



**Blackburn with Darwen Borough Council**

**CARE PACKAGE FOR CHILDREN WITH COMPLEXED NEEDS WHILST TRAVELLING ON HOME TO SCHOOL SEND TRANSPORT**

**CONTRACT PARTICULARS**

<b>Contract Title</b>	<b>CARE PACKAGE FOR CHILDREN WITH COMPLEXED NEEDS WHILST TRAVELLING ON HOME TO SCHOOL SEND TRANSPORT</b>	
<b>Council</b>	<b>BLACKBURN WITH DARWEN BOROUGH COUNCIL</b>	
<b>Contractor</b>	<b>ALLCARE NURSES AGENCY LIMITED</b>	
<b>Commencement Date</b>	<b>1<sup>ST</sup> APRIL 2023</b>	
<b>Contract Period (including option to extend)</b>	<b>1<sup>ST</sup> APRIL 2023 TO 31<sup>ST</sup> MARCH 2024 (WITH OPTION TO EXTEND FOR A FURTHER 12 MONTHS, IF NEEDED)</b>	
<b>Services/Goods/Works</b>	<b>SERVICES</b>	
<b>Specification/Description</b>	<b>SEE ATTACHED SERVICE SPECIFICATION</b>	
<b>Address for Notice</b>	<b>Allcare Offices 2 Albion Road Blackburn BB2 4UW</b>	
<b>Price</b>	<b>Up to £180,000 per annum</b>	
<b>Delivery Instructions</b>	<b>As per service specification</b>	
<b>Limit on Liability</b>	<b>N/A</b>	
<b>Notice Period</b>	<b>4 WEEKS</b>	
<b>Council Authorised Officers</b>		
<b>Name</b>	<b>Position</b>	<b>Contact Details</b>
Jackie Clarkson	Team Leader – Public Transport, Place	<a href="mailto:Jacqueline.Clarkson@blackburn.gov.uk">Jacqueline.Clarkson@blackburn.gov.uk</a> 01254 588817

Contractor Manager		
Name	Contact Details	
Rachel Quinn (Managing Director)	<a href="mailto:rachel@allcare-uk.com">rachel@allcare-uk.com</a> <b>01254 682200</b>	
Contractor Key Personnel		
Name	Position	Contact Details

Insurance	
Insurance type:	
<b>Employer's Liability Insurance</b>	£5,000,000.00 (TEN MILLION POUNDS) in respect of employer's liability
<b>Public Liability Insurance</b>	£10,000,000.00 (TEN MILLION POUNDS) in respect of public liability in relation to any one occurrence or series of occurrences arising out of one event without limit on the number of claims in any one year or other period
<b>Professional Indemnity Insurance</b>	£5,000,000.00 (FIVE MILLION POUNDS) in respect of professional liability in relation to any one occurrence or series of occurrences arising out of one event and with an aggregate amount of £5,000,000.00 for any one-year period of insurance. Cover of for pollution and contamination claims will have a sub-limit indemnity of £2,000,000.00.

**BLACKBURN WITH DARWEN BOROUGH COUNCIL**  
**STANDARD TERMS AND CONDITIONS OF CONTRACT**  
**FOR THE PURCHASE OF SERVICES**

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## PART A - OPERATIVE PROVISIONS

### A1. DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
“Commencement Date”	the commencement date stated in the Contract Particulars.
“Confidential Information”	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the Data Protection Act 2018).
“Contract”	<p>the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ol style="list-style-type: none"><li>1. the Contract Particulars;</li><li>2. the Special Terms and Conditions;</li><li>3. the Standard Terms and Conditions;</li><li>4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars.</li></ol>

“Contractor”	the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members.
“Contract Manager”	the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.
“Contract Particulars”	the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Contractor Personnel, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document.
“Contractor Personnel”	all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract
“Contract Period”	the period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1).
“Control”	control as defined by section 1122 of the Corporation Tax Act 2010.
“Council”	the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean 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).
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	(i) the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), the Law Enforcement Directive (Directive (EU) 2016/680) (“LED”) and any applicable

national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 (“the DPA 2018”) to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

“Data Subject Access Request”

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.

“Delivery Instructions”

the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services.

“Employee”

any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services.

“EIR”

The Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the information Commissioner or relevant government department in relation to such regulations.

“FOIA”

The Freedom of Information Act 2000.

“Force Majeure”

any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.

“Good Industry Practice”

the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract.

“Intellectual Property Rights”

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 to Tender”	the Council’s invitation to tender for the Contract.
“Key Personnel”	those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5.
“Law”	any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“Order”	an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.
“Price”	the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.
“Protective Measures”	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.
“Regulated Activity”	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
“Regulated Activity Provider”	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.



“Replacement Contractor”	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract
“Services”	the services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services.
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender.
“Specification”	the specification included in the Contract Particulars setting out the Council’s detailed requirements in relation to the Services.
“Standard Terms and Conditions”	the terms and conditions set out in this document.
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.
“Tender”	the Contractor’s tender for the Services in response to the Council’s Invitation to Tender.
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended.

- A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
- A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute as it is in force for the time being, taking into account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- A1.3 The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

A2. **NOTICES**

- A2.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, or by sending it by registered post or recorded delivery to the appropriate address, or email address notified to each other as set out in the Contract Particulars. Any notice from one party to the other not in writing shall have no validity under the Contract.
- A2.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served two (2) Business Days after it was posted; any notice sent by email before 4 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

A3. **ENTIRE AGREEMENT**

- A3.1 The Contract constitutes the entire agreement and understanding between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, arrangements, representations and undertakings, whether written or oral, except that this clause A3 shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

## **PART B - PROVISION OF SERVICES**

### **B1. CONTRACT PERIOD**

- B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated
- B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.
- B1.3 If the Council does extend the Contract, then it shall do so on the same terms and conditions as set out in this Contract.

### **B2. PERFORMANCE**

- B2.1 The Services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions, the Services shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
- B2.2 The Council will have the right to observe the Contractor's performance of the Services if the Services are not being performed on the Council's premises.
- B2.3 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- B2.4 If the Contractor at any time becomes aware of any material matter that could adversely affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- B2.5 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- B2.6 The Council retains the Contractor for the performance of the Services on a non-exclusive basis.

### **B3. CONTRACT MANAGER**

- B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
- B3.2 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

### **B4. ORDERING PROCESS**

- B4.1 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
- B4.2 Except where specified Orders are required to call off the Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.

B4.3 The Orders shall state the type of or part of the Services required including the Council's requirements with regard to timescale for delivery of those Services.

**B5. RISK IN AND TITLE TO GOODS**

B5.1 Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.

B5.2 Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.

**B6. WARRANTY**

B6.1 The Contractor warrants to the Council that the Services will be provided:

B6.1.1 with all due skill, care and diligence;

B6.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel who shall possess such qualifications, skills and experience as is necessary for the proper supply of the Services;

B6.1.3 in accordance with Good Industry Practice;

B6.1.4 in accordance with the Contract and any descriptions provided by the Contractor;

B6.1.5 to the reasonable satisfaction of the Authorised Officer;

B6.1.6 by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and

B6.1.7 in a way that the Contractor takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Contractor.

B6.2 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:

B6.2.1 be free from defects in design, material and workmanship and fit to achieve the purpose for which the Services are required as specified by the Council; and

B6.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health and the Contractor further acknowledges that in providing the Services that the Council is reliant at all times on the Contractor's skill and judgement.

B6.3 Without prejudice to the Council's rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:

- B6.3.1 require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
- B6.3.2 subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

**B7. CONTRACTOR'S EMPLOYEES AND SAFEGUARDING**

B7.1 The Council acting reasonably reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

- B7.1.1 any member of the Contractor's Employees; and/or
- B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

B7.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.

B7.3 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall at all times comply with such rules, regulations, and requirements (including those relating to security arrangements) and any health and safety measures implemented by the Council as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

B7.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.

B7.5 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

B7.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause

B7.7 The parties acknowledge that, in the event that the Contractor in the delivery of the Services is a Regulated Activity Provider, then they shall have ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 and shall comply with the requirements on B7.8 to B7.12.

B7.8 The Contractor shall ensure that all individuals engaged in the provision of the Services are:

- (a) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
- (b) the Contractor shall monitor the level and validity of the checks under this clause B7.8 for each Employee.

## B7.9

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

B7.10 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of clauses B7.8 and B7.9 have been met.

B7.11 The Contractor shall refer information about any person carrying out the Services to the DBS 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 children and/or vulnerable adults.

B7.12 The Contractor 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 Regulated Activity or who may otherwise present a risk to any children and/or vulnerable adults.

## **PART C - PRICE AND PAYMENT**

### **C1. PRICE AND PAYMENT**

- C1.1 The Council shall pay the Price for the Services to the Contractor which shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Price shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the provision of the Services
- C1.2 The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month. Each invoice must include details of the Services provided in the invoice period and supporting information required by the Council to verify the accuracy of the invoice.
- C1.3 Payment of any undisputed invoice will be made no later than thirty (30) days following the date on which the Council has determined that the invoice is valid and undisputed.
- C1.4 The Council reserves the right, without prejudice to any other rights and remedies under the Contract to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- C1.5 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Bank of England Bank Rate (commonly referred to as the base rate) from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
- C1.6 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for

such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.

- C1.7 The Contractor shall upon receipt of an invoice from any sub-contractor or supplier working on this Contract make a prompt determination that the invoice is valid and undisputed and thereafter it shall pay that invoice no later than within thirty (30) days of the date of having determined that the invoice is valid and undisputed.
- C1.8 The Contractor shall ensure that all its contracts with sub-contractors and suppliers contain similar obligations on them to pay their sub-contractors as set out in clause C1.7.
- C1.9 Further details of payment, if any, are set out in the Pricing Schedule.
- C1.10 If there is a dispute between the parties as to the amount invoiced, the Council shall pay the undisputed amount. The Contractor must not suspend the supply of the Services for a failure to pay undisputed sums. Any disputed sums shall be resolved through the dispute resolution procedure detailed in clause D3.

## **PART D - TERMINATION MANDATORY TERMINATION AND CONSEQUENCES OF TERMINATION**

### **D1. TERMINATION**

- D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
  - D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
  - D1.1.2 the Contractor is convicted of a criminal offence relating to the conduct of his business or profession; or
  - D1.1.3 the Contractor breaches the Bribery Act 2010; or
  - D1.1.4 the Contractor ceases or threatens to cease to carry on its business; or
  - D1.1.5 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Contract; or
  - D1.1.6 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or
  - D1.1.7 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within fourteen (14) days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
  - D1.1.8 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
  - D1.1.9 the Contractor commits persistent minor breaches of this Contract whether remedied or not.
- D1.2 The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.

D1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.

D1.4 The Council is required by virtue of Regulation 73 of the Public Contracts Regulations 2015 to ensure that all contracts which it awards contain provisions enabling the Council to terminate those contracts under certain circumstances. Thus the Council will terminate the whole of this Contract with immediate effect by the service of notice on the Contractor in the following circumstances:

D1.4.1 where the Contract has been subject to a substantial modification which will include any change in the Contract irrespective of the monetary value and which meets one or more of the following conditions:

i) materially alters the character of the Contract; or

ii) would have allowed other potential contractors to participate in the procurement procedure other than those initially selected or allowed for the acceptance of a tender other than that originally accepted; or

iii) attracted additional contractors in the procurement procedure; or

iv) the modification changes the economic balance of the Contract in favour of the Contractor in a manner which was not provided for in the original Contract; or

v) the modification extends the scope of the Contract considerably; or

vi) a new contractor replaces the Contractor other than where the change arises from a clear and precise unequivocal review clause or the exercising of an option which outlines the scope and nature of the possible modification as well as the conditions under which the option can be exercised and that the option exercised does not alter the overall nature of the Contract or following a universal or partial succession into the position of the Contractor following corporate restructuring such as a takeover, merger, acquisition or insolvency and provided that this does not entail other substantial modifications and where the purpose of the modification is not aimed at circumventing procurement law.

D.1.4.2 where post-award of the Contract it is discovered that the Contractor should have been excluded from the procurement procedure on certain mandatory exclusion grounds for a breach of Regulation 57 of the Public Contracts Regulations 2015. These exclusion grounds are where the Contractor has been convicted of any of the offences that are detailed in Regulation 57.

D.1.4.3 where the Court of Justice of the European Union has declared the Contract was awarded in 'serious infringement' of the Council's obligations under EU law and Directive 2014/24/EU in infringement proceedings brought by the European Commission against the Member State concerned under Article 258 TFEU.

## D2. CONSEQUENCES OF TERMINATION

D2.1 If this Contract is terminated in whole or in part the Council shall:



- D2.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
- D2.1.2 be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or
- D2.1.3 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.

D2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

### **D3. DISPUTE RESOLUTION PROCEDURE**

- D3.1 If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use endeavours and who shall co-operate in good faith to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- D3.2 If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within fourteen (14) days or such longer period as the parties may agree.
- D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within fourteen (14) days of one party requesting mediation. The parties shall bear their own legal costs in connection with any dispute but the costs and expenses of the mediation shall be determined by the mediator.
- D3.4 All negotiations connected with the dispute shall be conducted in strict confidence.
- D3.5 If with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing, and once signed by the Authorised Officers of each of the parties it shall remain binding on the parties.
- D3.6 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

### **D4. SURVIVAL**

- D4.1 The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H13 (Law and Jurisdiction).

## **PART E - INSURANCE AND LIABILITIES**

### **E1. INSURANCE**

- E1.1 The Contractor shall at its own cost effect and maintain with a reputable insurance company insurance necessary to cover any liability (including liability for death or personal injury, loss or damage to property or any other loss) arising under the Contract as set out in the Contract Particulars.
- E1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence satisfactory to the Council that all premiums relating to such insurances have been paid.
- E1.3 If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.
- E1.4 If the Contractor is required to hold and maintain professional indemnity insurance, it shall do so for a minimum of six (6) years following the expiration or earlier termination of the Contract.

### **E2. INDEMNITY AND LIABILITY**

- E2.1 Neither party seeks to exclude or limit its liability for:
- E2.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
  - E2.1.2 fraud or fraudulent misrepresentation;
  - E2.1.3 breach of any obligation as to title implied by statute;  
or
  - E2.1.4 any other act or omission in respect of which, as a matter of Law, liability cannot be excluded or limited.
- E2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect, special, consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, savings (whether anticipated or otherwise) loss of business opportunities, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
- E2.3 Subject to clause E2.1 the Council's total aggregate liability for all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract (other than failure to pay the Price due) shall in no event exceed 150% of the Price paid or payable to the Contractor in the year in which the liability arises.
- E2.4 The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis).
- E2.5 Subject to clauses E2.1 and E2.4 the Contractor's total aggregate liability for all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract shall in no event exceed the Limit of Liability stated in the Contract Particulars

## **PART F - PROTECTION OF INFORMATION**

### **F1. INTELLECTUAL PROPERTY**

- F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- F1.1.1 provided to the Contractor by the Council shall remain the property of the Council;
  - F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.
- F1.2 The Contractor hereby assigns to the Council, with full title guarantee, all Intellectual Property rights which may subsist in the materials prepared in accordance with sub-clause F1.1.2. The Contractor shall execute all documentation necessary to execute this assignment.
- F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grants to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, modify and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- F1.3 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
- F1.4 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

### **F2. CONFIDENTIALITY AND PUBLICITY**

- F2.1 Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.
- F2.2 All Confidential Information provided by the Council to the Contractor that is in its possession, custody or control shall be returned to the Council (or if agreed with the Council securely destroyed) at the end of the Contract.
- F2.3 Without prejudice to the Council's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).
- F2.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.

### F3. DATA PROTECTION OBLIGATIONS

- F3.1 The terms Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer shall take the meaning given in the Data Protection Legislation.
- F3.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Data Processing Schedule by the Council and may not be determined by the Contractor.
- F3.3 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- F3.4 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- F3.4.1 systematic description of the envisaged processing operations and the purpose of the processing;
  - F3.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - F3.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - F3.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- F3.5 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- F3.5.1 process that Personal Data only in accordance with the Data Processing Schedule, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
  - F3.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
    - 3.5.2.1 nature of the data to be protected;
    - 3.5.2.2 harm that might result from a Data Loss Event;
    - 3.5.2.3 state of technological development; and
    - 3.5.2.4 cost of implementing any measures;
  - F3.5.3 ensure that:
    - 3.5.3.1 the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Data Processing Schedule);
    - 3.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (a) are aware of and comply with the Contractor's duties under this clause;
      - (b) are subject to appropriate confidentiality undertakings with the Contractor 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 Council or as otherwise permitted by this Contract; and

(d) have undergone adequate training in the use, care, protection and handling of Personal Data; and

F3.5.4 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

3.5.4.1 the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;

3.5.4.2 the Data Subject has enforceable rights and effective legal remedies;

3.5.4.3 the Contractor 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 Council in meeting its obligations); and

3.5.4.4 the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

F3.5.5 at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

F3.6 Subject to clause F3.7, the Contractor shall notify the Council immediately if it:

F3.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

F3.6.2 receives a request to rectify, block or erase any Personal Data;

F3.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

F3.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

F3.6.5 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

F3.6.6 becomes aware of a Data Loss Event.

F3.7 The Contractor's obligation to notify under clause F3.6 shall include the provision of further information to the Council in phases, as details become available.

F3.8 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause F3.6 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

F3.8.1 the Council with full details and copies of the complaint, communication or request;

F3.8.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

F3.8.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;

- F3.8.4 assistance as requested by the Council following any Data Loss Event;
- F3.8.5 assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- F3.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
  - F3.9.1 the Council determines that the processing is not occasional;
  - F3.9.2 the Council 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; and
  - F3.9.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- F3.10 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- F3.11 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- F3.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
  - F3.12.1 notify the Council in writing of the intended Sub-processor and processing;
  - F3.12.2 obtain the written consent of the Council;
  - F3.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause F3.12 such that they apply to the Sub-processor; and
  - F3.12.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- F3.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- F3.14 The Contractor may, at any time on not less than 30 Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- F3.15 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **F4. FREEDOM OF INFORMATION**

- F4.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
- F4.2 The Contractor shall assist and cooperate fully with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

F4.3 The Contractor shall ensure that all information (within the meaning of section 84 of FOIA) produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

**F5. RECORD KEEPING AND MONITORING**

F5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.

F5.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

**PART G - STATUTORY OBLIGATIONS**

**G1. HEALTH AND SAFETY**

G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.

G1.2 The Contractor shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Contract.

G1.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the Contract or the Council's premises where the incident causes any personal injury or damage to property that could give rise to personal injury.

**G2. CORPORATE REQUIREMENTS**

G2.1 The Contractor in performing its obligations under this Contract shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time but not limited to the Modern Slavery Act 2015.

G2.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:

G2.2.1 equality and diversity policies;

G2.2.2 sustainability;

G2.2.3 information security rules;

G2.2.4 disaster recovery plan;

G2.2.5 whistleblowing and/or confidential reporting policies; and

G2.2.6 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.

G2.3 The Contractor shall not unlawfully, discriminate either directly or indirectly within the meaning of any Law. Furthermore the Contractor will ensure that it provides equality of treatment for anyone who shares a protected characteristic (whether it is on such grounds as maternity, gender, transgender, marital status, ethnicity, disability, age, religion and belief and sexual orientation or otherwise in the provision of the Services and in the employment of the Contractor's Personnel ) including but not limited to the Equality Act 2010 or other relevant or equivalent legislation ,or any statutory modification or re-enactment thereof..

- G2.4 The Contractor shall take all reasonable steps to secure the observance of clause G2.3 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed by it in the execution of this contract.
- G2.5 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom. Furthermore, the Contractor warrants and undertakes that it conducts its business in a manner that is compliant with the Modern Slavery Act 2015.
- G2.6 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:
- G2.6.1 details of the finding; and
  - G2.6.2 the steps the Contractor has taken to remedy the situation.

### **G3. LAW AND CHANGE IN LAW**

- G3.1 The Contractor shall comply at all times with the Law in its performance of the Contract.
- G3.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.
- G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

### **G4. TUPE AND RE-TENDERING**

- G4.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.
- G4.2 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.
- G4.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

## **PART H - GENERAL PROVISIONS**

### **H1. CONTRACT VARIATION**

- H1.1 Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.



H1.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

## H2. **THIRD PARTY RIGHTS**

H2.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded. This clause does not affect the any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

## H3. **NO WAIVER**

H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H3.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

## H4. **SEVERANCE**

H4.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

## H5. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

H5.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent (which shall not be unreasonably withheld or delayed) of the Council, assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract or sub-contract the provision of the Services.

H5.2 The Council shall be entitled to:

H5.2.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or

H5.2.2 any other body established by the Council or under statute in order to substantially perform any of the functions that had previously been performed by the Council.

H5.2.3 transfer, assign or novate its rights and obligations where required by Law. Provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

## H6. **FORCE MAJEURE**

- H6.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event as well as investigating the effects of the Force Majeure event
- H6.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.
- H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause B6 or any wilful act, neglect or failure to take reasonable precautions against the Force Majeure event shall not be regarded as an event of Force Majeure.
- H6.4 If the event of Force Majeure continues for more than twenty (20) Business Days either party may give written notice to the other to terminate the Contract immediately or on a set termination date.
- H6.5 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

## H7. **INDUCEMENTS**

- H7.1 The Contractor shall comply with all applicable Laws relating to anti bribery and corruption including but not limited to the Bribery Act 2010 together with any subordinate legislation or guidance issued under those acts and any subsequent amendments or replacements to those acts.
- H7.2 The Contractor shall not:
- H7.2.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract; nor
  - H7.2.2 commit any other criminal offence under the Bribery Act 2010; nor
  - H7.2.3 do anything to procure or induce an employee, agent, servant or representative of the Council to commit an offence under the Bribery Act 2010
- H7.3 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor's behalf.
- H7.4 The Contractor shall:
- H7.4.1 immediately inform the Council if it becomes aware of any breach of clause H7.2 or H7.3 and shall fully co-operate with any subsequent investigation including but not limited to access to all relevant documentation;
  - H7.4.2 provide the Council with all reasonable assistance required by the Council in order to comply with the Bribery Act 2010;
  - H7.4.3 if requested by the Council, provide the Council with evidence of its compliance with the Bribery Act 2010, including but not limited to producing to the Council a copy of its anti-bribery policy
- H7.5 Where the Contractor engages in conduct prohibited by clauses H7.2, H7.3 and H7.4 in relation to this or any other contract with the Council, the Council has the right to:

- H7.5.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- H7.5.2 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

**H8. COSTS AND EXPENSES**

- H8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

**H9. NO AGENCY OR PARTNERSHIP**

- H9.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf save as expressly permitted by the terms of this Contract.

**H10. NON SOLICITATION AND OFFERS OF EMPLOYMENT**

- H10.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

- H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

- H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

**H11. INSPECTION OF CONTRACTOR'S PREMISES**

- H11.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

**H12. COUNTERPARTS**

- H12.1 This Contract may be executed in any number of counterparts each of which when executed and delivered shall constitute an original of this Contract, but all the counterparts together constitute the same Contract. No counterpart shall be effective until each party has executed at least one counterpart.
- H12.2 The counterparts of this Contract may be executed and delivered by electronic means by any of the parties to the other party and the receiving party may rely on the receipt of such document so executed and delivered by electronic means as if the original had been received.

**H13. LAW AND JURISDICTION**

- H13.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.



## STRATEGIC COMMISSIONING PEOPLE SERVICE SPECIFICATION

The service specification is a document that quantifies the minimum acceptable (technical) standard of service required by the customer and will form a part of the contract with the service provider. The production of the service specification is a pre-requisite in the negotiation and drafting of the contract. This document is to be completed by the lead commissioner prior to consultation with the relevant service providers.

<b>Contract No &amp; Service Name</b>	Care Package for Children with Complexed Needs Whilst Travelling on Home to School SEND Transport
<b>Programme Area</b>	Children's Services
<b>Commissioner Lead</b>	Jackie Clarkson
<b>Provider Lead</b>	Rachel Quinn – Lindsey Dixon (AllCare)
<b>Period</b>	1 <sup>st</sup> April 2023 – 31 <sup>st</sup> March 2024 (with option to extend a further 12 months if needed)
<b>Contract Value</b>	Up to £180,000 per annum
<b>Notice Period</b>	4 weeks

### 1. Purpose

#### 1.1 General Overview

The service is for pupils who meet the agreed eligibility criteria for SEND home to school transport as determined by the home to school transport policy. The medical condition of the pupils is such that they require the skills or support of medically trained staff. The journeys will be around the borough of Blackburn with Darwen for pupils to attend special school.

#### 1.2 Aims

It is the aim of the procurement exercise to allocate a provider to allow each pupil to be managed by one primary supplier supporting and safeguarding pupils with complex medical needs offering a high quality pupil focused healthcare service. The provider will be responsible for the safe, timely and comfortable journey between home and school and return with a high quality healthcare facility. The provider will manage the healthcare needs of the entire journey and the healthcare requirements of the pupils.

### **1.3 Objectives**

**To prepare and produce risk assessments and travel plans for individual pupils agreed by the provider, the school nurse and the parent.**

**Pupil centred service delivered in a safe, friendly and effective manner by qualified trained staff via the school nurse.**

**Must provide a flexible and responsive service and must respond to change i.e. on the day requests changing needs etc.,**

**High quality communication with all partners concerned. Clear and complete risk assessments and travel plans must be regularly provided.**

### **1.4 Expected Outcomes**

**To safeguard and support children who may need medical intervention whilst on transport providing a quality focused service that is cost effective and provides value for money.**

## **2. Scope**

### **2.1 Service Description**

Providing an enhanced level of care to cover all the needs of high-dependency pupils needs such as those with complexed needs of vulnerable pupils on SEND Home to school transport.

### **2.3 Accessibility, fairness and equity of provision**

- The service will be non-stigmatising and non-discriminatory, providing fair and equitable access. The service will comply with the Equality Act (2010).
- The service will work in a way that it does not discriminate against individuals on the grounds of gender, race, disability, sexual orientation, sexual practices, gender reassignment, age, pregnancy or maternity, marriage/civil partnership or belief system and will ensure that all applicable legislation is adhered to.

### **2.4 Essential links to other services / care pathways**

- Blackburn with Darwen Children Services

### **2.5 National, statutory or local service standards applicable to this service**

This service delivery should be aligned where appropriate to the latest standards and guidelines set out by Ofsted.

The provision should also be fully compliant with the latest Blackburn with Darwen's Safeguarding Children Policies, Protocols and Procedures <https://www.lancashiresafeguarding.org.uk/>

Workforce development should take into consideration all locally available training to ensure the highest quality delivery of service underpinned by a skilled and competent workforce of paid and volunteer staff members.

All training provided by the LSCB will be utilised as this will provide improved awareness and knowledge with regards to various priority areas of work e.g. PREVENT, CHILD SEXUAL EXPLOITATION, MODERN SLAVERY ACT.

All provision will be determined by local need, guided by the following including:

### 3 Service Delivery

**3.1 Service delivery / model** Transport will be provided via the Council to transport pupils from home to school term time only.

#### **3.2 Competencies and Training**

The service will ensure: -

All staff (paid or voluntary) are appropriately qualified and supported in their work so as to realise their full potential and maximise positive outcomes for all.

All staff will work positively with service users and their carer's, and will positively promote the service.

All staff will be supported to continuously update skills and techniques relevant to their work and will endeavour to raise awareness among partner agencies of the issues faced by this cohort.

The provider will ensure that all policies and procedures relating to the commissioner and BwD LSCB are adhered to. As the commissioner is required to be compliant with Section 11 of the Children Act 2004, the provider by extension will also be required to be compliant.

Training on prevention of abuse, child sexual exploitation (CSE) and safeguarding must be given to all employees as a part of induction, and must be updated every 2 years. The Provider will be required to undertake CSE training programmes that are promoted by BwD Borough Council and will be expected to consider CSE implications with all relevant users of the service, referring to other agencies such as child protection and Engage as per the commissioners safeguarding policies.

There is a growing evidence base that supports the call for a system change approach recognising quality parental relationships as a core shared objective across all areas of service delivery in the Pan Lancashire region. In BwD we have a strong shared belief that relationship support should be more readily available for our families and undertaken across the continuum of need by a range of practitioners. To support this vision Reducing Parental Conflict training is required.

#### **3.3 Safeguarding**

The provider will access training and workforce development offered via our **Children's Safeguarding Assurance Partnership (CSAP)**. Multi-Agency Learning and Development Programme for 2021-22 is available on both the LSCB and LSAB websites – [www.lscb.org.uk/training/](http://www.lscb.org.uk/training/) and [www.lsab.org.uk/training/](http://www.lsab.org.uk/training/). Currently only online training is available but will be updated with face to face courses as soon as possible. The programme outlines the multi-agency learning and development opportunities available for staff working with children, young people and adults at risk of abuse and neglect. The programme offers a fantastic variety of training opportunities, and we look forward to hearing how this impacts on delegate's roles and how they use this in their work.

Training on prevention of abuse, and safeguarding must be given to all employees as a part of induction, and must be updated every 2 years as per the commissioners safeguarding policies.

Safeguarding continues to be of the highest priority for services. Providers must meet all the requirements for safeguarding of children, young people and vulnerable adults as set out in the policies and guidance available on the Council website. All workers/volunteers working with young people and vulnerable adults must have enhanced DBS clearance certificates and have undertaken appropriate safeguarding training. Providers are expected to have rigorous procedures for ensuring that DBS checks are in place and certificates should be available to young people or commissioners on demand.

Referral to, and liaison with relevant agencies regarding the safeguarding of children and vulnerable adult and public protection will be a priority.

All staff must be aware of community safety initiatives including the Organised Crime Initiatives Prevent/Protect agenda and take into account when developing support plans for service users. Staff should avail themselves of the Borough's Prevent on-line training programme.

All staff must be aware of the Modern Slavery Act 2015 and the need to have the appropriate training to recognise it.

The Provider will be required to ensure that an up to date DBS check is in place for any staff working with children and vulnerable adults and if this is not completed, the employees will not be able to undertake their commissioned role.

Staffing and management structures will be streamlined and efficient with all staff having clear areas of responsibility and remits.

All training costs will be met by the provider.

### **3.4 Governance**

The service provider is responsible for the governance and oversight of the service being provided and should have arrangements in place to demonstrate this.

### **3.5 Insurance**

The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following levels of cover:

- Public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims.
- Employer's liability insurance with a limit of indemnity of not less than £10,000,000.
- Professional indemnity insurance with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants and sub-contractors involved in the provision of the Services hold and maintain appropriate cover.

The Provider must put in place and/or maintain in force (and/or procure that its sub-contractors must maintain in force) at its own cost appropriate Indemnity Arrangements in respect of clinical negligence where the provision or non-provision of any part of the Services (or any other services under this Contract) may result in a clinical negligence claim.

### **3.6 Business Continuity**

The Service Provider ensures that sufficient staffing is available for the effective running of the service, including contingency planning for times of sickness, absences or any other occurrence that may jeopardise the delivery of the service to service users at levels sufficient to meet the performance

objectives and service standards of the service as outlined in this agreement.

### **3.7 Additional Costs**

The full cost of the service should be managed within the financial envelope available as outlined within the invitation to quote.

### **3.9 Consulting with service users**

Consultation with service users is everybody's business and as such regular feedback is sought via contract monitoring and reporting mechanisms. The service provider should also consider ongoing evaluation of the provision to inform future service developments.

### **3.10 Service Development**

The provider is expected annually to agree a service development action plan to embrace opportunities to provide both innovation and quality. The action plan should contain achievable milestones and should be agreed in partnership with the commissioner and other relevant stakeholders.

## **4 Referral, Access and Acceptance Criteria**

### **4.1 Geographic coverage / boundaries**

Blackburn with Darwen Borough Council boundaries.

### **4.2 Location(s) of service delivery**

Across Blackburn with Darwen Borough Council.

### **4.3 Days / hours of operation**

The service provider must operate term time, from Monday to Friday. Hours of service may vary – 8.30 – 9.30 and 2.30 – 3.30.

### **4.5 Risk Assessment**

All visits must be risk assessed.

### **4.6 Applicable service standards – national/local/statutory**

As above

## **5 Service Improvement Requirements**

The provider will work with the commissioner on an annual basis to agree a **positive development action plan** which will be reviewed via contract monitoring arrangements on a monthly basis. Service users may be called up on to scrutinise progress against the development milestones.


## **6 Baseline Performance Targets – Quality, Performance & Productivity**



Key Activity or Performance Indicator	Baseline or Threshold	Method of Reporting and Frequency
Up to date risk assessments.	To be confirmed following monthly meeting	Report card – monthly
Monthly updates for travel plans and health care needs etc.	To be confirmed following monthly meeting	Report card– monthly
Regular training updates.	To be confirmed following monthly meeting	Report card – monthly
<b>8. Reviews/Monitoring</b>		
Monthly reviews and monitoring and training requirements, these will be specified within the contract Terms and Conditions.		
<b>9. Finance</b>		
Monthly monitoring.		

Executed as a deed by affixing the common seal of the Authority in the presence of:

[COMMON SEAL]

  
Joanne Siddle (Apr 11, 2023 15:52 GMT+1)

Joanne Siddle

.....  
**Signature of Authorised signatory**

.....

**Signature of Authorised signatory**

**Executed as a deed by the Contractor Allcare Nurses Agency Limited by:**

R.QUINN  
R.QUINN (Apr 6, 2023 13:00 GMT+1)

R.QUINN

.....  
**Signature of Director**

R.QUINN  
R.QUINN (Apr 6, 2023 13:00 GMT+1)

R.QUINN

.....  
**Signature of Director/Secretary/Witness (delete as appropriate)**

## **Annex A - Part 2: Schedule of Processing, Personal Data and Data**

### **Schedule Processing, Personal Data and Data Subjects**

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: Sarah Critchley, IG Manager, Digital and Business Change (sarah.critchley@blackburn.gov.uk)
2. The contact details of the Processor's Data Protection Officer are:  
  
R.QUINN  
]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

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 Clause 1.1.
Subject matter of the processing	Personal information about the individual service user needed in order to ensure that the Parties can effectively deliver the contract
Duration of the processing	<i>For the duration of the Contract</i>
Nature and purposes of the processing	<i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i>  <i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i>
Type of Personal Data being Processed	<i>name, address, , telephone number</i>
Categories of Data Subject	<i>BwDBC service users</i>

<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><i>Current Year +6</i></p>
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# Care Package for Children with Complexed Needs Travel


Final Audit Report


2023-04-11


Created:	2023-04-06
By:	Contracts & Quality Contracts & Quality (contractsandquality@blackburn.gov.uk)
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