CALL OFF CONTRACT TERMS AND CONDITIONS FOR THE PROVISION OF DOMICILIARY CARE ('CARE AND SUPPORT AT HOME') SERVICES

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1. **THE PARTIES**

1.1. **("The Council/s")**

And

1.2. [Betsi Cadwaladr University Health Board whose principal address is Headquarters, Ysbyty Gwynedd, Penrhosgarnedd, Bangor, Gwynedd, LL57 2PW]

('The Health Board')

together and individually referred to as **"The Commissioner(s)"**

and

1.3.

(Name and address of registered branch/office of the registered Provider)
"The Service Provider"

NOW IT IS HEREBY AGREED AS FOLLOWS

i) The Council is responsible for carrying out an assessment of Person or their Carer(s) who may be in need of services in accordance with the Social Services and Well Being (Wales) Act 2014 and shall determine the Person's eligibility for care and support. The Health Board is responsible for meeting the health needs in accordance with applicable legislation, guidance and policies and in so doing shall generate a combined care plan for the person in need of the care.

ii) The Service Provider is an organisation, partnership or individual established for the provision of the Service and registered to do so with the Care and Social Service Inspectorate Wales (CIW) or such other legislative provisions as might or responsible organisations as appropriate.

iii) In accordance with the requirements of their respective statutory responsibilities, the Council and the Health Board are required to arrange domiciliary care services ("The Service").

iv) From time to time the Commissioner(s) will request the Service Provider to provide the Service as set out in this Contract for person(s) assessed as being eligible for care and support and the Service Provider has agreed to provide the Service in accordance with the Terms and Conditions of this Contract and the Framework Agreement.

v) The Service Provider acknowledges that all Call-Off Contracts awarded under the Framework Agreement shall be carried out in accordance with these Terms and Conditions and the Framework Agreement.

2. **DEFINITIONS**

2.1. In this Contract and its Schedule the words and phrases shall have the meaning as set out in Schedule 1 to this Contract (Definitions).

3. INTERPRETATIONS

3.1. The interpretation and construction of the Contract shall be subject to the following provisions:

i) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

ii) words importing the masculine include the feminine and the neuter;

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

iv) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

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

vi) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

vii) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;

viii) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;

ix) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and

x) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

4. KEY PERSONNEL

4.1. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible as follows:

i. The Authorised Officer for the Council shall be the most senior Officer who has responsibility for Social Services or such other person as the respective Authorised Officer may nominate and for the Health Board shall be [the Head of Therapeutic Service] services or such other person as the respective Authorised Officer may nominate.

ii. The Care Co-ordinator shall be the Officer identified as such in the Care and Support Plan or such other person as the Commissioner(s) may nominate.

iii. Day to day matters relating to the Person's individual services should be addressed to the Care Co-ordinator or, in continuing NHS Healthcare cases, to the [Health Board's Continuing NHS Healthcare Manager], in the first instance.

iv. Procedural matters or matters relating to the provision of this Contract should be referred to the Council's [Contracts Officer] or the [Health Board's Continuing NHS Healthcare Strategy and Quality Assurance Manager] in the first instance.

The Service Provider shall nominate a Registered Manager who shall be the person registered under the Care Standards Act 2000 and the Domiciliary Care Agencies (Wales) (Amendment) Regulations 2013 and / or with Social Care Wales and the Responsible Individual registered with CIW under the Regulation & Inspection of Social Care (Wales) Act 2016

The Registered Manager shall have day-to-day contact with the Commissioners and people supported by the service and together with the Responsible Individual shall be responsible for the Contract Performance on behalf of the Service Providers.
The Registered Manager and/or Responsible Individual shall hold a position of sufficient seniority to be able be given authority to make policy-level decisions on behalf of the Service Providers and bind the organisation contractually.
The Service Providers shall notify the Commissioner(s) of any change in the appointment of the Registered Manager and/or Responsible Individual.

4.2. The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall, where possible, provide at least one months' written notice of its intention to replace Key Personnel.

4.3. The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Service to the Commissioner(s). Where a vacancy occurs, the Service Provider shall endeavour to replace the role of any Key Personnel as soon as practically possible and any such replacement shall have suitable qualifications, experience and be fully competent to carry out the tasks assigned to the Key Personnel.

4.4. The Commissioner(s) may require the Service Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities. If the Service Provider replaces the Key Personnel as a consequence of this clause, the cost of effecting such replacement shall be borne by the Service Provider.

5. CONTRACT PERIOD

5.1. The Contract shall take effect on the Service Commencement Date as set out in the Call-Off Contract (Purchase Order and Care & Support Plan) shall continue unless it is otherwise terminated in accordance with the provisions of the Contract.

5.2. Notwithstanding the expiry of the Framework Agreement, the Service commissioned by way of a Call-Off Contract shall continue until the end date specified in the Call-Off Contract unless it is otherwise terminated in accordance with the terms of this Contract.

6. THE PROVIDER'S STATUS

6.1. At all times during the Contract Period the Service Provider shall be an independent organisation and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture and neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

7. CO-OPERATION AND PARTNERSHIP WORKING

7.1. Subject to clause 6.1 above, each Party agrees to cooperate with the other Party in the fulfilment of the Contract. The Parties acknowledge and shall endeavour to work in collaboration and in the spirit of partnership in connection with the Service provided under this Contract.

8. CONTRACT REVIEW

8.1. The terms of this Contract shall be reviewed annually and any modification, amendment or variation shall be confirmed and agreed in writing with the Service Provider prior to its implementation.

9. LIMITS OF THE COMMISSIONERS' OBLIGATIONS

9.1. Except as otherwise expressly provided, the obligations of the Commissioner(s) under the Contract are obligations of the Commissioner(s) in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Commissioner(s) in any other capacity, nor shall the exercise by the Commissioner(s) of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Commissioner(s) to the Service Provider.

10. MISTAKES IN INFORMATION

10.1. The Service Provider shall be responsible for the accuracy of the documentation and information provided to the Commissioner(s) in connection with the provision of the Service under this Contract.

11. COMMISSIONING PROCESS

11.1. Where it has been identified that a Domiciliary Care service is required to support a Person or Persons, then the Service Provider will be commissioned in line with the Commissioning and Call Off Procedures set out in the Framework Agreement's Schedule 2.

12. PRE REQUISITES AND STANDARD OF SERVICE

12.1. The Service Provider's base

12.1.1. The Service shall be managed and provided from sound premises, which are suitable for the purpose, providing a safe working environment for Staff and shall include the provision of private space for confidential meetings. The Service Provider's premises shall be appropriately located for the management and provision of the Service and contain the equipment and resources necessary for the efficient and effective management of the Service

12.1.2. Adequate arrangements shall also be made by the Service Provider to respond to any emergencies that may arise during non-office hours including on call arrangements, support for Staff, responding to unplanned incidents or emergencies and shall be suitably authorised to lead any business continuity requirements; including appropriate notification to and liaison with the Commissioner's out of hours services.

12.2. Standards and manner of carrying out the Service

12.3. Without prejudice to any higher standards of the Service required by this Contract and in addition to provisions of clause 14.1, the Service Provider shall perform its obligations in accordance with:

i. these contract terms and any expressed terms set out in the mini tender as and when applicable;
ii. the Service Specification set out in Schedule 1 of the Framework Agreement;
iii. the Service Conditions set out in Schedule 2 of this Contract;
iv. national guidance and local policies;
v. reasonable skill and care;
vi. the law and good industry practice;
vii. good clinical practice (where health related services are provided);

12.3.1. Where the Service includes the provision and/or use of goods, materials or plant, these must also:

i. be compliant with any policies, rules, codes of practice, procedures and standards with which such goods, materials or plant are required to comply; and
ii. be of satisfactory quality and fit for any purpose for which such goods, material or plant are commonly used or which is made known to the Service Provider in writing by the Commissioner(s);

12.3.2. The Service Provider shall:

i) ensure that its Staff providing the Service shall do so with all due skill, care and diligence as is necessary for the proper provision of the Service;
ii) provide to the satisfaction of the Commissioner(s) such suitably qualified, adequately trained, capable and experienced Staff as shall be necessary for the proper execution of the Service and shall not remove or replace such Staff without the approval of the Commissioner(s);
iii) ensure that Staff are aware of their responsibilities and those of the other members of Staff;
iv) ensure that Staff operate within their scope, professional boundaries and competence;
v) ensure that Staff involved in delivering the Service are sufficiently instructed with regard to the Service;
vi) ensure that there are sufficient Staff to provide the Service properly and safely;
vii) ensure that only those Staff who are authorised by the Service Provider are involved in providing the Service;
viii) ensure Staff obtain and maintain their registration with the appropriate regulatory or occupational body;
ix) co-operate with such others as the Commissioner(s) may require;
x) work diligently to protect and promote the Commissioner(s) interests; and satisfy itself that the information, including the documentation provided by the Commissioner(s) is adequate and will not prejudice the performance of any of the Service Provider's obligations under the Contract;
xi) ensure that Staff who are Care and Support Workers/Healthcare Workers adhere to the Code of Professional Practice for Social Care Workers and Social Care Managers; the Code of Conduct for Healthcare Support Workers in Wales and the Fundamentals of Care Guidance for Health and Social Care Staff published by Welsh Government;

12.3.3. The Health Board may agree with the Service Provider to delegate health related activities in accordance with the All Wales Guidelines for Delegation. Where health related activities are delegated to the Service Provider's Staff, the Person's Care and Support Plan must record the agreement of all parties including the Person and/or his/her representative. The Service Provider shall ensure that its Staff shall not undertake health related activities until Staff have received appropriate and necessary training and processes are in place for ensuring competency, supervision and update training.

12.3.4. The Service Provider shall take all reasonable care at all times to ensure that in execution of the Service it does not disrupt the operation of the Commissioner(s), its employees or any other Contractor employed by the Commissioner(s).

12.3.5. The Service Provider shall co-ordinate its activities in the provision of the Service with the Service Provider's Staff and other suppliers that may be engaged by the Commissioner(s) from time to time.

12.3.6. Time shall be of the essence for the purposes of any provision of this Contract, including the commencement of the Service within the time agreed or on a specified date.

13. OPERATION OF THE CONTRACT

13.1. The Commissioner(s) may at any time commission the Service from the Service Provider in accordance with the Commissioning and Call Off Procedures set out in the Framework Agreement and the Service Provider shall supply the Service during the Contract Period in accordance with the Commissioner(s)' requirements as set out in the Contract and the Framework Agreement.

13.2. The Service Provider may inform the Commissioner(s) of any available capacity on a frequency agreed between the Service Provider and the Commissioner(s) subject to the Commissioner's local procedures.

13.3. The Service Provider shall provide a Service that can be delivered 24 hours a day, 365 days a year to include Bank Holidays and Weekends generally between the hours of 7am and 11pm and at night generally between the hours of 11pm and 7am (subject to the Person's individual preferences and lifestyle patterns).

13.4. Each Person's needs and outcomes shall be identified through the completion of the integrated care and support assessment process to determine the Person's eligibility for the Service.

13.5. When a Service is commissioned from the Service Provider, a Call-Off Contract shall be issued by the Commissioner(s) in respect of the provision of the Service for one or more Persons in one or more households. By signing and returning the Call-Off Contract (which may be by electronic means), the Service Provider is deemed to accept and agree to enter into this Contract with the Commissioner(s) for the provision of the Service.

13.6. Prior to commencement of the Service the Commissioner(s) shall provide:

i. The initial information as set out in clause 1, Schedule 2 to this Contract (Service Conditions)
ii. Care and Support Plan/Pathway Plan/ Commissioned Care Plan, Risk Assessment, A Care and Treatment Plan (Part 2 Mental Health (Wales) Measure 2010) if applicable, and any other appropriate documentation
iii. any known factors which may result in disruptive or challenging behaviours or any other factors which may otherwise impact on the Service Provider's ability to provide the Service

13.7. The Service Provider shall provide the Service from the date specified in the Call-Off Contracts unless otherwise agreed between the Service Provider and the Commissioner(s).

13.8. The Parties shall acknowledge that a change in the Person's social care and/or health needs may necessitate a variation due to an increase or decrease in services required either in the short or long term. Any variations to the Service shall be made in accordance with Schedule 6 to this Contract (Service Variation Procedures).

13.9. Where the Service Provider is considering or proposes to discontinue the provision of a Service, the Service Provider shall notify the Commissioner(s) as soon as possible and shall work with the Commissioner(s) to resolve the issues and minimise the impact for the Person receiving the Service.

13.10. Where the Service Provider and the Commissioner(s) cannot agree to continuing the Service to the Person, the Service Provider shall notify the Commissioner(s) and the Commissioner(s) shall use reasonable endeavours as soon as practically possible in accordance with provisions of clause 53.2 (Termination) or within an agreed timescale to procure alternative services.

13.11. The Service Provider shall request a review of Service if there is a change in the Person's circumstances that, reasonably, the Service Provider feels warrants a change in either the Call-Off Contract or the Person's Care and Support Plan. Such a review shall be carried out by the Care Co-ordinator or other Nominated Officer.

13.12. During the lifetime of this Contract and the Framework Agreement, the Commissioner(s) may promote the use of electronic call monitoring systems. Where this is intended there will be full consultation with Service Providers. The Service Provider may at their own discretion implement the use of their own electronic call monitoring system as part of their own quality assurance and service delivery.

14. OBSERVANCE OF STATUTORY REQUIREMENTS

14.1. The parties to this Contract shall comply with all statutory and other provisions to be observed and performed in connection with the commissioning and provision of the Service and any relevant Codes of Practice, Codes of Conduct, Orders and Rules of Law, Regulations, Principles, Standards and Statutory Guidance or other requirements of relevant government agency relating to the Service.

14.2. The Service Provider shall maintain a valid registration of the Organisation pursuant to the Domiciliary Care Agencies Regulations (Wales 2004), Regulation and Inspection of Social Care (Wales) Act 2016 or any statutory modification or re-enactment thereof.

14.3. The Commissioner(s) may at any time approach the CIW/CQC for any information relating to the Organisation or the Service to be provided hereunder and this contract shall constitute an authority to the CIW/CQC to divulge to the Commissioner(s) any such information as the Commissioner(s) may require.

14.4. This Contract shall be read in conjunction with, and the Service Provider shall comply with the following legislation (and any subsequent amendments / replacements) in so far as it is relevant to the Service (the list is not exhaustive:

i. The Social Service and Well Being (Wales) Act 2014, Codes of Practice and Statutory Guidance
ii. The Well Being of Future Generations (Wales) Act 2015
iii. The Regulation and Inspection of Social Care (Wales) Act 2016
iv. The Wales Interim Policy and Procedure for the Protection of Vulnerable Adults from Abuse 2013
v. All Wales Child Protection Procedures 2008
vi. Human Rights Act 1998
vii. The Mental Capacity Act 2005 including the DOLS
viii. Equality Act 2010
ix. Data Protection Act 1998 and the General Data Protection Regulations as and when implemented
x. Protection of Freedoms Act 2012
xi. Civil Contingencies Act 2004
xii. The Welsh Language (Wales) Measure 2011 including the Welsh Language Standards and the Welsh Language Commissioner's advice document "Contracting Out Public Services Contracts
xiii. The Transfer of Undertakings (Protection of Employment) Regulation 2006

In addition, in relation to children's services:

i. The Children Act 1989 and 2004
ii. The Framework for Assessment of Children in Need and their Families
iii. Working Together to Safeguard Children (guide to interagency working) WAG 2000
iv. The National Service Framework 2004 for children, young people and maternity service

15. EFFECT OF STATUTORY PROCEEDINGS

15.1. Subject to provisions of clause 14.2, the Service Provider shall inform the Commissioner(s) as soon as possible and in any event within 24 hours, such notice to be confirmed in writing within 3 business working days, if any notice under the Care Standards Act 2000 / Regulation & Inspection of Social Care (Wales) Act 2016 has been issued in connection with the Service Provider by the CIW (or equivalent body) or there has been a decision by a Magistrates' Court to cancel registration.

16. PAYMENT

16.1. Service Price

16.1.1. In consideration of the Service, the payment for the Service shall be in accordance with Schedule 5 of this Contract (Payment Process).

16.1.2. The Service Price payable by the Commissioner(s) to the Service Provider in respect of the Service detailed in the Call-Off Contract shall be at the Rate set out in the Call-Off Contract and in accordance with clause 22 of the Framework Agreement.

16.1.3. The Rate shall be reviewed annually in accordance with the Commissioner(s)' budget setting process and confirmed to the Service Provider in writing on an annual basis unless otherwise specified in writing in the case of a mini tender. In exceptional circumstances the Rate may be reviewed more frequently than annually.

16.1.4. The review of the Rate shall have proper regard to government guidance.

16.1.5. Any changes to the Rate shall take effect from the 1st Sunday following the 1st April of the new financial year unless agreed otherwise.

16.1.6. Where applicable and agreed in writing, the Commissioner(s) shall pay for travelling and mileage at the Rate set out in the Call-Off Contract in respect of the Person's care and support plan activity e.g. medical appointment or leisure activity.

16.2. Temporary suspension of the Service and retainer

16.2.1. For the purpose of this clause a temporary planned or unplanned suspension of the Service may occur due to:

i. Hospitalisation
ii. The Person's absence at the Service Location
iii. A pre-planned absence i.e. respite, holiday

16.2.2. **Planned absence**

16.2.3. Where the Person's future absence from the Service Location is planned in consultation with the Care Co-ordinator, the Person and the Service Provider and is agreed at least two (2) weeks prior to the planned temporary absence, the Service Provider shall adjust the Service provision to take account of the Person's temporary absence and no charge shall be made by the Service Provider unless otherwise agreed in writing prior to the Person's temporary absence.

16.2.4. **Unplanned absence**

16.2.5. The Service Provider shall notify the Commissioner(s) of any temporary absence in writing by submitting the Notification of Absence/Change of Circumstance Form (Schedule 3) at the earliest convenience but no later than the next Business Working Day.

16.2.6. A retainer period, if any apply to the Service, shall be set out in the Call-Off Contract issued by the Commissioner(s) unless the Service is suspended or terminated in accordance with the provisions of this Contract (Termination).

16.2.7. Where the Service is expected to resume with the Service Provider following hospitalisation of the Person, the Commissioner(s) shall arrange a multi-disciplinary meeting if there has been a change in need or shall communicate with the Service Provider prior to the Person's discharge from hospital. Where a retainer is paid and, despite hospitalisation, the Person's care and support remains the same on discharge, the Commissioner(s) will contact the Service Provider in order to resume the Service giving at least 24 hour notice.

16.2.8. On receipt of notification of the Person's temporary absence from the Service Location, the Commissioner(s) shall decide whether or not a Review of a Service meeting is required and the Service may be terminated in accordance with the provisions of this Contract.

16.2.9. Failure by the Service Provider to notify the Commissioner(s) of any temporary absence in accordance with clause 16.2.5 within the required timescales of this Contract and without substantial reason, may result in a material breach of the Contract and may result in termination of the Call-Off Contract and the Framework Agreement.

16.2.10. Cancellations on request applicable for Phases 1,2 & 3:

i. In the event that the Person receiving the Service notifies the Service Provider of a planned cancellation of a call/visit at least 24 hours before the actual visit, the notification can be given by the Person or their Significant Carer/Representative directly to the Service Provider. Where the Person informs the Care/Support Worker of a cancellation of visit/call, it is the responsibility of that Care/Support Worker to inform their Manager as soon as possible.

ii. Where the Person gives minimum 24 hours' notice or more to the Service Provider for a cancelled Call (but not the entire Service), no payment shall be made to the Service Provider for the cancelled Call.

iii. Where a Person regularly cancels Calls, or requests later or earlier Calls without prior notice, the Service Provider can request a Review of service meeting whereby the decision to reduce, re-arrange or terminate the Call-Off Contract can be discussed and agreed.

iv. In the event that the Service Provider cannot avoid changes to the commissioned Call then, wherever possible, at least 24 hour notice of the change to the planned Service shall be given to the Person. The Service Provider shall also inform the Commissioner(s) in writing by completing the Notification of Absence/Change of Circumstance Form a specimen proforma of which is included in Schedule 3. Under these circumstances, the Service Provider shall not charge the Commissioner(s) for the Service or part of the Service i.e. individual Call that has not been delivered.

16.2.11. Cancellations on request applicable for Phase 4:

The Service Provider shall inform the Commissioner(s) and a review of Service may be arranged to revise the Call-Off Contract. A Service Variation may apply in accordance with Schedule 6 (Service Variation Procedures).

16.3. **Recovery of sums due**

16.3.1. Whenever under the Contract any sum of money shall be recoverable from or payable by the Provider to the Commissioner(s) the same may be deducted from any sum due or which at any time thereafter may become due to the Service Provider under this Contract or any other Contract with the Commissioner(s). The Service Provider and the Commissioner(s) shall use credit notes as the preferred method for recovery of sums due to the Commissioner(s)/Service Provider.

16.3.2. The Commissioner(s) shall be entitled to recover all or any of the Service Price paid to the Service Provider if:

i) the Commissioner(s) establishes on the balance of probability that the Service Provider has not provided or is not providing the Service in accordance with this Contract or;

ii) as a result of any audit or inspection carried out by Commissioner(s), an overpayment has been claimed by or made to the Service Provider.

16.4. **Interest**

16.4.1. If the Commissioner(s) fails to pay any amount properly due and payable by it under the Contract, the Service Provider shall have the right to charge interest on the overdue amount at the rate of 2 per cent (%) per annum above the base rate for the time being of the Bank of England base rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

16.5. **Costs**

16.5.1. Except as provided within this Contract, each Party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Contract and any documents referred to in it.

16.6. **VAT**

16.6.1. The Service Provider shall comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

16.6.2. All sums payable under this Contract, unless otherwise stated, are exclusive to VAT and other duties or taxes.

17. THE PROVIDER'S STAFF

17.1. **Recruitment and employment of Staff**

17.1.1. In providing the Service the Service Provider shall:

i. comply with legislation, regulations and guidance in force or applicable at the time including any local policies required by the Commissioner(s) relating to the recruitment, appointment and employment of sufficient, trained, competent and registered Staff including equality, diversity and equal opportunities;

ii. ensure ethical employment and working practices are in place where Staff are treated with dignity and respect;

iii. ensure Staff recruited by the Service Provider shall have no gaps in employment history in accordance with the Safer Employment Guidance;

iv. keep records in relation to recruitment and employment processes for each member of Staff and, where the member of Staff consents or where the law requires, shall provide information to the Commissioner(s);

v. ensure that policies are in place to guide and support Staff;

vi. at all times deploy sufficient Staff that are competent to perform the Service and shall ensure adequate staffing levels are available including providing a sufficient reserve of trained and competent Staff in order to deliver the Service during peak times e.g. winter period;

vii. ensure Staff are accountable and responsible for carrying out their tasks and activities in accordance with the necessary training provided for ensuring competency;

viii. not employ in the provision of the Service anyone previously dismissed fairly from employment with the Commissioner(s), except where previously declared as redundant. Whenever possible, the Person or their chosen advocate will participate fully in the recruitment process in a meaningful way;

ix. adopt fair employment practices, recruiting and retaining Staff in a fair and ethical manner, providing a safe and competent workforce in accordance with industry best practice;

x. recruit, employ and manage Staff on a basis that encourages high levels of retention. The Service Provider will be encouraged to employ specific workforce terms and conditions that encourage Staff retention and helps maintain low rates of Staff turnover and shall, wherever beneficial, ensure continuity of Staff;

xi. comply with the provisions of the National Minimum Wage Act 1998 (and National Living Wage) and shall ensure all relevant working time as referred to in the Act is included in the calculations for compliance with the National Minimum Wage and Working Time Regulations;

xii. inform Staff of their lawful pension rights;

xiii. ensure appropriate travel time is planned in the Staff rota so that Staff are able to go about their business in a manner which reasonably gives them adequate time for travel to deliver the Service effectively;

xiv. ensure Staff have the necessary registration with the relevant regulatory body such as the Social Care Wales as and when this becomes a statutory requirement during the term of the Contract;

xv. at all times operate in compliance with the Code of Professional Practice for Social Care Workers and Social Care Managers; the Code of Conduct for Healthcare Support Workers in Wales and the Fundamentals of Care, Guidance for Health and Social Care Staff published by Welsh Government;

xvi. maintain up to date personnel records of the Service Provider's Staff engaged in the provision of the Service and, on request provide reasonable information including, without limitations, workforce information to the Commissioner(s) on the Service Provider's Staff. The Service Provider shall reserve at all times the right to provide these records in compliance with the Data Protection legislation;

17.1.2. In accordance with clause 12.3.3 above, where agreement has been reached between the parties for Staff to undertake delegated health related activities and training has been provided to Staff to ensure competency, the Service Provider's Staff shall then be accountable and responsible for carrying out the health related activities in accordance with the training provided.

17.1.3. The Service Provider acknowledges that Staff engaged in the performance of the Service shall have the full authority to act on behalf of the Service Provider for all purposes in connection with the Contract, provided that if the Commissioner(s) shall at any time be dissatisfied for any reason with the performance of any individual Staff engaged in carrying out the Service, the Service Provider shall if the Commissioner(s) so require, provide a competent substitute to carry out the Service at no additional cost to the Commissioner(s).

17.1.4. The Service Provider shall replace any Staff who the Commissioner(s) has reasonably determined have failed to carry out their duties with reasonable care and skill. Following removal of any of the Service Provider's Staff for any reason, the Service Provider shall ensure such an individual is replaced with another Staff member with the necessary training and skills to meet the requirements of the Service.

17.1.5. Where the Service Provider recruits Staff who are related to other Staff members, it is the responsibility of the Service Provider to ensure that management systems are sufficiently robust to deliver a professional service that in no way compromises the quality and continuity of service provision and the Person's well-being.

17.1.6. The Service Provider shall maintain an organisational chart outlining the staffing structure, staffing levels, Staff duties and areas of responsibility which shall be reviewed annually and will be made available to the Commissioner(s) upon request.

17.1.7. Staff employed by the Service Provider shall at all times when carrying out their duties under this Contract, have in possession adequate means of identification which shall be shown on request to any Person receiving the Service, family member, Carer or Officer.

17.2. **Skills, competencies and workforce development**

17.2.1. Staff engaged to deliver the Service shall have the skills, experience and competencies to provide the Service and shall receive relevant ongoing training to ensure continued development.

17.2.2. The Service Provider shall provide an induction programme from the first day of employment and the programme shall comply with legislation, standards and guidance in force at the time.

17.2.3. The Service Provider shall provide appropriate training, development and supervision which will be no less than 3 monthly for all Staff involved in policy development or provision of the Service. This must include awareness of equalities including age discrimination, language awareness and specialist training appropriate in relation to the Service Provider's Statement of Purpose. Ongoing training must be provided, or made available, by the Service Provider for all Staff commensurate with the tasks and duties they are required to perform. The Social Care Passport (North Wales) has been designed to provide guidance on core training for the workforce in the social care sector in North Wales. The Commissioner(s) shall offer places (free of charge) on in-house training courses where applicable.

17.2.4. The Service Provider shall record details of the training and supervision provided to individual members of Staff in their personal file. At least each year the Commissioner(s) may request information relating to the training and supervision provided to Staff. The Commissioner(s) acknowledge that the information provided may be limited by the provisions of the DPA.

17.2.5. The Service Provider shall complete the required Workforce Development Survey on an annual basis which will be returned by the due date to the Commissioner(s). This survey is collated to ensure that accurate workforce data is available as part of future planning for training.

17.2.6. The Service Provider shall ensure that Staff are trained in manual handling to meet the standards set by the All Wales Manual Handling Passport. Training will include the safe use of equipment as prescribed in an individual's manual handling plan, which may include single handed moving & positioning where risk assessments and handling plan/s identify that this is safe and appropriate, having taken into account the task, individual, location and environment.

17.2.7. The Service Provider shall make Staff and support Staff aware of opportunities available locally to improve their Welsh language skills and encourage Staff to attend courses as a means to fulfil the need to plan, provide a bilingual Service and to ensure quality of care for those who need it in the medium of Welsh.

17.2.8. The Service Provider shall make Staff aware that English as a Second or Other Language (ESOL) courses are available and such courses are provided free of charge for Service Providers / Care/Support Workers.

The Service Provider shall keep a copy of the ESOL Entry Level 3 assessment for those members of Staff whose first language is not English or Welsh.

18. NON SOLICITATION

18.1. For the duration of the Contract, neither the Commissioner(s) nor the Service Provider shall employ or offer employment to any of the other Party's Staff who have been associated with the procurement and/or the contract management of the Service without that other Party's prior written consent.

19. POLICIES

19.1. The Service Provider shall comply with and shall ensure Staff comply with all of the Commissioner's published policies and with any further rules, codes of practice, procedures and standards which the Commissioner(s) notifies to the Service Provider. The Commissioner(s) shall throughout the Contract Period ensure that any changes to any policies, rules, code of practice, procedures and standards are brought promptly for the attention of the Service Provider.
A schedule of policies and procedures which may be reviewed for monitoring purposes is included within Schedule 2: Service Conditions

20. INDUSTRIAL ACTION

20.1. The Service Provider shall immediately inform the Commissioner(s) of any actual or potential industrial action by Staff, whether such action be by its own Staff or others, which affects or might affect its ability at any time to deliver the Service in accordance with the requirements of the Contract.

20.2. In the event of industrial action, the Service Provider shall seek the Commissioner(s)' approval to any revised proposals to deliver the Service. If such proposals are considered insufficient or unacceptable by the Commissioner(s), then the Commissioner(s) may terminate the Service in whole or in part in accordance with provision of this Contract (Termination).

21. TUPE

21.1. The Parties shall acknowledge that the Transfer Of Undertakings (Protection Of Employment) Regulations 2006 ("TUPE") rules may apply.

21.2. In the event that TUPE applies in connection with the Service provided under a Call-Off Contract, the Service Provider shall comply with the requirements as detailed below.

21.3. Where the Commissioner(s) has notified the Service Provider that it intends to tender or retender any of the Service, the Service Provider shall comply with its obligations in relation to informing and consulting with Staff engaged in the provision of the Service and then shall, on written request of the Commissioner(s) and in any event within 20 Business Working Days of that request (unless otherwise agreed in writing), provide the Commissioner(s) with all reasonably requested on the Staff engaged in the provision of the Service to be tendered or retendered that may be subject to TUPE Regulations to at least a level sufficient for a tenderer to determine the overall cost of employing such Staff.

21.4. The Service Provider warrants that the Provider's Staff List will be true and accurate in all material respects.

21.5. In the event that the Commissioner(s) suffers loss or becomes liable to pay additional sums which have arisen out or in connection with TUPE Regulations as a result of the Service Provider's failure to cooperate and provide the information requested at the requested time under this clause the Commissioner(s) shall be entitled to recover such additional costs from the Service Provider.

21.6. Subject to clause 21.2 above, during the 3 months immediately preceding the expiry of the Call-Off Contract or at any time following a notice of termination of the Call-Off Contract, the Service Provider shall not and shall procure that its Sub-Contractors do not, without the prior written consent of the Commissioner(s) (that consent not to be unreasonably withheld or delayed), in relation to any Staff engaged in the provision of the Service:

i. terminate or give notice to terminate the employment of any Staff engaged in the provision of the Service (other than for gross misconduct);

ii. increase or reduce the total number of people employed or engaged in the provision of the Service by the Service Provider and any Sub-Contractor;

iii. propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the Staff engaged in the provision of the Service;

iv. replace or relocate any Staff engaged in the provision of the Service or reassign any of them to duties unconnected with the Service; and/or

v. assign or re-deploy to the Service or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Service;

21.7. The Commissioner(s) shall use all reasonable endeavours to procure that any new Service Provider who provides any services equivalent to the Service or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Service Provider and/or any Sub-Contractor against any Losses in respect of:

i. any failure by the new Service Provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new Service Provider;

ii. any claim by any person that any proposed or actual substantial change by the new Service Provider to that person's working conditions or any proposed measures on the part of the new provider are to that Person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new Service Provider on expiry or termination of this Contract or of any Service; and/or

iii. any claim by any person in relation to any breach of contract arising from any proposed measures of the new Service Provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new Service Provider on expiry or termination of this Contract or of any Service.

22. VETTING OF PROVIDER'S STAFF

22.1. The Service Provider shall:

a. ensure that Staff who provide or supervise the Service are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS); and
b. monitor the level and validity of the checks for each member of Staff and review the DBS check where appropriate;
c. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to the Person receiving the Service;

22.2. The Service Provider 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 Service Provider in the provision of the Service 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.

22.3. The Service Provider shall immediately notify the Commissioner(s) of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.

22.4. The Service Provider shall refer information about any person carrying out the Service to the DBS where it removes permission for such person to carry out the Service (or would have, if such person had not otherwise ceased to carry out the Service) because, in its opinion, such person has harmed or poses a risk of harm to [children OR vulnerable adults].

22.5. The Service Provider shall ensure that the Commissioner(s) is notified of any person who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Service Provider (or any employee of a sub-contract or involved in the supply of the Service).

22.6. The Service Provider acknowledges and agrees that any person who fails to co-operate with the vetting process shall not be employed or continue to be employed in the provision of the Service.

22.7. The Service Provider shall ensure that every DBS check is satisfactory in relation to an individual person's employment and shall carry out risk assessments in relation to any disclosure (whether as a result of a DBS check or from an employee or a potential employee) and shall confirm to the Commissioner(s), when asked to do so, that the DBS checks are satisfactory.

22.8. If an incident or concern is referred to the Commissioner(s) relating to a member of the Service Provider's Staff, the Commissioner(s) shall notify the Service Provider and the Commissioner(s)' Safeguarding Co-ordinator so that the incident or concern can be dealt with within that process or shall convene a Review of Service meeting.

23. <u>SAFEGUARDING</u>

23.1. The Service Provider is required to ensure that the Person to whom the Service is delivered under this Contract is protected from abuse. All agencies and bodies, both statutory and independent caring for children and adults at risk, are responsible for making sure the requirements of Part 7 of the Social Service & Wellbeing (Wales) Act 2014 are met, ensuring that all their Staff are aware of the definition of children and adults at risk and what constitutes abuse.

23.2. The Service Provider will ensure that their Staff know that they have a legal and professional duty to report any concern, suspicion or information about abuse, or if they have reason to suspect someone is being abused or at risk of abuse.

23.3. The Service Provider must have a policy which states how it will meet all its legal obligations to protect children and adults at risk from abuse and which acknowledges the duty to report a reasonable cause to suspect that any Person is being, has been or is at risk of abuse to the Safeguarding Team. The Service Provider must include protecting children and adults at risk from verbal, physical, psychological, financial and sexual abuse and state the Service Provider's commitment to preventing such incidents, and that any allegations will be treated very seriously. The policy must have a statement that the Service Provider will comply with the Social Service & Wellbeing (Wales) Act 2014 and any related guidance and should describe to Staff, in each service setting of their agency, how they will ensure that their legal obligations are met.

23.4. The Service Provider is responsible for ensuring their recruitment and selection procedures for paid Staff and volunteers are robust and safeguard children and adults at risk from those who may exploit, harm or abuse them.

23.5. The Service Provider must ensure that all Staff (and volunteers):

i. have safeguarding training which must be recorded in the Staff personal file
ii. their Staff are able to demonstrate their understanding on what constitutes abuse, what types of abuse are considered, what are the indicators and where to go for advice;
iii. know how to report concerns appropriately utilising the referral forms set out in (North Wales Adults Safeguarding Report) and Schedule 8 (Referral to Social Services Children and Family Services - Inter Agency Referral Form);
iv. have a clear understanding of the roles and responsibilities of the Relevant Partners to protect children and adults at risk;

23.6. The Commissioner(s) shall notify the Service Provider of any relevant referrals received wherever appropriate.

23.7. The Service Provider shall co-operate in any safeguarding investigation and shall assist in any reasonable requests for information that relates to the allegation and / or the investigation.

23.8. The Service Provider's policies, procedures in relation to safeguarding shall be compliant with the policies and procedures of the North Wales Safeguarding Board published through the web link at www.northwalessafeguardingboard.wales.

24. CONFLICT OF INTEREST

24.1. The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Commissioner(s)) there is or may be conflict or potential conflict between the personal interests of the Service Provider or Staff and the duties owed to the Commissioner(s).

24.2. The Commissioner(s) reserves the right to terminate the Call-Off Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where in the reasonable opinion of the Commissioner(s) there is or may be an actual conflict, or a potential conflict between the personal interests of the Service Provider and the duties owed to the Commissioner(s).

25. PREVENTION OF BRIBERY

25.1. The Provider shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out.

26. DISCRIMINATION

26.1. The Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

26.2. The Service Provider shall take all reasonable steps to secure the observance of Clause 26 by all servants, employees or agents of the Service Provider and all suppliers and sub-contractors employed in the execution of the Contract.

27. **WHISTLEBLOWING**

27.1. Under the Public Interest Disclosure Act 1998, members of Staff who speak out against corruption and malpractice at work are protected by statute from victimisation and dismissal.
The Service Provider's employees, volunteers and board members shall operate within the terms of the Public Interest Disclosure Act 1998 and the NHS (Wales) Whistle Blowing Policy and Procedures.

28. **BUSINESS CONTINUITY**

28.1. The Service Provider shall have a robust Business Continuity Plan in place to ensure that the Service will be maintained in the event of disruption (including but not limited to preventative and mitigating actions in respect of risks such as disruption to premises, information technology systems, adverse weather, unavailability of staff etc) to the Service Provider's operation, however caused.

28.2. Such Business Continuity Plan shall be available to the Commissioner(s) to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Contract Period.

28.3. If requested and at no cost to the Commissioner(s) the Service Provider shall provide copies of the Business Continuity Plan to the Commissioner(s) and update such plans to the Commissioner(s) reasonable satisfaction.

28.4. The Service Provider's Business Continuity Plan shall set out how the Service Provider would continue to provide Services in the event of an emergency, including:

- Defining and prioritising the critical functions of the business
- Analysing the emergency risks to the business e.g. financial crisis, adverse weather, epidemics, energy/fuel shortages, loss/damage of records due to fire/flood
- Detailing preventative measures and planned response to the emergency
- Identifying key contacts during an emergency.

29. **PREMISES**

29.1. Any premises made available from time to time by the Commissioner(s) to the Service Provider in connection with the Contract shall be made available to the Service Provider solely for the purpose of performing its obligations under the Contract.

29.2. The Service Provider shall limit access to the Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Service Provider shall co-operate (and ensure its Staff shall co-operate) with such other individuals working concurrently on such Premises as the Commissioner(s) may reasonably request.

29.3. The Service Provider and its Staff shall observe and comply with such rules and regulations as may be in force at any time for the use of the Premises notified to it by the Commissioner(s) and the Service Provider shall pay for the cost of making good any damage to the fabric of the buildings, plant, fixed equipment of fittings therein caused by the negligent act or omission of its Staff.

30. **ENVIRONMENTAL REQUIREMENTS**

30.1. The Service Provider shall perform its obligations under the Contract in accordance with the Commissioner(s)' environmental policy (as provided to the Service Provider form time to time) which is to conserve energy, water, wood, paper and other resources, reduce waste and carbon emissions.

31. **SOCIAL VALUE/COMMUNITY BENEFITS**

31.1. The Service Provider shall comply with the requirements of the Framework Agreement with regards to community benefits.

32. **HEALTH AND SAFETY**

32.1. The Service Provider shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974 and of any other Acts, Regulations or Order pertaining to the Health and Safety of employees.

32.2. The Service Provider shall have in place a general statement of safety policy where applicable and shall nominate a person to be responsible for Health and Safety matters.

32.3. The Service Provider shall promptly notify the Commissioner(s) of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

32.4. The Service Provider shall ensure that its health and Safety Policy Statement (as required by the Health and Safety at Work Act 1974) and any other such information in relation to the Service Provider's Health and Safety obligations as may be required by the Commissioner is made available to the Commissioner(s) on request.

33. **CONFIDENTIALITY**

33.1. The Service Provider will at all times maintain the integrity and confidentiality of all information relating to the Person held or known and any other information that the Commissioner(s) may from time to time determine. It will hold and process in relation to the Person's manual and computer) and Staff in accordance with the DPA.

33.2. The Service Provider shall not use any Confidential Information it receives from the Commissioner(s) otherwise than for the purposes of this Contract.

33.3. The Service Provider shall immediately notify the Commissioner(s) of any breach of security in relation to Confidential Information and all data obtained in the performance of this Contract and will keep a record of such breaches. The Service Provider will co-operate with the Commissioner(s) in any investigation that the Commissioner(s) considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

33.4. In the event that the Service Provider fails to comply with this Clause 33, the Purchaser reserves the right to terminate this Contract by written notice with immediate effect.

34. **SECURITY OF CONFIDENTIAL INFORMATION**

34.1. In order to ensure that no unauthorised individuals gain access to any Confidential Information or any data obtained in the supply of the Service under the Contract, the Service Provider undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best industry practice.

34.2. The Service Provider shall immediately notify the Commissioner(s) of any breach of security in relation to Confidential Information and all data obtained in the performance of this Contract and will keep a record of such breaches. The Provider will co-operate with the Commissioner(s) in any investigation that the Commissioner(s) considers necessary to undertake as a result of any breach of security in relation to Confidential Information.

34.3. The Service Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Commissioner's request if the Commissioner(s) reasonably believes that the Service Provider has failed to comply with clause 33 (Confidentiality) and 35 (Data Protection).

34.4. The Commissioner(s) may require the Service Provider to alter or update any security systems at any time during the Contract Period.

35. DATA PROTECTION

35.1. The Service Providers shall comply with this clause 35 and Schedule 9 to this Contract with regards to the Service Provider's data protection obligations.

Joint Data Controllers

35.2 Each Party shall be a Data Controller for the Personal Data created and processed for performing the Services and the where the nature of the processing requires each Party to be a Data Controller otherwise the Commissioner(s) shall be the Data Controller and the Service Provider shall be the Data Processor. Each Party shall be responsible under the DPA (and subsequently the GDPR), for their own actions, decisions and omissions when processing Personal Data. The Parties shall work collaboratively with respect to their obligations as a Data Controller and or Data Processor provided that nothing in this Clause 35 and Schedule 9 and shall negate or alleviate either Party from their obligations as a Data Controller.

35.3 Each Party shall ensure that it and its servants and agents complies in all respects with the DPA and any other relevant Data Protection Requirements in relation to the Personal Data made available to it under this Contract by the other Party or arising through the delivery of the Services.

35.4 If Personal Data is to be shared between a Party and a third party under this Contract the Parties shall comply with its obligations in respect of the DPA.

35.5 Without prejudice to the generality of this Clause and for the avoidance of doubt it is hereby specifically provided that the Parties shall fully, promptly and effectively indemnify and keep so indemnified each other, their servants and agents from and against all and any actions, charges, claims, reasonable costs, damages, demands, reasonable expenses (including legal and administrative expenses), liabilities, direct losses and proceedings whatsoever arising from its failure to comply this Clause 35.

35.6 All Parties shall (and shall ensure that any Sub-Contractor shall) comply with the provisions of Schedule 9.

35.7. The Service Provider shall have policy and procedures in place for the protection of Personal Data that will take account of but not limited to the following:

i. fax usage;
ii. email usage;
iii. manual document disposal;
iv. physical security;
v. homeworking;
vi. retention of information;
vii. system access;
viii. dealing with disclosures over the telephone;
ix. archiving;
x. data back up and retrieval;
xi. incident reporting; and
xii. training;

35.8. The Service Provider's policy relating to retention of Personal Data shall:

i. apply to both electronic and manual records;
ii. justify the retention of records based on the type and any business or legislative need;
iii. set out how any exceptions to retention schedules are applied and reviewed;
iv. specify who is responsible for destroying records;

v. list appropriate disposal methods and security requirements;
vi. set out the requirements for recording records as destroyed; and
vii. require periodic review to ensure the retention schedule is correctly applied;

35.9. **Notices in respect of Data Protection**

The Parties shall serve a notice pursuant to this Clause 35 in writing and each notice shall be delivered personally, or sent by pre-paid first class post, or by recorded delivery, or by commercial courier, to the address of the Parties as set out above.
Any notice that complies with this Clause 35 shall be deemed to have been received by the addressee:

i) if delivered personally, when left at the address of the Parties stated above; or
ii) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Working Day after posting; or
iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed

and for the avoidance of doubt no notice under this Clause 35 shall be accepted by fax or e-mail.

36. INFORMATION SHARING

36.1. The Service Provider agrees that the Commissioner(s) may in its absolute discretion, acting reasonably, disclose to other public authorities any proper and genuine concerns regarding any provision of the Service provided under this Contract, where it is necessary to do so, whilst at all times in making any disclosure, no commercially sensitive information of the Service Provider or Personal Data of any Person shall be communicated.

37. FREEDOM OF INFORMATION (FOI)

37.1. The Service Provider acknowledges that the Commissioner(s) is or may be subject to the Freedom of Information Act 2000 (FOIA) and may be required to disclose information about the contract to ensure the compliance of the Authority with the FOIA.

37.2. The Service Provider shall:

i) provide all necessary assistance and cooperation as reasonably requested by the Commissioner(s) to enable the Commissioner(s) to comply with its obligations under the FOIA.
ii) transfer to the Commissioner(s) all requests for information relating to this Agreement that it receives as soon as practicable and in any event within two (2) working days of receipt.
iii) Provide the Commissioner(s) with a copy of all information belonging to the Commissioner(s) requested in the request for information which is in its possession or control in the form that the Commissioner(s) requires within five (5) working days (or such other period as the Commissioner(s) may reasonably specify) of the Commissioner(s)' request for such information; and
iv) not respond directly to a request for information unless authorised in writing to so by the Commissioner(s).

37.3. The Provider notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time.

The Provider will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Provider from time to time) to the extent that they apply to the Provider's performance under the contract.

37.4. The Service Provider acknowledges that the Commissioner(s) may be required under the FOIA to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Service Provider. The Commissioner(s) shall take reasonable steps to notify the Service Provider of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but the Commissioner(s) shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.

37.5. The Service Provider acknowledges that the decision on whether any exemption applies as to a request for disclosure of recorded information is a decision solely for the Commissioner(s). Where the Commissioner(s) is managing a request as referred to in this clause, the Provider shall co-operate with the Commissioner(s) if it so requests and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

37.6. The Service Provider shall ensure that it and any of its representatives notify the Commissioner(s) in writing of requests for information under the Information Laws relating to this Agreement, that it receives as soon as practicable.

38. PUBLICITY, MEDIA, OFFICIAL ENQUIRIES AND THE OMBUDSMAN

38.1. Without prejudice to the Commissioner(s)'s obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the prior written consent of the other Party. Such consent shall not be unreasonably withheld or delayed.

38.2. The Service Provider shall not use business logos or publicise the logos of the Commissioner(s) either in print or electronically without the prior written consent of the Commissioner(s). Such consent not to be unreasonably withheld or delayed.

38.3. The Commissioner(s)l shall be entitled to publicise this Contract in accordance with any legal obligation on the Commissioner(s), including any examination of this Contract by the Auditors and the provisions of the FOIA or otherwise.

38.4. The Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 38 by all their servants, employees, agents, professional advisors and consultants.

38.5. The Parties acknowledge that the Auditor has the right to publish details of this Contract (including Confidential Information) in its relevant reports to Parliament (or similar) to the extent permitted by Law.

38.6. The Service Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Commissioner(s) or bring the Commissioner(s) into disrepute.

38.7. OMBUDSMAN

38.8. The Commissioner(s) is under a legal obligation by virtue of the Local Government Acts to observe the rights and powers of the Local Government Ombudsman who can require the provision of information and production of documents for the purpose of carrying out investigations into relevant matters that may have been referred to him for adjudication when maladministration has been alleged against the Service Provider.

38.9. The Service Provider shall make available any documentation or allow to be interviewed any of its Staff and at all times assist the Ombudsman or his Staff and shall co-operate with any enquiries that are requested by the Ombudsman or his Staff in investigating any complaint.

38.10. Upon determination of any case by the Ombudsman in which the Service Provider has been involved or been implicated the Commissioner(s) shall forward copies of those determinations to the Provider for the Service Provider's comments before reporting the details to the Commissioner(s)'s executive. Should the Ombudsman make recommendations in his report that compensation should be paid for maladministration and this either expressly or by implication has been due wholly or in part to the failure of the Service Provider in not complying with the provisions of this Contract, the Commissioner(s) may recover such compensation in full from the Service Provider.

38.11. The Provider shall comply with all recommendations made by the Ombudsman as they may affect or be relevant to the Service Provider.

39. RECORDS AND AUDIT ACCESS

39.1. The Service Provider shall keep and maintain until six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Service provided under it, the Contracts entered into with the Commissioner(s) and the amounts paid by the Commissioner(s).

39.2. The Service Provider shall keep the records and accounts referred to in clause 39.1 above in accordance with good accountancy practice and shall include a full and accurate record of all monies expended by the Service Provider in observing and fulfilling the Service Provider's obligations under the Contract.

39.3. The Service Provider shall on request afford the Commissioner(s) or the Commissioner's Authorised Representative and/or the Auditor such access to such records and accounts as may be required by the Commissioner(s) from time to time.

39.4. The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Contract Period and for a period of six years after the expiry of the Contract Period to the Commissioner(s) and the Auditor.

39.5. Subject to the Commissioner's rights of confidentiality, the Service Provider shall on request provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

a) all information requested by the Commissioner(s) within the scope of the audit;
b) reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Service; and
c) access to the Service Provider's Staff.

39.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 39, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Commissioner(s) for the Commissioner's reasonable costs incurred in relation to the audit.

40. MONITORING

40.1. The Service provided under this Contract will be subject to continuous review and monitoring and the Commissioner(s) may carry out any reviews required of the Service provided under this Contract.

40.2. The Service Provider shall, at all times, co-operate with the Commissioner(s) processes for monitoring arrangements in whatever way as is reasonably requested by the Commissioner(s) including but not limited to, access to premises, Staff and records.

40.3. The Commissioner(s) may monitor, inspect and examine the work or Service being carried out by the Service Provider without notice at any time. The Service Provider shall give all such assistance as the Commissioner(s) may reasonably require for such monitoring.

40.4. Commissioner(s) or any individuals nominated by the Commissioner(s) shall be entitled to ascertain by whatever lawful means considered appropriate whether the Service Provider has performed the Service in accordance with the Contract and the Service Provider shall provide access to all information required by the Commissioner(s) relating to the provision of the Service under this Contract.

40.5. The Service Provider may be required to rectify any deficiencies in Service and bring it to the required standard in a time specified by the Commissioner's Nominated Officer.

40.6. The Commissioner(s) any individuals nominated by the Commissioner(s) will require access to all information relating to the provision of the Service under this Contract at all times, with or without prior notice, to enable monitoring and evaluation of the Service to be carried out and to review the performance of this Contract. The Service Provider shall make available the information required by the Commissioner(s) relating to the provision of the Service under this Contract.

40.7. The Service Provider shall conduct an annual individual satisfaction questionnaire (administered in accessible formats) to ensure that the Person accessing the service is afforded opportunities to exercise their formal right to comment on the manner in which the Service is provided. The Service Provider shall facilitate access to advocacy services where required. Comments and feedback on the Service provided should be made available to the Commissioner(s) upon request.

40.8. The Service Provider shall provide any information required by the Commissioner(s) from time to time to inform workforce planning on a local, regional or national basis.

40.9. The Commissioner(s) reserves the right to arrange meetings with the Service Provider at its discretion to discuss the performance of the Service under this Contract.

40.10. For avoidance of doubt, the Commissioner(s) shall also monitor the quality of the Service by various methods including:

i. Feedback from Person receiving the Service, their relatives or advocate through satisfaction questionnaires, sampling etc.

ii. Feedback from Care Co-ordinators, Health Board Nurse Reviews and other relevant Staff on the standard of Service provided

iii. An examination of written records, reports or logs which the Service Provider is required to provide

iv. The review of the Integrated Care and Support Plan, Service Delivery Plan and progress against the individual Person's outcomes and relevant care planning documentation

v. Contract reviews

vi. Care Co-ordinator's reviews

vii. Inspection reports issued by the CIW/CQC

viii. Review of policies and procedures held by the Service Provider including dates when these were updated

ix. The Service Provider must be able to demonstrate evidence of business continuity planning

x. Review copies of procedures and forms e.g. specimen supervision form used by the Service Provider

41. REMEDIES FOR INADEQUATE PERFORMANCE

41.1. Where in the reasonable opinion of the Commissioner(s):

i. the standard of Service is not in accordance with the terms of the Contract;

ii. the manner in which any Service has been performed is not in accordance with the terms of the Contract;

iii. the procedures used by the Service Provider in the delivery of the Service is not in accordance with the terms of the Contract; or

iv. it has concerns about any other matter connected with the performance of the Service Provider's obligations under the Contract,

v. the provisions of clause 41.2 shall apply.

41.2. The Commissioner(s) may, without prejudice to its right under clause 58 (Resolution of Dispute), if it is the reasonable opinion of the Commissioner(s) that there has been a breach of the Contract by the Service Provider pursuant to the provisions of clause 41.1 above, do any of the following:

i. without terminating the Contract, itself supply or procure the supply of all or part of the Service until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Commissioner(s) that the Service Provider will once more be able to supply all or such part of the Service in accordance with the Contract;

ii. without terminating the whole of the Contract, terminate the Contract in respect of part of the Service only (whereupon a corresponding reduction in the Service Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Service; and

iii. charge the Service Provider for (and the Service Provider shall pay any costs reasonably incurred by the Commissioner(s) including administration costs) in respect of the supply of any part of the Service by the Commissioner(s) or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Service and provided that the Commissioner(s) uses its reasonable endeavours to mitigate any additional expenditure in obtaining a replacement Service.

41.3. If the Service Provider fails to provide any of the Service in accordance with the Contract and such failure is capable of remedy, then the Commissioner(s) shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [ten] Business Working Days of the Commissioner(s) instructions or such other period of time as the Commissioner(s) may direct.

41.4. If the Service Provider:

i) fails to comply with clause 41.3 and the failure is materially adverse to the interests of the Commissioner(s) or prevents the Commissioner(s) from discharging a statutory duty; or

ii) persistently fails to comply with clause 41.3 above,

the Commissioner(s) may terminate the Service under this Contract with immediate effect by giving the Service Provider notice in writing.

41.5. In the event of inadequate performance, the Commissioner(s) may without terminating the Call-Off Contract, dependent on the circumstances, suspend the Service, for a specified reason for a specific period of time as agreed with the Service Provider in writing until the Service Provider demonstrates to the reasonable satisfaction of the Commissioner(s) that it is able to and will provide the suspended Service to the required standard.

41.5.1. During the period of suspension, the Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to the Person as a result of the suspension of the Service.

42. RIGHTS AND REMEDIES

42.1. Except as expressly provided in this Contract, rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

43. TRANSFER AND SUBCONTRACTING

43.1. The Service Provider shall not subcontract, assign, novate, or otherwise dispose of this Contract or any part of it without prior consent of the Commissioner(s) acting in its absolute discretion. Neither may the Service Provider sub-contract the whole or any part of its obligations under this Contract except with the express prior written consent of the Commissioner(s). Subcontracting any part of the Contract shall not relieve the Service Provider of any of its obligations or duties under the Contract.

43.2. Where the Commissioner(s) consented for the Service Provider to sub-contract any part of the Service, the Service Provider shall submit to the Commissioner(s) the governance arrangement between the Service Provider and the Sub-contractor. Every act or omission of the sub-contractor shall, for the purposes of the Framework Agreement be deemed to be the act or omission of the Service Provider and the Service Provider shall be liable to the Commissioner(s) thereafter as if such act or omission had been committed or omitted by the Service Provider itself.

43.3. This Contract is binding on the Commissioner(s) including its successors and assignees and the Service Provider and the Service Provider's successors and permitted assignees.

44. WAIVER

44.1. A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

44.2. A failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

44.3. A Party that waives a right or remedy provided under this Contract or by law in relation to one Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

45. VARIATION TO THE CALL-OFF CONTRACT

45.1. In accordance with clause 13.11 above, paragraph 17 to Schedule 2 and the variation to the service procedures set out in Schedule 6 to this Contract, either the Commissioner(s) or the Service Provider may request a Review of the Call-Off Contract which may result in a variation to the Call-Off Contract. The request must be made in writing and the Review must be held as soon as practically possible.

46. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

46.1. Except as expressly provided elsewhere in this Contract, only a person who is a Party to this Contract or a Replacement Service Provider shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

47. **SEVERANCE**

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

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

48. **LIABILITY**

48.1. The Service Provider shall be liable for, and shall indemnify in full the Commissioner(s), its employees, servants or agents from and against all liability arising from:

i. Death of, or personal injury, to any person;
ii. Breach of a statutory duty or obligation arising under this Contract;
iii. Loss of, or damage to any property

in respect of any claim, action, proceedings, damages, costs, demands, expenses and charges (including all legal expenses) and any other liabilities whatsoever arising out of, or in connection with this Contract arising as a result of the negligent act or omission of the Service Provider.

48.2. The Commissioner(s) shall be liable for, and shall indemnify in full the Service Provider, its employees, servants or agents from and against all liability arising from:

i. Death of, or personal injury, to any person;
ii. Breach of a statutory duty or obligation arising under this Contract;
iii. Loss of, or damage to any property;

in respect of any claim, action, proceedings, damages, costs, demands, expenses and charges (including all legal expenses) and any other liabilities whatsoever arising out of, or in connection with this Contract arising as a result of the negligent act or omission of the Commissioner(s).

49. **INSURANCE**

49.1. The Service Provider shall hold and maintain insurance policies (evidence of such policies to be provided to the Commissioner(s) to include:

i. Employer's liability (a minimum of £10m in respect of any one claim);
ii. Public liability (a minimum of £10m in respect of any one claim);
iii. Medical malpractice cover (a minimum of £10m in respect of any one claim)

49.2. The Service Provider shall ensure that all Staff maintain appropriate insurance policies in respect of motor vehicles used in the course of their employment. Evidence of such policies shall be provided to the Commissioner(s) upon request. All vehicles used in the provision of the Service either owned, leased or hired by the Service Provider, or an employee of the Service Provider, must include business use cover.
The Service Provider shall ensure, through annual inspection of insurance and MOT certificates, that any vehicles used by employees in the course of their employment are in a roadworthy condition. The Service Provider shall have processes in place to ensure Staff with driving duties and responsibilities maintain a current and updated driving licence as required.

49.3. Where the Service Provider's employees or agents use the vehicle of the Person supported under this Contract, the Service Provider shall ensure that its employees or agents are insured to drive such vehicles and shall request copies of the insurance documentation. In these circumstances it is expected that the Person has a fully comprehensive policy that covers any driver. In addition, such use shall be wholly and exclusively for the purposes of the Person receiving the Service, not to enable any employee or agent of the Service Provider to benefit from the availability of such vehicle. The Service Provider shall inform the Commissioner(s) of any such misuse, and the employee shall be disciplined appropriately.

49.4. In the event of any accident occurring whilst using the vehicle of the Person supported under this Contract, any excess payable on the Person's policy shall be payable by the Service Provider.

49.5. The Service Provider shall produce such evidence as the Commissioner(s) may reasonably require that all insurances referred to herein have been taken out and are in force at all times.

50. WARRANTIES AND REPRESENTATION

50.1. The Service Provider warrants and represents that:

50.2. The Service Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that is executed by a duly authorised representative of the Service Provider as further set out in the Framework Agreement.

50.3. The Service Provider shall discharge its obligations hereunder with all due skill, care and diligence and (without limiting the generality of this Clause 50) in accordance with its own established internal procedures;

51. TERMINATION ON INSOLVENCY

51.1. Without affecting any other right or remedy available to it, the Commissioner(s) may terminate this Contract with immediate effect by giving written notice to the Service Provider if:

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

ii. the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

iii. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider;

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

v. the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;

vi. a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;

vii. the Service Provider (being an individual) is the subject of a bankruptcy petition or order;

viii. a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within [14] days;

ix. any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 51i to 51viii (inclusive); or

x. the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

xi. any warranty given by the other party in clause 50 (Warranties and Representations) of this Contract is found to be untrue or misleading.

52. **TERMINATION ON DEFAULT –**

52.1. The Commissioner(s) may terminate the Call –off Contract by giving written notice to the Service Provider with immediate effect if the Service Provider commits a Material Breach and if:

52.2.

i. the Service Provider has not remedied the material breach to the satisfaction of the Commissioner(s) within 20 Business Working Days (excluding Saturday, Sunday and bank holidays), or such other period as may be specified by the Commissioner(s), after issue of a written notice specifying the material breach and requesting it to be remedied; or

ii. the material breach is not, in the opinion of the Commissioner(s), capable of remedy**.**

52.3. For the purposes of clause 52, **Material Breach** means a breach (including an anticipatory breach) that is not minimal or trivial in its consequences to the Commissioner(s). In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

52.4. The Commissioner(s) may terminate the Call- Off Contract by giving written notice to the Service Provider with immediate effect if the Service Provider repeatedly breaches any of the terms of this Call-Off Contract in such a manner as to reasonably justify in the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.

52.5 The Commissioner(s) may terminate this Contract without notice and recover any resulting financial loss from the Service Provider in the following circumstances:

i. If the Service Provider or a member of Staff engages in any conduct which, in the opinion of the Commissioner(s), is prejudicial whether by positive action or neglect or to the detriment of the welfare of the Person receiving the Service. Such action will include fraud and theft from the Person, neglect or inappropriate care, cruelty and assault including verbal abuse.

ii. If the Commissioner(s) is satisfied that the Service Provider has committed a breach of the Contract or has consistently failed to perform the terms, conditions and obligations imposed by this Contract;

iii. If the Service Provider persistently fails to take corrective action following a default in the provision of this Contract following a reasonable period of notice given by the Commissioner(s);

iv. If the Service Provider or a person on the Service Provider's behalf takes unreasonable financial advantage of the relationship with a Person supported under this Contract;

v. Upon the Service Provider's Agency ceasing for whatever reason to be registered pursuant to the Care Standards Act 2000, Regulation and Inspection of Social Care (Wales) Act 2016 or any statutory modification or re-enactment thereof;

vi. If the Service Provider shall have given any financial inducement or reward to an elected Member or employee of the Commissioner(s) in order to gain unfair advantage under or in connection with this Contract and or has committed any offence under the Prevention of Corruption Acts or Section 117 of the Local Government Act 1972;

vii. If the Service Provider has been convicted on an offence under the provisions of the Care Standards Act 2000 / Regulation & Inspection of Social Care (Wales) Act 2016 or other legislation and/or where the offence has caused harm or put at risk of harm the Person supported under this Contract;

53. TERMINATION OF THE CALL-OFF CONTRACT

53.1. Termination following Death

53.1.1. It is the responsibility of the Service Provider or Care Co-ordinator to inform the other Party in the event of the death of a Person receiving the Service. The following shall apply.

53.1.2. In respect of a Call-Off Contract commissioned under Phases 1,2 & 3, the Service shall cease 24 hours after the Person's death unless otherwise stipulated by the Commissioner(s) within the Call-Off Contract. In exceptional circumstances, where required by the Commissioner(s) i.e. where a short term continuation of a service is required from the Service Provider, then the notice period may be extended for up to a maximum of five Business Working Days from the date of the Person's death (unless otherwise agreed by the Commissioner(s)).

53.1.3. In respect of a Call-Off Contract commissioned under Phase 4, a variation to the Service shall apply as set out in the Call-Off Contract and in accordance with Schedule 6 to this Contract (Variation Procedures).

53.2. Termination following Notice – Phases 1, 2 & 3

In respect of a Service commissioned under Phases 1 & 2 and/or 3, the Commissioner(s) may terminate this Contract at any time as follows:

53.2.1. Either Party may terminate a Call-Off Contract by giving a minimum of five (5) Business Working Days' notice in writing to the other Party with an option to reduce or extend for a longer period by negotiation and agreement of both Parties in exceptional circumstances.

53.3. Fixed termination

A Call-Off Contract shall expire automatically where an end date has been indicated on the Call-Off Contract.

53.4. **Termination of a Block Contract**

53.4.1. In relation to a Call-Off Contract for more than one Person in separate households i.e. a Block Contract, a party may terminate the Call-Off Contract with a minimum of three months' notice in writing, unless a shorter or longer termination notice is agreed between the Parties.

53.4.2. In all cases where a Service is terminated, the Service Provider shall work with the Commissioner(s) to ensure the Service is maintained and shall only withdraw the Service at an agreed with date with the Commissioner(s).

53.5. **Termination before the Service begins**

53.5.1. In circumstances where a Call-Off Contract has been completed but the Service has not yet begun, a party may terminate a Call-Off Contract by giving a minimum of 24 hours' notice (1 Business Working Day) in writing to the other unless otherwise stipulated in the Call-Off Contract issued by the Commissioner(s). Persistent termination by the Service Provider may necessitate a review of the Service Provider's performance under the Framework Agreement.

53.6. **Termination following Notice – Phase 4**

53.6.1. The Service under Phase 4 shall terminate automatically on the date indicated on the Call-Off Contract unless it is terminated earlier in accordance with provisions of clause 53.6.2 below.

53.6.2. Either Party may terminate the Service under Phase 4 by giving not less than three months' notice in writing (12 weeks). Notwithstanding the Parties may agree to a longer termination notice in the best interest of the Person receiving the Service.

53.6.3. During the period of notice the Parties shall co-operate to ensure the best interest of the Person receiving the Service is met under whatever new arrangements may be proposed.

54. **CONSEQUENCE OF TERMINATION**

54.1. Where the Commissioner(s) terminates the Call- Off Contract under clause 52 (Default) and then makes other arrangements for the provision of Service, the Commissioner(s) may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Commissioner(s) throughout the remainder of the Contract Period.

The Commissioner(s) shall take all reasonable steps to mitigate such additional expenditure. Where the Call-Off Contract is terminated under clause 52 (Default), no further payments shall be payable by the Commissioner(s) to the Service Provider until the Commissioner(s) has established the final cost of making other arrangements.

54.2. Subject to clause 48 (Liability), where the Commissioner(s) terminates the Call-Off Contract under clause 53 (Termination of the Call-Off Contract), the Commissioner(s) shall indemnify the Service Provider against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under clause 53 (Termination of the Call-Off Contract).

54.3. The Commissioner(s) shall not be liable under clause 54.2 to pay any sum that:

i. was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

ii. when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract had not been terminated before the expiry of the Contract Period.

54.4. Except as otherwise expressly provided in the Contract:

i. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

ii. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Commissioner(s) or the Service Provider.

54.5. In the event of termination pursuant to Clause 53 (Termination of the Call-Off Contract), the Service Provider shall cease to provide the Service to any individual from the day following the expiry of the notice period and no payment shall be made by the Commissioner(s) for any services provided from that date.

54.6. In the event of termination pursuant to Clause 52 (Termination on Default), the Service Provider shall cease to provide the Service from the day following the expiry of the notice and no payment shall be made by the Commissioner(s) for any services provided from that date.

54.7. In the event of a notice of termination being given by the Service Provider to the Commissioner(s) pursuant to Clause 53.2.4 and 53.2.5, no payment shall be made by the Commissioner(s) for the Service provided after the expiry of the period of notice but the Service Provider shall continue to provide all services required to be provided the Person identified until Midnight on the day on which the period of notice ends (unless otherwise agreed in writing).

55. COMPLAINTS & CONCERNS

55.1. The Service Provider will operate a procedure for investigating any complaint made by or on behalf of the Person receiving the Service. The Service Provider will make the Person/the Person's representative(s), family and/or carers aware of how to access this procedure at the commencement of the provision of the Service. The Person/Person's representative shall be informed in writing by the Service Provider of the means of registering a complaint, how the complaint will be dealt with and of the outcome, as soon as is reasonably possible, or in any event within 7 Business Working Days of the start of the Service.

55.2. Where a complaint is registered and in line with good practice a discussion and/or meeting should take place with the Person/the Person's representative(s) to try and resolve the issues and agree a way forward. Consideration should be given as to whether the Person would benefit from the assistance of an advocate and if this is the case then advice on the advocacy service should be provided by the Service Provider.

55.3. All complaints made to the Service Provider by or on behalf of the Person/Person's Representative(s) to the Service Provider will be recorded and a copy of any such complaints shall be forwarded to the Commissioner(s) as soon as practically possible. The Service Provider shall set out his response to the complaint in writing to the Commissioner(s) within agreed timescales. Any extension to this timescale must be negotiated and agreed with the Person and/or their family and the Commissioner(s) should be notified of the agreed timescale

55.4. All complaints received and dealt with by the Service Provider (including any identified service improvements or lessons learned) will be reviewed to ensure the Service Provider's performance meets the expectations of this Contract.

55.5. The Service Provider shall advise the Person/the Person's representative(s) of their rights to access the Commissioner's complaints procedures in the event that they are not satisfied with the way in which the Service Provider has dealt with their complaint.

The Service Provider is defined as a 'Responsible Body' under the 'Putting Things Right' Guidance developed in accordance with the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (http://www.wales.nhs.uk/sites3/docopen.cfm?orgid=932&id=170588)
As such, most of these regulations apply to Service Providers who delivery domiciliary care and support funded in full, or in part by an NHS body. This requires the Service Provider to cooperate fully with Health Board commissioners in respect of any complaint or concern received in such cases where the complainant is not satisfied with the local resolution offered by the Service Provider's own complaints or concerns procedures

56. DISRUPTION

56.1. The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Commissioner(s), its employees or any other Service Provider employed by the Commissioner(s).

56.2. The Service Provider shall immediately inform the Commissioner(s) of any actual or potential industrial action, whether such action be by its own Staff or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

56.3. In the event of industrial action by the Staff, the Service Provider shall seek the Commissioner(s)'s consent to its proposals for the continuance of the supply of the Service in accordance with its obligations under the Contract.

56.4. If the Service Provider's proposals referred to in clause 56.3 are considered insufficient or unacceptable by the Commissioner(s) acting reasonably then the Commissioner(s) may:

i. require the Service Provider to provide alternative proposals; or

ii. undertake the Service itself and recover from the Service Provider the additional costs incurred in the process.

Nothing in this clause shall release the Service Provider from the proper performance of its obligations under the Contract.

57. RECOVERY UPON TERMINATION

57.1. On the termination of the Contract for any reason the Service Provider shall upon request from the Commissioner(s):

i. promptly provide all information concerning the provision of the Service which may reasonably be requested by the Commissioner(s) for the purposes of adequately understanding the manner in which the Service has been provided or for the purpose of allowing the Commissioner(s) or replacement Service Provider to conduct due diligence.

ii. assist and co-operate with the Commissioner(s) to ensure an orderly transition of the provision of the Service to any replacement Service Provider

iii. deliver to the Commissioner(s) all property (including materials, documents, information, access keys etc) provided to the Service Provider.

iv. provide to the Commissioner(s) all confidential information, personal data in its possessions or under the control of any permitted sub-contractors which was obtained for the provision of the Service.

58. RESOLUTION OF DISPUTES

58.1. If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it then the parties shall use their best endeavours to resolve by agreement. Either party may request:

i. a meeting between representatives within 14 working days of the dispute being raised, and if unresolved;

ii. a further meeting of Senior Representatives of the Commissioner(s) and Service Provider within a further 28 Business Working Days. The parties may invite an independent representative.

58.2. Where the dispute cannot be resolved, a formal mediation facilitated by an independent mediator will be arranged, the costs of which are to be shared equally between all parties, or otherwise by agreement. This will be arranged by the Commissioner(s).

58.3. Where the dispute is between the Commissioner(s) this will be managed in line with the dispute process identified within the North Wales CHC Implementation Plan (May 2010) and the North Wales CHC Standard Operations Procedure 2011.

58.4. Where a dispute cannot be resolved under this Clause 58, the Call-Off Contract and the Framework Agreement may be terminated.

59. FORCE MAJEURE

59.1. In this Agreement 'Force Majeure' shall mean any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts events omissions or accidents beyond the control of the Parties including, without limitation, act of God, war, riot, civil commotion, fire, flood, storm or other form of natural catastrophe or disaster.

59.2. If either party is prevented or delayed in the performance of any of its obligations under this Contract by reason of Force Majeure, that party shall forthwith or as soon as reasonably practicable thereafter serve notice in writing on the other Party specifying the extent and nature of the disruption caused setting out any mitigation strategy to overcome such event and delay and the period of time within which the Service will be resumed

59.3. The party affected by force majeure shall use all reasonable endeavours to bring the force majeure event to a close or to find a solution by which the Agreement may be performed, despite the continuance of the force majeure event.

59.4. If either party is prevented from performance of its obligations for a continuous period in excess of three months the other party may terminate this Contract forthwith by written notice, whereupon all money due under this Agreement shall be paid immediately and in particular:

59.5. The Commissioner(s) shall pay to the Service Providers all payments for the Services provided which have become due and payable and which are not otherwise disputed.

60. HUMAN RIGHTS ACT 1998

60.1. The Service Provider acknowledges that in relation to its obligations under this Contract, it will abide by the provisions of the European Convention of Human Rights and the Human Rights Act 1998 and at all times act in accordance with the said Convention and Act in relation to its obligations.

60.2. The Provider agrees that it will take such action as the Commissioner(s) may reasonably require for the purpose of ensuring compliance with the said Convention and Act.

61. FRAUD

61.1. The Service Provider shall safeguard the Commissioner's funding of this Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Provider's directors and suppliers and the Service Provider shall notify the Commissioner(s) immediately where it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

62. GRATUITIES

62.1. The Service Provider, his employees, servants or agents shall not solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for any part of the Service other than charges properly approved by the Commissioner(s) in accordance with the provision of this Agreement.

63. ELECTRONIC BUSINESS

63.1. The Service Provider is required to provide secure information management and technology systems that underpin and support the services specified in this Contract, backed up by appropriate policy and procedures.

64. PROPER LAW & JURISDICTION

64.1. This Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales. Where there is a conflict between the laws of England and Wales, the laws of Wales shall prevail.

65. AGREEMENT IS TO PREVAIL

65.1. In the event of any conflict between the provisions of this Agreement and the provisions of any other document published or prepared in relation to the procurement of the Service by the Commissioner(s) and the responses of the Service Provider in any procurement exercise or scheme, the provisions of this Contract shall prevail.

66. SURVIVAL OF TERMS

66.1. No term shall survive expiry or termination of this Contract except the confidentiality clause.

67. **NOTICES (SERVICE OF NOTICES & DOCUMENTS)**

67.1. Any notice given pursuant to this Contract shall be in writing and shall be sufficiently given to any Party if sent in a letter by first class pre-paid post addressed to that Party at the address of that party set out at the head of this Contract (or any alternative address notified by that Party in accordance with this Clause) and any notice so given shall be deemed unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

68. **CUMULATIVE REMEDIES**

68.1. Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Call-Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

69. **DEFAULT**

69.1. If any Party is in default of their respective obligations under this Contract, the other party shall notify in writing the way in which the Party is in default and if appropriate the matter shall be considered at a meeting of the Parties.

69.2. Where, despite any action taken the Party is still in default, the aggrieved Party may issue a default notice specifying the default and the action to be taken to rectify it. The notice shall state a reasonable period of time within which the required action is to be taken. If the default is not remedied within this period to the reasonable satisfaction of the other party, the aggrieved party shall refer to clause 58 (Resolution of Dispute).

70. **ENTIRE CONTRACT**

70.1. This Contract, the Framework and its Schedules constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matters of this Contract.

70.2. Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (Whether negligently or innocently made) of any person (whether party to this Contract or not) other than as expressly set out in this Contract.

70.3. The only remedy available to a party for breach of the warranties shall be for a breach of contract under the terms of this Contract.

70.4. Nothing in this sub-clause shall operate or exclude any liability for fraud.

71. **WELSH LANGUAGE**

71.1. The Service Provider shall comply with the Welsh Language (Wales) Measure 2011 and Welsh Language Standards set within Section 4 of the Measure, Schedule 5 of the Welsh Language Commissioner's advice document "Contracting Out Public Services Contracts" and Welsh language policies held by the Commissioner(s) to the extent that the same relate to the provision of the Service.

The Service Provider shall also be expected to comply with the principles and obligations of the Welsh Government Strategic Framework, "More than Just Words", and shall as a minimum:

i. Ensure the "active offer" is applied at all times in providing Services in order to ensure that linguistic needs are respected;
ii. Ensure the Services are provided in the preferred language of the Person and his / her family;
iii. Record the preferred language of the Person and his / her family;

iv. Keep a record of Staff skills in relation to the Welsh language to ensure the Service Provider can plan the workforce (work rotas etc) to fulfil any need for Welsh language services by the Person;
v. Commit to improving skills and awareness of Staff in relation to the Welsh language through regular training programmes;

71.2. The Service Provider shall have in place and operate an up to date Welsh Language Policy that will show their commitment to the above legislature and good practice requirements and ensure staff are provided with guidance on how to operate accordingly.

71.3. The Service Provider shall take all reasonable and practicable steps to deliver the Service to the Person in the language medium of the Person's choice. It is acknowledged that languages other than Welsh and English may be the preferred language in some parts of North Wales.

71.4. The Service Provider shall, upon request, provide details of the percentage of bilingual Staff employed and the number of Person who choose Welsh as their preferred language but whose preference could not be accommodated.

71.5. The Commissioner(s) is committed to offering support and guidance to the Service Provider on the planning and provision of bilingual services. They will be able to provide guidance and help to create a Welsh language policy and advice on the relevant standards.

71.6. For the avoidance of doubt, with regards to Welsh language the Service Provider shall comply with the requirements of the Social Services & Wellbeing (Wales) Act 2014 in respect of the provision of the "active offer" in all aspects of the service. The Service Provider will be required to evidence how they are striving to meet the Welsh language requirements, including within recruitment and training activities, provision of information and service delivery.

CALL OFF CONTRACT TERMS AND CONDITIONS

SCHEDULE 1: DEFINITIONS AND INTERPRETATIONS

Abuse	Defined in Section 197(1) of the Social Services & Wellbeing (Wales); Act means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place), and "financial abuse" includes— having money or other property stolen; being defrauded; being put under pressure in relation to money or other property; having money or other property misused;
Agreement	The Framework Agreement entered into between the Commissioner(s) and the Service Providers including its Clauses, schedules, appendices and any other documents expressly incorporated.
Assessment	means a written assessment carried out by Commissioner(s) of a Person's individual eligible care and support needs and the personal wellbeing outcomes set out in the Person's Care and Support Plan
Assessment review	Process of monitoring the progress of the Care and Support Plan on a systematic basis throughout the Agreement period and in conjunction with the Provider and the Person(s) and their informal Carers or representatives.
Block contract	An agreed level of Service provided to one or more Person(s) and / or in an agreed geographic location at a fixed price applicable for a set period of time. The contract will include a specification, or equivalent schedule, detailing the service requirements.
Breach of contract	A failure of a party to this Agreement to perform his or her obligations as set out therein.
Business (office) Working Day	Every official working day of the week between and including Monday to Friday, excluding public holidays in Wales.
Caldicott Principles	Means a number of general principles that health and social care organisations should use when reviewing its use of client information alongside the Data Protection Act principles
Call Off	Means the commissioning of Services that may be made by the Commissioner(s) from the Service Providers under the Commissioning and Call Off Procedures as set out in the Framework Agreement.
Call-Off Contract	Means the collective of the Purchase Order issued by the individual Commissioner setting out the specific requirements and the Call-Off Contract terms and conditions duly executed by the Parties.
Care Co-ordinator	The person assigned by the Commissioner(s) to coordinate the care and support and/or any other information, advice or support services provided to a Person(s).
Care and Support Plan	The document which underpins the Service to be provided following the Person's assessment, outlining how his/her wellbeing outcomes will be met. A specimen copy of the Care and Support Plan is set out in Schedule 4 to the Call Off Contract Terms and Conditions.
Care / Support Worker	The registered Person employed by the Provider to be involved in directly providing the Service, registered with Social Care Wales as and when applicable.
Call	A visit scheduled by the Service Providers to deliver the Service the Service by the Care/Support Worker.
Carer	A person who provides or intends to provide care for an adult or disabled child (excluding paid carers).
Code of Practice/ Code of Professional Practice	The Code of Professional Practice for Social Care issued by Social Care Wales setting out the conduct and practice expected of the social care profession in Wales
Complaints Procedure	The Complaints Procedure as set out in Clause 26
Competence	The knowledge, skills, attitudes and ability to practise safely and effectively without the need for direct supervision.

Confidential Information	Any information which has been designated in writing by either Party as being confidential or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to all personal data and sensitive personal data within the meaning of the DPA and Section 124 of the Police Act 1997 in relation to the business, affairs, properties, assets, trading practices, Service Developments, trade secrets, personnel, Person(s) and suppliers of either Party, and the Commercially Sensitive Information.
Continuous support	Care and/or support provided to the same individual / individuals for a period of two hours or more; this can be provided in any setting e.g. a person's home, or in the community. This can be delivered at any time of day/ night and therefore includes 'waking nights'. Sometimes referred to as 'project support'.
Contract	The Call Off Contract terms and conditions which becomes effective following authorisation of the Call-Off Contract.
CQC	Care Quality Commission or such other replacement body acting as the independent regulator of health and social care in England
CIW	Care Inspectorate for Wales or such other replacement body authorised in Wales to act in accordance with the Care Standards Act 2000 and Regulation and Inspection of Social Care (Wales) Act 2016
DPA	means the Data Protection Act 1998, the EU Data Protection Directive 95/45/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI2000/2689), the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR, the LED and any applicable national implementing Laws as amended from time to time, the Data Protection Act 2018 [subject to Royal Assent],and all applicable laws and regulations relating to the processing of Personal Identifiable Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner
Data Controller	has the meaning set out in the DPA
Data Processor	Shall have the meaning set out in the DPA
Data Protection Requirements	means the requirements of the DPA
Data Subject	has the meaning in the DPA
Domiciliary Care	Defined in the Regulation & Inspection of Social Care (Wales) Act 2016 as "the provision of care and support to a person who by reason of vulnerability or need (other than vulnerability or need arising only because the person is of a young age) is unable to provide it for him or herself and is provided at the place in Wales where the person lives (including making arrangements for or providing services in connection with such provision). It excludes the skills and expertise of a qualified nurse.
Deprivation of Liberty (DoLS) Safeguards	Means the framework of safeguards set out in Schedule A1 to the Mental Capacity Act 2005
Disclosure & Barring Service (DBS)	Means a Non-Departmental Public Body established under the Protection of Freedoms Act 2012 with the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA)
Emergency	Is an exceptional circumstance where failing to act would cause unacceptable distress to, or affecting the wellbeing of the Person receiving the Service.
Enhanced Domiciliary Care	Shall mean person centred, outcome based care and support provided to Person(s) with complex needs living in their own home in the community to achieve their wellbeing outcomes. The Service will generally be commissioned following a health or multi-disciplinary assessment. Additional Staff training and competencies will be required in order to meet the Person's physical, mental or emotional wellbeing needs.
Equipment	The Provider's equipment, and materials used in the performance of its obligations under this Agreement.
Freedom of Information Act (FOIA)	The Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

Framework Agreement	Means the overarching terms and conditions under which specific purchases (call-offs) can be made.
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
Good Industry Standards	Standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence, and foresight which wold reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
Health Board	The Betsi Cadwaladr University Health Board.
Key Personnel	As defined in Clause 3.
Law	Any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, Delegated or subordinate legislation or notice of any Regulatory Body.
Lot	Means the services divided into Lots as referred to in the OJEU Notice and the recitals to this Agreement
Material Breach	A breach (including an anticipatory breach) that is not minimal or trivial in its consequences to the People supported by the service and or the Commissioner(s). In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding; however the outcome can lead, if not remedied, to termination of the Agreement.
Multi-Disciplinary Team	A group of health and/or social care workers who are members of different disciplines, each providing specific services to the Person(s).
Mini tender	Shall mean the tender exercise as set out in Schedule 2 [Call-off Award Criteria] to be used to award a Call-Off Contract
Outcomes	Means the impact or end results of the Service on a Person's life and wellbeing
Personal Data	Means personal data defined in the DPA processed by the Service Providers on behalf of the Commissioner(s)
Provider's Representative	The individual authorised to act on behalf of the Provider for the purposes of this Agreement
(Individual) Purchase Order	The document used to define the service arrangements for individuals, detailing for example start date and time of service
Quality Standards	Standards as defined within the contract and specification, including National Minimum Standards for Domiciliary care Agencies in Wales to be replaced in 2018 by regulations, standards and guidance under the Regulation & Inspection of Social Care (Wales) Act 2016
Reablement	Service for people with poor physical or mental health or disability to help them live as independently as possible by learning or re-learning the skills necessary for daily living
Registered Manager	The person registered with the CIW or CQC and/or Social Care Wales to manage the domiciliary care service provided by the Provider
Responsible Individual	means an individual who is eligible to be a responsible individual under subsection (2) of the Regulation & Inspection of Social Care (Wales) Act 2016, who the Welsh Ministers are satisfied is a fit and proper person to be a responsible individual (section 9) and designated by a service provider in respect of a place at from or in relation to which the provider provides a regulated service and specified as such in the service providers registration.
Relative	(a) spouse or civil partner, or a person who lives with them as their spouse or civil partner; (b) parent or parent in law; son or daughter; son in law or daughter in law; stepson or stepdaughter; brother or sister; aunt or uncle; grandparent; (c) the spouse or civil partner, or a person who lives with them as if their spouse or civil partner, or any person specified in sub-paragraph
Regulated Service	as defined in Part 1, section 2 of the Regulation & Inspection of Social Care (Wales) Act 2016
Risk Assessment	An assessment by an appropriately trained and qualified person of the potential risks to Person(s) and Staff associated with delivering the Person(s)'s package of care.

Safeguarding	Means protection from abuse harm and neglect, and promoting of children/adults' physical, emotional and mental health, education, training and leisure, contribution to society and social and economic well-being
Safeguarding Co-ordinator	The person assigned to oversee and co-ordinate the process that deals with allegations of abuse and neglect against children and adults at risk
Service Conditions	The Service Conditions forming part of the Call Off Contract
Service Delivery Plan	A plan written by the Service Providers which specifies how the Person's outcomes are to be met in accordance the Person's Care and Support Plan
Service Providers	Means the Service Providers appointed under the Agreement to provide the Service who shall maintain a valid registration of the Domiciliary Support Agency pursuant to the Regulation & Inspection of Social Care (Wales) Act 2016 or Care Standards Act 2000 where applicable or any statutory modification or re-enactment thereof.
Service Provider's Lots	Means the lots referred to in Schedule 10 to the Framework Agreement in accordance with the Service Provider's appointment under the Framework Agreement.
Supported Living	Shall mean accommodation based Standard or Enhanced Domiciliary Care provided to Person(s) living in their own homes in the community with or without housing related support. Supported Living services will be compliant with Wales Government's and/or North Wales' Supporting People Programme Outcomes Framework and Reach Standards or equivalent.
Social Care Wales (formerly Care Council for Wales & Social Services Improvement Agency)	Assembly sponsored public body implemented from April 2017 under the Regulation & Inspection of Social Care (Wales) Act 2016 who's responsibilities include registration and the regulation of social care workforce in Wales and leading improvements in social care in Wales
Social Services and Well Being (Wales) Act 2014	The legal framework for improving the well-being of people who need care and support, and carers who need support.
Person's Representative	The relative or friend or carer or other (for example solicitor) nominated from time to time by the Person to represent him / her and may include the Person's Attorney or Deputy where the Attorney or Deputy has the authority to make the decisions in question. Where the Person lacks the mental capacity to nominate a Representative, the Parties shall proceed in accordance with the principles of the Mental Capacity Act 2005.
Regulation & Inspection of Social Care (wales) Act 2016	establishes a regulatory regime for care and support services which is consistent with the changes which are being delivered by the Social Services and Well-being Act 2014; defines the meaning of regulated services and standards required of services
Relevant Partners	The partners defined by section 162(4) and section 130(5)(b) of the Social Services and Well Being (Wales) Act.
Service	The Service to be provided in accordance with the terms of the Contract, the Service Specification, Service Conditions and the Person's Care and Support Plan.
Service Location	The place where the Service or any part thereof is to be provided by the Service Provider as specified in the Call-Off Contract or relevant documentation such as the Person's Care and Support Plan.
Significant Carer/ Representative	The individual responsible for the Person(s) or acting on behalf of the Person(s)
Sleep-in	Arrangement between the Commissioner and the Service Providers for Staff to be present generally between 11pm and 7am to support a Person(s) should they need assistance. A sleep-in will normally be considered to include any assistance required with going to bed/rising. Sleep-in Staff are not expected to be awake or woken for long periods during the night. If the Care Worker is woken any time up to a maximum of 2 hours or more than twice during the night, this then becomes a waking night and should be reviewed by the Commissioner(s),unless otherwise specified and agreed.

Specification	The description of the Service to be provided under this Contract.
Staff	All persons employed by the Provider to perform this Contract together with the Provider's employees, agents and sub-contractors used in the performance of this Agreement.
Standard Domiciliary Care	For the purposes of the Framework and Contract, this means person centred, outcome based care and support with or without housing related support provided to Person(s) living in their own home in the community (including personal care traditionally known as 'homecare' or 'home support') to achieve their wellbeing outcomes as detailed in the Service Specification.
Sustainable Development	Means ensuring that our actions contribute to the social, economic and environmental well-being now and in the future, improving the environment, building stronger community, reducing social exclusion and poverty and encouraging the development of the economy.
TUPE Regulations	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as may be amended or modified from time to time.
Waking Night	Where the Care/Support Worker is required to be awake during the night to attend to and provide regular / frequent care and support (which may include support to remain safe and/or personal care tasks) throughout the night.

SCHEDULE 2: SERVICE CONDITIONS

In accordance with the terms of the Contract, the following Service Conditions shall apply with regards to the provision of the Service.

1. INFORMATION GIVEN TO THE SERVICE PROVIDER

1.1. The Service Provider will be given such information as required to perform the Service. This information shall be given with the Person's consent, but where this is not possible, the Significant Carer/Representative shall give permission. The information must be regarded as strictly confidential.

1.2. Wherever possible, information shall be shared with the Person's consent. Where the Person lacks the capacity to consent in relation to the decision in question, a decision will be made by the Commissioner(s) involving the Person's representative (if any) and in accordance with the principles of the Mental Capacity Act 2005.

1.3. The Commissioner(s) shall provide all relevant information to the Service Provider that is necessary for the Service Provider to carry out the Service as identified in the care plan including:

i. List of all equipment required to carry out the Service i.e. hoist, stair- lift or other equipment as identified by the specialist Staff i.e. Occupational Therapist, Speech and Language Therapist, Physiotherapists
   a. If the equipment is available at the Service location
   b. If the equipment is in a workable condition
   c. the name and contact number of the contractor responsible for servicing the equipment, including method for cleaning equipment
ii. Manual handling plans detailing level of staffing and equipment required for any moving & positioning – such as use of hoists, wheelchairs, stand-aids, toilet seat risers etc
iii. Details of other services provided to the Person and name(s) of Service Provider(s)
iv. Any risks to staff, related to family members and / or visitors to the home and / or animals pets at the Person's home
v. Information about other family members that live at the property
vi. Pets at the Person's home
vii. Any hazards and other information relating to the Person's home environment, well-being and behaviour that have been addressed within the Care and Support Plan.

any known factors which may result in disruptive or challenging behaviours or any other factors which may otherwise impact on the Service Provider's ability to provide the service

2. PERSON CENTRED SERVICE PLANNING AND DELIVERY

2.1. The Provider shall meet a range of Service Outcomes which are contributed to and determined by the achievement of outcomes as detailed in their individual Care and Support Plan.

2.2. In delivering the Service, the National Wellbeing Outcomes and Supporting People Outcomes will apply as may be reviewed from time to time (as applicable) detailed below :

National Wellbeing Outcomes:

i) I know and understand what care, support and opportunities are available and use these to help me achieve my well-being
ii) I can access the right information, when I need it, in the way I want it and use this to manage and improve my well-being
iii) I am treated with dignity and respect and treat others the same
iv) My voice is heard and listened to
v) My individual circumstances are considered
vi) I speak for myself and contribute to the decisions that affect my life, or have someone who can do it for me
vii) I am healthy and active and do things to keep myself healthy
viii) I am happy and do the things that make me happy
ix) I get the right care and support, as early as possible
x) I am safe and protected from abuse and neglect
xi) I am supported to protect the people that matter to me from abuse and neglect
xii) I am informed about how to make my concerns known
xiii) I can learn and develop to my full potential
xiv) I do the things that matter to me
xv) I belong
xvi) I contribute to and enjoy safe and healthy relationships
xvii) I engage and make a contribution to my community
xviii) I feel valued in society
xix) I contribute towards my social life and can be with the people that
xx) I choose
xxi) I do not live in poverty
xxii) I am supported to work
xxiii) I get the help I need to grow up and be independent
xxiv) I get care and support through the Welsh language if I want it
xxv) I live in a home that best supports me to achieve my well-being

Supporting People Outcomes:

Promoting Personal and Community Safety

i. Feeling safe
ii. Contributing to the safety and well-being of themselves and of others

Promoting Independence and Control

i. Managing accommodation
ii. Managing relationships
iii. Feeling part of the community

Promoting Economic Progress and Financial Control

i. Managing money
ii. Engaging in education/learning
iii. Engaged in employment/voluntary work

Promoting Health and Wellbeing

i. Physically healthy
ii. Mentally healthy
iii. Leading a healthy and active lifestyle

2.3. Each Person's personal outcomes will be unique to them dependent on their circumstances therefore the Person's Care and Support Plan may not include all of the National Wellbeing Outcomes detailed above all of the time.

2.4. The delivery of personal outcomes will be defined within the Person's Care and Support Plan and may be short-term or long term, dependent on the Service Users individual circumstances.

2.5. The Service Provider shall operate a person centred approach to support planning with the involvement of the Person receiving the Service and/or his/her representative(s). The Service will be flexible and designed in a way that meets the Peron's outcomes, needs and preferences.

2.6. The Service Provider shall ensure that:

i. All Staff have the knowledge and skills required for person centred thinking and approaches
ii. Each Person has a brief summary of what is important to / for them, what people like and admire about them and ideally containing a picture of them (for example a one page profile)
iii. The Service Provider Staff know how to help the Person to have choice and control in their lives
iv. A person centred culture is created within a team
v. Action planning tools and resources are utilised in team meetings, review meetings etc
vi. Policies and procedures are in place that support person-centred processes and materials that focus on enablement, progression and social inclusion

2.7. As part of the support planning process, the Person receiving the Service shall have access to the Service Provider's guide which will at least include (but not limited to) the following information:

i. The ethos of the Service and aims and objectives of the Service Provider
ii. Contact details for the Service Provider including arrangements for out of hours service
iii. Service Provider's complaints procedures
iv. Statement of concerning the Person's confidentiality
v. Access to advocacy services
vi. The Person's rights and responsibilities

2.8. **INDIVIDUAL SERVICE DELIVERY PLAN**

2.9. The Service Provider shall ensure that a Person Centred Service Delivery Plan shall be in place for each Person that identifies, with the involvement of the Person, how the Service will be provided in accordance with the Care and Support Plan requirements and in a format which is meaningful to the Person. The amount of support agreed will be appropriate for the Person to achieve his/her outcomes with regular progress reviews.

2.10. The Care and Support Plan and Service Delivery Plan will be stored in the Person's own home. A copy of the Service Delivery Plan will be submitted by the Service Provider to the Commissioner(s) upon request.

3. CALL(S) / VISIT(S)

3.1. The provision of the Service, when and how the Service shall be provided to meet the Person's required outcomes shall be agreed prior to the commencement of the Service. It is anticipated that this will remain under review as the relationship between the Person, their Carers/ family/neighbours and the Service develops and in response to ongoing review of what matters to the Person receiving the Service and as outcomes are achieved. The Service Provider should ensure that there is effective communication with the Person being supported and their Carers / family regarding planned calls. Calls shall be planned as required to promote the Person's independence moving away from traditional ('time and task') forms of service delivery.
This will require flexibility on behalf of the service and the people receiving support and a positive supportive culture should be developed as a principle of co-producing the Service. The service should have a policy / information in place regarding how it remedies significantly late or missed calls/ visits

3.2. The Service shall be delivered in an efficient and outcome focussed manner, ensuring that Care/Support Workers arrive times within time bands agreed and provide continuity of care and support. in the event that a care/support worker is significantly early / delayed, it is the responsibility of the Service Provider to notify the Person of the expected changes by a telephone call where possible and agree an alternative time of service delivery.

3.3. The ongoing requirements of the hours of support will be subject to monitoring and review by the Care Coordinator in accordance with the Person's needs and the outcomes that are expected to be achieved. The frequency of calls/visits may vary from time to time dependent on the needs of the Person.

3.4. The Service shall focus on improved overall outcomes for individuals supporting the Person to do things for him/herself rather than on the tasks associated with the Person's needs.

3.5. Occasionally the Person may cancel individual calls with the Service Provider. The Service Provider shall ensure that procedures are in place within their organisation for notifying and recording cancellation of such calls/visits.

3.6. During the life of the Contract the Commissioner(s) may promote the use of an electronic care monitoring system. The Service Provider may utilise the Electronic Care Monitoring System for verification of the accuracy of timings though electronic data entry at the time of starting and finishing the Service by Care/Support Workers. Where this is intended there will be full consultation and agreement with Service Providers. Any Service Provider wishing to implement their own electronic call monitoring system should discuss their intention with the Commissioner(s) and provide assurance that such a system shall enable Staff to focus on quality of service delivery.

4. PROMOTING APPROPRIATE BEHAVIOUR & POSITIVE BEHAVIOUR SUPPORT

4.1. All parties should adhere to the North Wales 'Promoting Appropriate Behaviour Policy'. This policy is a positive step to creating a safer working environment for employees where appropriate behaviour from individuals using services is promoted and raises awareness of what is inappropriate behaviour and how any incidents of such will be managed.
In the event that the Person receiving the Service presents behaviour which challenges the worker/s or the service, the Service Provider shall work as part of the Multi-Disciplinary Team (MDT) and guided by the Social Worker / health professional use appropriate models of support e.g. Positive Behavioral Support and/or Active Support.

4.2. Wherever possible, information should be shared with the consent of the Person. Where the Person lacks capacity to consent in relation to the decision in question, a decision will be made by the Commissioner(s) involving the Person's representative and in accordance with the principles of the Mental Capacity Act 2005.

4.3. Where the Person presents behaviour that challenges, it is essential that the Service Provider working with the MDT undertakes a Multi Disciplinary risk assessment. The risk assessment will evaluate any potential for harm to the Person, the public, the Staff and identify risk reduction measures. The risk assessment will be regularly reviewed and updated.

4.4. Devising behavior support plans is the role of the MDT which includes the Service Provider. All incidences of challenging behaviour should be recorded in the given recording methods (e.g. ABC charts) to allow for periodic service review (potential triggers, description of the behaviour itself, who was involved and what happened in response to the behaviour) in addition, where appropriate, to standard accident & incident records where there is any injury, property damage etc Records should be shared with the Multidisciplinary Team

4.5. All Staff supporting people with complex and/or challenging behaviour (including people with mental health issues / dementia) should be appropriately trained and skilled for example understanding Positive Behaviour Support, and/or Active Support and using positive behaviour management techniques where required.. Individual debriefing and support will be available for the person and any staff following incidents.

5. ASSISTIVE TECHNOLOGY, EQUPMENT AND MATERIALS

5.1. The Service Provider shall identify opportunities to increase independence through the introduction of technology.

5.2. The Service Provider shall respond to individual alarms and sensors where installed as part of a specialist Assistive Technology package e.g. bed sensors, falls monitor etc.

5.3. The Service Provider shall have a level of understanding and competency in the use technology and equipment including specialist equipment and technology e.g. hoists, slings, pressure relieving mattresses, iPad, mini pads etc and Staff will be expected to be competent in its use where this is required as part of their service delivery.

5.4. Care/Support Workers shall operate the equipment that is indicated for such use in the Person's individual Care and Support Plan. Where the Person, or his/her representative, expressly refuses to use the equipment or the equipment is not available in the Person's premises, the Commissioner(s) shall be informed.

5.5. The Service Provider shall assist in maintaining in a safe, serviceable and clean condition and replacing as necessary all equipment as necessary used by the Person.

5.6. At the end of the Service or upon earlier termination of the Call-Off Contract as appropriate, the Service Provider shall leave the service setting and all materials and equipment belonging to the Commissioner and the Person in a secure, safe, serviceable and clean condition.

5.7. Insofar as the services include the cleaning of equipment, it shall be the duty of the Service Provider well and properly to clean such equipment to the entire satisfaction of the Named Designated Representative, insofar as may be necessary, it shall be the duty of the Service Provider at the beginning of the Contract Period to clean such equipment to a state which conforms to such standards.

6. HEALTH AND SAFETY

6.1. Further to the terms and conditions of the Contract, the Service Provider shall:

6.1.1. Provide the Social Worker or any relevant appointed Officer of the Social Services Department with copies of any incident forms within two working days of the incident occurring.

6.1.2. Ensure that all employees are competent to carry out the tasks required of them, providing training and information to Staff where necessary in accordance with this Service Specification and in particular ensuring that:

i. Staff have undertaken as a minimum the All-Wales Manual Handling Passport (2 day) training where they are required to provide manual handling as part of the Service and complete appropriate training modules in accordance with any specific / individual manual handling plans.

ii. Prior to administering medication, Staff have undertaken the medication training provided by BCUHB, which follows the administration of medication policy agreed between the Commissioner(s) and BCUHB.

iii. Staff are trained in responding effectively to incidences of inappropriate behaviour (see N Wales policy), violence and/or aggression and challenging behaviour where required

In addition the following is applicable for Phase 4

i. a fire safety risk assessment is in place and Staff follow a fire plan which details checks and procedures to be carried out.
ii. systems are in place to ensure the safety of the premises and equipment in it, through a regular programmed checks and maintenance.

6.2. Care/Support Workers who are unwell, and/or have infectious illnesses such as influenza, should not work with the Person until symptoms have passed. It is the responsibility of the Service Provider to provide alternative cover. The Service Provider shall have in place a Business Continuity Plan, o policy of promoting staff vaccination and shall adhere to a sickness policy.

7. RISK ASSESSMENT MANAGEMENT

7.1. The Service Provider shall in compliance with the Management of Health and Safety at Work Regulations, assess the risks to Staff and make arrangement for their health and safety by effective planning, organisation, monitoring and review arrangements.

7.2. The Service Provider shall operate a risk assessment system which ensures all risks presented within the Service are clearly documented, evaluated and managed. The Risk Assessments will be regularly updated and checked for accuracy and relevance. Copies of the Risk Assessments will be provided to the Commissioner(s).

7.3. The Service Provider will be responsible for the completion of the risk assessment supported by the Multidisciplinary Team.

7.4. The Service Provider will liaise with the Housing Association relating to health and safety and risk management issues, which are pertinent to the safe operation of the Scheme.

8. DEPRVIATION OF LIBERTY SAFEGUARDS

8.1. In accordance with the Mental Capacity Act 2005, the Commissioner(s) and the Service Provider will always assume that the Person has capacity to make day to day decisions unless there is clear evidence to the contrary.

8.2. The Commissioner(s) and Service Provider shall act in accordance with the Mental Capacity Act 2005 including Deprivation of Liberty Safeguards.

8.3. The Service Provider must inform the Commissioner if there appears to be significant changes or ongoing concerns about a Person’s mental capacity.

8.4. The Commissioner(s) shall ensure that there is a current authorisation from the Court of Protection in place in respect of a Person in circumstances where, without the authorisation, the Person would be suffering a deprivation of his/her liberty.

8.5. The Service Provider shall notify the Commissioner(s) immediately where there are any changes in the Person's circumstances and the delivery of the Service which may result in the Person being deprived of his liberty.

9. MEDICATION

9.1. The Service Provider shall observe the Commissioner(s)' medication policy **"***BCUHB Pharmacy and Medicines Management Standard Operating Procedure (SOP) for medicines management in Domiciliary Settings in North Wales"* http://www.wales.nhs.uk/sitesplus/861/page/93220
The Service Provider shall work in partnership with the Commissioners to implement the policy and procedures; ensuring that Staff are fully trained and competent in regards to any medicines management activities specified in assessments / care & support plans.. Clear policies shall be in place for the record keeping of the administration of medication should be following by Staff at all times.

10. MANUAL HANDLING

10.1. All Staff where the Care and Support Plan identifies a moving and handling need, shall have completed the "All Wales Moving and Handling Passport" or equivalent standard training prior to delivering the Service. The Service Provider shall ensure that specific Passport modules are completed to ensure competence with safe use of equipment detailed within individual manual handling plan/s and that refresher training is provided to relevant Staff on an annual basis after completion of the initial training.

10.2. If there are any specialist Manual Handling procedures (advised by specialist NHS Staff – physio, SALT, OT etc), these will comply with BCUHB guidance in relation to Manual Handling (i.e. for specialist equipment, bed bound). This guidance should be provided by BCUHB when the Service is commissioned and additional training organised as required.

11. MONETARY AFFAIRS

11.1. The Service Provider shall have policies and procedures in place to safeguard Care/Support Workers who have access to the Person's money to include written protocols for Care/Support Workers dealing with the handling of the Person's money and the receipt of gifts from the Person. These policies, procedures and protocols must be communicated to all Staff members and the Person.

11.2. The Service Provider shall request a Review of Service meeting if the Person appears to be or is becoming incapable of managing his/her financial affairs and there is no representative with lawful authority to do so on the Person's behalf.

11.3. Care/Support Workers shall not manage any money belonging to the Person unless this has been identified in the Care and Support Plan. In these circumstances the Care/Support Worker shall make an individual separate financial record for each Person and provide a form of receipt for the Person.

The record should be located in the Person's own home and receipts should be provided. Receipts and any remaining monies should be reconciled in writing and, where appropriate, be countersigned by the Person or the Significant Carer/Representative.

11.4. Care/Support Workers shall not keep in their possession the Person's pension credit/debit cards, store cards, loyalty cards, savings accounts pass books or other benefit cards or any other means of accessing the Person's monies other than when the collection of the Person's pension/benefits/savings has been identified as an appropriate activity by the parties. The Care/Support Worker shall only have the pension card when actually engaged in collecting the pension. Care/Support Workers must return the card to the Person or to the individual identified in the Care and Support Plan with responsibility for the Person's monetary affairs.

11.5. The Service Provider or its Staff shall not act as witnesses or appointee to the Person's Will and shall not become an executor of a Person's Will.

12. END OF LIFE

12.1. The Service Provider shall acknowledge and inform the Commissioner(s) if the Person's need change and engage in multidisciplinary discussions between health and social care professionals surrounding the end of life needs of a Person.

12.2. The Service Provider shall ensure there is a regularly updated policy and procedure for supporting people at the end of life, including End of Life Pathways and Do Not Attempt Resuscitation agreements.

12.3. The Service Provider should be mindful that any surviving partner or co-tenant may require additional support following the death of the Person. Any ongoing needs in such circumstances will be referred to the Commissioner(s) to ensure an appropriate assessment of need is carried out.

12.4. The Service Provider will have a supporting mechanism in place to provide counselling to their own Staff where required.

13. TRANSPORT

13.1. Where a Care and Support Plan requires transport to be provided, the Service Provider shall ensure that any transport provided is:

i) appropriate to the Person's needs and in line with their outcomes
ii) operated by an individual holding a valid driving licence relating to the type of Service being provided
iii) has in force and maintains appropriate current motor vehicle insurance which is adequate for the type of use being made
iv) has personal seat belts or wheelchair restraints which conform to the relevant British Standard or European equivalent which are used by the drive and passenger/s at all times
v) maintained in a roadworthy condition and complies with all current Road Traffic Act requirements
vi) driven in a safe and considerate manner by a driver who is not under the influence of any drug, medication or alcohol which may affect his ability to drive

14. RECORDS

14.1. The Person's rights and best interests will be safeguarded by the Service Provider's record keeping policies and procedures.

14.2. It is the Service Provider's responsibility to ensure that all records relating to the Person are up to date, recorded accurately, respectfully and stored safely. These are the property of the Person and shall not be removed from his/her home. The records will be available for inspection by the Social Worker/ Named Designated Officer.

14.3. The Service Provider shall maintain clearly legible, factual and accurate timesheets as a record of actual times of service delivery by individual Care/Support Workers which will be duly signed by the Person (or where agreed, the Person's representative). Any such timesheets shall provide a verification of the Service provided and will be made available by the Service Provider to the Commissioner upon request without any delay.

15. COMMUNICATION SYSTEMS/DIARIES/HEALTH RECORDS

15.1. Where applicable, a travelling communication system will be applicable where another Service Provider may be involved, i.e. day care and the Person's ability to communicate his/her wishes are compromised.

15.2. Assessments, care plans and health related records prepared by BCUHB or as part of an MDT Team shall be followed appropriately and stored securely within the Scheme. Records must be made available to the allocated Community Nurse/Speech and Language Therapist or other professional on request and his/her advice followed. Where the Person requires assistance with medication in accordance with the Care and Support Plan requirements, the Service Provider shall follow the procedures for recording in accordance with the medication policy.

15.3. In the event that the Service Provider requires additional training to perform the service relating to any enhanced health needs (Enhanced Domiciliary Care) of the Person, the Service Provider shall receive the relevant training from the Health Board and have a record of training undertaken in respect of each Care/Support Worker, including a date of refresher training to be undertaken and competency of Staff signed off by the BCUHB prior to the service being provided.

15.4. It is an essential requirement of this Contract that the Service Provider monitors and records the Person's specific health needs and / or, challenging behaviours in accordance with methods advised by the MDT. Failure to maintain such records will be a failure to achieve the required Contract standard.

15.5. A person centred appointment diary will be kept dependent on the Person's communication needs. This may be a paper diary, iPad, calendar, using pictures, photographs etc. The Person will be enabled to be an active participant in the recordings of this diary.

16. NOTIFIABLE EVENTS

16.1. The Service Provider shall inform the Commissioner(s) immediately or at least within two working days if a notifiable event occurs. Notifiable events include:

i) A formal complaint made by the Person, Care/Support Worker or other person;
ii) A safeguarding concern occurs or is alleged;
iii) A serious accident to the Person, for example a fall;
iv) A significant change in the Person's mental or physical condition;
v) Admission to hospital
vi) Person's absence from the Service Location
vii) Other incident as detailed in the Regulation 26 of the Domiciliary Care (Wales) Regulations 2004, the Regulation and Inspection Social Care (Wales) Bill as amended from time to time

17. REVIEW OF SERVICE MEETING

17.1. In accordance with the Contract terms, a change in the Person's needs may necessitate an increase or decrease of the Service required by the Service Provider as agreed at the Review of Service meeting between the Service Provider and the Commissioner(s).

17.2. The Service Provider shall ensure that staffing levels allow for some flexibility to accommodate minor changes and fluctuations in need. Longer term or more substantial changes in needs should be notified to the Social Worker who will undertake a review at the earliest opportunity.

17.3. The Service Provider shall ensure the Service is provided flexibly within the Service hours agreed in the Service Delivery Plan. From time to time this may require adjusting the staffing rotas to accommodate to the Person's needs and circumstances, maximising their opportunities as far as possible.

17.3.1. It is envisaged that Care/Support Workers, recruited to provide the specified service hours will undertake as part of their working day hours, support duties that enable the Person to access activities as required.

17.3.2. Where the Person is supported by another Service Provider e.g. Day Service/Opportunity or Workplace, the Service Provider must ensure that there is sufficient flexibility within the staffing arrangements to accommodate those situation where for whatever reason the Person is not able to access the service (e.g. external day service), including sickness attendance at appointments and planned or unplanned closures to day services or choice to stay at home.

17.3.3. In the event that the Person attends day opportunities independently without Staff support, the Service Provider shall agree with the Commissioner(s) whether or not there is an eligible need for services when day opportunities are not available e.g. bank holidays.

18. REGISTRATION WITH THE FINANCIAL CONDUCT AUTHORITY

18.1. The parties acknowledge that the Person shall utilise support services in their community as and when required, however in the event that an agreement is reached and the Service Provider is required to provide independent budgeting and debt counselling services as detailed in the Person's Care and Support, the Service Provider must register with the Financial Conduct Authority in order to ensure that the Service is provided within the legal parameters for the provision of financial information and support.

18.2. In accordance with the terms of the Contract, the Service Provider shall indemnify the Commissioner(s) against any and all claims that may be made in relation to the provision of financial advice to the Person as part of their Care and Support Plan.

18.3. The Service Provider shall maintain adequate records regarding the provision of financial advice set out in clause 18.1 and 18.2 above as the Commissioner(s) may reasonable require for reviewing and performance monitoring purposes (performance indicators and outcome monitoring data) to enable the Commissioner(s) to submit to the Welsh Government any information or data required. In specifying the information to be compiled and maintained for this purpose, the Commissioner(s) will have regard to any directions or guidance which the Welsh Assembly Government may issue relating to the form and extent of such information.

19. QUALITY ASSURANCE

19.1. The Service Provider shall have a Quality Assurance System in place to monitor and evaluate the standards and quality of services provided which will involve the Person and partner agencies as appropriate.

19.2. The Service Provider's quality assurance system will take account of (but not be limited to) CIW and Commissioners' Quality Monitoring requirements and:

- Feedback from the Person receiving the Service (audited annually) including evaluation of complaints and compliments received
- Views of family, friends and other stakeholders sought
- Measurement of outcomes achieved and learning from person centred practices used
- Care and Social Services Inspectorate reports / notices
- Contract Monitoring reports / action plans
- Periodic review of policies, procedures and practices
- Evaluation of the skills, competency and conduct of Staff
- Learning from any accidents / incidents or near misses

19.3 Without limitation to the Service Provider(s) rights the Commissioner(s) may at a future date, unilaterally amend, alter or enhance the Specification, if such changes are, in the Commissioner's opinion required because of changes directed by or arising from actions of the Welsh Government or National Government or because of changes in law.

20. MONITORING AND REVIEW

20.1. The Commissioner(s)' monitoring arrangements regarding the quality of the service(s) it has secured may be (although not limited to) through the following methods:

- Annual Service Provider Review meetings
- Planned or unplanned monitoring visits undertaken by the Commissioner's Monitoring Officers
- Quality management activities and continuous improvement in accordance with the Commissioner's Service Outcomes Measurement Framework agreed with the Service Provider during the term of the Contract and the Framework Agreement
- Individual annual statutory review meetings undertaken by Social Workers/Health Professionals where applicable
- Feedback from stakeholders on the quality of the service for example through quality monitoring questionnaires, sampling etc.
- An examination of written records, reports, logs and other written materials by Staff on the standards of service(s) being supplied.
- Staff rotas, timesheets, training records, accident and incident logs and other relevant record and other documents held or compiled by the Service Provider in relation to the provision of the Service, except where it conflicts with any over-riding duty of confidentiality
- Examination of the Service Provider's policies and procedures.
- Examination of compliment and complaints received by the Service Provider.
- Inspection reports undertaken by the Care and Social Services Inspectorate for Wales including details of compliance and enforcement notifications
- Observation of the service delivery

Policy and Procedures / Relevant Document Assessment Guide

The following information is requested as it will be used to measure that the content of your Policies and procedures meet the minimum requirements required for Providers providing a service for resident in North Wales. Please note you may be required to implement other policies and procedures as legislation or good practice dictates.
To help reduce the length of the monitoring visit, please have the policies and procedures noted below available as a random selection will be made. You may use the checklist below to identify that your Organisation has the following:

POLICY/PROCEDURE	YES	NO	Review Date
Statement of Purpose **(content adheres to the requirements as dictated by the Regulation and Inspection of Social Care (Wales) Act 2016)**			
Service Delivery Plan			
Service User Guide			
Service User Records			
Business Continuity Plan			
Dignity and Respect Policy			
Infection Prevention & Control Policy			
Welsh Language (Active Offer) Policy			
Risk Assessment Procedures & Blank Risk Assessment form			
Equality and Diversity / Equal Opportunities Policy			
Staff Supervision and Appraisal Policy			
Disciplinary Procedures			
Out of Hours Policy / Procedure			
Lone Working Policy			
Training Plan / Matrix			
Confidentiality Policy			
Moving and Handling Policy			
Health and Safety Policy			
Food and Hygiene Policy			
Recruitment & Selection Policy			
Confidentiality and Data Protection Policy and Procedure			
Complaints Procedure for staff and service users			
Policy or procedure on service user keys and/or key safes			
Procedure for Handling Service User monies			
Whistle blowing policy and procedure			
Positive Approaches to Challenging Behaviour			
Safeguarding of Vulnerable Adults			
Policy on Administration of Medication / Storage of Medication			
Policy on the use of Social Media			
Policy on Receiving Gifts			
Blank Employment Contract			
Missed or late calls policy			
Working Time Regulations (1998) Policy / Opt out clause			
Staff Smoking and Alcohol Policy			
Quality Assurance and Internal Audit Plans / Policy			
Management of Work Related Stress Policy			
Electronic Communications Policy (Code of Practice)			
Staff Sickness , Absence and Time-Keeping Policies			
Staff Hand Book / Policy / Guidance			
Court of Protection Deprivation of Liberty Application (**for Supported Living settings)**			

SCHEDULE 3 : NOTIFICATION OF ABSENCE/CHANGE OF CIRCUMSTANCE FORM

SPECIMEN COPY

NOTIFICATION OF ABSENCE FORM

(This form is a sample only and may be subject to change by the Purchaser)

The purpose of this generic form (used by both parties) is to notify the Purchaser/Provider of the Service User's planned/unplanned absence from the service location in accordance with the terms and conditions of the North Wales Domiciliary Care Agreement.

Faxed to the: Customer Care Team: 01492 583890 or by email on cco@conwy.gov.uk in respect of Learning Disability, Older People, People with Physical Disability Service Users
Faxed to the: Case Management Team at Roslin (01492 535034), Nant y Glyn (01492 872 295) for mental health services

Basic Information:

Service User's Name:..... Reference Number .....

Name of Service Provider:.....

Name of Care Manager/Care Co-ordinator:.....

Unplanned Service User's absence from the service location:

- ❑ Hospital admittance Date ..... Admitted to:.....
- ❑ Respite Date ..... Details .....
- ❑ Holiday Date ..... Details .....
- ❑ Other, please Specify.....
  .....

Expected length of stay or date of return .....

Comments and additional information:

_____

_____

Planned Service User's absence from the service location:

Reason for absence	Date of suspension of service	Date of re-commencement of service
❑ Hospital admittance	Planned date	Date .....
❑ Respite	Planned date	Date .....
❑ Holiday	Planned date	Date .....

- ❑ Other, please Specify.....
  .....

Comments and additional information:

_____

_____

_____

Completed by the: **Provider** ❑ **Purchaser** ❑ *(please tick accordingly)*
Notification of absence signed and dated:

Name:..... Position::..... Date:.....

SCHEDULE 4

CARE AND SUPPORT PLAN (SPECIMEN COPY)

Care & Support Co-ordination details:

Co-ordination undertaken by:		Contact details:	
Date assessment / s completed:			
If needs change, please contact:			

Consent & Agreement:

Information recorded in your assessment/s and care and support plan may be shared with others involved in your care.

This will help them understand what matters to you and how they can support you to achieve your wellbeing outcomes.

Agreement to Care & Support Plan and Consent to Share Information: (tick as appropriate)	
☐ I agree to this Care and Support Plan. If declined, please state reasons:	
☐ I agree the information recorded in this care and support plan is accurate (including differing views of practitioner and person, family etc)	
(☐) I agree that the information contained in this plan may be shared with other health & social care practitioners and key agencies as appropriate, in order to provide care and support for me.	
(☐) There is specific information I do not want to share and /or agencies/individuals I do not want information to be shared with. I understand that my care & support may be affected by not sharing information. *Do not share the following information:* *Agencies / persons not to receive information about me:*	
Signed:	Date:
Signed (Family / Friends / Carer agreeing to provide support):	Date:

Useful Contacts & information				
	Name	**Preferred (agreed) contact/s**		**Relationship to person supported**
Main Carer				
Next of Kin				
Emergency contact				
Key Holder				
Advocate / Attorney				
	Name	**Office address**	**Telephone**	**Email**
Social Worker				
District Nurse				
GP				
Pharmacist				
Occupational Therapist				
Physiotherapist				
Other plans in place, e.g. care and treatment plans				

Contingency arrangements – arrangements in event of an emergency, where no access can be gained, or if for any reason care & support can't be delivered. (Who should be contacted, how best to contact them in emergency - agreed contact details)

Community Alarm ☐ YES ☐ NO Key-safe: ☐ YES ☐ NO Carer has emergency card / bracelet: ☐ YES ☐ NO

Moving & handling requirements:

None ☐ Transfers only ☐ Manual hoist ☐ Ceiling Track hoist ☐ Separate assessment / plan provided: ☐ YES ☐ NO

Medication Administration:

Self ☐ Carer / Family / Friend ☐ Nurse ☐ Care Agency / Care Home ☐

Personal outcome/s to be achieved:	
Aspect of wellbeing:	Being informed ☐ Getting care & support through the Welsh language ☐ Living in the right home ☐ Getting help to be independent ☐ Being healthy and active ☐ Being happy ☐ Being supported to work ☐ Being safe ☐ Being protected from abuse and neglect ☐ Learning & Developing ☐ Having a social life ☐ Achieving potential ☐ Doing the things that matter ☐ Engaging and participating ☐ Not living in poverty ☐ Being valued in society ☐ Belonging ☐ Having safe and healthy relationships ☐

Baseline self-assessment measure (1-10): **Goal (1-10):** **Assessor agrees with score:** ☐ **Yes** ☐ **No Reason:**

Outcome achieved when *(in person's own words, describing what a good outcome would look / feel like):*

Who will support outcome achievement:	**What will they do, when & how often:**	**Start date:**
[Name of person supported]		
[Carer / Family / Friend of person supported]		
[Name of Lead Practitioner]		
[Name of Community Service - statutory or third Sector such as Employment Service or Lunch club]		
[Name & title of practitioner e.g. Nurse, OT] [Name of Employer e.g. Council, HB]		
[Name & title of practitioner e.g. Nurse, OT] [Name of Employer e.g. Council, HB]		
[Name of Care & Support Provider]		

Risks or barriers to achieving this outcome (including the reasons and date person has refused a care and support plan):

Your Life, Your Way - Care & Support review arrangements

Our approach to re-assessment of your needs and review of care & support plans and arrangements:

- You may request a re-assessment if your circumstances have changed in a way that affects your care & support plan
- A review of the care & support plan will include measurements of how close you are to achieving the personal outcomes identified within the 'what matters' conversation/s and specialist assessments.

Review Agreement (How and when we have agreed to review achievement of your personal outcomes and the quality of your care & support)	
Date / timescale for a planned review (where appropriate)	

Outcome of any Adult at Risk Enquiries

Is this Care & Support Plan informed by Adult at Risk Enquiries

☐ **Yes**

☐ **No**

If Yes, the conclusion of the enquiries is:

If this care and support plan has been developed without consent, please state reasons why:

Financial contributions				
How will you chose to receive your funding allocation?	☐ **Direct Payment to me** ☐ **Paid directly to Care & Support Provider/s (I have been offered a Direct Payment and have declined)** My reason for declining a Direct Payment: ☐ **Mixture of Direct Payment and Care & Support**			
Contributors:	**Amounts payable (weekly):**	**Date to commence:**	**Payment / collection method**	**Signed / Agreed by:**
[Name of person being supported]	**£**		Following Financial Assessment. Payment on receipt of [4 weekly] invoice	Name:
Council (Social Services)	**£**		Paid directly to Care & Support Provider/s	Name:
Council (Social Services)	**£**		[e.g. 4 weekly] Direct Payment	Name:
Health Board (Continuing NHS Care)	**£**			Name:
[Other] *	**£**			Name:
What is the total weekly cost of this Care & Support Plan?			**£**	
Where there is a joint funding agreement between Local Authority & Health Board – agreed percentage of funding is: LA = % HB = %				

* Where the person is to be accommodated in a care home where there is an additional cost, an Additional Cost Agreement must be completed with the person agreeing to pay the additional cost.

SCHEDULE 5: PAYMENT PROCEDURES

1. Payment requirements (Phases 1,2 3 and 4)

1.1. The Commissioner(s) shall pay the Service Price from the date and for the period specific in the Call-Off Contract at:

1.1.1. At the Rate set out in the Pricing Matrix of the Framework Agreement or;

1.1.2. At the Tender Price following a mini tender/competition.

1.2. Payments will be made in arrears, within 28 days of the date of the receipt of the invoice by the Commissioner(s).

1.3. Within 14 days of receipt of the Service Provider's invoice, the Commissioner(s) may request further proof of any item or items from the Service Provider. Where and invoice has to be revised, the 28 days will run from the date of receipt of the revised invoice.

1.4. The payment method is by using the Bankers Automated Clearing System (BACS) upon submission of invoices, a prompt remittance will be sent to confirm each BACS payment date.

1.5. Payments will be made for the hours or part hours during which the service is delivered in accordance with the Call-Off Contract.

1.6. Payments for other services, including mileage, if applicable and agreed within the Care and Support Plan/Service Delivery Plan, will be at the rate detailed in the Call-Off Contract.

1.7. Payments for travelling to and from the Person's home shall be deemed to be included within the hourly rate and no additional payment will be made by the Commissioner(s) for travelling, unless otherwise requested and agreed in writing between the Commissioner(s) and the Service Provider.

1.8. Where partial hour services including quarter hour, half hour or three quarter hour calls have been commissioned separately by the Commissioners, but the actual services are delivered by the Service Provider consecutively, payment will be made by the Commissioner(s) to the Service Provider at the combined unit cost rather than the individual rates for partial hour calls/services.

1.9. All sums payable under this Contract, unless otherwise stated, are exclusive to VAT and other duties or taxes.

2. Invoicing requirements (Phases 1,2 and 3)

2.1. All invoices must comply with all the requirements of both, the Commissioner(s) and HM Customs and Excise.

2.2. Invoices in respect of a Call-Off Contract applicable for Phases 1, 2 & 3 shall be submitted as follows:

Commissioning Party	Frequency of submission of invoices
Anglesey	weekly by post or email within 10 working days at the end of the week to which they relate
Conwy County Borough Council	weekly by post or email within 10 working days at the end of the week to which they relate
Denbighshire County Council	weekly for the period Sunday to Saturday and within 10 working days of the end of the week to which they relate
Flintshire County Council	weekly by post or email and should be for the period Sunday to Saturday (i.e. midnight Saturday to midnight the following Saturday) and within 5 working days of the end of the week to which they relate
Gwynedd County Council	Submitted on a calendar monthly basis
Wrexham County Council	weekly by post or email within 10 working days at the end of the week to which they relate
BCUHB (where applicable)	weekly by post or email within 10 working days at the end of the week to which they relate

2.3. The Commissioner(s) may be introducing e-invoicing during the term of this Agreement. Any additional arrangements in relation to e-invoicing will be confirmed to the Service Provider in writing when applicable.

2.4. The Provider shall provide a fully itemised invoice to the Commissioner(s) indicating clearly the period they cover, including the following information (**unless otherwise requested by the Commissioner(s) in writing)**::

i) Invoice made out to the Commissioning Party above
ii) Provider details
iii) Invoice Number
iv) Date of invoice
v) Person's Name, Reference Number, Address
vi) Week ending date
vii) Actual Care Hours worked
viii) Hourly rate
ix) Actual Number of Sleep-ins
x) Sleep-in rate
xi) Additional Care Plan Mileage (as applicable)
xii) Total amount claimed
xiii) Reductions / rebates for any calls
xiv) Retained in accordance with the Call-Off Contract
xv) Any other information

2.5. The Service Provider shall ensure that all relevant supporting documentation is attached to the invoice where additional authorised expenses are claimed.

2.6. Individual invoices must comply with the requirements of a tax invoice and in order to prevent error, duplication and fraud.

2.7. Where a Service Provider, elects to issue electronic invoices, they must be received as an attachment via e-mail in a pdf format.

2.8. Invoices should be forwarded to the Commissioner's address by post or electronically.

3. Invoicing requirements (Phase 4)

3.1. All invoices must comply with all the requirements of both, the Commissioner(s) and HM Customs and Excise.

3.2. Invoices in respect of a Call-Off Contract applicable for Phase 4 shall be submitted as follows

Commissioning Party	**Frequency of submission of invoices**
Anglesey	To be confirmed
Conwy County Borough Council and BCUHB	On a monthly basis equating one twelfth of the annual value and Call-Off Contract unless otherwise agreed between the Commissioner(s) and the Service Provider.
Denbighshire County Council and BCUHB	Four weekly
Flintshire County Council and BCUHB	To be confirmed
Gwynedd County Council and BCUHB	
Wrexham County Council and BCUHB	
BCUHB (where applicable)	

3.3. The Service Provider shall provide a fully itemised invoice to the Commissioner(s) the following information (**unless otherwise requested by the Commissioner(s) in writing)**:

i) Invoice made out to the Commissioners
ii) Provider details including name and address
iii) Invoice number
iv) Date of invoice
v) Person's name or reference number, address the service relates to
vi) Period for which it applies
vii) Actual service provided
viii) Hourly rate applicable

ix) Actual Sleep-in service provided
x) Additional Care Plan Mileage (if applicable)
xi) Total amount claimed
xii) Retainer (if applicable) in accordance with the Call-Off Contract
xiii) Any other information

3.4. The Service Provider shall ensure that all relevant supporting documentation is attached to the invoice where additional authorised expenses are claimed.

3.5. Individual invoices must comply with the requirements of a tax invoice and in order to prevent error, duplication and fraud.

3.6. Where a Service Provider, elects to issue electronic invoices, they must be received as an attachment via e-mail in a pdf format.

3.7. Invoices should be forwarded to the Commissioner's address by post or electronically.

SCHEDULE 6: SERVICE VARIATION PROCEDURES

(*These procedures are to be read in conjunction with clause 45 of the Call Off Contract Terms and Conditions for the Provision of Domiciliary Care Services)*

SERVICE VARIATION – SERVICES UNDER PHASES 1,2 & 3:

1 Permitted variances (Phases 1, 2 and 3)

1.1 In exceptional circumstances variation to the Service by the Service Provider can be permitted on a short term basis for up to a maximum of 4 weeks up and to a maximum of five percent (5%) of the Service set out in the Call-Off Contract per week. The Service Provider is required to notify the Commissioner(s) where an increase to the Service has been applied due to unforeseen exceptional circumstances.

1.2 The Service Provider is not permitted to vary services on a long term or permanent basis. The Service Provider shall notify the Commissioner(s) in the 2nd concurrent occurrence where the Service Provider is required to increase the Service and request a Review of Service Meeting in accordance with the Service Conditions (Schedule 2).

2 Outside permitted variances (Phases 1,2 & 3)

2.1 Following a Review of Service Meeting, the situation may arise whereby the Service Provider has a need to negotiate with the Commissioner(s) a change to the current Service. Where this is the case, the Commissioner(s) may authorise the Service Provider to provide more or a less Service accordingly.

2.2 Where any more or less Service is to be provided, they shall be recorded by the Commissioner(s) by issuing a new Call-Off Contract or a variation to the Call-Off Contract which should include details of:

- The changes to the Services in question (more or less Service)
- The period or periods for which the more/less Service is to be provided
- By whom the Service is to be provided
- Any payment to be made for such more/less Service

2.3 In the event of the Service Provider not being able to contact the Commissioner(s) during normal office hours and in the reasonable opinion of the Service Provider, an emergency situation exists involving danger to the Person's life, property or well-being, it is in the power of the Service Provider to address and remove or minimise by an increase in the, the Service Provider shall have authority to so increase the Service provision for a period not exceeding 48 hours (96 hours for bank holiday weekends only) without the necessity of written approval of the Commissioner(s). The Commissioner(s) shall pay all reasonable charges thereby incurred at the current rates or such other rates as may be agreed between the parties on the basis that the Service Provider shall demonstrate:

i) Reasonableness
ii) Inability to contact Commissioner(s) earlier
iii) Contact the Commissioner(s) at the first opportunity and in any case within 48 hours (96 hours maximum for bank holiday weekends only).

2.5 If the variation to care Service identified in accordance with this Schedule needs to continue, a new Care and Support Plan may need to be completed by the Commissioner(s) and shall be supplied to the Service Provider within 5 working days of the date the variation was agreed.

SERVICE VARIATION – SERVICES UNDER PHASE 4:

To be advised

SCHEDULE 7: ADULT SAFEGUARDING

North Wales Adult Safeguarding Report

This form is to be used when there is reasonable cause to suspect that a person is an Adult at Risk. (Please ensure that you have the correct version of this report as it is subject to change: please see – http://www.northwalessafeguardingboard.wales/new-north-wales-adults-safeguarding-report-form/)

IF YOU THINK A CRIME HAS BEEN COMMITTED – CONTACT THE POLICE

Please send this form for the URGENT attention of **ONE** of the following: -

The Conwy Customer Access Team:	wellbeing@conwy.gov.uk
The Wrexham Initial Response Team:	irt@wrexham.gov.uk
The First Contact Team, Flintshire:	ssduty@flintshire.gov.uk
Gwynedd's Adult Advice and Assessment Team:	cynghoriasesuoedolion@gwynedd.llyw.cymru
Denbighshire SPOA Group:	spoagroup@denbighshire.gov.uk
Anglesey - The Adult Services Duty Team:	asduty@ynysmon.gov.uk
Betsi Cadwaladr University Health Board:	BCU.AdultSafeguarding@wales.nhs.uk

SCHEDULE 8: SAFEGUARDING CHILDREN AND YOUNG PEOPLE

Making a referral to Social Services (Children and Family Services): Inter-agency Referral Form

(Please ensure that you have the correct version of this report as it is subject to change: https://www.denbighshire.gov.uk/en/resident/health-and-social-care/children-young-people-and-families/report-a-child-at-risk.aspx

please also see – http://www.northwalessafeguardingboard.wales/)

SCHEDULE 9 DATA PROTECTION PROVISIONS

The following definitions shall apply to this Schedule 9:

Certified Data Wiping	means data destruction through a service that can certify that data held on information technology systems (including hard disk drives and/or other digital media) has been wiped.
Data Controller	has the meaning as set out in the Data Protection Legislation.
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement;
Data Processor	has the meaning as set out in the Data Protection Legislation.
Data Protection Impact Assessment	an assessment by the Commissioner(s) of the impact of the envisaged processing on the protection of Personal Data;
Data Protection Legislation	means the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003,the General Data Protection Regulation and the Law Enforcement Directive in so far as it relates to the processing of data and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice is sued by the Information Commissioner;
Data Subject	means any living person who is the subject of Personal Data as defined in the DPA.
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data.
DPA	means the Data Protection Act 1998 and (ii) the Data Protection Act 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy.
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
Law	means any applicable Act of Parliament, subordinate 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, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply;

LED	means the Law Enforcement Directive (Directive (EU) 2016/680);
Personal Data	shall have the same meaning as set out in the DPA and relates only to personal data, or any part of such personal data, of which the Commissioner (s) is the Data Controller and in relation to which the Service Provider is providing the Services under this Agreement.
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;
Regulatory Body	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Commissioner(s).
Sub-Contractor	means a contractor that enters into a sub-contract with the Service Provider.
Working Day	means any day other than a Saturday or Sunday or public holiday in England and Wales.

1. The Service Provider shall (and shall ensure that any Sub-Contractor or third party shall) comply at all times with the Data Protection Legislation and their obligations as a Data Processor or Data Controller as the case may be in respect of Personal Data belonging to the Data Controller and shall not perform its obligations under this Agreement in any such way as to cause the Commissioner(s) to breach their obligations under the Data Protection Legislation. The Commissioner(s) shall be the Data Controller of the Personal Data and the Service Provider shall be the Processor of the Personal Data unless it is agreed or is apparent from the nature of the processing that the Service Provider shall be a Data Controller in which case the Parties shall be joint Data Controllers and the provisions of the Data Protection Legislation in relation to Data Controllers shall apply to both Parties.

2 Each Party shall ensure that it and its representatives shall comply in all respects with the Data Protection Legislation and any other relevant Data Protection Legislation in relation to all information made available to it under this Agreement by the other Party or arising through the delivery of the Services.

3 If Personal Data shall be shared between the Service Provider and any Sub-Contractor or third party under this Agreement the Service Provider shall ensure the Sub-Contractor or third shall comply with this Schedule 9.

4 Upon expiry or termination of this Agreement the Service Provider shall at no cost to the Commissioner(s) ensure that Personal Data shall be transferred back to the Commissioner(s) or provided to a replacement service provider (as directed by the Commissioner(s)) unless the Service Provider shall be obliged by Law to retain the Personal Data.

5 Upon expiry or termination of this Agreement any Personal Data that remains on the Service Provider's (or any Sub-Contractor's) computer systems shall be cleaned from the computer systems in accordance with industry practice relating to Certified Data Wiping.

6 Without prejudice to the generality of this Schedule 9 and for the avoidance of doubt it is hereby specifically provided that the Service Provider shall fully, promptly and effectively indemnify and keep so indemnified the Commissioner, its servants and agents from and against all and any actions, charges, claims, reasonable costs, damages, demands, reasonable expenses (including legal and administrative expenses), liabilities, direct losses and proceedings whatsoever arising from its failure to comply this Schedule 9 or Clause 35 of this Agreement.

7 If a notice is required to be given between the Data Controller or the Data Processor the notice shall be in writing and shall be delivered personally, or sent by pre-paid first class post, or by recorded delivery, or by commercial courier, to each Party required to receive a notice under the Data Protection Legislation at its address as set out clause 1 of the Agreement

8 The Service Provider shall (and shall ensure that any Sub-Contractor shall):

i) process Personal Data only to the extent, and in such manner as is necessary for the delivery of the Services, by Law, or by any Regulatory Body and the Service Provider shall inform the Commissioner(s) if it considers that any of the Commissioner(s') instructions infringe the Data Protection Legislation;

ii) ensure that it has in place Protective Measures, which have been reviewed and approved by the Commissioner(s) as appropriate to protect against a Data Loss Event having taken account of the:

s(a) nature of the data to be protected;
(b) harm that might result from a Data Loss Event;
(c) state of technological development; and
(d) cost of implementing any measures;

iii) process that Personal Data only in accordance with this Schedule 9, Annex 1 hereto and Clause 35, unless the Service Provider shall be required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Commissioner(s) before processing the Personal Data unless prohibited by Law

iv) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, damage, destruction, alteration or disclosure;

v) take reasonable steps to ensure the reliability of any of its Staff who have access to the Personal Data and that its Staff shall not process Personal Data except in accordance with this Agreement (and in particular this Schedule 9 and Annex 1 hereto);

vi) ensure that its Staff (unless they have appropriate authority) shall not have access to the Personal Data and enter into appropriate confidentiality undertakings with the Service Provider or Sub-Contractor ;

vii) obtain prior written consent from the Commissioner(s) to transfer Personal Data to any Sub-Contractor or affiliates for the delivery of the Services;

viii) ensure that Staff required to access the Personal Data shall be informed of the confidential nature of the Personal Data and comply with the obligations set out in this Schedule 9,Annex 1 and Clause 35 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 Commissioner(s) or as otherwise permitted by this Agreement; ;

ix) ensure that Staff shall receive an adequate level of training in data protection and in the use, care, protection and handling of Personal Data;

x) ensure that none of its Staff shall publish, disclose or divulge any of the Personal Data any third party unless directed in writing to do so by the Commissioner(s);

xi) notify the Commissioner(s) within twenty-four [24] hours if it becomes aware of a breach or alleged breach of the Data Protection Legislation;

xii) provide the Commissioner(s) with full co-operation and assistance in relation to investigating breaches of the Data Protection Legislation, (to include inspection of premises and security arrangements if requested);

xiii) notify the Commissioner(s) within five [5] Working Days, if it receives:
- a request from a Data Subject or a third party to have access to a person's Personal Data; or
- a complaint or a request relating to the Commissioner(s') obligations under the Data Protection Legislation.

xiv) at the written direction of the Commissioner(s), delete or return Personal Data (and any copies of it) to the Commissioner(s) on termination or expiry of the Agreement unless the Service Provider is required by Law to retain the Personal Data.

9 The Service Provider shall (and shall ensure that any Sub-Contractor shall) provide the Commissioner(s) with full co-operation and assistance in respect of any complaint or request made, including

i) providing the Commissioner(s) with full details of the complaint or request;
ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Commissioner(s') instructions;
iii) providing the Commissioner(s) with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Commissioner(s)); and
iv) providing the Commissioner(s) with any other information requested by the Commissioner(s) in respect of the complaint or request.

10 The Service Provider shall not transfer Personal Data outside of the EU unless the prior written consent of the Commissioner(s) has been obtained and the following conditions are fulfilled:
(i) the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Commissioners;
(ii) the Data Subject has enforceable rights and effective legal remedies;
(iii) the Service Provider 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 Commissioner(s) in meeting its obligations); and
(iv) the Service Provider complies with any reasonable instructions notified to it in advance by the Commissioner(s) with respect to the processing of the Personal Data;

11 Subject to clause 15 of this Schedule 9, the Service Provider shall notify the Commissioner(s) immediately if it:

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

12 The Service Provider shall (and shall ensure that any Sub-Contractor Shall) permit the Commissioner or the Commissioner's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit its data processing activities and comply with all reasonable requests or directions by the Commissioner (s) to enable the Commissioner(s) to verify that the Service Provider (or Sub-Contractor) is in full compliance with its obligations under the Data Protection Legislation.

13 The Service Provider's obligation to notify under clause 11 of this Schedule 9 shall include the provision of further information to the Commissioner(s) in phases, as details become available.

14 The Service Provider shall provide all reasonable assistance to the Commissioner(s) in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may include:

(i) a systematic description of the envisaged processing operations and the purpose of the processing;
(ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
(ii) an assessment of the risks to the rights and freedoms of Data Subjects; and
(iii) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

15 Taking into account the nature of the processing, the Service Provider shall provide the Commissioner(s) with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 11 of this Schedule 9 (and insofar as possible within the timescales reasonably required by the Commissioner(s)) including by promptly providing:

(a) the Commissioner(s) with full details and copies of the complaint, communication or request;
(b) such assistance as is reasonably requested by the Commissioner(s) to enable the Commissioner(s) to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
(c) the Commissioner(s), at its request, with any Personal Data it holds in relation to a Data Subject;
(d) assistance as requested by the Commissioner(s) following any Data Loss Event;
(e) assistance as requested by the Commissioner(s) with respect to any request from the Information Commissioner's Office, or any consultation by the Commissioner(s) with the Information Commissioner's Office.

16 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 9 provided that this requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
(a) the Commissioner(s) determines that the processing is not occasional;
(b) the Commissioner(s) 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
(c) the Commissioner(s) determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

17 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.

18 Before allowing any Sub-Contractor to process any Personal Data related to the Agreement, the Service Provider shall:
(a) notify the Commissioner(s) in writing of the intended Sub-Contractor and processing;
(b) obtain the written consent of the Commissioner(s);
(c) enter into a written agreement with the Sub-Contractor which shall give effect to the terms set out in this Schedule9 and clause 35 of this Agreement such that they apply to the Sub-Contractor; and
(d) provide the Commissioner (s)with such information regarding the Sub-Contractor Provider as the Commissioner(s) may reasonably require.

19 The Service Provider shall remain fully liable for all acts or omissions of any Sub-Contractor.

20 The Commissioner(s) may, at any time on not less than 30 Working Days' notice, revise this Schedule 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

21 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Commissioner(s) may on not less than 30 Working Days' notice to the Service Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

22 The Service Provider shall provide all reasonable assistance to the Commissioner(s) in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may include:
(i) a systematic description of the envisaged processing operations and the purpose of the processing;
(ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
(ii) an assessment of the risks to the rights and freedoms of Data Subjects; and
(iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

23 Failure by the Service Provider to comply with its obligations under this Schedule 9 and Clause 35 may be regarded as a material breach of this Agreement.

SCHEDULE 10 ANNEX 1

Processing, Personal Data and Data Subjects

The Service Provider shall comply with any further written instructions given by the Commissioners with respect to the processing of Personal Data. Any such further instructions shall be incorporated into this Schedule 10 Annex 1.

Description Details

Subject matter of the processing

This should be a high level, short description of what the processing is about i.e. its subject matter

Duration of the processing

Clearly set out the duration of the processing including dates

Nature and purposes of the processing

Please be as specific as possible, but make sure that you cover all intended purposes. 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. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.

Type of Personal Data

Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc

Categories of Data Subject

Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc

Retention of Personal Data

Describe for how long the personal data will be retained, how it be returned, or how it will be destroyed.