

FRAMEWORK REFERENCE NUMBER (IF ANY)

FRAMEWORK AGREEMENT

between

(1) [COUNCIL] (THE “COUNCIL”)

and

(2) [] (THE “PROVIDER”)

**relating to the Provision of
[insert name of [Health] and Social Care] Services**

THE PURPOSE OF THIS DRAFT IS TO INCORPORATE SUGGESTED CHANGES INTO A SIMPLE SET OF STANDARD FRAMEWORK TERMS FOR THE PURCHASE OF CARE SUPPORT SERVICES BEING PART OF THE SUITE OF TOOLS NEEDED TO MOVE TOWARDS A FLEXIBLE FRAMEWORK APPROACH TO THE PROCUREMENT OF SOCIAL CARE SERVICES CONDUCTED UNDER REGULATION 76 OF THE PUBLIC CONTRACTS (SCOTLAND) REGULATIONS 2015 IN CIRCUMSTANCES WHERE A PURCHASER, SUCH AS A LOCAL AUTHORITY, PROCURES AND APPOINTS MULTIPLE PROVIDERS TO A FLEXIBLE FRAMEWORK FOR THE DELIVERY OF SOCIAL CARE SERVICES. IT IS DRAFTED ON THE BASIS OF FRAMEWORK TERMS AND BESPOKE INDIVIDUAL FOCUSED AGREEMENTS.

THE DRAFT RESPECTS THAT PURCHASERS OF SUCH SERVICES WILL LIKELY HAVE THEIR OWN TERMS AND CONDITIONS BOTH FOR FRAMEWORKS AND SO THIS DRAFT SUGGESTS CHANGES **PARTICULARLY THOSE HIGHLIGHTED IN RED** AND CAN BE ADAPTED BY LOCAL AUTHORITIES FOR THEIR OWN COMMISSIONING AND PROCUREMENT.

THIS IS A WORKING DRAFT FOR DISCUSSION PURPOSES.

INDEPENDENT LEGAL ADVICE SHOULD BE SOUGHT.

THIS DRAFT IS PROVIDED TO FACILITATE THE MOVE TOWARDS A FLEXIBLE FRAMEWORK APPROACH AND COMMISSIONING FOR OUTCOMES. CCPS SHALL NOT BE LIABLE FOR ANY RELIANCE PLACED ON THIS [DRAFT MODEL AGREEMENT] [DRAFT STANDARD FRAMEWORK TERMS].

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FRAMEWORK AGREEMENT

between

- (1) [] COUNCIL, a local authority constituted under the Local Government etc. (Scotland) Act 1994, having its principal offices at [] (hereinafter referred to as the **"Council"** which expression will include its statutory successors, permitted assignees and transferees);

and
- (2) [], a company incorporated in [Scotland/England & Wales] with Company Number [●] and having its registered office at [●] [but its main operational base for the purposes of this Framework Agreement at [●]] (hereinafter referred to as the "Provider").

WHEREAS:

- A On [●], the Council's contract notice relating to the Services was published in Public Contract Scotland with reference number [●];
- B On [●] the Council issued its invitation to tender ("ITT") entitled "[●]", to potential Providers (including the Provider) in respect of the supply of [●] Services;
- C On the basis of the Provider's response to the ITT the Council selected the Provider, amongst other Framework Providers, to enter into this Framework Agreement to provide the Services to the Council from time to time on a call-off basis; and
- D The Framework Agreement sets out:
 - (a) The Specification setting out the Services that the Provider has undertaken to provide;
 - (b) the award and ordering procedure for purchasing the Services which may be required by the Council;
 - (c) a Pricing Schedule setting out details of the pricing of the Services;
 - (d) Monitoring, Evaluation, Learning and Reporting Arrangements for the strategic management of the relationship between the Council and the Provider;
 - (e) the obligations of the Service Provider during and after the Term of the Framework Agreement; and
 - (f) the main terms and conditions for **any Individual Agreement for Social Care Support** which the Council may conclude.

1. INTERPRETATION

Unless otherwise provided or the context otherwise requires, the words and expressions used in the Framework Agreement shall have the meanings and interpretation set out in Schedule [●].

2. ORDER OF PRECEDENCE

2.1 In the event of, and only to the extent of, any conflict between the clauses of this Framework Agreement, the Schedules and any document referred to in this Framework Agreement, the following order of precedence applies:

- 2.1.1 the Individual Agreement for Social Care Support (Schedule 4);
- 2.1.2 the clauses of the Framework Agreement;

2.1.3 the remaining Schedules; and

2.1.4 any other document referred to in the clauses of the Framework Agreement.

Guidance note: Consider how the Invitation to Tender, any pre and post tender clarifications and the Provider's Tender are to be incorporated within the overall contract. Also consider Order of Precedence of Schedules.

3. APPOINTMENT

3.1 The Council hereby appoints the Provider as a potential provider of the Services, and the Provider shall be eligible to be considered for the award of Call-Off Contracts from the Council for the Services for the Term, all in accordance with the terms and conditions of the Framework Agreement including without prejudice any Special Conditions.

Guidance note: Consider the duration bearing in mind that there is no requirement to limit the duration of the Framework to 4 years in terms of the flexibilities available under Regulation 76 of the Public Contracts (Scotland) Regulations 2015.

3.2 The period of a Call-off Contract is addressed in the Individual Agreement for Social Care Support. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

3.3 The Provider acknowledges that it is not the exclusive supplier of the Services to the Council and as such no guarantee of work or volume of work has been granted by the Council **and that the Council has the right to admit new Framework Providers during the term.**

Guidance note: If the duration is to be for a longer period consider providing entry points for new providers to join the Framework.

4. SERVICES

4.1 The Provider shall provide the Services in accordance with the Specification, the terms of the Framework Agreement and the terms of every Individual Agreement for Social Care Support.

4.2 The Parties will follow the procedure for (i) assessment for the Services and (ii) referrals to the Services set out in the Specification.

4.3 The Provider shall perform, and shall procure that each of its Staff performs the Services:

4.3.1 to good social work practice standard, meaning using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

4.3.2 in compliance with the Quality Standards, the principles set out in the National Health and Social Care Standards, SDS principles and the Ethical Commissioning and Procurement Principles and any other standards and principles relating to the Services set by any Regulatory Body;

4.3.3 in accordance with the terms of each Individual Agreement for Social Care Support;

4.3.4 in accordance with the various policies and procedures which the Provider has in place to comply with the Law and those required by any Regulatory Body; and

4.3.5 in accordance with the Law.

- 4.4 The Provider shall ensure that its policies and procedures are regularly reviewed to comply with its obligations under the Law and the Framework Agreement, that they do not conflict with those of the Council and that relevant Staff receive regular training in those policies and procedures.
- 4.5 The Provider and each Supported Person can, on a flexible basis, agree any changes to the support being provided to meet the varying needs of each Supported Person in meeting the Outcomes as defined in each Individual Agreement for Social Care Support provided the cost of any changes remains within the Individual Budget.

Guidance note: The Terms are drafted on the basis that the Council determines the Individual Budget. However, there is scope within a Light Touch process to give more control to providers in relation to managing budget.

- 4.6 The Provider is responsible for ensuring that the Services meet the relevant Supported Person's needs and Outcomes as outlined in the Individual Agreement for Social Care Support and for having management systems in place which demonstrate such compliance.
- 4.7 The Provider shall notify the Council immediately of any child or adult protection, child welfare or adult welfare allegations or concerns which it becomes aware of irrespective of the extent of the concerns, and shall provide the Council with any information necessary to allow the Council to investigate fully any such concern or allegation, such disclosure of information in these circumstances being necessary for the performance of the Council's statutory duties to safeguard adults and children.

5. PRICE AND PAYMENT

- 5.1 The Payment and Invoicing Schedule sets out details for payment and invoicing including the pricing of the Services as at the Commencement Date for the Term.
- 5.2 Payment of the Services will not imply acceptance or that the Services have been performed satisfactorily.
- 5.3 The Council shall not be liable for the cost of any Services which are not covered by the prior issue of an Individual Agreement for Social Care Support [or the prior written approval of the Council's Social Work Team](#), except for a period lasting no more than seven days arising due to an emergency situation.
- 5.4 The Council shall be entitled to deduct any sum recoverable from or payable by the Provider to the Council from any sum due by the Council to the Provider whether due under the Framework Agreement or any other contract with the Council.

6. ORDERING PROCEDURES

- 6.1 The Ordering Procedures may be invoked by the Council and Call-off Contracts may be entered into at any time during the period of the Framework Agreement on the terms set out in the Individual Agreement for Social Care Support and the Framework Agreement.
- 6.2 The Provider must maintain the organisational and technical ability and the capacity to enter into and perform Call-off Contracts throughout the period of the Framework Agreement.

Guidance note: The Ordering Procedures Schedule should set out how Direct Awards are to be made and how Mini Competitions will be conducted.

7. MONITORING, EVALUATION, LEARNING AND REPORTING ARRANGEMENTS

- 7.1 The **Monitoring, Evaluation, Learning and Reporting Arrangements Schedule** set out the arrangements for the strategic management of the relationship between the Council and the Provider.

Guidance Note: As well as providing details of data and information to be provided and covering matters such as on-going financial standing, the Monitoring, Evaluation, Learning and Reporting Arrangements Schedule should contain details of how the Outcomes will be measured as well as detailing individual and collaborative review meetings with the Council. Meetings should also provide opportunity to discuss what is working well, challenges encountered and how they were dealt with and what should be done differently going forward. Providers should also be obliged, through management systems and tools to provide the Council with aggregate data and information which measures success and which can be used by the Council for planning purposes both at the strategic level as well as for planning service delivery to individuals.

How the Provider intends to do this could also be evaluated at the tender stage given its importance for the purposes of evaluating service delivery as well as impact and learning. Pre-market engagement in accordance with the Public Contract (Scotland) Regulations 2015 would also provide information on the management tools and systems which providers currently have or could obtain to measure outcomes as an alternative to, for example, monitoring being measured against task and time.

- 7.2 In addition to the reporting requirements at clause 7.1, the Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of, or proceedings brought against it and keep the Council informed and of the outcome as soon as practical.

8. COLLABORATION

- 8.1 The Provider shall collaborate with the Council and other agencies involved in the delivery of the Services and where possible, engage in a partnership approach with other Framework Providers where this is for the benefit of Supported Persons in receipt of the Services and sharing best practice and learning including attending regular collaborative review meetings arranged by the Council to discuss matters including what is working well, challenges in service delivery and how they have or can be overcome, lessons learned and what is or could be done differently.

9. REPRESENTATIVES

- 9.1 Each Party' nominates the following representative for all purposes connected with the delivery of the Framework Agreement for the Term:
- 9.1.1 For the Council: []
- 9.1.2 For the Provider: []
- 9.2 Either Party may change its representative using the process set out in clause 37.

10. COMPLAINTS PROCEDURE

- 10.1 The Provider shall operate a complaints procedure at its own expense and shall record, and promptly investigate and use best endeavours to resolve any complaint received within a reasonable period and advise, in a suitable format, Supported Persons of their right to make a complaint. The records shall be made available to the Council on request.

11. CARE INSPECTORATE AND STAFFING

- 11.1 The Provider shall ensure that it is registered with the Care Inspectorate for the Term and provide evidence to the Council upon request.

- 11.2 The Provider will provide the Council with a copy of any notice received from or provided to the Care Inspectorate.
- 11.3 The Provider will notify the Council immediately if the Care Inspectorate issues any enforcement notice to the Provider, or serves any notice proposing to cancel the Provider's registration with the Care Inspectorate, or makes summary application to a Sheriff under Section 65 of the Public Services Reform (Scotland) Act 2010. Under these circumstances the Council may terminate this, and/or any Individual Agreement for Social Care Support with immediate effect by written notice to the Provider and without compensation or liability to the Provider.
- 11.4 The Provider will follow the Code of Practice for Employers of Social Service Workers and will also ensure that its Staff will be appropriately registered with the Scottish Social Services Council.
- 11.5 The Provider shall ensure that sufficient, competent and capable Staff will be on duty at any given time to carry out the Provider's obligations in terms of all Individual Agreements for Social Care Support and in compliance with the requirements of the appropriate Regulatory Body and the Scottish Social Services Council, where applicable.
- 11.6 The Provider shall ensure that all Staff assigned to undertake the Services will possess the skills and experience as deemed necessary for the proper performance of their role in providing the Services.

12. FAIR WORK PRACTICES

- 12.1 The Provider shall comply with the method statement for delivering fair work Practices forming part of the Tender.
- 12.2 The Provider shall have due regard to the Council's commitment to the Living Wage calculated by the Living Wage Foundation throughout the Term and the duration of any Individual Agreement for Social Care Support.

Guidance note: Consider SPPN 7/21: fair work practices

13. ADULTS AT RISK AND CHILD PROTECTION

- 13.1 Where delivery of the Services requires any person to undertake Regulated Work, the Provider and its Staff shall for the duration of the Term comply with all of the relevant requirements, including the establishment of and adherence to effective procedures, of the PVG Act as set out at Adults at Risk and Child Protection Schedule.

14. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (2006 REGULATIONS)

- 14.1 The Employee Schedule sets out the terms relevant to employees as at the commencement and expiry of the Services for the purposes of the 2006 Regulations as well as Information about employees which the Council has the right to request from the Provider for the purposes of undertaking a competitive re-tendering of the Framework Agreement, or for the Council to take over the provision of the Services itself.

15. DATA PROTECTION

- 15.1 The Parties shall comply with the provisions of the Data Protection Schedule.

16. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 16.1 The Provider and its Staff shall treat the Confidential Information as confidential, shall safeguard it accordingly and shall not disclose the Confidential Information to any person except to the Council and to Staff directly involved in the provision of the Services provided such Staff are bound to the same obligation of confidentiality.

- 16.2 Clause 16.1 does not prevent the Provider disclosing Confidential Information (a) pursuant to an order of a court of competent jurisdiction; (b) to any person having a statutory or regulatory right to request and receive that Confidential Information; (c) which is already known to the Provider or lawfully in its possession at the last date of signature of the Framework Agreement; or (d) which is already in the public domain other than as a result of its disclosure by the Provider in Breach of any obligation of confidentiality owed to the Party to whom the information relates.
- 16.3 The Council shall also maintain the obligation of confidentiality in relation to Supported Persons subject to any requirement to disclosure information in terms of its statutory duties or the Law including without the Information Legislation or an order from a court of competent jurisdiction.
- 16.4 When making disclosure decisions in terms of clause 16.3, the Council may make such decision without reference to the Provider but the Council will:-
- 16.4.1 use reasonable endeavours to consult with the Provider before disclosing or publishing any information under the Information Legislation which relates to the Provider; and
- 16.4.2 have regard to any information of a confidential nature relating to the Provider in making decisions about disclosure of information under the Information Legislation.
- 16.5 This clause [16is subject to the provisions of clause 15 and the Data Protection Schedule.

17. AUDIT AND RECORDS MANAGEMENT

- 17.1 The Provider is obliged to keep and maintain during the Term and for a period of six (6) years after the date of termination or expiry (whichever is the earlier) of the Framework Agreement or, if later, any Individual Agreement for Social Care Support, full and accurate records and accounts of the operation of the Framework Agreement and any Individual Agreement for Social Care Support, including the Services provided, and the amounts paid by the Council, in connection with them (the "Records").
- 17.2 In respect of Records created or to be created in terms of the Framework Agreement, the Provider will comply with the requirements of the Public Records (Scotland) Act 2011 (the "2011 Act") and all secondary legislation made under the said 2011 Act as though the Provider was a public authority for the purposes of the said 2011 Act and provide the Council, at no cost to the Council, with reasonable assistance in complying with the Council's obligations under the 2011 Act in respect of such Records.
- 17.4 During the Term and for a period of six (6) years after the termination or expiry (whichever is the earlier) of the Framework Agreement or, if later, any Individual Agreement for Social Care Support, the Provider must on request, and without any charge to the Council, afford the Council, or the Council's representatives, such access to the Records as may reasonably be requested by the Council in connection with the Framework Agreement.

18. PUBLICITY

- 18.1 The Provider must not make any press announcement or otherwise publicise the Framework Agreement in any way, except with the prior written consent of the Council.

19. ASSIGNATION AND CHANGE OF CONTROL

- 19.1 The Provider may not assign its interest in the Framework Agreement without the prior written consent of the Council.
- 19.2 The Provider must provide the Council with at least less 8 weeks' prior written notice if the Provider proposes to assign its interest in the Service in whole or part and provide the Council with such information as the Council may reasonably require to assist the Council to determine that the proposed assignee satisfies the Selection Criteria and can therefore provide the consent required in terms of clause 19.1 and appoint the assignee to the Framework.
- 19.3 The Council may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any Contracting Authority or any other body

established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

Guidance note: Consider SPPN 7/21

19.4 Except to the extent expressly set out in this clause or elsewhere in the Framework Agreement, neither Party will assign or sub-contract any or all of their responsibilities under this Framework Agreement without the prior consent, in writing, of the other Party.

19.5 Where the Council consents to sub-contracting, the Provider shall remain responsible for any sub-contracted Services as if the Services had been performed by the Provider.

20. VARIATION

20.1 The Parties shall comply with the Variation Schedule in relation to any proposed variation to the Framework Agreement.

20.2 Any variation to the terms of the Framework Agreement will only be valid if it is in writing and signed by both the Council and the Provider.

21. TERMINATION RIGHTS

21.1 The Council may terminate the Provider's interest in the Framework Agreement by written notice to the Provider:

21.1.1 with immediate effect if the Provider commits a material Default and the Provider has not remedied the Default to the satisfaction of the Council within 20 Working Days, or such other period as may be specified by the Council, after issue of a notice specifying the Default and requesting it to be remedied;

21.1.2 with immediate effect if the Provider commits a material Default which is not in the opinion of the Council, capable of remedy;

21.1.3 with immediate effect if a material Default of the Provider has led to the termination of an Individual Agreement for Social Care Support or where termination is necessary to protect health and safety.

21.1.4 with immediate effect if an Unauthorised Change of Control has occurred;

21.1.5 in the event that the Provider or any person falling within the description set out in paragraph (2) of Regulation 58 of the Public Contracts (Scotland) Regulations 2015 commits or is convicted of an offence referred to in paragraph (1) of that Regulation;

21.1.6 in the event that the Framework Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or

21.1.7 in the event of a failure by the Provider to comply in the performance of its obligations under the Framework Agreement with legal obligations in the fields of environmental, social or employment law.

21.2 The Council may terminate the Provider's interest in the Framework Agreement with immediate effect by notice where in respect of the Provider:

21.2.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

- 21.2.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 21.2.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 21.2.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 21.2.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 21.2.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 21.2.7 being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
 - 21.2.8 a debt relief order is entered into; or
 - 21.2.9 any event similar to those listed above occurs under the law of any other jurisdiction.
- 21.3 Where the Council terminates the Framework Agreement for material Default of the Framework Agreement it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.

22. BREAK

The Council may terminate the Provider's interest in the Framework Agreement at any time by giving not less than [3 months'] notice to the Provider.

23. CONSEQUENCES OF EXPIRY OR TERMINATION

- 23.1 Where the Council terminates the Provider's interest in the Framework Agreement under clause 21. 1 and makes other arrangements for the supply of Services, the Provider shall indemnify the Council against all costs incurred in making those arrangements.
- 23.2 The termination of the Framework Agreement or its expiry shall not affect the accrued rights of either party.
- 23.3 Following the service of a termination notice, the Provider shall continue to perform its obligations in accordance with the provisions of this Framework Agreement until termination.
- 23.4 [The following provisions survive the expiry or termination of this Framework Agreement: *To be completed*]
- 23.5 The Provider shall comply with the Exit Management Schedule on the expiry or termination of the Framework Agreement.

24. SUSPENSION

- 24.1 The Council may by notice to the Provider suspend the Provider's appointment to provide the Services to the Council for a notified period of time if the Council reasonably believes:
 - 24.1.1 that the Provider has committed a material Default of the Framework Agreement;
 - 24.1.2 there is an immediate or serious risk of harm to any Supported Person; or
 - 24.1.3 that there are grounds in terms of the Monitoring, Evaluation, Learning and Reporting Arrangements Schedule or the Framework Agreement which permit suspension.

- 24.2 The Council will notify the Care Inspectorate, other relevant regulatory bodies and other local authorities (where relevant) of the suspension.
- 24.3 The Provider will keep the Council fully informed of what progress the Provider has made in addressing the issues that led to the suspension and to address the issues that led to the suspension and the Provider shall cooperate fully with the Council.
- 24.4 Suspension under clause 24.1 shall terminate upon cessation of all of the circumstances referred to in clause 24.1.
- 24.5 The Provider shall not be entitled to enter into any new Individual Agreement for Social Care Support or be entitled to participate in any mini-competition during the period of any suspension
- 24.6 The Provider must continue to perform existing Call-off Contracts during any period of suspension unless otherwise determined by the Council in conjunction with the Supported Person and the Parties shall work together to ensure that there is no interruption to the Services being delivered to Supported Persons who have existing Individual Agreements for Social Care Support.

25. BUSINESS CONTINUITY

- 25.1 The Provider shall develop, implement and maintain contingency plans to ensure that the Services will be maintained in the event of any disruption (including disruption due to Force Majeure) to the Provider's operations. Such contingency plans will be made available to the Council within 14 days of the Council's request to inspect and to practically test at any reasonable time.
- 25.2 The Provider will notify the Council as soon as reasonably practicable of the activation of its business continuity plan.
- 25.3 The Provider shall co-operate with the Council in relation to any business continuity plans the Council deems it necessary to introduce to fulfil its statutory duty of care to individuals in need.

26. EXIT MANAGEMENT

- 26.1 The Provider shall provide a draft of the Exit Plan to the Council within [] months after the Commencement Date and shall include and address the matters specified in the Exit Management Schedule. The Council will have [] of receipt to provide comments and suggestions and the Provider will, taking account of such comments and suggestions, thereafter have [] to finalise the Exit Plan.
- 26.2 The Provider shall throughout the period of the Framework Agreement, maintain and continuously update the Exit Plan with any amendment being subject to the prior written consent of the Council.

27. CHANGES IN THE LAW

- 27.1 If the cost to the Provider of the performance of its obligations under the Framework Agreement shall be increased or reduced by reason of the making after the date of the Framework Agreement of any relevant Law that shall be applicable to the Framework Agreement [the amount of such increase shall be borne by the Provider.](#)

28. OFFENCES

- 28.1 The Provider and its Staff must not commit or attempt to commit any Prohibited Act nor any offence:
- 28.1.1 under the Bribery Act 2010;
- 28.1.2 under the Modern Slavery Act 2015;
- 28.1.3 under the Equality Act 2010;

28.1.4 of fraud, uttering, or embezzlement at common law;

28.1.5 of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015; or

28.1.6 under the Employment Relations Act 1999 (Blacklists) Regulations 2010 or under section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities.

28.2 Breach of clause 28.1 is a material Default for the purposes of clause 21 (Termination Rights).

29. ETHICAL SOURCING

29.1 The Provider shall have an ethical sourcing policy which promotes appropriate standards regarding legal, ethical and social issues including health and safety, security of employment rights, equality, corruption and fair trade and, if requested, shall provide a copy to the Council.

30. WARRANTIES

30.1 The Provider warrants and represents that as at the Commencement Date:

30.1.1 all information contained in the SPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Framework Agreement;

30.1.2 no claim is being asserted and no litigation, alternative dispute resolution procedure, administrative proceeding or proceedings 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 Framework Agreement; and

30.1.3. 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 Framework Agreement.

31. INDEMNITY

31.1 Without prejudice to any rights or remedies of the Council, the Provider will indemnify the Council against any and all claims, proceedings, actions, damages, costs, expenses and any other loss and liabilities which may arise out of, or in consequence of, any [material] Default of the Provider and its Staff.

32. LIMITATION OF LIABILITY

32.1 The Parties' liability shall be limited as follows:

32.1.1 the maximum aggregate liability of a Party in relation to physical damage to property caused by that Party shall be []; and

32.1.2 the maximum aggregate liability of a Party in relation to the Framework Agreement (excluding any damage to property) shall be [].

32.2 Subject to clause 32.5 and the Personal Data Schedule, neither Party is liable to the other Party under the Framework Agreement for any:

32.2.1 loss of profits, business, revenue or goodwill; or

32.2.2 indirect or consequential loss or damage.

32.3 Nothing in this Framework Agreement shall be construed as limiting or excluding liability to the other Party for:

32.3.1 death or personal injury caused by its negligence; and

32.3.2 misrepresentation.

- 32.4 The Provider acknowledges that the Framework Providers are separate legal persons and as such the Council has no liability in relation to the performance or non-performance of the Services by other Framework Providers.
- 32.5 The following types of loss, damage, cost or expense arising from the Provider's Breach shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Council) be recoverable by the Council from the Provider:
- 32.5.1 the additional operational and/or administrative costs and expenses arising from any material Default of the Provider;
 - 32.5.2 the costs and expenses reasonably and properly incurred by the Council in procuring services similar to the Services on a temporary basis until the appointment of a successor to the Provider, but only to the extent that such costs and expenses exceed the charges that would have been payable (or a reasonable estimate of such charges, to the extent unknown) had the Framework Agreement not been terminated;
 - 32.5.3 the cost and expenses reasonably and properly incurred by the Council in carrying out the tendering or reappointment process referred to in clause 32.5.2; and
 - 32.5.4 any regulatory losses, fines, expenses or other losses arising from a breach by the Provider of any Laws.

Guidance note: Whether or not to limit liability will be a personal matter for each Council.

33. INSURANCE

- 33.1 The Provider must effect and maintain with a reputable insurance company adequate and appropriate insurance cover in respect of all risks of the Provider and its Staff arising from the performance of its obligations under the Framework Agreement including:
- 33.1.1 public liability insurance in the sum of not less than [] per claim;
 - 33.1.2 professional indemnity insurance in the sum of not less than [];
 - 33.1.3 employer's liability insurance in accordance with any legal obligation for the time being in force; and
 - 33.1.4 insurance cover for Staff for all aspects of the Services including the administration of medicines.
- 33.2 The insurances referred to at clause 33.1 must be maintained for the Term and for the duration of all Individual Agreements for Social Care Support.
- 33.3 The Provider must give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 33.4 Where Supported Persons are transported in motor vehicles, the Provider must ensure that vehicles meet the needs of Supported Persons, that there is adequate insurance and MOT certificates in place and any driver holds a current driving licence for the vehicle.

34. DISPUTE RESOLUTION

- 34.1 The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Framework Agreement, including any question regarding its

existence, validity or termination, in accordance with Monitoring, Evaluation, Learning and Reporting Arrangements Schedule.

- 34.2 Any dispute or difference arising out of or in connection with this Framework Agreement, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Monitoring, Evaluation, Learning and Reporting Arrangements Schedule, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of arbitration shall be Scotland. The language used in the arbitral proceedings shall be English.
- 34.3 Any arbitration under clause 39.2 is subject to the Arbitration (Scotland) Act 2010.

35. TAX ARRANGEMENTS

- 35.1 Where the Provider is liable to be taxed in the UK in respect of consideration received under the Framework Agreement and/or Call-Off Contracts, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 35.2 Where the Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under the Framework Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 35.3 The Council may, at any time during the term of the Framework Agreement, request the Provider to provide information which demonstrates how the Provider complies with sub-clauses 35.1 and 35.2 above or why those clauses do not apply to it.
- 35.4 A request under sub-clause 35.3 above may specify the information which the Provider must provide and the period within which that information must be provided.
- 35.5 The Council may supply any information which it receives under clause 35.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 35.6 The Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 35 by its staff
- 35.7 Where the Provider enters into any sub- the Provider must ensure that a provision is included which is in the same terms as this clause 35 subject only to modification to refer to the correct designation of the equivalent party as the provider.

36. PROVIDER'S STATUS

- 36.1 At all times during the term of the Framework Agreement the Provider is an independent Provider and nothing in the Framework Agreement establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Framework Agreement.

37. NOTICES

- 37.1 Any notice or other communication which is to be given by a Party to the other under this Framework Agreement must be:
- 37.1.1 given in writing;
- 37.1.2 addressed in accordance with clause 37.3; and
- 37.1.3 sent by letter (delivered by hand, first class post or by recorded delivery or special delivery) or e-mail.

37.2 Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

37.2.1 2 Working Days after the day on which the letter was posted; or

37.2.2 4 Working Hours, in the case of an e-mail.

37.3 For the purposes of this clause, the address of each Party is:

37.3.1 For the Council: []

37.3.2 For the Provider: []

37.4 Either Party may change its address details by serving a notice in accordance with clause 37.

38. THIRD PARTY RIGHTS

38.1 No express third party right and no purported right is conferred by the Framework Agreement or any contract, deed or instrument entered into under or in connection with the Contract (Third Party Rights) (Scotland) Act 2017.

39. SEVERABILITY

39.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Framework Agreement continue in full force and effect as if the Framework Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

40. WAIVER AND CUMULATIVE REMEDIES

40.1 Any failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Framework Agreement.

40.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 37 (notices).

40.3 The rights and remedies provided by the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

41. FORCE MAJEURE

41.1 Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Framework Agreement to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in excess of [], either Party may terminate the Framework Agreement with immediate effect by notice.

41.2 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 41.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.

41.3 The only events that afford relief from liability for failure or delay under the Framework Agreement are Force Majeure events.

Guidance note: Consider whether or not boilerplate terms could be taken to a separate Schedule.

42. CONFLICTS OF INTEREST

- 42.1 The Provider must take appropriate steps to ensure that the Council is not placed in a position where, in the reasonable opinion of the Council, there is an actual or potential conflict between the interests of the Provider and the duties owed to the Council under the Framework Agreement.
- 42.2 The Provider must disclose by notice to the Council full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 42.3 Breach of this clause by the Provider is a material Default for the purposes of clause 21 (Termination Rights).

43. GOVERNING LAW AND JURISDICTION

- 43.1 This Framework Agreement is governed by and interpreted in accordance with Scots law and, subject to clause 34 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the [] preceding pages together with the [] Schedules annexed hereto are executed as follows:

SIGNED on behalf of **[COUNCIL]** by **[Name]**, [Authorised Signatory] at [●] on [Date] in the presence of:

Witness:

Full Name:
Authorised Signatory

Address:
.....

SIGNED on behalf of **[PROVIDER]** by **[Name]**, [Director/Secretary/Authorised Signatory] at [●] on [Date] in the presence of:

Witness:

Full Name:
Director/Secretary/Authorised Signatory

Address:
.....

This and the following [●] pages comprise the Schedule to the Framework Agreement between [●] and [●]

SCHEDULE 1 – SPECIFICATION

Guidance note: ITTs will invariably include a Specification/Statement of Requirements. This must be included here for the entire agreement document including general requirements and specific requirements e.g. technical standards. Specification should be outcomes based and take account of SPPN 7:21

SCHEDULE 2 – QUALITY STANDARDS

SCHEDULE 3 – ORDERING PROCEDURES SCHEDULE

Guidance note: In all cases – multi or single supplier, direct award, order of preference, round-robin and/or mini-competition – this Schedule must be completed.

The Ordering Procedures should make clear how the process will work and the necessary documentation to complete a Call-off Contract – for straightforward frameworks this might be completion of the Standard Call-Off Terms at Schedule [] and for more complex frameworks this might be a full mini-competition. A simple ordering form may also assist. The possibility of one, but not all, Framework Providers being removed from the Framework should be built in.

In particular, this Schedule must set out award criteria for mini-competitions (and weightings too if possible) and make it absolutely clear how any categories/lots within framework operate.

This Schedule would require development for a Light Touch Flexible Framework under Regulation 74 of the Public Contracts (Scotland) Regulations 2015.

**SCHEDULE 4 – STANDARD CALL OFF TERMS – INDIVIDUAL AGREEMENT FOR SOCIAL CARE
SUPPORT**

[INSERT FINAL DOC HERE]

SCHEDULE 5 – PRICING SCHEDULE

Guidance note: Pricing arrangements for framework agreements will vary considerably but all relevant information must be included here. This includes the agreed prices themselves, mechanisms for price variation (if any) specifying any indexation allowed. Consider SPPN 7/21: financial transparency and commercial viability.

SCHEDULE 6 – PAYMENT & INVOICING

SCEDULE 7 -MONITORING, EVALUATION, LEARNING AND REPORTING ARRANGEMENTS

Guidance note: This Schedule should set out the arrangements for the strategic management of the relationship between the Council and the Provider.

This section should set out the monitoring arrangements on how Outcomes will be measured moving away from monitoring being based on task and time. There is likely to be a need for preparatory work to determine what management tools are available for this purpose which may involve pre-market engagement with providers to determine what management tools and systems are available to measure outcomes.

This Schedule should oblige Providers to attend individual and regular meetings with the Council to evaluate progress made in meeting the Specification and the strategic Outcomes as well as the terms of the Framework Agreement. Challenges faced should also be discussed as well as how they were tackled and what can be done differently next time.

The Provider should also be obliged to attend collaborative meetings with the Council and other Framework Providers to discuss, what is working well from a best practice perspective, any issues in the delivery of the Services, how they are being dealt with, lessons learned so that Providers are using their respective and collective strengths to work together towards shared strategic Outcomes.

The Provider should have management systems in place which enable the Provider to report and evidence to the Council the progress made in delivering the Services as per the strategic Outcomes. Through its systems and tools the Provider should also provide the Council with collated and aggregate data in relation to Individual Agreements for Social Care and Support which demonstrates, for example, the impact and difference being made by the delivery of the Services. The Council should also be permitted to use the aggregate data for strategic planning purposes as good intelligence about local needs and outcomes. The information and systems should enable links from individual to strategic planning and from strategic planning to individual outcomes thereby making links across the whole system.

This Schedule should link to the clauses for Suspension and Dispute Resolution.

SCHEDULE 7 – ADULTS AT RISK AND CHILD PROTECTION

**SCHEDULE 8 – TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)
REGULATIONS 2006 AS AMENDED**

Guidance note: This Schedule should include provisions regarding possible TUPE implications arising from incoming employees at the time of award as well as possible outgoing employees at exit. It should also set out the information about employees which the Council can ask for use when undertaking any competitive re-tendering of the Framework Agreement.

SCHEDULE 9 – EXIT MANAGEMENT SCHEDULE

Guidance note: To ensure, as a minimum, there is an smooth orderly transfer of support provision in the event of the expiry or termination of the Framework Agreement, subject to the terms of any Individual Agreement for Social Care Support.

SCHEDULE 10 – DATA PROTECTION

[•]

SCHEDULE 11 – VARIATION SCHEDULE

[•]

SCHEDULE 12 – SPECIAL CONDITIONS

SCHEDULE 13 – DEFINITIONS AND INTERPRETATION

- 1.1. In the Framework Agreement unless the context otherwise requires the following terms have the meanings given to them below:

“Call-off Contract” means any contract for Services between the Council and the Provider entered into in accordance with the Ordering Procedures and based on the Individual Agreement for Social Care Support;

“Care Inspectorate” shall mean Social Care and Social Work Improvement Scotland (SCSWIS), established under the Public Services Reform (Scotland) Act 2010, having its Head Office at Compass House, 11 Riverside Drive, Dundee, and being the successor to the Scottish Commission for the Regulation of Care (Care Commission);

“Commencement Date” has the meaning given at the definition of “Term”;

“Confidential Information” shall mean all Confidential Information which has been or which may be disclosed by the Council or its employees, officers, representatives, advisers or sub-contractors to the Provider or the Provider’s employees, officers, representatives, advisers or sub-contractors in connection with the Framework Agreement or an Individual Agreement for Social Care Support (as applicable) which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure, in any form or medium (whether disclosed orally, in writing, in the form of machine readable code or embodied in hardware or any other physical medium), including information relating to the business or prospective business plans or internal affairs of the Council or relating to any Council service;

“Contracting Authority” has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015;

“Control” has the meaning given in section 450 of the Corporation Tax Act 2010;

“Data Controller”, “Data Processor”, “Data Subject” and “Data Subject Access Requests” have the meanings given in the Data Protection Laws;

“Data Protection Laws” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR;

“Default” means any breach of the obligations of the Provider (including but not limited to material breach) or any negligent act, omission or statement of the Provider in connection with or in relation to the Framework Agreement or any Individual Agreement for Social Care Support;

“Disclosure” means a criminal record certificate or enhanced criminal record certificate issued by Disclosure Scotland under Part V of the Police Act 1997;

“Disclosure Information” means: (a) disclosure records disclosed under section 52, 53 or 54 of the PVG Act; and (b) any information in such a disclosure record which is obtained by virtue of section 51, 52, 53 or 54 of the PVG Act;

“Disclosure Scotland” means an agency of the Scottish Government that discharges the functions of Scottish Ministers under the Police Act 1997 and in particular provides disclosure of conviction information and manages the PVG Scheme on behalf of the Scottish Government, based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA;

“Employee Liabilities” means all claims (whether in delict, contract, under statute or otherwise), demands, actions, orders, complaints, proceedings and any award, compensation,

damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses and legal costs reasonably incurred in connection with any 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) including:

- claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful or constructive dismissal compensation; and
- compensation for discrimination on grounds of sex, sexual orientation, race, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity and age or less favourable treatment of part-time workers or fixed term employees;

“Employee Liability Information” has the meaning given in TUPE.

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004;

“Ethical Commissioning and Procurement Principles” means the principles contained in SPPN 7/2021 as same may be replaced from time to time;

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Framework from the Provider to the Council or any Replacement Provider as set out in Clause 26 (Exit Management) and the Exit Management Schedule **“Exit Plan”** means the exit management plan developed by the Provider and approved by the Council in accordance with Clause [] (Exit Management).

“FOISA” means the Freedom of Information (Scotland) Act 2002;

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made;

“Framework Agreement” means this framework agreement between the Council and the Provider;

“Framework Providers” means all providers which the Council has appointed or may appoint to the Framework and including the Provider where the context so requires;

“Incoming Employees” means individuals whose employment transfers to the Provider on the commencement of the provision of the Services by operation of TUPE;

“Individual Agreement for Social Care Support” means a legally binding agreement (made pursuant to the Ordering Procedures) for the provision of Services, made between the Council, the Provider and the Supported Person, setting out the standard terms and conditions for Call-Off Contracts which shall be in the form, or substantially in the form, set out at the Individual Agreement for Social Care Support Schedule;

“Individual Budget” shall mean the financial limit from time to time, as set out in the relevant Individual Agreement for Social Care Support, up to which the Provider shall provide Framework Services to the Council at the direction of the Supported Person, subject to the terms and conditions of the Individual Agreement for Social Care Support and the Framework Agreement;

“Information Commissioner” means the Commissioner as set out in Part 5 of the Data Protection Act 2018;

“Information Legislation” shall mean the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004 and any subordinate legislation made

under them from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“Law” means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;
- (c) any applicable guidance, direction, order, determination, standards, regulations or codes of practice with which the Council and/or the Provider is bound to comply;
- (d) any applicable judgment of a relevant court of law which is a binding precedent in Scotland; and
- (e) any requirements of any Regulatory Body,

in each case in force at any time during the period of the Framework Agreement in Scotland.

“Management Arrangements” means the arrangements set out in the Management Arrangements Schedule;

“Ordering Procedures” means the procedures for entering into Call-off Contracts set out at the Ordering Procedures Schedule;

“Outgoing Employees” means any individuals whose employment transfers from the Provider on the ceasing or partial ceasing of the provision of the Services by the Provider by operation of TUPE.

“Outcomes” means the aims and objectives for a Supported Person identified in the social work assessment of the needs of the Supported Person as arranged and approved by the Council and set out in the Individual Agreement for Social Care Support;

“Overseas Criminal Record Check” a criminal record certificate in respect of a person obtained from the police or judicial authority of the country in which the person resided or worked (except for the United Kingdom);

“Party” means the Council or the Provider;

“Personal Data” has the meaning given in the Data Protection Laws

“Personal Plan” has the meaning assigned to it by Regulation 5 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/110);

“Pricing Schedule” means the details of the pricing of the Services as at the Commencement Date set out in the Pricing Schedule;

“Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

“Prohibited Acts” means (i) to offer, give or agree to give to any employee or servant of the Council any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of any contract or agreement with the Council, or for showing or not showing favour or disfavour to any person in relation to any contract or agreement with the Council; and/or (ii) to enter into any contract or agreement with the Council in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before such contract or agreement is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Council;

“Protected Persons” means persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act;

“PVG Act” means the Protection of Vulnerable Groups (PVG) (Scotland) Act 2007;

“PVG Scheme” means the scheme established under section 44 of the PVG Act managed by Disclosure Scotland for individuals undertaking Regulated Work;

“Quality Standards” means the standards set out in the Quality Standards Schedule;

“Registered Person” means a person registered with Disclosure Scotland under section 120 of the Police Act 1997;

“Regulated Work” is as defined in section 91 of the PVG Act;

“Regulatory Body” shall mean any of those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Framework Agreement or an Individual Agreement for Social Care Support (as applicable) or any other affairs of the Provider;

“Relevant Transfer” has the meaning given in regulation 2(1) of TUPE;

“Replacement Provider” means any third party Provider appointed by the Council from time to time in part or whole succession to the Provider;

“Request for Information” means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request;

“Schedule” means the relevant schedule annexed to the Framework Agreement”

“SDS principles” means the principles established by the Social Care (Self-Directed Support) (Scotland) Act 2013 (“the Act”).

“Scheme Record” shall mean the document defined in section 48 of the PVG Act;

“Selection Criteria” means the selection [and evaluation] criteria set out in the SPD or the Invitation to Tender (ITT);

“Services” means the services as are to be supplied by (i) the Provider to the Council as set out in the Specification and (ii) by the Provider to Supported Persons as set out in Individual Agreements for Social Care Support;

“Short Scheme Record” means a short scheme record as defined in section 53 of the PVG Act;

“SPD” means the Single Procurement Document completed by the Provider and sent to the Council;

“Special Conditions” means the conditions set out in the Special Conditions Schedule or referred to as Special Conditions in the Invitation to Tender;

“Specification” means the specification of the Services that the Provider has undertaken to provide set out in the Specification Schedule;

“Staff” means any person engaged by the Provider to provide the Services including all employees, agents and [decide position with Sub-Contractors and update Framework Agreement accordingly] [but excepting any Volunteer];

“Sub-Contractor” means any provider selected, appointed and managed by the Provider. The terms “Sub-Contract” and “Sub-Contracting” shall be interpreted accordingly;

“Supported Person” and **“Supported Persons”** respectively mean an individual receiving Services from the Provider pursuant to an Individual Agreement for Social Care Support and those individuals collectively as a group;

“Tender” means the tender submitted by the Provider to the Council in response to the Invitation to Tender;

“Term” means the period from and including [] (the “Commencement Date”) to and including [], unless the appointment is terminated earlier in accordance with the terms of the Framework Agreement;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;

“Unauthorised Change of Control” shall mean an event which has not been approved in advance by the Council which shall mean that the person who Controls the Provider ceases to do so, or another person acquires Control of the Provider, where "Control" shall mean the power of a person to secure that the affairs of the Provider are conducted in accordance with the wishes of that person (i) by means of the holding of shares or the possession of voting power in or in relation to the Provider or any other entity; or (ii) by virtue of any powers conferred by the articles of association or any other document regulating the Provider or any other entity;

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

“Vetting Information” is as defined in section 49 of the PVG Act;

“Volunteers”

“Working Day” means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971;

“Working Hour” means an hour between 0900 hours and 1700 hours on a Working Day.

1.2 The interpretation and construction of this Framework Agreement is subject to the following provisions:

1.2.1 words importing the singular meaning include, where the context so admits, the plural and vice versa;

1.2.2 words importing the masculine include the feminine and neuter;

1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;

1.2.4 references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument or re-enacted;

1.2.5 references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

1.2.7 headings are included in this Framework Agreement for ease of reference only and do not affect the interpretation or construction of this Framework Agreement.