in the Terms and Conditions); and
 - 7.1.8 the Provider's wilful default.
- 7.2 In respect of all other claims, losses (excluding Indirect Losses) and/or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement, shall be limited to a sum equivalent to one hundred and fifty percent (150%) of the Fees paid for the relevant Services, (save in respect of the first 12 months of the Agreement Period when liability will be limited to £250,000.
8. The Authority's maximum liability to the Provider for all claims (including Indirect Losses), losses and/or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement, shall be limited to a sum equivalent to one hundred percent (100%) of the Fees paid for the relevant Services. However, this limitation of liability shall not apply to the Authority in the case of fraud or fraudulent misrepresentation, or death or personal injury caused by its negligence or any liability which cannot be excluded or limited at law.
9. The Provider shall, as required under clause 21.2 of the Terms and Conditions, take out and maintain for the Agreement Period:
- 9.1 Public liability insurance in an amount of not less than £10,000,000 for any one occurrence or series of occurrences arising during each policy year, and this insurance shall not specifically contain any exclusion for medical malpractice;
 - 9.2 Employers' liability insurance in an amount of not less than £10,000,000 for any one occurrence or series of occurrences arising during each policy year;
 - 9.3 Motor Insurance in respect of any transport used by the Provider's Staff and any Sub-Contractor(s) under the Agreement;
 - 9.4 Professional Indemnity insurance in an amount of not less than £ 5,000,000 for any one occurrence or series of occurrences arising during each policy year, unless otherwise agreed in writing by the Authority; and
 - 9.5 Any other insurance reasonably deemed necessary by the Authority and detailed in an Order.
 - 9.6 The Provider shall ensure that each resident's personal belongings are included in the Providers contents insurance cover at no additional charge to the Authority or the resident. Residents have the option for inclusion of their personal belongings within the Providers contents insurance or to make their own arrangements for insurance coverage for their personal effects and provide on request documentary evidence of such coverage in place on placement and annually thereafter.

10. The Authority shall have the right, in accordance with clause 19.6.1 of the Terms and Conditions to terminate the Agreement on giving no less than three (3) months' written notice to the Provider.
11. The Authority shall, in addition, have the right to terminate any Order on giving no less than the period of notice set out in the Specification.
12. The Provider shall have the right, in accordance with clause 19.6.1 of the Terms and Conditions, to terminate the Agreement on giving no less than six (6) months' written notice to the Authority.
13. The term "Agreement" shall mean the terms and conditions contained herein together with:
 - (a) the Terms and Conditions and any other document agreed between the Authority and the Provider under the Terms and Conditions;
 - (b) the Invitation, which the Authority uploaded to the North West's Local Authority Procurement Portal ("the Chest") on [insert date and time];
 - (c) the Invitation Response, which the Provider uploaded to the Chest at [insert time] on [insert date];
 - (d) each Order
14. In the event of conflict the following order of priority shall apply:
 - (a) The Terms and Conditions set out in the body of the Agreement;
 - (b) Any document agreed between the Authority and the Provider under the Terms and Conditions;
 - (c) the Invitation;
 - (d) the Invitation Response;
 - (e) each Order.
15. Neither the Authority nor the Provider shall be liable for any statement, representation, promise, inducement or understanding made in respect of a proposed order unless expressly contained in, or incorporated into this Agreement or an Order.

IN WITNESS hereof the Authority and the Provider have executed this Agreement as a Deed the day and year first before written

Executed as a deed by THE
BOROUGH COUNCIL OF
BOLTON affixing its Common
Seal in the presence of:

Authorised Sealing Officer

Executed by []
acting by

.....

Director signature

.....
Director/Secretary/Witness signature

.....
Witness Name

.....
Witness Address

APPENDIX 1

TERMS AND CONDITIONS



TABLE OF CONTENTS

Title

1. DEFINITIONS & INTERPRETATION
2. TERM OF AGREEMENT
3. THE FEES
4. THE SERVICES
5. WARRANTIES AND REPRESENTATIONS
6. HEALTH & SAFETY
7. STAFF
8. AUDIT AND RECORD KEEPING
9. DISCRIMINATION AND THE PROMOTION OF EQUALITY
10. SAFEGUARDING AND PROMOTING WELFARE
11. FRAUD AND PROHIBITED ACTS
12. CORPORATE REQUIREMENTS
13. EFFICIENCY SAVINGS
14. COMPLAINTS
15. DATA PROTECTION
16. FOIA, EIR AND CONFIDENTIALITY
17. INTELLECTUAL PROPERTY RIGHTS
18. DISPUTE RESOLUTION
19. SUSPENSION AND TERMINATION OF AGREEMENT
20. CONSEQUENCES OF TERMINATION
21. INDEMNITY AND LIMITATION OF LIABILITY
22. EMPLOYMENT EXIT PROVISIONS
23. ACTIONS UNDER CONTRACT
24. FORCE MAJEURE
25. VARIATION
26. ASSIGNMENT AND SUB-CONTRACTING
27. PARTNERSHIP
28. AGENCY
29. WAIVER
30. NOTICES
31. THIRD PARTIES
32. SURVIVAL OF TERMS
33. ENTIRE AGREEMENT
34. LAW & JURISDICTION

1. DEFINITIONS & INTERPRETATION

1.1 In these terms and conditions the following expressions shall have the following meanings: -

“Agreement” shall have the meaning afforded to it in the main body of the Agreement

“Agreement Manager” the person appointed from time to time by the Authority and the person appointed from time to time by the Provider to manage the Agreement on their behalf and shall include any deputy appointed

“Agreement Period” shall mean the term specified in paragraph 1 of the main body of the Agreement

“Authority” shall have the meaning afforded to it in the main body of the Agreement

“Bolton Brand” shall mean:

- (a) Bolton Council (registered trademark number: 2443977)
- (b) Part of the Bolton Family (registered trademark number: 2443967)
- (c) any other phrase which the Authority develops from time to time in relation to the trademarks detailed at (a) and (b) above or in relation to the operation or functions of the Authority

“Business Continuity” shall mean the ability to maintain operations and services in the face of a disruptive event

“Business Continuity Exercise” shall mean an activity in which the Business Continuity Strategy is rehearsed in part or in whole to ensure that the same contains the appropriate information and produces and achieves the desired result when put into effect

“Business Continuity Plan” shall mean a documented collection of procedures and information that is developed, compiled, and maintained in readiness for use in an incident to enable the Provider to continue to deliver its critical activities at an acceptable pre-defined level

“Business Continuity Strategy” shall mean the strategy to be developed and implemented by the Provider which details how the Provider will ensure its recovery and continuity in the face of a disaster or other major incident or business disruption

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

“Caldicott Principles” means the general information protection principles that health and social care organisations should use when reviewing its use of client information alongside the Data Protection Act 2018 principles

“CCA” shall mean the Civil Contingencies Act 2004 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

“Change of Control” means a change in Control of the Provider or a sub-contractor of the Provider

“Commencement Date” shall mean the date on which the Agreement commences as specified in paragraph 1 of the main body of the Agreement

“Confidential Information” shall mean all confidential information relating to the Services and/or the Agreement which the Authority or its contractors/sub-contractors or their representatives directly or indirectly discloses, or makes available, to the Provider before, on or after the Commencement Date. This includes but is not limited to:

- (a) the fact that discussions and negotiations are taking place concerning the Services and/or the Agreement and the status of those discussions and negotiations;
- (b) the existence and terms of this Agreement;
- (c) all confidential or proprietary information relating to:
 - (i) the business, affairs, contractors/sub-contractors, partners, suppliers, plans, intentions, or market opportunities of the Authority; and
 - (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Authority;
 - (iii) any information, findings, data, or analysis derived from Confidential Information; and
 - (iv) any other information that is identified as being of a confidential or proprietary nature

but excludes Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Provider in breach of the Agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- (b) it was available to the Provider on a non-confidential basis prior to disclosure by the Provider;
- (c) it was, is, or becomes available to the Provider on a non-confidential basis from a person who, to the Provider’s knowledge, is not under any confidentiality obligation in respect of that information;
- (d) it was lawfully in the possession of the Provider before the information was disclosed by the Provider;
- (e) it is strictly required to enable a determination to be made under clause 18 below;
- (f) the parties agree in writing that the information is not confidential.

“Control” means the power to direct or cause the direction of the general management and policies of the person in question, but only for so long as such control exists and shall include the definition in a section 416 of the Income and Corporation Taxes Act 1988

“Data Protection Legislation” shall mean:

- (a) the UK General Data Protection Regulation (UK GDPR);
- (b) the Data Protection Act 2018 (DPA 2018);
- (c) the Regulation of Investigatory Powers Act 2000;
- (d) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000;
- (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003, implementing the Electronic Communications Data Protection Directive 2002/58/EC; and
- (f) all other applicable laws and regulations relating to protection, processing, and sharing of personal data and privacy (as amended), including where applicable the guidance and codes of practice issued by the Information Commissioner

“DBS” shall mean Disclosure and Barring Service

“DPA 2018” shall mean the Data Protection Act 2018

“EIR” shall mean the Environmental Information Regulations 2004

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

“Exempt Information” shall mean any information or class of information (including but not limited to any document, report and contract or other material containing information) relating to the Agreement or otherwise relating to the Provider which falls within an exemption to FOIA (as set out therein)

“Existing Intellectual Property Rights” shall mean those Intellectual Property Rights vested in the Authority or the Provider prior to the Commencement Date

“Fees” shall have the meaning afforded to it in the main body of the Agreement

“FOIA” shall mean the Freedom of Information Act 2000

“Force Majeure Event” shall mean an event or circumstance which is beyond the reasonable control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition, or compulsory acquisition by any governmental or competent authority;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) earthquakes, flood, fire, or other physical natural disaster, but excluding weather conditions regardless of severity;
- (e) strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labour not employed by the affected Party, its subcontractors, or its suppliers and which affect an essential portion of the Services but excluding any industrial dispute which is specific to the performance of the works or this Agreement; and
- (f) pandemic and/or epidemic.

“Improvement Notice” shall mean a written notice served by the Authority on the Provider detailing the improvements which the Authority requires the Provider to make in relation to the delivery of the Agreement

“Intellectual Property Rights” shall mean 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 but not limited to the United Kingdom) and the right to sue for passing off

“Invitation” shall have the meaning afforded to it in the main body of the Agreement. The Invitation will also cover the Authority’s specification for the Services which sets out the key requirements in relation to the Services, and relevant description of the Services, together with any other detailed requirements as specified in writing in its Order

“Invitation Response” shall have the meaning afforded to it in the main body of the Agreement, and for the avoidance of doubt, shall include a response to the original Contract Notice or a future response following an invitation from the Authority to be placed on the Agreement after the Commencement Date

“Individual Service User Placement Agreement/ISUPA” means the separate agreement which sets out the details of the placement of a resident following an Order. Each ISUPA is a separate and distinguishable contract and incorporates the

terms of the Agreement by reference. The ISUPA shall be in the form set out in Schedule 1 or in any such form as may be notified to the Provider by the Authority from time to time

“Law” shall mean any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Provider is bound to comply

“Losses” shall include but not be limited to actions claims losses demands proceedings damages costs and expenses

“Material Breach” shall mean a substantial failure to perform any term or condition of the Agreement, as determined at the Authority’s sole discretion

“Mini-Competition” shall mean a competitive process which the Authority may run from time to time to select a service provider to carry out Services from time to time, the successful service provider being the Provider

“Order” shall have the meaning afforded to it in the main body of the Agreement

“Order Form” shall mean a document produced by the Authority pursuant to clause 4, setting out its request for the Providers Order, which shall be in the form set out in Schedule 1 or in any such form as may be notified to the Provider by the Authority from time to time

“Party” shall mean a party to the Agreement and **“Parties”** shall mean all the parties to the Agreement

“Personal Data” shall have the meaning afforded to it in the DPA 2018

“Prohibited Act” shall mean the following:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;
- (c) to commit any offence:
 - (i) under the Bribery Act; or
 - (ii) under section 117(2) of the Local Government Act 1972
 - (iii) under legislation creating offences concerning fraudulent acts;

- (iv) at common law concerning fraudulent acts relating to the Agreement or any other contract with the Authority; or
- (v) defrauding, attempting to defraud or conspiring to defraud the Authority

“Provider” shall have the meaning afforded to it in the main body of the Agreement

“Provider’s Final Staff List” shall mean the list of information specified in Part 2 of Schedule 2 to these terms and conditions, detailing all the Provider’s and Sub-Contractor’s staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date

“Provider’s Provisional Staff List” shall mean the list of information specified in Part 1 of Schedule 2 to these terms and conditions, prepared and updated by the Provider of all the Provider’s and Sub-Contractor’s staff engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list

“Reasonable Living Wage” means the wage set by the Living Wage Foundation, which is made according to the cost of living based on a basket of household goods and services

“Regulatory Body” shall mean any government departments and regulatory, statutory, and other entities, committees, 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 the Agreement or any other affairs of the Authority

“Relevant Employees” shall mean those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Provider by virtue of the application of TUPE

“Relevant Transfer” shall mean a relevant transfer for the purposes of TUPE

“Replacement Provider” shall mean any third-party supplier of any services that are fundamentally the same as any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of the Agreement Period or an Order or ISUPA, whether those services are provided by the Authority internally or by any Replacement Provider

“Services” shall mean those services to be delivered to the Authority by the Provider under the Agreement as more particularly described in the main body of the Agreement, and as will be further detailed in an Order and/or ISUPA

“Service Transfer Date” shall mean the date on which the Services (or any part of the Services), transfer from the Provider or Sub-Contractor to the Authority or any Replacement Provider

“Specification” shall mean the specification and other requirements set out in the Invitation.

“Staff” shall mean employees, volunteers, and agency staff

“Staffing Information” shall mean, in relation to all persons detailed on the Provider’s Provisional Staff List, in an anonymised format, such information as the

Authority may reasonably request including the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE and details of whether the staff are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services

“Sub-Contractor” shall mean the contractors or Providers engaged by the Provider to provide goods, services or works to, for or on behalf of the Provider for the purposes of providing the Services to the Authority.

“Third Party Employer” shall mean a Provider engaged by the Authority to provide some or all of the Services to the Authority before the date(s) on which the Services (or any part of the Services), transfer from the Authority and/or any Third Party Employer to the Provider or Sub-Contractor and whose employees will transfer to the Provider on the date(s) on which the Services (or any part of the Services), transfer from the Authority and/or any Third-Party Employer to the Provider or Sub-Contractor

“TUPE” shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

“UK GDPR” shall mean the UK General Data Protection Regulation and **“GDPR”** shall mean the General Data Protection Regulation (Regulation (EU) 2016/679)

“Working Day” shall mean Monday to Friday in any week, excluding public holidays in England

1.2 In the Agreement:

1.2.1 Whenever required by the context the singular includes the plural and vice versa and words importing the masculine shall include the feminine and vice versa;

1.2.2 The headings used in these terms and conditions are for ease of reference only and shall not affect the interpretation or construction of the Agreement;

1.2.3 Unless the context otherwise requires reference to a clause or sub-clause is a reference to a clause or sub-clause of these terms and conditions; and

1.2.4 References to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute.

2. TERM OF AGREEMENT

The Agreement shall commence on the Commencement Date and continue for the Agreement Period unless terminated earlier in accordance with these terms and conditions.

3. THE FEES

3.1 The Authority shall pay the Fees to the Provider in sterling, in accordance with current legislation and within 30 days of receipt of a valid undisputed invoice. For the avoidance of doubt the Authority shall not be liable to pay the Provider for the provision of unauthorised services. The Fees shall be set out in the Invitation Response and will be further detailed in the Order and/or ISUPA.

- 3.2 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Provider where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the avoidance of doubt, an electronic invoice will be deemed to comply with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 3.3 Each invoice of the Provider shall be delivered to such address as may be notified in writing from time to time by the Authority.
- 3.4 Where any monies are or shall become due or recoverable from the Provider by virtue of the Agreement or any other agreement with the Authority the Authority may deduct or offset those monies from the Fees payable from time to time. The Authority's rights under this clause 3.3 are without prejudice to any other rights or remedies available to the Authority under the Agreement or otherwise.

4. THE SERVICES

- 4.1 The Provider shall provide the Services to the Authority during the Agreement Period in accordance with the Agreement and any Order/ISUPA placed from time to time by the Authority. Such Services shall be provided by the Provider:
- 4.1.1 with the high degree of skill, care, and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type, and complexity to the Services and with sufficient resources, including project management resources if relevant;
 - 4.1.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
 - 4.1.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
 - 4.1.4 so that they are properly managed and monitored and shall immediately inform the Authority if any aspect of the Services is not being, or is unable to be, performed.
- 4.2 The Provider acknowledges that the Authority will place Orders with the Provider in accordance with its obligations under the Care Act 2014, and other relevant legislation and that the Provider shall comply with all such obligations in so far as they apply to the Provider.
- As the Authority has set up a FPS, and multiple suppliers have been appointed to provide the Services, then the Authority will decide, from time to time, when it needs Services to be provided whether it wishes to run a Mini-Competition.
- Where the Authority appoints a Provider direct without the need for a Mini-Competition, the Authority will issue an Order Form to the Provider, specifying the Services to be provided, in which event:
- 4.2.1 The Provider shall promptly confirm receipt of such Order Form;

- 4.2.2 The Provider shall respond to the Order Form by completing an Order as an offer capable of acceptance, or by notifying the Authority in writing that it does not intend to submit an Order. The Provider shall so respond to the Authority by the date specified in the Order Form or, if no such date is specified, within 10 business days of receiving the Order Form, or by such other date as may be agreed between the parties. An Order must remain valid for at least 90 business days from the date it is submitted to the Authority.
- 4.3 Where the Authority undertakes a Mini-Competition it will issue to those Providers on the framework that are the subject of this Agreement, that it assesses at its sole discretion, are capable of providing the Services to the Authority's satisfaction, an Order Form specifying the Services to be provided. In the event that the Provider receives such an Order Form:
- 4.3.1 The Provider shall immediately confirm receipt of such Order Form;
- 4.3.2 The Provider shall respond to an Order Form by completing an Order as an offer capable of acceptance or by notifying the Authority in writing that it does not intend to submit an Order. The Provider shall respond to the Authority by the date specified in the Order Form or, if no such date is specified, within 10 business days of receiving the Order Form, or by such other date as may be agreed between the Parties. An Order must remain valid for at least 90 business days from the date it is submitted to the Authority.
- 4.3.3 The Authority will award the relevant Services to the Provider that is the most economically advantageous with reference to the assessment criteria set out in the Order Form as they relate to the Services in question.
- 4.3.4 The procedure for ordering Services, which is set out in Schedule 1, shall also apply and the Authority may change this procedure from time to time, provided that it complies with the general principles set out in this clause 4.3.
- 4.4 The Provider and the Authority shall both appoint an Agreement Manager and inform the other of his name within ten (10) Working Days of the Commencement Date. In the event that an Agreement Manager is replaced the relevant Party shall inform the other of the name of his replacement as soon as is reasonably practicable.
- 4.5 The Provider shall comply with:
- 4.5.1 all those reasonable directions and monitoring requirements imposed from time to time by the Authority and those requirements detailed in the Invitation; and
- 4.5.2 all reasonable guidance relating to the provision of the Services issued by the Authority and other regulatory bodies.
- 4.6 The Provider shall permit the Authority and those authorised by it including but not limited to any regulatory body to observe the Provider's delivery of the Services at any time and to interview those members of the Provider's Staff directly or indirectly involved in the provision of the Services.
- 4.7 The Provider shall attend review meetings with the Authority at such times and at such locations as agreed between the Authority and the Provider to discuss the operation of the Agreement and any other relevant matters.

- 4.8 The Provider will develop and deliver to the Authority on request a written assessment of the quality of the Services being provided from time to time under the Agreement.
- 4.9 In the event that the Authority has concerns regarding the Provider's delivery of or ability to deliver the Services:
- 4.9.1 The Authority shall be entitled to serve an Improvement Notice on the Provider; and
- 4.9.2 The Provider shall comply with each Improvement Notice served within the timescales detailed therein.
- 4.10 The Authority shall, where necessary, permit the Provider and those authorised by the Provider to enter onto such Authority premises as agreed between the Parties for the purpose of delivering the Services. The Provider shall require those of its personnel using Authority premises to comply with any site rules or policies communicated to the Provider. The Authority shall have the right to refuse entry to and remove any of the Provider's personnel from Authority Premises if they fail to comply with any site rules or policies or if they otherwise present a security risk.
- 4.11 The Provider shall not at any time during the Agreement Period knowingly act in any capacity for any person(s), partnership, organisation, or company in circumstances where a conflict of interest would or might exist between its professional duties towards such person(s), partnership, organisation or company and its duties to the Authority under the Agreement. The Provider shall inform the Authority immediately if any potential conflict arises.
- 4.12 The Provider shall at all times comply with any statutory requirements relating to the Provider's obligations under the Agreement whether such statutory requirements are in force at the Commencement Date or enacted at any time during the Agreement Term.
- 4.13 The Provider shall not do anything by reason of which the Authority may incur or become liable to pay any penalty damages compensation costs fees or expenses.
- 4.14 The Provider shall inform the Authority promptly and in writing of any problems encountered by the Provider in delivering the Services which the Provider is unable to resolve within a reasonable period of time and the Provider shall comply with any reasonable directions of the Authority in respect of the same.
- 4.15 The Provider acknowledges that, in entering into this Agreement, no form of exclusivity or volume guarantee has been given by the Authority Body for the Services and that the Authority is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as, or similar to, the Services.
- 4.16 The Parties acknowledge that the Authority must exercise a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health Functions and Entry to Provider Premises by Local Healthwatch Representatives) Regulations.

- 4.17 The Provider shall reasonably afford all necessary rights in accordance with the Social Care Act 2012, in particular but not limited to those rights set out in section 186 of the Social Care Act 2012 with regards to requests for information and rights of entry to Premises to the Local Healthwatch.

5. WARRANTIES AND REPRESENTATIONS

- 5.1 The Provider warrants and represents that in providing the Services:

- 5.1.1 it will exercise all the reasonable skill, care, and diligence to be expected of a properly qualified and competent person experienced in the provision of services which are similar in nature to the Services; and
- 5.1.2 it will meet any targets and service levels detailed in the Invitation within the timescales detailed therein; and
- 5.1.3 it will comply with the Law, including but not limited to, the legal requirement to pay the National Minimum Wage.

- 5.2 The Provider further warrants that:

- 5.2.1 it has full capacity and authority and all necessary rights and consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform the Agreement and to grant the rights to be granted hereunder and that the Agreement is executed by a duly authorised representative of the Provider;
- 5.2.2 there are no material facts or circumstances in relation to the financial position or operation or constitution of the Provider which have not been fully and fairly disclosed to the Authority in writing and which if so disclosed might reasonably have been expected to affect the decision of the Authority to enter into the Agreement;
- 5.2.3 as at the Commencement Date, all information contained in the Invitation Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Agreement;
- 5.2.4 in entering into the Agreement it is not in breach of clause 11 (Fraud and Irregularity and Corrupt Gifts);
- 5.2.5 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights and all permissions, authorisations, consents and permits that are necessary for the performance of its obligations under the Agreement;
- 5.2.6 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 have a material adverse effect on its ability to perform its obligations under the Agreement;
- 5.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Agreement;

- 5.2.8 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; and
- 5.2.9 in the three (3) years prior to the Commencement Date:
- (i) 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;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Agreement.
- 5.3 The Authority shall at any time be entitled to assign or transfer the benefit of the warranties given under the Agreement by way of legal assignment without the Provider's consent.
- 5.4 Except as expressly stated in the Agreement, all warranties, and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.
- 6. HEALTH & SAFETY**
- 6.1 The Provider shall notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement.
- 6.2 The Provider shall:
- 6.2.1 comply with all relevant health and safety legislation and any relevant guidance issued by the Authority or a government or regulatory body;
 - 6.2.2 co-operate with and provide information to the Authority, as requested, to give assurance that adequate arrangements exist to ensure the health and safety of any members of the public affected by the provision of the Services, to enable the Authority to review any incidents involving members of the public and to assist the Authority to comply with its health and safety policies;
 - 6.2.3 carry out health and safety risk assessments in respect of the provision of the Services, as and when necessary;
 - 6.2.4 in relation to the environment in which the Services will be delivered, ensure that risks have been reduced to the lowest risk practicable;
 - 6.2.5 ensure that the Provider it employs a sufficient number of Staff competent in health and safety to meet its obligations under the Agreement;

- 6.2.6 maintain adequate records in relation to health and safety, including but not limited to:
 - 6.2.6.1 assessments of Staff/environment suitability;
 - 6.2.6.2 agreements or commitments on health and safety with Staff;
 - 6.2.6.3 information relating to harm to any members of the public affected by the delivery of the Services;
 - 6.2.6.4 records of assessments, monitoring and reviews of its compliance with clause 6.2.6 above;
- 6.3 In the event that any part of the Services is provided in an environment outside the direct control of the Provider, the Provider shall carry out a risk assessment of the environment to ensure its suitability.
- 7. STAFF**
- 7.1 The Provider shall at all times employ (or procure the employment and/or engagement) at its own expense sufficient Staff for the purpose of providing the Services.
- 7.2 The Provider shall ensure that all Staff engaged in the provision of the Services are suitably skilled and experienced.
- 7.3 The Provider shall set up and maintain written personnel policies and procedures for all Staff engaged in the provision of the Services covering all relevant matters (including but not limited to discipline, grievance, equal opportunities and health and safety). The Provider shall procure that the terms and implementation of such policies and procedures comply with legislation and best practice and that they are made available to the Authority on request.
- 7.4 In the event that the Authority is at any time during the Agreement Period of the reasonable opinion that any member of the Provider's Staff is unable or unfit to deliver the Services or any part of the Services the Provider will:
 - 7.4.1 Provide written details of the issue or issues to the Authority;
 - 7.4.2 Deliver to the Authority a written action plan detailing the way in which the Provider proposes to deal with the issue or issues; and
 - 7.4.3 Comply with any reasonable guidance or instructions issued by the Authority in relation to the action plan; and
 - 7.4.4 Comply with the action plan and any timescales detailed therein.
 - 7.4.5 Comply with the suspension of any staff on a without prejudice basis whilst any investigations are undertaken if required to do so.
- 7.5 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Provider's Staff and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the delivery of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension

contributions, termination costs and otherwise from and including the Commencement Date.

- 7.6 The Provider shall use endeavour to pay those Staff delivering the Services the Reasonably Living Wage.

8. AUDIT AND RECORD KEEPING

- 8.1 The Provider will at all times and on reasonable notice permit for the purposes of audit the Authority and any nominated auditors' access to documentation relating to the provision of the Services.
- 8.2 The Authority reserves the right, at any reasonable time, and as it may deem necessary to require the Provider at its own cost to:
- 8.2.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform its obligations under the Agreement;
 - 8.2.2 provide a copy of the Provider's latest audited accounts;
 - 8.2.3 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the Authority; and
 - 8.2.4 provide any additional evidence to support payments made under the Agreement as the Authority shall reasonably require.
- 8.3 The Provider shall at all times during the Agreement Period and for twelve (12) years thereafter, keep and maintain full and detailed records relating to the delivery of the Services delivered under the Agreement and provide copies of the same to the Authority upon request.
- 8.4 The Provider will make available to the Authority on request a copy of the Provider's written occupancy agreement and/or statement of purpose relating to the resident's placement in the care home, as detailed in the ISUPA and shall ensure that nothing in that ISUPA shall contradict or conflict with the terms of the Agreement.

9. DISCRIMINATION AND THE PROMOTION OF EQUALITY

- 9.1 The Provider will:
- 9.1.1 not unlawfully discriminate directly or indirectly by way of victimisation or harassment within the meaning of any law, enactment, order, regulation, or other similar instrument relating to discrimination in employment (whether in relation to race, age, gender, religion, disability, sexual orientation or otherwise);
 - 9.1.2 comply with all relevant anti-discrimination legislation, have proper regard to any relevant codes of practice and treat people fairly and equally;
 - 9.1.3 inform the Authority forthwith of any finding of unlawful discrimination against the Provider by any Court, Tribunal, the Equality and Human Rights Commission and as soon as reasonably practicable:
 - 9.1.3.1 take all necessary steps to prevent a reoccurrence of such unlawful discrimination; and,

9.1.3.2 provide to the Authority full details of all steps taken.

9.2 The Provider shall not treat a person less favourably than another on grounds of trade union membership or trade union activities, in contravention of The Employment Relations Act 1999 (Blacklists) Regulations 2010 and, in particular, the Provider will not:

9.2.1 compile, supply, sell or use a Prohibited List (as defined in The Employment Relations Act 1999 (Blacklists) Regulations 2010);

9.2.2 refuse employment to a job applicant, to dismiss an employee, or to subject an employee to any other detriment for a reason related to a Prohibited List; and

9.2.3 engage with an employment agency which refuses to provide its services to an individual for a reason related to a Prohibited List.

9.3 The Provider shall, on request, and at its own cost, provide to the Authority such written evidence as the Authority reasonably requires that the Provider has not breached clause 9.2 above.

9.4 The Provider recognises that the Authority is bound to comply with the Human Rights Act 1998 ("HRA") and that those duties imposed on it under the HRA must be met in the delivery of the Services. As a result, the Provider shall comply with the provisions of the HRA as if it were a public authority (as defined under the HRA).

9.5 The Provider shall at all times have a written equalities policy which shall as a minimum cover race, age, gender, religion, disability, sexual orientation and provide a copy of the same to the Authority on request ("Equalities Policy").

9.6 The Provider shall provide all reasonable assistance, at its own cost, to the Authority to enable it to meet any duties imposed on it in relation to the prevention of discrimination and the promotion of equality.

9.7 In the event that the Provider enters into any sub-contract in connection with the Agreement it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this clause 9.

10. SAFEGUARDING AND PROMOTING WELFARE

10.1 In the event that a Regulated Activity as defined in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 (as amended) ("SVGA") is to be delivered by the Provider under the Agreement the Provider shall be a Regulated Activity Provider for the purposes of the SVGA with ultimate responsibility for the management and control of the Regulated Activity.

10.2 The Provider shall ensure that prior to commencement of their contract all Staff engaged in the provision of a Regulated Activity are:

10.2.1 in receipt of a valid enhanced disclosure check undertaken through the DBS, which check shall at no time during the period in which the Services are being provided is to be more than three (3) years old from the date when the relevant Staff member starts providing the Regulated Activity;

10.2.2 in receipt of a check against the adults' barred list or the children's barred list, as appropriate; and

- 10.2.3 during the course of the contract, regularly monitored to ensure the level and validity of the checks under this clause 10.2 are complied with.
- 10.3 The Provider shall renew no less than 10% of enhanced disclosure checks each year during the Agreement Period on a random sample basis, and undertake other renewals, where deemed appropriate by the Provider.
- 10.4 The Provider warrants that at all times for the purposes of the 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 Services is barred from the activity in accordance with the provisions of the SVGA and any regulations made thereunder, as amended from time to time.
- 10.5 The Provider shall upon immediate request provide such information to the Authority as the Authority reasonably requires in order to satisfy it that the obligations of this clause 10 have been met.
- 10.6 The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to service users.
- 10.7 The Provider shall refer information about any person carrying out the Services to the DBS and/or any relevant regulatory or governing bodies, together with the Authority if it is not already involved, where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users, children or vulnerable adults.
- 10.8 In delivering the Services the Provider shall have due regard to all relevant parts of:
- 10.8.1 The Authority's Framework for Action for all children, young people and families in Bolton, which is currently available at:
- <https://www.boltonsafeguardingchildren.org.uk/downloads/file/147/framework-for-action>
- 10.8.2 The Greater Manchester Safeguarding Children Procedures Manual, which is currently available at:
- <http://greatermanchesterscb.proceduresonline.com/chapters/contents.html>
- 10.8.3 Bolton's "Safeguarding Adults Board Procedures Manual" which is currently available at:
- <https://www.bolton.gov.uk/adult-safeguarding-board/professionals>
- 10.8.4 Any updates to the documents referenced at 10.8.1 to 10.8.3 above and any other policies of the Authority detailed in an Order.
- 10.8.5 The Caldicott Principles.
- 10.8.6 The Care Quality Commission (Registration) Regulation 2009 as amended from time to time.
- 10.8.7 Any requirements of the Authority relating to any Staff checks which must be carried out by the Provider on any Staff providing Services to the Authority, such as DBS, Enhanced Security Checks and similar, such

requirements being notified by the Authority to the Provider if they are not specified in the Invitation,

- 10.9 The Provider shall, where required by the Authority have, and comply with a child protection policy during the Agreement Period and supply a copy of the same to the Authority upon request. For the avoidance of doubt, in the event of any conflict between the policies and/or documents of the Authority and the Provider, as referenced in clause 10.8, the Authority's policies and/or documents shall prevail.
- 10.10 The Provider shall as and when required work with other agencies and share information with the same to ensure the safeguarding and promotion of the welfare of children and vulnerable adults subject always to the duty of the Provider to comply with all relevant laws, statutory instruments, guidance, rules, regulations, orders, or directives.

11. FRAUD AND PROHIBITED ACTS

- 11.1 The Provider shall notify the Authority immediately in writing where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Services or the performance of its obligations under this Agreement including, but not limited to, cases of:

- 11.1.1 collusion with Authority Staff;
- 11.1.2 computer fraud;
- 11.1.3 the submission to the Authority of inaccurate, incomplete, misleading, or falsified management information; and/or
- 11.1.4 fraud involving awarding bodies

provided that nothing in this clause 11.1 shall require the Provider to do anything which may cause it to infringe any law.

- 11.2 Where the Authority has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and any payments made under the Agreement or in relation to any other agreement made between the Authority and the Provider, the Authority shall have the right:

- 11.2.1 of access to any premises of the Provider at any reasonable time with or without notice to examine and remove or copy all relevant documents and records and to interview any Staff of the Provider engaged to deliver the Agreement; and/or
- 11.2.2 to suspend payments of the Charges or any monies owed under any other agreement made between the Authority and the Provider until such time as the Authority's concerns are abated.

- 11.3 The Provider warrants that no commission has been paid or agreed to be paid by the Provider or on the Provider's behalf or to the Provider's knowledge unless, before the Agreement was made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof were disclosed in writing to and authorised by the Authority.

- 11.4 The Provider shall not offer nor give nor agree to give any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or

forborne to do any act in relation to the obtaining or performance of the Agreement or any other agreement with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement.

11.5 The Provider:

11.5.1 shall not, and shall procure that any Staff, agents, contractors, or sub-contractors of the Provider shall not, in connection with the Agreement commit a Prohibited Act;

11.5.2 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 the Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Agreement;

11.5.3 shall, 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; and

11.5.4 shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff, agents, contractors, or sub-contractors of the Provider from committing a Prohibited Act and shall enforce it where appropriate.

11.6 If any breach of this clause 11 is suspected or known, the Provider shall notify the Authority immediately and respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records, and any other relevant documentation.

11.7 The Provider acknowledges and agrees that the Authority shall be entitled to share information relating to the Provider or the Agreement with any department, office or agency of the Government or any auditor appointed by the Authority or the aforementioned public bodies for the purpose of data matching and fraud prevention (as more particularly described at <https://www.bolton.gov.uk/data-protection-freedom-information/privacy-notices>) or otherwise.

11.8 Despite clause 18 (Dispute Resolutions), any dispute relating to:

11.8.1 the interpretation of this clause 11; or

11.8.2 the amount or value of any gift, consideration, or commission,

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

12. CORPORATE REQUIREMENTS

Corporate Policies

12.1 The Authority shall, where appropriate, supply to the Provider details of any relevant policies (including but not limited to, any safeguarding policies referred to at clauses 10.8.1 to 10.8.3) and rules and on receipt of the same the Provider shall comply with all relevant policies and rules in delivering the Services and/or performing its obligations under the Agreement.

The CCA

- 12.2 The Provider recognises that the Authority is subject to legal duties under the CCA and agrees that, on receipt of a reasonable request from the Authority, it shall assist the Authority in meeting its duties under the CCA, such assistance may include but not be limited to:
- 12.2.1 developing and operating a Business Continuity Strategy during the Agreement Period;
 - 12.2.2 developing and adopting a Business Continuity Plan (taking into account the CCA);
 - 12.2.3 providing the Authority with a copy of those documents referred to at clauses 12.2.1 and 12.2.2;
 - 12.2.4 undertaking regular risk assessments and business impact analysis in relation to this Agreement;
 - 12.2.5 implementing a Business Continuity Exercise on a regular basis (for the avoidance of doubt, the Authority shall be entitled to attend any such test); and
 - 12.2.6 providing the Authority with a written report on request which summarises the results of each Business Continuity Exercise carried out, which summary shall highlight any actions or remedial measures necessary as a result of the said exercises.
- 12.3 The Authority shall have the right to carry out a review of the Provider's Business Continuity arrangements subject to the Authority giving the Provider not less than 24 hours' notice of any such review. The Provider warrants that the Authority shall have unfettered access to and the ability to reproduce and retain any pertinent documentation deemed appropriate by it during such a review.

The Bolton Brand

- 12.4 In the event that the Provider is authorised to use the Bolton Brand it shall comply with all instructions issued from time to time by the Authority. The Provider shall not be entitled to reproduce or copy the Bolton Brand without written consent.

13. EFFICIENCY SAVINGS

- 13.1 The Provider recognises that the Authority is under a continuous duty to achieve savings and hereby agrees to carry out a savings review as and when reasonably requested by the Authority to, where possible:
- 13.1.1 identify ways in which the provision of the Services may be modernised and made more productive so as to reduce outgoings and costs; and
 - 13.1.2 reduce third party costs and fees relevant to the provision of the Services (including, without limitation, endeavouring to source equipment and third-party software from suppliers with competitive rates).
- 13.2 In the event that the Provider identifies a potential saving under this clause 13, it shall promptly inform the Authority of the same and it shall advise the Authority whether, in the Provider's professional opinion, the implementation of any change is necessary

to enable the Authority to benefit from the potential saving is required (in view of quality, reliability and other relevant factors as well as price).

- 13.3 If the Authority shall conclude that the implementation of the necessary change identified under clause 13.2 is required:

13.3.1 the Authority will inform the Provider in writing to make the change; and

13.3.2 the Provider shall on receipt of written notification from the Authority implement the change within such timescales as advised by the Authority or otherwise agreed between the Authority and the Provider.

For the avoidance of doubt the Provider shall not be entitled to object to a proposed change unless the Provider acting reasonably is of the opinion that the proposed change would result in the Provider being commercially or otherwise disadvantaged. In that event the Provider shall immediately inform the Authority in writing of its objections and the Parties shall negotiate the proposed changes in good faith. If the Parties are unable to agree any changes clause 18 will apply.

- 13.4 Any benefits arising from any change made under this clause 13 (including any consequent reduction to the Fees) shall accrue solely to the Authority (subject to any costs reasonably incurred by the Provider in implementing the necessary change being taken into account).

14. COMPLAINTS

- 14.1 The Provider shall at all times operate a complaints procedure and provide details of the same to the Authority upon request.
- 14.2 The Provider shall notify the Authority of all complaints received during the Agreement Period relating in any way to the provision of the Services (including but not limited to complaints relating to any Staff of the Provider engaged in the performance of the Agreement) within two working days of receipt of the complaint by the Provider.
- 14.3 The Provider shall provide to the Authority a written report on each and every reasonable and unduplicated complaint (from whatever source) within 10 Working Days of the receipt or notification of the complaint, giving details of the complainant and on any action taken in respect thereof.

15. DATA PROTECTION

- 15.1 The Provider shall at all times during the Agreement Period comply with and maintain Personal Data in accordance with Data Protection Legislation.
- 15.2 The Provider shall comply with the terms and conditions of the Data Processor Schedule attached at Schedule 3 to these Terms and Conditions and any amendments to the same which the Authority notifies the Provider of in writing.
- 15.3 The Provider shall, if required by the Authority, enter into a data sharing agreement with the Authority on the Authority's standard terms and conditions (and any other relevant parties) which will govern the way in which the parties to the Agreement share Personal Data.
- 15.4 In the event that the Provider is a "Controller" (as defined in the DPA 2018) the Provider shall at all times be responsible to third parties for any Personal Data held, including the individuals to whom the Personal Data relates and the Provider shall at

all times during the Agreement Period have appropriate data protection and information security policies in place which demonstrate how the Provider will meet its responsibilities under the Data Protection Legislation and any other relevant legislation, code of practice, and guidance issued from time to time.

- 15.5 When recording Personal Data, in whatever format, each piece of information must contain the date created or recorded and whether it comprises fact, opinion, hypotheses or a mixture of these together with the identity of the person recording the information.
- 15.6 The Provider acknowledges and agrees that the Authority shall be entitled to share any Personal Data supplied by the Provider to the Authority under the Agreement where it has a lawful and legitimate reason for doing so.
- 15.7 In delivering the Agreement, the Provider shall only share Personal Data with a third party where it has a lawful and legitimate reason for doing so.
- 15.8 On expiry of the Agreement Period, or earlier termination of the Agreement, the Provider shall immediately provide to the Authority written details of all Personal Data held by the Provider relating to the Agreement or any individual in receipt of any part of the Services under the Agreement. The Provider shall then transfer to the Authority all Personal Data requested in writing by the Authority. Personal Data shall be transferred in a secure manner in compliance with Data Protection Legislation and any reasonable instructions issued by the Authority, including instructions relating to timescales. Where legally required to do so, the Provider shall be responsible for obtaining any individual consents needed to lawfully transfer Personal Data.
- 15.9 The Provider shall indemnify and keep indemnified the Authority against any Losses whatsoever incurred in respect of or in any way arising directly out of a breach by the Provider of this clause 15.

16. FOIA, EIR AND CONFIDENTIALITY

16.1 FOIA & EIR

- 16.1.1 The Provider recognises that the Authority is subject to legal duties which may require the release of information under FOIA or the EIR or any other applicable legislation or codes governing access to information ("Access Duties") and that the Authority may be under an obligation to provide information on request. Such information may include matters arising out of or under the Agreement in any way.
- 16.1.2 In the event that the Authority receives a request for information under its Access Duties, the Authority is entitled to disclose all such information and documentation (in whatever form) as it is obliged to disclose under its Access Duties.
- 16.1.3 The Authority shall not disclose Exempt Information provided always that the Authority shall be responsible for determining at its absolute discretion what information it is obliged to disclose under its Access Duties and what is Exempt Information.
- 16.1.4 In respect of any disclosure under its Access Duties, the Authority shall, prior to disclosure, endeavour to advise the Provider of the intention to disclose any information which the Provider has marked as Exempt Information in the Invitation Response and the Authority has agreed in

writing may be Exempt Information and allow at least ten (10) Working Days for the Provider to make submissions to the Authority in respect of that disclosure.

16.1.5 The Authority shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information relating to the Agreement which the Authority is obliged to disclose under its Access Duties.

16.1.6 The Provider will assist the Authority in complying with the Authority's obligations under its Access Duties. In the event that the Authority receives a request for information under its Access Duties and requires the Provider's assistance in obtaining the information that is subject to such request or otherwise, the Provider will respond to any such request for assistance from the Authority at the Provider's own cost and promptly and in any event within 10 days of receiving the Authority's request.

16.2 Confidentiality

16.2.1 Subject to its obligations under clause 16.1 above, the Provider undertakes to the Authority that it shall:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way except for the provision of the Services and/or performing its obligations under the Agreement;
- (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with the Agreement;
- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the provision of the Services and/or performing its obligations under the Agreement. Any such copies, reductions to writing and records shall be the Property of the Authority;
- (e) not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;
- (f) apply the same security measures and degree of care to the Confidential Information as the Provider applies to its own confidential information, which the Provider warrants as providing adequate protection from unauthorised disclosure, copying, or use;
- (g) keep a written record of:
 - (i) any document or Confidential Information received from the Authority in tangible form; and
 - (ii) any copies made of the Confidential Information;

- (h) establish and maintain adequate security measures (including any reasonable security measures proposed by the Authority from time to time) to safeguard the Confidential Information from unauthorised access or use; and
 - (i) where instructed to do so by the Authority, ensure that any document or other records containing Confidential Information shall not be removed from the premises identified by the Authority.
- 16.2.2 Subject to the provisions of this clause 16.2.2, the Provider may disclose Confidential Information to the minimum extent required only by an order of any court of competent jurisdiction or any regulatory, judicial, governmental, or similar body or any taxation authority of competent jurisdiction.
- 16.2.3 Before the Provider discloses any Confidential Information pursuant to clause 16.2.2 it shall, to the extent permitted by law, give the Authority as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 16.2.2, the Provider shall take into account the Authority's requests in relation to the content of this disclosure.
- 16.2.4 If the Provider is unable to inform the Authority before Confidential Information is disclosed pursuant to clause 16.2.2 it shall, to the extent permitted by law, inform the Authority of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.
- 16.2.5 If so requested by the Authority at any time by notice in writing to the Provider, the Provider shall promptly:
 - (a) destroy or return to the Provider all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Authority's Confidential Information;
 - (b) erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
 - (c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
 - (d) certify in writing to the Authority that it has complied with the requirements of this clause 16.2.2.
- 16.2.6 Nothing in clause 16.2.1 shall require the Provider to return or destroy any documents and materials containing or based on the Confidential Information that the Provider is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of the Agreement shall continue to apply to any documents and materials retained by the Provider pursuant to this clause 16.2.6.

- 16.2.7 The Authority reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Authority to the Provider does not give the Provider or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in the Agreement.
- 16.2.8 Except as expressly stated in the Agreement, the Authority makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.
- 16.2.9 Without prejudice to any other rights or remedies that the Authority may have, the Provider acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause 16.2. Accordingly, the Authority shall be entitled to the remedies of injunctions, specific performance, or other equitable relief for any threatened or actual breach of this clause 16.2 by the Provider.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 The Parties shall not cause or permit anything which may damage or endanger the Existing Intellectual Property Rights of the other or assist or allow others to do so.
- 17.2 Any Intellectual Property Rights created by the Provider during the Agreement Period in connection with the provision of the Services shall vest in the Authority and the Authority shall be entitled to use and reproduce all materials originated by the Provider (including basic factual data) for any purpose whatsoever whether in connection with the Agreement or otherwise. The Provider shall not be liable in any way for use by the Authority of any materials generated under or in respect of the Agreement for any purpose other than that for which the same was prepared and provided by the Provider.
- 17.3 The Provider warrants to the Authority that to the best of its knowledge the delivery of the Agreement will not infringe, in whole or in part, any third party Intellectual Property Rights and agrees to indemnify the Authority and keep fully and effectually indemnified the Authority its Staff and agents from and against all Losses arising directly or indirectly out of any act of the foregoing, where such act is, or is alleged to be, an infringement of a third party's Intellectual Property Rights.
- 17.4 The Authority agrees that:
- 17.4.1 it will notify the Provider in writing of any "IPR Claim", being any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Right used to provide the Services or as otherwise provided by the Provider (or to which the Provider has provided access) to the Authority in the fulfilment of its obligations;
- 17.4.2 it will allow the Provider to conduct all negotiations and proceedings and will provide the Provider with such reasonable assistance required by the Provider, each at the Provider's expense, regarding the IPR Claim; and
- 17.4.3 it will not, without first consulting with the Provider, knowingly make an admission relating to the IPR Claim.

- 17.5 The Provider shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute.
- 17.6 The Provider shall not settle or compromise any IPR Claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 17.7 If an IPR Claim is made, or the Provider anticipates that an IPR Claim might be made, the Provider may, at its own expense and sole option, either:
- 17.7.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - 17.7.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - 17.7.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - 17.7.2.2 there is no additional cost to the Authority;
 - 17.7.2.3 the terms of the Agreement shall apply to the replaced or modified item.
 - 17.7.3 If the Provider elects to modify or replace an item pursuant to clause 17.7.2 above or to procure a licence in accordance with clause 17.7.1 above, but this has not avoided or resolved the IPR Claim, then the Authority may terminate the Agreement in whole or in part by written notice with immediate effect and, without prejudice to the indemnity set out in clause 21 below, the Provider shall be liable for all reasonable and unavoidable costs of the substitute item(s) including the additional costs of procuring, implementing and maintaining the substitute item(s).

18. DISPUTE RESOLUTION

- 18.1 The Authority and the Provider shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute ultimately to each Party's Agreement Manager (or such other person as he may direct) of each Party.
- 18.2 Nothing in this dispute resolution procedure shall prevent either Party 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.
- 18.3 If the dispute cannot be resolved by the Parties pursuant to clause 18.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 18.5 unless:
- 18.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
 - 18.3.2 the Provider does not agree to mediation.
- 18.4 The obligations of the Parties shall not cease or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and its Staff shall comply fully with the requirements of the Agreement at all times.

- 18.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 18.5.1 A neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator, or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator;
 - 18.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure;
 - 18.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - 18.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - 18.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties;
 - 18.5.6 If the parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 18.6 Subject to clause 18.2, neither the Authority nor the Provider shall institute court proceedings until the procedures set out in clauses 18.1 and 18.3 have been completed.

19. SUSPENSION AND TERMINATION OF THE AGREEMENT

- 19.1 In the event that the Authority has concerns regarding the Provider’s delivery of or ability to deliver the Services it shall, in addition to its right to serve an Improvement Notice under clause 4.8 above, be entitled to:
- 19.1.1 suspend the provision of the Services under the Agreement for such period as the Authority deems reasonably necessary; and
 - 19.1.2 take such other action as the Authority deems reasonably necessary to investigate or address its concerns

For the avoidance of doubt, the Authority shall not be liable to pay any Fees during a period of suspension.

- 19.2 The Authority is entitled to terminate the Agreement forthwith in writing in the event of one or more of the following:
- 19.2.1 a material misrepresentation by the Provider during the process leading up to its appointment is discovered;
 - 19.2.2 the Provider commits a Material Breach of the Agreement;
 - 19.2.3 the Provider persistently breaches the Agreement;
 - 19.2.4 the Provider fails to comply in any respect with an Improvement Notice served by the Authority under section 4.8 above;
 - 19.2.5 the Provider fails to comply in any way with the terms of clause 9 (Discrimination and the Promotion of Equality) or clause 10 (Safeguarding and Promoting Welfare);
 - 19.2.6
 - (i) the Provider becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent
 - (ii) a petition is presented, an order made, or a resolution passed for the liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction), administration, bankruptcy, or dissolution of the Provider
 - (iii) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the Provider and over all or any part of the assets of the Provider
 - (iv) the Provider enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally
 - (v) anything equivalent to any of the events or circumstances stated in clauses 19.2.6(i) to 19.2.6(iv) inclusive occurs in any applicable jurisdiction
- 19.3 The Authority may terminate the Agreement by written notice with immediate effect if the Provider or any Staff, agents, contractors, or sub-contractors of the Provider (in all cases whether or not acting with the Provider's knowledge) breaches clause 11 (Fraud and Prohibited Acts).
- 19.4 The Authority may terminate the Agreement by written notice without penalty if there is a Change of Control to which the Authority reasonably objects, having regard to the identity, trading interests, financial standing and intentions of the new controller or potential new controller, having afforded the Provider a reasonable opportunity to make representations in this respect and having given such representations reasonable consideration except where:
- 19.4.1 the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - 19.4.2 the Provider fails to notify the Authority in writing within one month of any Change of Control taking place; or

- 19.4.3 the Authority has not served its notice within six months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control; or
- 19.4.4 there is a bona fide reorganisation within the Provider's group which results in a Change of Control.
- 19.5 The Provider is entitled to terminate the Agreement forthwith in writing if:
 - 19.5.1 the Authority fails to make any payment within 30 days of the Provider notifying the Authority in writing that payment of the Fees is overdue;
 - 19.5.2 the Authority commits any other breach of Agreement (and fails to remedy the breach within a reasonable period of it having been requested to do so) which in the reasonable opinion of the Provider justifies termination of the Agreement.
- 19.6 Either Party shall have the right to terminate the Agreement without consequence (financial or otherwise) if:
 - 19.6.1 provision is made for the same in the main body of the Agreement;
 - 19.6.2 in the reasonable opinion of the Party wishing to terminate the Agreement, the conduct of the other Party is having or may have a negative or adverse effect on the reputation of the Party wishing to terminate.
- 19.7 In addition to the suspension and termination rights above, the Authority is entitled to terminate an Order in accordance with the terms of the same.

20. CONSEQUENCES OF TERMINATION

- 20.1 Upon termination in accordance with the terms of the Agreement and in addition to such consequences as are set out in other provisions of the Agreement:
 - 20.1.1 the Provider shall forthwith cease to provide the Services;
 - 20.1.2 the Authority shall be under no obligation to make any further payment to the Provider and shall be entitled to retain any payment which may have fallen due to the Provider before termination until the Provider has paid in full to the Authority all sums due or arising under the Agreement or any other agreement between the Parties; and
 - 20.1.3 the Provider shall forthwith release and handover to the Authority any and all property belonging to the Authority which may be in the Provider's possession or under its control including but not limited to records whether in the form of documents computer data or other material in any medium.
- 20.2 Upon termination in accordance with the terms of the Agreement and in addition to such consequences as are set out in other provisions of the Agreement the Provider shall fully and promptly indemnify and compensate the Authority in respect of any Losses suffered by the Authority as a result of or in any way connected with an event or events giving rise to the right to terminate the Agreement including but not limited to the cost of causing to be provided such part of the Agreement as would have been provided had the Agreement not been terminated or the right(s) of termination had not arisen.

- 20.3 Termination shall be without prejudice to the accrued rights and remedies of either Party.

21. INDEMNITY AND LIMITATION OF LIABILITY

- 21.1 The Provider shall indemnify on behalf of itself and its sub-contractors and keep fully and effectually indemnified the Authority its Staff and agents from and against all Losses whatsoever incurred in respect of or in any way arising directly out of the negligence or breach by the Provider and its sub-contractors of the Agreement except to the extent that such Losses may arise out of the act, default or negligence of the Authority provided always that the Provider shall not be liable for any indirect or consequential losses.
- 21.2 The Provider shall take out and maintain during the Agreement Period those insurances and to those levels detailed in the main body of the Agreement.
- 21.3 The Provider shall supply to the Authority on request certified copies of insurance policies, cover notes, premiums, receipts, and other documents deemed by the Authority to be necessary to comply with clause 21.2 above.

22. EMPLOYMENT EXIT PROVISIONS

- 22.1 In the event of a Relevant Transfer the Authority or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date and the Provider indemnifies and keeps the Authority indemnified against any Employment Liabilities and costs incurred in respect of the Relevant Employees prior to the Service Transfer Date.
- 22.2 The Provider shall and shall procure that any Sub-Contractor shall, within 14 days of receipt of a written request from the Authority (or otherwise required by TUPE):
- (a) that the Authority intends to either re-tender the Services or deliver the Services itself following expiry of the Agreement Period (or earlier termination)

(b) of termination of the Agreement

provide in respect of any person engaged or employed by the Provider or any Sub-contractor in the provision of the Services, the Provider's Provisional Staff List, and the Staffing Information together with any other information required by the Authority, including information as to the application of TUPE to the Staff. The Provider shall notify the Authority of any material changes to this information as and when they occur.

- 22.3 At least 28 days prior to the Service Transfer Date, the Provider shall supply to the Authority, or at the Authority's direction to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all respects. The Provider's Final Staff List shall identify which of the Provider's and the Sub-Contractor's Staff named are Relevant Employees.
- 22.4 The Authority shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List, and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as the Services (or any part of the Services).
- 22.5 The Provider warrants to the Authority and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List, and the Staffing

Information (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 Services other than those included on the Provider's Final Staff List.

- 22.6 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 22.7 The Authority regards compliance with this clause 22 as fundamental to the Agreement. In particular, failure to comply with clause 22.2 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Fees until such information is provided, or indefinitely. The maximum sum that may be retained under this clause 22.7 shall not exceed an amount equivalent to the Fees that would be payable in the three-month period following the Provider's failure to comply with clause 22.2.
- 22.8 Any change to the TUPE Information which would increase the total employment costs of those of the Provider's Staff delivering the Services (or any part) in the six months prior to the expiry of the Agreement Period or during any termination notice period shall not (so far as reasonably practicable) take place without the Authority's prior written consent unless such changes are required by law. The Provider shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.
- 22.9 In the six months prior to expiry of the Agreement Period or during any termination notice period, the Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of those of the Provider's Staff delivering the Services (or any part), their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.
- 22.10 The Provider shall indemnify and keep indemnified in full the Authority and every Replacement Provider against all Employment Liabilities relating to:
- (a) Any person who is or has been employed or engaged by the Provider or any Sub-contractor in connection with the provision of any of the Services;
 - (b) Any trade union or staff association or employee representative
- arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 22.11 The Parties shall co-operate to ensure that any requirement to inform and consult with the Staff and Staff representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 22.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 22.11, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 22.13 Despite clause 22.12, it is expressly agreed that the Parties may by agreement rescind or vary any terms of the Agreement without the consent of any other person

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

23. ACTIONS UNDER CONTRACT

The Provider shall pay to the Authority on an indemnity basis all costs, fees, disbursements, and expenses including, without prejudice to the generality of the above, those payable to counsel, solicitors, surveyors, and bailiffs properly incurred by the Authority in relation to or incidental to the recovery of any outstanding monies due to the Authority under the terms of the Agreement.

24. FORCE MAJEURE

24.1 Any delay or failure caused by a Force Majeure Event will not constitute a breach of the Agreement and the time for performance of the affected obligation shall be extended by such period as is reasonable. As regards any delay or stoppage:

24.1.1 any costs arising from the delay or stoppage shall be borne by the Party incurring those costs;

24.1.2 the party claiming the Force Majeure Event will take all necessary steps to bring the event to a close or to find a solution by which the Agreement may be performed despite the Force Majeure Event; and

24.1.3 either Party may if the delay or stoppage continues for more than 28 days terminate the Agreement with immediate effect on giving written notice to the other Party, and neither Party shall be liable for such termination.

25. VARIATION

Save where expressed to the contrary in these Terms and Conditions, no variations or additions to the Agreement may be made unless made in writing and signed by both Parties.

26. ASSIGNMENT, NOVATION AND SUB-CONTRACTING

26.1 The Provider shall not be entitled to assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under the Agreement without the prior written consent of the Authority.

26.2 The Provider shall not be entitled to sub-contract the provision of the Services or any part thereof without the previous written consent of the Authority which consent shall not be unreasonably withheld.

26.3 In the event that any part of the Agreement is sub-contracted the Provider hereby warrants that it:

26.3.1 it shall pay all invoices issued to it by its sub-contractor(s) within 30 days of receipt of a valid invoice; and

26.3.2 it will make it a term of any contract entered into with a sub-contractor that the sub-contractor complies with the terms of the Agreement.

27. PARTNERSHIP

Nothing in the Agreement will create any joint venture or partnership between the Authority and the Provider, and the Authority shall not be liable for any actions, costs, proceedings, claims or demands arising out of delivery of the Agreement.

28. AGENCY

Neither the Provider nor its employees shall in any circumstances hold itself or themselves out as being the agent or servant of the Authority otherwise than in circumstances expressly permitted by the Agreement.

29. WAIVER

Failure by the Authority at any time to enforce the provisions of the Agreement or require performance by the Provider of any of the provisions of the Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Authority to enforce any provision in accordance with its terms.

30. NOTICES

30.1 Any notice under the Agreement must be in writing and can only be sent by recorded delivery post or personal delivery to the addresses at the head of the Agreement.

30.2 Any other communication under the Agreement must be in writing and can only be sent by recorded delivery post, personal delivery, fax, or electronic mail.

31. THIRD PARTIES

Save where expressed to the contrary, the Contract (Rights of third Parties) Act 1999 shall not apply to the Agreement.

32. SURVIVAL OF TERMS

Clauses 5, 8, 15, 16, 17, 18, 20, 21, 22, 23 and 34 shall survive the expiry or early termination of the Agreement. In addition, the provisions of any other clauses of this Agreement that by their nature may reasonably be presumed to survive any termination or expiration of this Agreement shall survive any termination or expiration hereof.

33. ENTIRE AGREEMENT

The Agreement supersedes all prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties (save that neither Party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other Party can be shown to have relied).

34. LAW & JURISDICTION

The Agreement and any dispute or claims (including non-contractual disputes or claims) arising out of or in connection with its subject matter or formation shall be governed by and shall be construed in accordance with English law; and be subject to the exclusive jurisdiction of the Courts of England and Wales, to which both Parties submit.

Schedule 1

ORDER FORM AND ORDERING PROCESS



Part A

Order Form

The Order Form shall substantially be in this format but may be changed by the Authority from time to time.

FROM

Authority	The Borough Authority of Bolton
Service Address	Town Hall, Victoria Square, Bolton BL1 1RU
Invoice Address	[]
Contact Ref:	Name: [] Phone: 01204 33[] e-mail: []
Order Number	TC[]/
Order Date	

TO

Provider:	
Company Number:	
For the attention of: E-mail: Telephone number:	
Address:	

1. AUTHORITY REQUIREMENTS

(1.1) Services:

The provision of [] in accordance with the [name of the Agreement] entered into between the Authority and the Provider dated [] ("Framework Agreement").

Details of the Authority's requirements are included in the [1] which is attached at Appendix 1 to this Order.

(1.2) Commencement Date:

(1.3) Price Payable by Authority:

(1.4) Term: The Provider shall commence delivery of the Authority's requirements on the Commencement Date and continue delivery until [1].

2 ADDITIONAL REQUIREMENTS

(2.1) Supplemental Requirements in addition to the terms of the Framework Agreement:

3. PERFORMANCE OF THE SERVICES AND DELIVERABLES

(3.1) Performance Standards

(3.2) Quality Standards

(3.3) Contract Monitoring Arrangements

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter into a legally binding contract with the Authority to provide the Services specified in this Order Form incorporating the rights and obligations in the above referenced Agreement entered into by the Authority and the Provider.

For and on behalf of the Provider:-

Name and Title	
Signature	
Date	

For and on behalf of the Authority:-

Name and Title	
Signature	
Date	

Part B

Individual Service User Placement Agreement

Agreement Number: *Version:*

Dated:

This Individual Service User Placement Agreement relates to the following Resident:

Resident Name:

Service User ID Number / Liquid Logic Number:

THIS INDIVIDUAL SERVICE USER PLACEMENT AGREEMENT IS BETWEEN:

The Borough Authority of Bolton of the Town Hall, Bolton, BL1 1RU ("The Authority") or ("The Authority") and

Provider: XXXXX

Care Home:

Care Manager:

Telephone number:

The Resident's placement shall be:

Which shall commence on:

And end on:

In room number:

As of the date of this Individual Service User Placement Agreement the local price payable for one bed:

Total weekly cost of:

This Individual Service User Placement Agreement shall at all times be subject to the terms and conditions of the [name of Agreement] and the additional terms set out in Annex 1.

The attached Support Plan shall form part of this Individual Service User Placement Agreement.

Signed on behalf of the said
Director of People Services
on behalf of Bolton Authority:

Name (printed):

In the presence of:

Name (printed):

Signed on behalf
of the Home by:

In the presence of:

Name (printed):

Annex 1 to the ISUPA

Absences, deaths and termination of placements

1. Absences and deaths of residents

1.1 The Provider shall notify the Authority immediately if a Resident is absent from the Care Home for an unplanned period such as a hospital admission. The Authority shall discuss with the Provider the viability of continuing with the relevant ISUPA. In the event that the relevant ISUPA is not terminated the Local Prices payable under that ISUPA will be continue. The Care Home must contact the Authority to discuss the viability of continuing the placement every fourteen (14) days.

1.2 The Provider shall notify the Authority in writing as soon as reasonably possible, but within no more than four (4) hours of a Resident being absent from the Care

Home without explanation, in line with their Missing Person's Protocol. Out of usual business hours the Provider must also contact the relevant Emergency Duty Team

1.3 In the event of the death of a Resident, the Provider will ensure timely notification to:

- The Resident's next of kin and/or their representative;
- The Authority, within one (1) Working Day and completion of the relevant Local Authority paperwork; and
- The Resident's GP.

1.4 If a Resident who has no next of kin dies outside of normal working hours the Provider may arrange to move the Resident's body to the nominated undertaker of the Authority, provided that the Resident has not made alternative arrangements prior to death. For the avoidance of doubt, nothing in this paragraph shall oblige any party to meet any funeral expenses.

1.5 An ISUPA shall terminate forthwith without notice on the death of the Resident to which it relates and in that event the Care Fees shall be payable up to the date of death plus three (3) extra nights following death.

Termination of ISUPA for Placements funded by Bolton Authority

1.6 The Authority may terminate an ISUPA on no less than fourteen (14) nights' notice for any reason. During the period of notice the Provider shall continue to provide the Services as specified in the ISUPA.

1.7 The Authority may terminate an ISUPA forthwith if the Resident's financial circumstances become such that the Resident's placement at the Care Home ceases to be eligible for financial support by Bolton Authority.

1.8 The Authority may terminate an ISUPA on no less than one (1) nights' (24 hours) notice for the following reasons:

<ul style="list-style-type: none">• The Resident's placement at the Provider's Care Home is no longer appropriate to meet the Resident's assessed needs;
<ul style="list-style-type: none">• The Authority discovers that it has been induced to enter into an ISUPA as a result of misrepresentation by the Resident or his/her representative, advocate or guardian of the Resident's needs, condition and/or financial circumstances;
<ul style="list-style-type: none">• The Provider persistently breaches its obligations relating to a Resident under an ISUPA;
<ul style="list-style-type: none">• A Resident no longer wishes to reside at the Care Home, for the avoidance of doubt a Resident's wishes may, where relevant, be expressed by their formal advocate;
<ul style="list-style-type: none">• The Provider's or the Care Home's registration status has or is scheduled to change;
<ul style="list-style-type: none">• The Care Home is closing.

1.9 The Provider may terminate an ISUPA with the Authority by giving not less than fourteen (14) nights' written notice if the Resident's physical and/or mental condition deteriorates to a point where long term care is needed at a level which the Provider is unable to meet, having regard to the Care Home's statement of purpose. In such cases, prior to serving notice, the Provider shall request a review of needs, in liaison with the Authority and appropriate health or care professionals. In this event the ISUPA shall terminate on the expiry of the said notice or on the date that the Resident is moved into more suitable accommodation whichever shall be the later date.

1.10 The Provider may terminate an ISUPA with the Authority by giving not less than fourteen (14) nights' written notice to the Authority if in the Provider's reasonable opinion a Resident's behaviour is a danger to the Care Home, the Provider's Staff or other residents or if a Resident persistently seriously affects the well-being of other residents, provided that:

<ul style="list-style-type: none">• The Provider has contacted the Resident's Care Manager, as detailed in the ISUPA, giving reasonable notice for the same to consider the issues and, where it is deemed appropriate, to arrange for further assessment of the Resident's needs; and
<ul style="list-style-type: none">• A meeting has been held between the Resident's Care Manager, as detailed in the ISUPA, the Provider and, where appropriate, the Resident's representative resulting in an action plan being agreed; and
<ul style="list-style-type: none">• The agreed action plan has been implemented but has failed and a further meeting has taken place between the team leader of the Resident's Care Manager and at this meeting it was agreed that there is no other option but to remove the Resident from the Care Home; and
<ul style="list-style-type: none">• The said Care Manager has confirmed to the Provider that suitable alternative accommodation for the Resident is available.

1.11 The Provider shall not in any circumstances make any arrangements to discharge or relocate the Resident without the prior express written agreement of the Authority, which shall not be given without all appropriate prior consultation, including consultation with the Resident and the Resident's representative.

1.12 The Provider shall not discharge a Resident from the Care Home in which they normally reside where such discharge would not be in accordance with good health and social care practice and good clinical practice.

1.13 Prior to the transfer of a Resident to another Care Home operated by another provider, such transfer having been approved by the Authority, the Provider shall:

- Liaise with the other provider to prepare an appropriately detailed and comprehensive transition plan relating to the transfer of the Resident's care. This plan will ensure that consistently high standards of care for the Resident are maintained.
- Not discharge or transfer the Resident until the transition plan has been developed is agreed with the other provider and is agreed to be ready for implementation by both the Provider and the other provider.

1.14 The Authority shall not pay the Provider the agreed price for the Services:

- With immediate effect from the day of discharge of a Resident, upon termination of an ISUPA without notice;
- Upon termination of an ISUPA where it has given fourteen (14) days written notice to the Provider.

Schedule 2

TUPE

Introduction - Staffing Information

There are two stages:

Stage 1 (Provider's Provisional Staff List) - Information is collected from the current employer (Transferor) and disclosed to the bidders in the tender process. The information in Stage 1 should not reveal the employees' identities. The information should enable the bidders to:

- (a) present their plans for servicing the new contract (with reference to the existing workforce); and
- (b) price their bids taking into account their potential inherited employment liabilities.

Stage 2 (Provider's Final Staff List) - Contains information that is not required by the bidders for the tender stage but will be required by the new employer once it has been identified.

All information marked * in both stages is "employee liability information". This information must be provided to the transferee 28 days before the transfer date. If it has already been provided, for example, because it is included in Stage 1, it must be updated so that it is accurate on the date that falls 28 days before the transfer date.

Schedule 2, Part 1

Provider's Provisional Staff List – Stage 1

STAGE 1: INFORMATION FOR BIDDERS

Name of "Transferor":	
Total number of employees transferring	
Total number of employees expected to be transferred who were originally transferred from the client (if applicable)	

COMPLETION NOTES

All parties

If the information cannot be included on this form, please attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.

	* Items required to be provided to the successful bidder at least 28 days before the start of the new contract (<i>regulation 11, TUPE</i>)	Details	Emp No 1	Emp No 2
1	*	Job title		
2	*	Work location		
3	*	Age		
4		Gender		
5	*	Continuous service date (dd/mm/yyyy)		
6	*	Date employment started with existing employer (dd/mm/yyyy)		
7	*	Contractual weekly hours		
8	*	Regular overtime hours per week		
9	*	Salary (or hourly rate of pay)		
10	*	Payment interval		
11	*	Bonus payments		
12		Pay review method		
13		Frequency of pay reviews		
14	*	Agreed pay increases		
15		Next pay review date		
16		Any existing or future commitment to training that has a time-off or financial implication		
17	*	Car allowance (£ per year)		
18		Lease or company car details		
19	*	Any other allowances paid		
20	*	Any other benefits in kind		
21	*	Type of pension provision		
22	*	Current employer contribution rate		
23	*	Private health insurance		
24	*	Annual leave entitlement (excluding bank holidays)		

25	*	Bank holiday entitlement		
26		Mobility or flexibility clause in contract?		
27	*	Contract end date (if fixed term contract or temporary contract)		
28	*	Maternity or paternity leave		
29	*	Sick leave entitlement		
30	*	Sick pay entitlement		
31	*	Notice		
32	*	Any collective agreements?		
33		Employment status (for example, employee, self-employed, agency worker)?		
34		% of working time dedicated to the provision of services under the contract		

Schedule 2, Part 2

Provider's Final Staff List – Stage 2

STAGE 2: INFORMATION FOR THE NEW EMPLOYER AFTER CONTRACT AWARD

Name of "Transferor":	
Total number of employees transferring	
Total number of employees expected to be transferred who were originally transferred from the client (if applicable)	

	* Items required to be provided to the successful bidder at least 28 days before the start of the new contract (regulation 11, TUPE)	Details	Emp No 1	Emp No 2
1		Personnel or employee number		
2		Employee full name		
3		NI number		
4		Currently absent from work due to long term sickness absence, maternity leave or career break (indicate reason for absence)		
5	*	Information about any disciplinary procedure taken against, or grievance procedure taken by, the employee in the last two years.		

6	*	Information of any court, tribunal, case, claim or action: (a) brought by the employee against the transferor previous two years; and (b) that the transferor has reasonable grounds to believe that an employee may bring against the transferee, arising out of the employee's employment.		
7		Employee DBS checked? (yes or no)		
8		If "yes" enter date of DBS check notification to you and employee		
9		If "yes" enter the category of the DBS check notification to you and employee		
10		Pension information: length of pensionable reckonable service		

Schedule 3

Data Processor Schedule

1. DEFINITIONS AND INTERPRETATION

1.1 Clause 1 of the Terms and Conditions attached at Appendix 1 of the Agreement shall apply to this Data Processor Schedule.

1.2 In this Data Processor Schedule, the following additional expressions shall have the following meanings:

Controller shall have the meaning afforded to it in the DPA 2018

Data Loss Event shall mean any event that results, or may result, in unauthorised access to Personal Data held by the Processor under the Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of the Agreement, including any Personal Data Breach.

Data Protection Impact Assessment shall mean an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data

Data Subject shall have the meaning afforded to it in the DPA 2018

Data Subject Request shall mean a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data

Data Protection Officer shall have the meaning afforded to it in the DPA 2018

Personal Data Breach shall have the meaning afforded to it in the DPA 2018

Data Protection Officer shall have the meaning afforded to it in the DPA 2018

Processor shall have the meaning afforded to it in the DPA 2018

Protective Measures shall mean appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Appendix 1 to this Data Processor Schedule (Security)

Sub-processor shall mean any third Party appointed to process Personal Data on behalf of that Processor related to the Agreement

2. DATA PROTECTION

2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor unless otherwise specified in Appendix 1 to this Data Processor Schedule. The only processing that the Processor is authorised to do is listed in Appendix 1 to this Data Processor Schedule and may not be determined by the Processor.

- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- (a) process that Personal Data only in accordance with Appendix 1 to this Data Processor Schedule, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Staff do not process Personal Data except in accordance with the Agreement, including the terms of this Data Processor Schedule and Appendix 1 to it;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this paragraph;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by the Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection;
 - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

2.5 Subject to paragraph 2.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

2.6 The Provider will provide all reasonable assistance to the Controller in investigating and mitigating any potential or confirmed Data Loss Event.

- 2.7 The Processor's obligation to notify under paragraph 2.5 shall include the provision of further information to the Controller in phases, as details become available.
- 2.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event; and
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 2.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 2.12 Before allowing any Sub-processor to process any Personal Data related to the Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 2.11 such that they apply to the Sub-processor; and

- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 2.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 2.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this paragraph by replacing it with any applicable controller to processor standard paragraphs or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Agreement).
- 2.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend the Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

APPENDIX 1

1. The contact details of the Controller's Data Protection Officer are:
Patricia Ashcroft, Chief Executives, First Floor, Town Hall, Bolton BL1 1RU

Tel: 01204 332064 Email: patricia.ashcroft@bolton.gov.uk
2. The contact details of the Processor's Data Protection Officer are:
[Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with paragraph 2.1 of the Data Processor Schedule.
Subject matter of the processing	The processing is required to ensure that the Processor can effectively deliver the contract to enable the Controller to carry out its legal obligation.
Duration of the processing	The Agreement Period.
Nature and purposes of the processing	<p>The processor shall process personal data in delivering the service to meet the controller's statutory obligations under the Care Act 2014. To enable the Authority to meet its duties under the Care Act 2014, the Authority must ensure that it has a contract in place with any care home provider appropriately registered with the health and social care regulator the Care Quality Commission (CQC).</p> <p>The Services are required to facilitate the provision of personal care and accommodation within the Care Home for individuals who have been assessed as eligible for residential or nursing care</p> <p>The following conditions apply under Articles 6 and 9 of GDPR:</p> <p>Article 6 (1) (b) Performance of a contract Article 6 (1) (e) Public task: the processing is necessary for the performance of a task in the public interest. Article 9 Special Category Processing Article 9(2)(g) substantial Public Interest Further, DPA 2018 Part 1(2) applies</p>
Type of Personal Data being processed	<p><u>Personal Data</u> Dates of birth Contact details Financial Information Names, addresses and contact information for carers and financial representatives.</p> <p><u>Special Category Data</u> Ethnic origin Medical history description Details of physical health</p>

	<p>Details of mental health Health and social care needs of the individual Required medication</p> <p><u>Other Personal Data provided</u> Medicines administered Incidents such as falls, and safeguarding incidents Change in resident's health and where it has been necessary to involve health care professionals</p>
Categories of Data Subject	Members of the public - specifically service users in receipt of care packages
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>All Personal Data will be retained in accordance with the Data Protection Legislation and any requirements within the Agreement provided, the Data Protection Legislation shall always take precedence.</p> <p>At the end of the retention period as specified in the Council's Corporate Retention Schedule, all personal data that is held electronically must be securely and permanently erased from the Processor's ICT system.</p> <p>All paper copies shall be securely shredded (to DIN3 grade or if superseded to the equivalent secure shredding applicable to restricted data).</p>

