

DATE

(1) PETERBOROUGH CITY COUNCIL

(2) CAMBRIDGESHIRE COUNTY COUNCIL

### INTER AUTHORITY AGREEMENT

### RELATING TO THE JOINT WORKING ARRANGEMENTS FOR THE

### PROCUREMENT OF HOME & COMMUNITY SUPPORT FOR CHILDREN & YOUNG PEOPLE IN PETERBOROUGH AND CAMBRIDGESHIRE

THIS AGREEMENT is dated the

day of

202

BETWEEN:

- (1) **PETERBOROUGH CITY COUNCIL** of Sand Martin House, Bittern Way, Fletton Quays, Peterborough PE2 8TY (“Lead Authority”); and
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of New Shire Hall, Emery Crescent, Enterprise Campus, Weald, Huntingdon, PE28 4YE (“CCC”).

each a “Partner” and together referred to as “the Partners”.

WHEREAS:

- (A) The Partners have agreed to work together in order to procure the service. The procurement will consist of five Block Contracts and a Pseudo DPS Agreement.
- (B) The Lead Authority, in its capacity as the lead authority and host, will enter into a Pseudo DPS Agreement with the Providers on behalf of itself and CCC.
- (C) The Lead Authority, will lead on the procurement for the Block Contracts and each Partner will enter into the Block Contract with the successful bidder.
- (D) This Agreement sets out the basis on which the Lead Authority will manage the DPS Agreement on behalf of itself and CCC. Subject to clause 4.1, if necessary, the Partners individually, directly and or independently from the other Partners may enter into Call Off Contracts with the preferred Providers.
- (E) Save as provided for in this Agreement, the Partners agree that their individual obligations under the terms of this Agreement will be fulfilled by their own staff and that these arrangements will not involve the co-location of or the provision of staff by one Partner to another.
- (F) The Partners agree to collaborate, work together in good faith and use reasonable endeavours to deliver the Project and achieve the Project. The Project may be revised or updated by the Partners through the Joint Project Board. Where applicable, the Partners will agree any joint working principles or procedures to facilitate the provisions of this Agreement and the achievement of the Project.
- (G) The schedules to this Agreement form part of this Agreement.

#### 1. DEFINITIONS

In this Agreement, except where a different interpretation is clear from, or necessary in the context, the terms below shall have the following meanings:

Agreement	this document including the Schedules.
Block Contract	a contract (being one of five) between a Provider and a Partner for the provision of Services between the period of three years, between 1 <sup>st</sup> November 2023 to 31 <sup>st</sup> October 2026, inclusive with an option to extend up to two years. There will be three Block Contracts between Peterborough City Council and the successful bidders and two Block

	Contracts between Cambridgeshire County Council and the successful bidders
Call Off Contract	the contract between a Provider and a Partner for the provision of the Services.
Chairperson	the representative elected from time to time by the Partners to act as chairperson in accordance with Schedule 1 (Terms of Reference).
Commissioning Officer	the officer appointed under clause 7.
Commencement Date	the date on which the Services commence under the DPS Agreement and the Block Contract.
DPA	the Data Protection Act 2018.
DPS Agreement	the agreement for the provision of Services which will be entered into with the Lead Authority, and the Providers, that will enable the Partners separately and or jointly to enter into a Call Off Contract. The Term of the DPS Agreement will be for a period of five years, with the option to extend for up to a further five years, commencing on the 1 <sup>st</sup> November 2023
“Data Protection Brexit Regulations”	shall mean the Data Protection Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2019 (SI 2019/419) made under section 8 of the European Withdrawal Act 2018 (EUWA) as amended by the Data Protection Privacy and Electronic (Amendments etc)(EU Exit) Regulations 2020 (SI 2020/1586).
“Data Protection Legislation”	shall mean all applicable data protection and privacy Laws in force from time to time (including the UK GDPR, the 2018 Act and the Data Protection Brexit Regulations and the EU GDPR) and any relevant national and international implementing Laws and regulatory requirements, as all such may be amended from time to time, to which the Council and/or the Provider are subject, relating to the use of personal data and any related guidance or codes of practice issued from time to time by the Information Commissioner.
EIR	the Environmental Information Regulations 2004.
Exempt Information	has the same meaning as ‘exempt information’ in the FOIA.
FOIA	the Freedom of Information Act 2000.
GDPR	the General Data Protection Regulations.
Intellectual Property Rights	any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto.

Joint Board	Project	the group assembled and responsible for oversight of the monitoring and strategic input into the Project and the management of the Services.
Joint Principles	Working	is as defined in clause 2 of this Agreement.
"Law"		means any legal provision the Partners must comply with including any law, statute, and/or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law or legal requirements (including of any regulatory body), in force from time to time.
Lead Authority		Peterborough City Council, who will be the lead authority and will have the lead role in the Project and the operational management of the DPS Agreement.
Project		working towards and ultimately the establishment of a DPS Agreement and Block Contracts to provide the Services for the Partners and the establishment of the Joint Project Board on the terms as set out in this Agreement.
Provider		the successful bidder awarded either a Block Contract or a place on the DPS to provide the Services.
Records		all data and all files, records, documents, notebooks, accounts, statistics, surveys, and specifications, (howsoever stored) which are held and/or used by the Partners prior to the Commencement Date in connection with the commissioning of the Services.
Senior Manager		the person appointed by each Partner to represent that Partner in relation to that Partner's requirements in respect of the commissioning of the Services and who shall also be a member of the Joint Project Board.
Services		Home & Community Support For Children & Young People In Peterborough And Cambridgeshire. The Services will be for generic home support, complex home support, generic community support and complex community support. The DPS Agreement will also have a Lot for high level family support Service.
Term		the term of this Agreement commencing on the Commencement Date to the expiry or termination of the Block Contract or DPS Agreement (whichever is the longer) unless terminated early pursuant to clause 20 or extended in accordance with clause 9.
Terms of Reference	of	the terms of reference of the Joint Project Board set out in Schedule 1, as may be varied from time to time by the Partners.
"UK GDPR" / "United Kingdom General Data Protection Regulation"	Data	Regulation (EU) 2016/679 of the European Parliament and of the European Council of 27 <sup>th</sup> 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 Brexit Regulations and defined in the Data Protection Legislation.
Working Day	a calendar day but excluding Saturdays, Sundays and bank holidays.

1.2 In this Agreement unless the context requires otherwise:

- 1.2.1 words importing the singular shall include the plural and vice versa;
- 1.2.2 words importing any particular gender shall include all other genders;
- 1.2.3 references to persons shall include bodies of persons whether corporate or incorporate;
- 1.2.4 words importing the whole shall be treated as including a reference to any part of the whole;
- 1.2.5 any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended or replaced, (whether before or after the date of this Agreement), and including all subordinate legislation made under it;
- 1.2.6 references in this Agreement to any clauses and appendices are to the clauses and appendices to this Agreement except where otherwise expressly stated; and
- 1.2.7 headings are used in this Agreement for the convenience of the Partners only and shall not be incorporated into this Agreement nor deemed to be any indication of the meaning of the clauses or appendices to which they relate.

1.3 If there is any conflict between any provision in the main body of this Agreement and any provision in the appendices, the provision in the main body will prevail.

## 2. PARTNERSHIP WORKING

2.1 The Partners have agreed to work in partnership and enter into this Agreement in order to jointly ensure good management of the DPS Agreement and Block Contracts and establish the terms of collaboration between the Partners, with the aim of achieving best value in the provision of the Services and with the intention of improving health and social benefits for the residents of Cambridgeshire and Peterborough.

2.2 In performing their respective obligations under this Agreement, the Partners agree to adopt the following Joint Working Principles:

- 2.2.1 at all times act in good faith towards each other;
- 2.2.2 act in a timely manner;
- 2.2.3 adopt an approach to identifying and resolving issues together;
- 2.2.4 to share information and best practice, and work collaboratively to collaboratively identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;

- 2.2.5 at all times, observe relevant statutory powers, requirements and best practice to ensure compliance with applicable Laws and standards including those governing procurement, Data Protection Legislation and FOIA; and
  - 2.2.6 to manage the procurement and Services through the Joint Project Board, so that all decisions in relation to the Services provision are centrally managed and agreed by the Joint Project Board on behalf of the Partners;
  - 2.2.7 to inform each other and report to the Joint Project Board details of any actual/potential service requirements through the Call Off processes and/or concerns regarding the strategic management and operation of the DPS Agreement;
  - 2.2.8 discuss and develop ideas openly, seeking to contribute to the overall success of the Project;
  - 2.2.9 without prejudice to the rights of a Partner to be indemnified by the other Partner as set out expressly elsewhere in the Agreement, take reasonable steps to mitigate any losses arising from any failure of the other Partner under this Agreement; and
  - 2.2.10 adhere to the requirements and obligations in this Agreement.
- 2.3 This Agreement does not affect the Partners' constitutions or delegations and for the avoidance of doubt the Joint Project Board is not a decision making board.
- 2.4 The Partners intend this Agreement to be legally binding and the mutual commitments between them created by this Agreement shall be construed accordingly.

### 3. GOVERNANCE ARRANGEMENTS

- 3.1 The Partners shall establish the Joint Project Board and shall ensure that it remains constituted and operates as provided for in this Agreement.
- 3.2 The constitution, membership and Terms of Reference of the Joint Project Board shall be as set out in Schedule 1.
- 3.3 Each Partner shall take the steps that are necessary or expedient to secure the achievement of the Project, subject always to each Partner's internal governance requirements. Each Partner confirms that it has obtained all necessary consents to authorise the delegation of the decisions contemplated by the Project and this Agreement.

### 4. ARRANGEMENTS

- 4.1 As from the Commencement Date and throughout the Term, the Lead Authority will have the lead role in procuring and managing the DPS Agreement with the Provider(s) and procuring the Block Contracts in accordance with the Public Contract Regulations 2015. The Lead Authority will enter into a DPS Agreement with the Providers on behalf of itself, with the ability for CCC to call off from the DPS, on terms agreed by all of the Partners to this Agreement. If necessary, the Partners individually, directly and or independently from the other Partner may enter into Call Off Contracts with the preferred Provider(s). The Partners may also elect to enter into Call Off Contract(s) for itself and on behalf of each other, provided the respective Partners enter into relevant delegated and/or funding agreements as necessary.
- 4.2 Each Partner shall:
  - 4.2.1 use reasonable care and skill in performing those obligations;

4.2.2 use employees or agents in performing the obligations who are suitably qualified and experienced; and

4.2.5 act collaboratively in the planning, securing and monitoring of the Service, the Block Contracts, and in particular, with respect to the DPS Agreement and any subsequent Call-Off Contract, to:

(i) plan services to meet the social care and health needs of the local population in accordance with the Partners' respective commissioning intentions and ambitions;

(ii) agree the range of Services, and procure and negotiate the Block Contracts and the DPS Agreement;

(iii) manage the DPS Agreement, including in respect of quality standards, observance of service specifications, and monitoring of activity and finance, so as to obtain best performance, quality and value from the Services by assessing quality and outcomes (including effectiveness, service user experience and safety).

4.3 Each Partner shall, subject to compliance with the Data Protection Legislation and the FOIA and any other duty of confidentiality howsoever arising, afford to each other such access to its Records or any aspect of them which is reasonably necessary to facilitate the effective operation and management of the Services, the Block Contracts, the DPS Agreement, any Call-Off Contract and terms of this Agreement.

## 5. TUPE

Saved as set out in this Agreement, the Partners agree that their individual obligations under the terms of this Agreement will be fulfilled by their own staff and that these arrangements will not involve the provision by one Partner to another of any staff nor the co-location of any staff. Accordingly, the Partners do not consider that TUPE applies.

## 6. FINANCIAL ARRANGEMENTS

Details of each Partner's contribution towards the cost of procuring and managing the Services are set out in Schedule 2 (Financial management arrangements and allocation of costs).

## 7. ROLES

7.1 The Commissioning Officer shall be the officer of the Lead Authority and notified to the Joint Project Board in writing. The Lead Authority shall ensure that at all times an officer is appointed to undertake the role of the Commissioning Officer who shall be responsible for:

7.1.1 keeping proper records in relation to the provision of the Services which shall be open to other officers of the Partners, at any reasonable time for their inspection, together with all invoices, receipts and documents relating thereto; and

7.1.2 submitting to the Joint Project Board quarterly reports and an annual return in relation to the income and expenditure received from or incurred in respect of the provision of the Services.

- 7.2 Each Partner shall appoint an individual who shall fulfil the role of Senior Manager and notify the Partners in writing of that individual within fourteen (14) days of the completion of this Agreement. Each Partner shall ensure that at all times an officer is appointed to undertake the role of Senior Manager for and on behalf of that Partner.
- 7.3 The Senior Manager will be the point of contact for the relevant Partner in relation to that Partner's requirements in respect of the commissioning of the Services and shall be authorised to make related decisions on behalf of the Partner appointing them.
- 7.4 The Senior Managers shall be members of the Joint Project Board.
- 7.5 The Partners shall undertake the roles as detailed in Schedule 1.

## 8. PROBLEM SOLVING AND DISPUTE AVOIDANCE OR RESOLUTION

- 8.1 If any Partner has any issues, concerns or disputes about the Agreement, the Block Contracts, and or the DPS Agreement, the Provider or any matter in relation to the Services, that Partner shall notify their representative on the Joint Project Board promptly in writing and the Senior Managers shall meet within ten (10) Working Days of the notice, (or such other period as agreed), in order to resolve the issues, concerns or disputes. The Senior Managers may invite the Provider to attend this/other related meetings to assist with identifying and implementing a resolution.
- 8.2 If the aforesaid issues, concerns or disputes cannot be resolved within ten (10) Working Days of the meeting of the Senior Managers, (or such other period as may be agreed), the matter shall be escalated to the Joint Project Board. If the matter cannot be resolved at that level, the Partners shall have recourse to the respective Chief Executives and organisational escalation protocols.
- 8.3 Nothing in this clause 8 shall prevent the Partners making an interim application to the Court, subject to notifying the Joint Project Board immediately of the intention to do so.
- 8.4 If a Partner contends that there is a basis for pursuing legal action against a Provider, the Partner contending that, (the "Contending Partner"), will notify the other Partners and will request a meeting of the Joint Project Board as soon as possible or, in the case of emergency, notify the Joint Project Board members in writing and the Lead Authority's Monitoring Officer together with the Head of Legal Services of the respective Partners shall take such actions as they deem necessary to protect the interests of all the Partners. All Partners shall take on board the recommendations and advice provided by the Joint Project Board but the conduct and liabilities of any resulting action will rest with the Contending Partner.
- 8.5 If any third party makes a claim, or notifies an intention to make a claim, against a Partner to a Call Off Contract in connection with or arising from the Services which may reasonably be considered likely to give rise to a liability, the relevant Partner shall:
- 8.5.1 as soon as reasonably practicable, give written notice of the claim, (or potential claim), to the other Partner;
  - 8.5.2 not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the Monitoring Officer at the Lead Authority and the Head of Legal Services for the respective Partners;
  - 8.5.3 allow the other Partner and their professional advisers access to its premises, staff and any relevant assets, accounts, documents and records within their power or control, so as to enable the Partners and their professional advisers to examine them



and to take copies (at the requesting Partner's expense), for the purpose of assessing the claim;

8.5.3 seek to settle the claim where the failure to do so is likely to be materially prejudicial, provided that the Contending Partner approves the settlement.

8.6 Subject to the Joint Project Board, or the Partners' respective persons with appropriate delegations if applicable, approving the course of action, the Partner who is the subject of the claim shall indemnify and keep indemnified the other Partners against any claim, liability, costs, expenses, damages or losses which may be incurred as a result of such a claim, (or proposed claim), made against it, save where the claim arises as a result of a breach of contract, negligence, wilful default or fraud of that other Partner's or its employees. In the event that there is no agreement of the Joint Project Board as to the proportion of each Partner's contribution to any claim, liability, costs, expenses, damages or losses which may be incurred, the Partners will in the first instance, look to resolve any disagreement in line with the Dispute Resolution Procedures.

## 9. TERM

9.1 The Agreement shall commence on the Commencement Date and shall continue for the Term and may be extended by written agreement of the Partners.

9.2 Any extension will be for the minimum period required to cover the remaining term of any existing DPS Agreement and or Block Contract.

9.3 Subject to any extension, the Agreement shall expire automatically on the expiry or termination of the DPS Agreement or the Block Contract, whichever is the longer.

## 10. VARIATION

This Agreement may only be varied by written agreement signed on behalf of all the Partners.

## 11. STATUS

Nothing in this Agreement is intended to, or shall be deemed to, constitute any Partner as exercising rights over the other under the Partnership Act 1890, nor authorise either Partner to make or enter into any commitments for or on its behalf save as expressly set out in this Agreement.

## 12. INTELLECTUAL PROPERTY

12.1 Each Partner shall retain all Intellectual Property in its Records.

12.2 Any Intellectual Property Rights created in the furtherance of this Agreement shall vest in the Partners jointly in equal shares. This shall include but is not limited to processes, procedures, methodology and manuals.

12.3 For the avoidance of doubt, any Intellectual Property Rights in reports and documents created by or produced for a Partner in relation to this Agreement shall vest in the Partner who created the report or document or in the Partner for whom the report or document has been produced.

12.4 Nothing in this Clause 12 shall operate to prevent or make difficult the sharing of good practice between the Partners.

12.5 Each Partner grants to the other a non-exclusive, irrevocable, royalty free, non-transferable and perpetual licence to use, modify, amend and develop its Records for the purposes of this Agreement and the Services.

12.7 Each Partner shall immediately give written notice to the other of any actual, threatened or suspected infringement of any Intellectual Property Rights that it becomes aware of.

### 13. NOTICES

13.1 Any notice or other communication given in connection with or required by this Agreement shall be made in writing and shall be delivered by hand, or sent by pre-paid first class post to the recipient at the address stated above or by email to the recipient.

13.2 Any such demand, notice or communication shall be deemed to have been duly served:

13.2.1 if delivered by hand - at the time of delivery;

13.2.2 if sent by pre-paid first class post - two Working Days from the date of being posted;  
or

13.2.3 if sent by email - on the day of transmission if sent by 4pm on the Working Day the email is sent, otherwise 9am on the following Working Day.

### 14. FREEDOM OF INFORMATION

The Partners acknowledge that they are subject to the provisions of the FOIA 2000 and the Environmental Information Regulations 2004 and each Partner shall use all reasonable endeavours to assist and cooperate with each other, (at its own expense) to enable the other Partner to comply with its information disclosure obligations.

### 15. INFORMATION AND CONFIDENTIALITY

15.1 Subject to Clause 14 above each Partner shall keep confidential all matters relating to this Agreement which are marked as confidential or intended to be confidential or which the receiving Partner should reasonably consider to be confidential given its nature.

15.2 Clause 15.1 shall not apply to any:

15.2.1 disclosure to a Partner's employees or agents who need to know the information for the performance of their obligations under this Agreement;

15.2.2 matter which a Partner can demonstrate is already generally available and in the public domain;

15.2.3 disclosure which is required by any applicable Law;

15.2.4 disclosure of information which is already lawfully in the possession of the receiving Partner;

15.2.5 disclosure to a department, office or agency of the Government;

15.2.6 disclosure for the purpose of the examination and certification of a Partner's accounts.

15.2.7 information which the disclosing Partner agrees in writing is not confidential and/or may be disclosed.

15.3 Neither Partner shall use any information received from the other within its own organisation except to the extent necessary for the implementation of the Services or with the written consent of the other Partner.

15.4 Neither Partner shall make any public statement or issue any press release or publish any other document relating, connected with or arising out of this Agreement and/or the DPS Agreement and/or the Block Contract(s) without the other Partner's written consent.

## 16 DATA PROTECTION

16.1 The Partners to this Agreement will comply with all applicable requirements and obligations of the Data Protection Legislation.

16.2 This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

16.3 The Partners acknowledge their respective duties under the Data Protection Legislation and shall give all assistance to each other where appropriate or necessary to comply with such duties.

16.4 The Partners agree that personal data shall only be disclosed where to do so is permitted under the Data Protection Legislation and where such disclosure complies with the Law.

16.5 To the extent that any Partner acts as a Processor on behalf of another Partner ("**Instructing Party**"), it shall:

16.5.1 only process such personal data as is necessary for the purposes of this Agreement, and only in accordance with any lawful instruction given by the Instructing Party;

16.5.2 put in place appropriate protective, technical and organisational measures against any unauthorised or unlawful processing of such personal data, and against the accidental loss or destruction of or damage to such personal data, having regard to the state of technical development and the level of damages that may be suffered by a data subject whose personal data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;

16.5.3 if any complaint, notice or communication which relates directly or indirectly to the processing of the personal data or to any Partner's compliance with the Data Protection Legislation and the data protection principles set out in the Data Protection Legislation, arising from or in connection to this Agreement, immediately notify the other Partners and provide them with full cooperation and assistance in relation to any such complaint, notice or communication;

16.5.4 not transfer the personal data outside the United Kingdom without the prior written consent of the Instructing Party and the following conditions have been fulfilled:

16.5.4.1 either the proposed transfer is based on adequacy regulations or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation, including in particular the UK GDPR Articles 44 -47 and sections 17A to 17C of the 2018 Act, or in relation to Law enforcement, sections 73, 74A, 74B and 75 of the 2018 Act), or one of the derogations in Article 49 of the UK GDPR applies, as determined by the Instructing Party;

16.5.4.2 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data

- that is transferred (or, if it is not so bound, uses its best endeavours to assist the Instructing Party in meeting its obligations); and
- 16.5.4.3 the Processor complies with any reasonable instructions notified to it in advance by the Instructing Party with respect to any such proposed transfer of the personal data;
  - 16.5.5 not disclose any personal data to a third party without the prior written consent of the Instructing Party;
  - 16.5.6 ensure it does not knowingly or negligently do or omit to do anything which places the other Partners in breach of its obligations under the Data Protection Legislation; and
  - 16.5.7 ensure that access to the personal data is limited to such employees, agents or servants who need access to give effect to this Agreement and take reasonable steps to ensure the reliability of such employees, agents or servants who will have access to such personal data, and ensure that such employees, agents or servants are aware of and trained in the policies and procedures for handling data under the Data Protection Legislation.
- 16.6 The Partners shall ensure that personal data is safeguarded at all times in accordance with the Data Protection Legislation.
- 16.7 The Processor shall allow for audits of its processing activities by the Instructing Party or their designated auditor upon reasonable notice by the Instructing Party and in any event no later than 10 (ten) Working Days after being requested by the Instructing Party to do so.
- 16.8 The Processor shall designate a data protection officer if required by the Data Protection Legislation. If no data protection officer is required by the Data Protection Legislation, the Processor shall, upon signature hereof by the Partners, provide the name, office, contact address, email address and telephone number of a duly authorised officer, who shall act as the Processor's representative and contact in relation to all Data Protection Legislation matters arising in relation to this Agreement.
- 16.9 The Processor shall not engage a Sub-processor to process any personal data, without first obtaining the prior written authorisation of the Instructing Party. If the Processor wishes to engage such Sub-processor it must first:
- 16.9.1 notify the Instructing Party in writing of the intended Sub-processor and processing;
  - 16.9.2 provide the Instructing Party with such information regarding the Sub-processor as the Instructing Party may reasonably require; and
  - 16.9.3 obtain the prior written consent of the Instructing Party.
- 16.10 In the event that such Sub-processor intends to process any personal data in the European Union), entering into a binding written agreement with such Sub-processor (to be pre-approved by the Instructing Party) in which the Sub-processor agrees to adopt the Standard Contractual Clauses (using the applicable Module) in order to ensure the continued access by the Instructing Party and the Processor to the personal data in the event that the European Union Commission revokes its [two] adequacy decision[s] of the 28th June 2021 for transfers of personal data to the United Kingdom, under the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED) respectively.
- 16.11 If, and subject to, the Instructing Party giving its prior written authorisation to the appointment of such Sub-processor, the Processor shall enter into a binding written agreement with the

Sub-processor which gives effect to the terms set out in this clause 16 (and the related definitions as they are set out in this Agreement) and the personal data Instructions such that they apply to the Sub-processor (as a processor) and will not allow the Sub-processor to process any personal data before it has done so.

- 16.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 16.13 The Instructing Party may elect, at any time (on not less than 30 (thirty) Working Days' notice), to revise the provisions of this clause 16 (and relevant related Definitions) by replacing it with any applicable controller to processor standard clauses adopted by the Information Commissioner under Article 28 of the UK GDPR or similar terms forming part of an applicable certification scheme, referred to in the Data Protection Legislation and upon receiving any such notice, the Processor agrees that it shall accept and be bound by the same.
- 16.14 The Partners agree to take account of any guidance issued by the Information Commissioners Office. The Partners may on not less than 30 (thirty) Business Days' notice to the other amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioners Office.
- 16.15 The provisions of this clause 16 shall apply notwithstanding any other term of this Agreement in relation to the processing of personal data and in the event of any conflict between the terms of this clause 16 and the remaining terms of this Agreement in relation to the processing of personal data, the terms of this clause 16 shall prevail.
- 16.16 A breach of clause 16 by either Partner shall be deemed to be a material breach for the purposes of clause 20.1.1.

## 17 SEVERANCE

- 17.1 If at any time any clause or part of a clause is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:
  - 17.1.1 that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement;
  - 17.1.2 the Partners shall in good faith amend the Agreement in writing to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision; and
  - 17.1.3 if the Partners cannot agree upon the terms of any amendment within six months of the date upon which a clause was determined to be illegal, invalid or unenforceable, the dispute will be determined in accordance with the dispute resolution procedures (clause 8).

## 18 SUCCESSORS AND ASSIGNS

Neither Partner may assign, transfer, charge, dispose of or otherwise deal in any manner with any or all of its rights and liabilities under this Agreement without the prior written consent of the other Partner, such consent not to be unreasonably withheld or delayed. It is envisaged that it would be reasonable to provide consent where a Partner delegates its function to another body or either amalgamates with a other public body to form a larger organisation or wider public and health authority.

## 19 REVIEW PROCESS AND VARIATIONS TO DPS AGREEMENT

- 19.1 The Lead Authority in consultation with the Joint Project Board shall consider, develop, update and amend (as appropriate), the process for reviewing the Provider's performance in line with the DPS Agreement.
- 19.2 Any amendment or update of the review process shall require the agreement of the Partners.
- 19.3 No change may be made to the DPS Agreement without the agreement of the Partners.
- 19.4 In agreeing any changes to the DPS Agreement, the Partners agree that the cost of providing the Services must be in compliance with each Partner's constitutional requirements and any applicable terms of the Joint Project Board.

## 20 TERMINATION AND CONSEQUENCES

### Termination for Breach

- 20.1 The Partners may terminate this Agreement (in whole or part) with immediate effect by the service of written notice on the breaching Partner in the following circumstances:
  - 20.1.1 If a Partner commits any material breach of any term of this Agreement which is irremediable or if such breach is capable of remedy, the Partner not in breach shall first seek to resolve the matter through discussion at the Joint Project Board.
  - 20.1.2 If the Partners are not able to resolve the matter at Joint Project Board level, the Partner alleging the breach shall be entitled to serve a notice ("Notice to Remedy"), which shall set out the breach(es), the actions required to remedy the breach(es), and the timescales by which the remedial actions must be undertaken ("Compliance Date").
  - 20.1.3 Failure to comply with a Notice to Remedy shall entitle the Partner that served the Notice to Remedy to terminate the involvement of the Partner in breach from the day following the latest Compliance Date, without prejudice to any of its rights or remedies under this Agreement.
  - 20.1.4 In the event that a Partner's involvement in this Agreement is terminated pursuant to clause 20.1.3, it shall fully indemnify the other Partner in respect of all direct and indirect losses that the other Partner incurs under the DPS Agreement.
  - 20.1.5 In the event that a Partner's involvement is terminated pursuant to clause 20.1.3, it shall be liable for its proportion of debts and liabilities arising out of or in connection with this Agreement. The proportions shall mirror those set out in Schedule 2 (Financial management arrangements and allocation of costs).
  - 20.1.6 Without prejudice to clause 21, in the event that a Partner's involvement is terminated pursuant to clause 20.1.3, it shall remain liable after the date its involvement terminated for any debt or liability in respect of any negligent or wrongful act or omission arising from its actions or that of its servants or agents and it shall keep the remaining Partner indemnified from and against all debts and liabilities and all actions proceedings costs claims and demands in that respect.

- 20.2 For the purposes of clause 20.1.1 material breach means a breach (including an anticipatory breach):
- 20.2.1 that is serious in the widest sense of having a serious effect on the benefit which a Partner would otherwise derive from a substantial portion of this Agreement; or
  - 20.2.2 which is expressly stated to amount to a material breach within this Agreement,
- and in deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

### **Termination of the DPS Agreement and Agreement before the expiry of the Term**

- 20.3 Should one of the Partners wish to exit from this Agreement prior to the expiry of the term of the DPS Agreement, it shall consult with the other and convene a meeting of the Joint Project Board without delay to discuss its reasons for wishing to terminate, its effect on the other Partners and to agree a plan as to the way forward. The Partner wishing to withdraw shall provide notice of not less than 12 months of its intention to withdraw.
- 20.4 In the event that a Partner wishes to withdraw from this Agreement pursuant to clause 20.3, it shall fully indemnify the other Partner in respect of all direct and indirect losses that the other Partner incurs under the DPS Agreement.
- 20.5 In the event that a Partner's involvement in this Agreement ceases pursuant to clause 20.3, it shall be liable for its proportion of debts and liabilities arising out of or in connection with this Agreement. The debts and liabilities shall be calculated on a proportionate basis, based on the provisions as set out in Schedule 2 (Financial management arrangements and allocation of costs).
- 20.6 Without prejudice to clause 21, in the event that a Partner's involvement in this Agreement is terminated pursuant to clause 20.3, it shall remain liable after the date its involvement ceases for any debt or liability in respect of any negligent or wrongful act or omission arising from its actions or that of its servants or agents and it shall keep the remaining Partner indemnified from and against all debts, liabilities, actions, proceedings, costs, claims and demands in this respect.
- 20.7 In the event that the Partners decide to terminate this Agreement on early termination of the DPS Agreement, the Partners shall agree a plan which makes provision for the disaggregation of the joint working arrangements to ensure that this process occurs as smoothly as possible.

### **Expiry**

- 20.8 The Joint Project Board shall meet twenty (24) months before the DPS Agreement is due to expire in order to agree a plan for the future commissioning of the Services and whether this Agreement shall continue in force or terminate.
- 20.9 In the event the Partners agree not to extend this Agreement on expiry of the DPS Agreement, the provisions for the disaggregation of the joint working arrangements set out in clause 20.3.7 shall apply.

20.10 Termination or expiry of this Agreement shall be without prejudice to the rights and remedies the Partners accrued before such termination or expiration and nothing in this Agreement shall prejudice the right of any Partner to recover any amount outstanding at the date of such termination or expiry.

## 21. LIABILITY AND INDEMNITY

21.1 Each Partner shall be liable to the other Partner for and shall fully and promptly indemnify the other Partner against all direct losses whatsoever and howsoever arising out of or in connection with:

21.1.1 its failure to comply with its obligations under this Agreement, the Block Contracts or the DPS Agreement which seriously impacts on the provision of the Services to the other Partner;

21.1.2 any serious breach of the provisions of this Agreement arising as a result of that Partner's acts and/or omissions;

21.1.3 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by that Partner or any of its agents, subcontractors or employees,

subject to clause 21.2 below, a Partner's total liability to the other whether in tort (including without limitation for breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise shall be limited in respect of each individual incident or event to the amounts specified in clause 23.

21.2 Nothing in this Agreement excludes a Partner's liability for:

21.2.1 death or personal injury caused by its negligence;

21.2.2 fraud or fraudulent misrepresentation; or

21.2.3 any act, omission or liability which may not be limited or excluded by Law.

21.3 The Partners shall indemnify each other in respect of any breach or non-observance of the Agreement and such indemnity shall include liability for all direct losses resulting from any breach or non-observance of any obligations in the Agreement. Such direct losses shall include (but are not limited to) all costs, charges or fees in connection with continuing the Service and the Partners will take all reasonable measures to mitigate losses.

## 22. WITHDRAWAL DURING THE TERM

22.1 Each Partner acknowledges that its withdrawal from the Project (for whatever reason) will result in the remaining Partner incurring costs and expense. These additional costs include but are not limited to, the costs of undertaking a changed or re-procurement of the DPS Agreement, the opportunity costs resulting from any consequential delay in the services commencement date, loss of economies of scale and loss of savings from sharing infrastructure.

22.2 In view of the above, the Partners shall:

22.2.1 indemnify each other against all additional costs that may arise or be incurred as a consequence of the withdrawal;



- 22.2.2 indemnify each other against any damage or damages, expenses, liability or costs reasonably incurred by the remaining Partner in contesting any claim resulting from or attributable to the withdrawal.
- 22.3 In the event of a withdrawal, the withdrawing Partner shall not be entitled to recover any contributions previously made by it in respect of the procurement or management of the DPS Agreement, which have been expended or allocated for expenditure as at the date of withdrawal.
- 22.4 Where either Partner withdraws from the Project:
  - 22.4.1 its obligations in relation to the delivery and governance of the Project shall cease forthwith;
  - 22.4.2 any financial liabilities which have arisen or may arise out of the performance of this Agreement as at the date of the withdrawal shall remain in force;
  - 22.4.3 its liability under this clause 22 shall remain in full force;
  - 22.4.4 the dispute resolution procedure, (Clause 8), shall remain in force in respect of any other matter arising from the performance or withdrawal of a Partner; and
  - 22.4.5 in the event a Provider has been procured prior to the withdrawal, the Joint Project Board shall meet to discuss the implications of the withdrawal in respect of service delivery for the withdrawing Partner thereafter, e.g. the period over which the withdrawing Partner may be entitled to continue receiving the Services post-withdrawal.

## 23. INSURANCE

- 23.1 Each Partner shall throughout the Term maintain such insurances as are necessary to cover any liability, which may be incurred by that Partner in relation to its obligations under this Agreement including:
  - 23.1.1 public liability insurance with a minimum limit of indemnity of ten million pounds (£10,000,000) in respect of any one act or occurrence, or series of connected acts or occurrences in any one year unlimited in aggregate;
  - 23.1.2 employer's liability insurance to comply with all statutory requirements with a minimum limit of indemnity of ten million pounds (£10,000,000) in respect of any one act or occurrence, or series of connected acts or occurrences in any one year;
  - 23.1.3 professional indemnity insurance with the minimum liability of one million pounds (£1,000,000) in respect of any one act or occurrence, or series of connected acts or occurrences in any one year limited in aggregate.

## 24. CONTRACTS (RIGHT OF THIRD PARTNERS) ACT 1999

Nothing in this Agreement is intended to confer or purport to confer on any third Partner any benefit or the right to enforce any term of this Agreement. This clause does not affect any right or remedy available to a person apart from the Contracts (Rights of Third Parties) Act 1999.

25. ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Partners relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Partners.

26. CONTINUING OBLIGATIONS

Save as may be expressly provided otherwise, termination or expiry of this Agreement shall not affect the continuing rights and obligations of a Partner under any provision which is expressed to survive termination or expiry or which is required to give effect to such termination or the consequences of termination.

27. MITIGATION

Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss in respect of which it is entitled to bring a claim against the other Partner pursuant to this Agreement.

28. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

29. STATUORY DUTIES OF THE PARTNERS

Nothing in the Agreement shall in any way restrict, prohibit or prevent any Partner from complying with any of its statutory obligations and no Partner shall be deemed to be in breach of any of its obligation under this Agreement where it demonstrated that it was acting in order to comply with any statutory obligation.

30. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English Law and, each Partner agrees to submit to the exclusive jurisdiction of the courts of England.

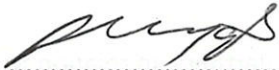
Signed by PETERBOROUGH CITY COUNCIL



.....  
Authorised Signatory

ISRAR AHMED  
Print Name

Signed by CAMBRIDGESHIRE COUNTY COUNCIL



.....  
Authorised Signatory

P. WARREN-HIGGS  
.....  
Print Name

## SCHEDULE 1

### JOINT PROJECT BOARD TERMS OF REFERENCE

#### 1. Purpose

The primary intention of the Pseudo DPS and Block Contracts is to support the commissioning of services, maximising opportunities for innovative service development through increased co-design with the market and a more joined up and integrated approach to commissioning.

The purpose of the Joint Project Board is to maintain oversight of the effective and appropriate commissioning of services through the DPS and Block Contract by:

- Delivering a robust and lawful procurement process to enable quality-assured providers entry onto the DPS jointly by the Partners and or individually and awarding the Block Contract
- Reviewing the provider market across all DPS Lots to ensure there is an appropriate number and mix of providers within each of the delivery areas
- Approving appropriate services to be called off by the Partner jointly and or individually under the DPS
- Ensuring the DPS and Block Contracts meets the strategic intentions, of the Partners, in relation to home and community support services for children and young people
- Developing and maintaining the processes which govern the DPS on behalf of the Partners
- Ensuring the terms of the Inter Authority Agreement are adhered to by both Partners

#### 2. Key Objectives

- To engage with the market in a collaborative way encouraging both large and small organisations to contribute to the shaping and development of services
- Agree the timeframe for re-opening of the DPS and evaluation of new providers applying to the DPS
- Encourage commissioners and providers to collaboratively deliver efficient and effective services which can be procured and monitored in a consistent way to ensure continuous improvement
- Develop a strategic approach to commissioning home and community support services for children and young people across the Partners aligned to the DPS
- Use best endeavours to reduce duplication and commissioning for local needs in line with procurement and commissioning best practice.
- Explore opportunities to jointly commission services with the Partners to reduce duplication and achieve care and health outcomes
- Undertake review and approval of call-off services under the DPS and Call Off Process

#### 3. DPS Procurement Activity

3.1 In respect any procurement activity relating to the DPS and Block Contract the Partners shall undertake the following roles :

Activity	Lead Authority	CCC
Project Management	X	
Procurement	X	

Legal	X	
Finance	X	X
Communications	X	X
Joint DPS and Call Off Contract	X	X
Individually	X	X

3.2 For the purpose of the table above:

- (a) **Lead:** the Partner that has principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task. The Lead must consult with the other Partner in advance if they are identified as having a role to Assure the relevant activity;
- (b) **Assure:** the Partner that will defer to the Lead on a particular task, but will have the opportunity to review and provide input to the Lead before they take a final decision on any activity. All assurance must be provided in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns regarding compliance with the Joint Working Principles.

3.3 The lead role for any aspect of the Project shall develop a delivery plan for that part of the Project which shall identify the following:

- the key milestones for the delivery the Key Objectives;
- what employees (other than employees identified in this Agreement) will be required to work on the Project;
- whether any employee will need to be seconded from one Partner to the other;
- what employee will require access to the premises of the other Partner.

Each delivery plan must be approved by the Joint Project Board prior to being implemented

#### 4. Accountability

The Joint Project Board will be held accountable to:

- Peterborough City Council – Joint Commissioning Board
- Cambridgeshire County Council – Joint Commissioning Board

#### 5. Reporting

The Joint Project Board meetings will be formally recorded, with minutes and actions sent to the Senior Managers of the respective Partner. At the start of any meeting, the attendees will decide and elect a Chairperson who will chair the meeting. The Chairperson will be responsible for circulating, for approval, the minutes and actions to the attendees and other relevant Partner officers before sending to the Senior Managers.

The following updates will be reported by the Joint Project Board:

- Providers assigned to each Lot and Block Contract
- Call-off services by Lot with details of value, start/end date and Commissioning Authority

- Planned call-off service requirements with details of value, start/end date and Commissioning Authority
- Details of planned re-opening of the DPS for new providers to apply

All reports to the above group will be agreed and signed off by the Joint Project Board prior to submission

## 6. Frequency

Meetings will be held as and when required.

## SCHEDULE 2

### FINANCIAL MANAGEMENT ARRANGEMENTS AND ALLOCATION OF COSTS

#### 1.0 Financial Arrangements and Principles

1.1 Each Partner will bear its own costs in relation to this Agreement and the performance of its roles and responsibilities under or in connection with it.

1.2 Each Partner undertakes:

- i. To nominate a representative, with delegated authority to act on its behalf in relation to the DPS and the Services;
- ii. To provide all relevant information to each other as required to ensure the effective management and monitoring of the DPS;
- iii. On the 1<sup>st</sup> November 2024 and each subsequent year thereafter, throughout the Term of the DPS, each Partner must update the Lead Authority's Procurement team with a breakdown on spend on call offs for that year, to ensure the spend remains within the permitted threshold of the DPS.

1.3 The Partners are responsible to the Joint Project Board and as part of that control and responsibility the Joint Project Board shall work in the spirit of partnership to ensure that there is no financial disadvantage or loss to any of the Partners as a result of the Block Contract, DPS or resulting Call-Off Contracts. The Joint Project Board shall be responsible for assessing the respective Partners' risks; and where necessary to direct that any affected Partner(s) escalate the matter to their Senior Manager and in accordance with their organisational escalation protocols.

1.4 Where required the Partners shall support each other and in particular the Lead Authority in the management and monitoring of the DPS.

1.5 Each Partner further undertakes to carry out any additional roles and responsibilities assigned to it as agreed by the Partners and confirmed by the Joint Project Board to achieve the overarching objective of the Agreement.

1.6 The Lead Authority represents, undertakes and warrants that the procurement officer(s) for the Lead Authority is skilled and suitable for undertaking the duties in relation to the procurement of the Block Contract and DPS, any subsequent suppliers to be added to the DPS and the process for suppliers to respond to the Call-Off Contracts in line with the Invitation to Tender for the DPS and call for competition.

1.7 For this procurement process and any opportunity to reopen the DPS is at no charge to the Partners. Should this change in the future then there will be a requirement for the Partners to contribute to future costs (this being subject to formal agreement between the Partners). Any changes to condition will be discussed, agreed and formally set out in writing by the Partners in advance to any decision to impose future costs.

1.8 Any costs relating to clauses 20.1.5 and 20.5 of this Agreement will be calculated based on the total proportion of funding committed to the Block Contract and DPS budget from each Partner. The Partners' proportionate funding contributions are set out in the table below:

Description	CCC Investment (£) per annum	PCC Investment (£) per annum	Total Annual Value – First Year (£)	Total Contract Value (Entire Term) (£)
Home Care and Support Services Broken into Lots as follows:	£200,000	£350,000	£550,000	
1a Generic Home Care				
1b Complex Home Care				
2a Generic Community Support				
2b Complex Community Support				
3 High Level Family Support		£175,000	£175,000	
Total for DPS with anticipated uplifts for inflationary and demographic, over a term of 10 years)				£10,000,000
Block Contracts 3 years plus option to extend up to 2 years	£100,000	£150,000	£250,000	£1,250,000 if extended for up to 2 years

1.9 An essential part of this risk management duty of the Joint Project Board shall be to ensure that financial controls under this Agreement are robust and carefully monitored and available for scrutiny by the Partners and/ or its representatives.



## **2.0 Pseudo Dynamic Purchasing System – Call-Off Contracts Financial Arrangements and Principles**

- 2.1 Each Partner shall be liable for their own budgetary and funding elements in relation to any of the Call-Off Contracts. Each Partner will be responsible for deciding its contribution to any individual Call-Off Contract and in any joint arrangement no Partner will place the other in no better or worst financial position.
- 2.2 The withdrawal or reduction of any individual Partners budget will have a material impact on the delivery of the Service and will need to be formally agreed in writing with the Provider and any joint funding Partner.
- 2.3 Where a Call-off Contract is made on behalf of or jointly between the Partners, then an appropriate funding agreement between the respective Partners will be entered into prior to the mini-competition to govern the funding arrangement for the Call-Off Contract.
- 2.4 There will be no liability on any Partner resulting from any change or reduction by another Partner's budgetary and funding contribution(s). In the event of a reduction in a Partner's funding contribution(s) as set out in the table above, that affected Partner agrees to undertake a review of its Services with the aim to change and /or reduce its Services to align with its reduced funding contribution(s).
- 2.5 On or before the 1<sup>st</sup> April 2024 and each subsequent year thereafter, throughout the Term of the DPS, each Partner must update the Lead Authority's Procurement team with the anticipated spend for the following financial year, to ensure the spend remains within the permitted threshold of the DPS.

2.0 Pseudo Dynamic Partnering System – Call-Off Contracts Financial Arrangements and Principles

- 2.1 Each Partner shall be liable for their own budgetary and funding elements in relation to any of the Call-Off Contracts. Each Partner will be responsible for deciding its contribution to any individual Call-Off Contract and in any joint arrangement no Partner will place the other in no better or worse financial position.
- 2.2 The withdrawal or reduction of any individual Partner's budget will have a material impact on the delivery of the Service and will need to be formally agreed in writing with the Provider and any joint funding Partner.
- 2.3 Where a Call-Off Contract is made on behalf of or jointly between the Partners, then an appropriate funding agreement between the respective Partners will be entered into prior to the mini-contract to govern the funding arrangement for the Call-Off Contract.
- 2.4 There will be no liability on any Partner resulting from any change or reduction by another Partner's budgetary and funding contribution(s) in the event of reduction in a Partner's funding contribution(s) as set out in the table above, that affected Partner agrees to undertake a review of its Services with the aim to change and/or reduce its Services to align with its reduced funding contribution(s).
- 2.5 On or before the 1<sup>st</sup> April 2024 and each subsequent year thereafter throughout the Term of the DPS, each Partner must update the Lead Authority's Procurement team with the anticipated spend for the following financial year, to ensure the spend remains within the permitted threshold of the DPS.